# JUDGEMENT

# AS A RATIONAL PROCESS

*Reprinted from* ***Architectural Judgement****, McGill-Queen's University Press, Montreal, 1971. This chapter subsequently appeared as an article entitled "Architectural Judgement" in the June, 1971 issue of the* ***Canadian Architect****.*

Any opinion expressed about a building or group of buildings can, in its widest sense, be called a rational judgement. In this sense, Ruskin's rapturous assessment of the merits of St. Mark's, Venice, is just as much a reasoned judgement as a surveyor's report on the condition of a mediaeval barn. In the narrower and stricter sense of the term, however, it may be assumed that professional judgements in architecture are neither the dithyrambic transmutations of poetic experiences induced by the contemplation of a building, nor the bare catalogue of a building's physical merits and defects. They are, we may presume, sober and sensitive critical assessments of the total quality of a building envisaged as a synthesis of every aspect of its design. Such assessments are rarely put into writing (even by judges of architectural competitions); nor are they elaborated into lengthy detailed expositions customary in Courts of Appeal. But elaborations of such judgements, and even attempts to reconcile or distinguish conflicting opinions, by means of reasoning, seem to be an indispensable part of the architect's *creative* process. The only controversial aspect of the activity concerns the difficulty in reaching general agreement as to what exactly this "rational" element implies.

The nineteenth-century theory of Rationalism, as expounded most eloquently by Viollet-le-Duc, has been criticized from two diametrically opposed points of view. First there are those who contend that an architect, being an artist, designs intuitively, and hence judges intuitively, so that the merits of his works are incabable of assessment by Aristotelian, Cartesian or any other "rational" methods. Secondly, there are those who contend that nineteenth-century Rationalism was just a clumsy and obsolete substitute for judgements now capale of solution with absolute precision by computers. The only common ground of these two dissenting points of view is the shared implication that *debate* about architectural judgement is impossible. Hence those who hold either view would presumably deny that legal judgements could possibly provide any useful analogy to architectural judgements, since the former, being based in Anglo-American law on an "adversary" system, assumes that there must be two points of view, even if one point of view is virtually untenable.

Scepticism as to the reality of "Rationalism" as a dialectical process cannot be ignored, because such scepticism was expressed even by those who were most influential in popularizing the doctrine in the nineteenth century. César Daly, in an editorial in the 1866 issue of the *Revue Générale*, stated that although the Rationalist School (with which he sympathized) was assuming considerable importance in France, its virtue in assuring technological progress was offset by its inevitable tendency to retard aesthetic progress.[1] John Summerson (whose essay on Viollet-le-Duc and his theory is a masterpiece of its kind) considered that Rationalism was vitiated by the fact that it was possible to envisage two kinds: the first depending wholly on the extent to which function can be mathematically stated, and the second depending on the architect's personal interpretation of function. "The first sort is ruthless in its application of means to ends; the second sort adapts both means and ends to a game of its own. The first sort of architecture is, as a matter of fact, almost impossible for conception...the second sort of architecture is a perfectly feasible one, the only proviso being that the function of the building be considered as a sufficient emotional interest to make this dialectic mode of expression significant."[2]

The credibility of nineteenth-century Rationalism has been affected in the present century by the introduction of parallel concepts, such as the idea of "organic architecture" developed by Frank Lloyd Wright, and the cult of "functionalism." Moreover, there are doctrinal ambiguities inherent in such architectural labels as "rationalism" and "functionalism" which are well exemplified by the title of Alberto Sartoris's "panoramic synthesis of modern architecture," published in Milan in 1935, where the title on the front cover reads: *Gli Elementi dell' Architecttura Funzionale*, whilst the title on the spine reads *Architecttura Razionale*. In this instance, the confusion was to some extent due to misgivings expressed by

Le Corbusier in a letter written in 1931; a letter which Sartoris published in the preface. In this letter, Le Corbusier contends that the term *architecttura razionale* is too limited, and adds: "our rationalist cenacles negate, though only theoretically, the fundamental human function of beauty, namely the beneficial and invigorating action which harmony has upon us."

Walter Gropius also rejected the term "rationalism" in *The New Architecture and the Bauhaus*, though this was mainly due to the disrepute into which *Die neue Sachlichkeit* had fallen in the 1930's.[3] "Rationalism," he wrote, "which many people imagine to be the cardinal principle (of the New Architecture), is really only its purifying agency. The liberation of architecture from a welter of ornament, the emphasis on its structural functions, and the concentration on concise and economical solutions, represent the purely material side of that formalizing process on which the *practical* value of the New Architecture depends. The other, the aesthetic satisfaction of the human soul, is just as important as the material."[4] These emphatic repudiations of Rationalism by both Le Corbusier and Gropius, and their reasons for repudiating it, are important, because the nineteenth-century ideal of Rationalism, as expounded by Viollet-le-Duc and exemplified by Henri Labrouste, had never implied that "Rationalism" must necessarily exclude emotion. Following Boileau (whose *Art Poétique* was written in 1674), these French theorists regarded reason as an arbiter of architectural criticism, and never as the sole mechanism of architectural creativity. Hence, any discussion as to whether architecture should be either rational or emotional would, as far as these theorists were concerned, be intrinsically futile.

The validity of Rationalism as a basis for architectural criticism must surely depend on whether or not the essential qualities of good architecture can be assessed by *debatable* judgement. Before the Freudian era, this concept of a reasoned judgement, though difficult to define with philosophical precision, was at least relatively free from ambiguities in this respect. But since the middle of the last century, when the verb to "rationalize" was gradually introduced into our vocabulary, the difference between "reasoning" and "rationalizing" has obscured and complicated the essential nature of the problem. Nevertheless, it is some consolation to reflect that the complexities which this ambiguity has introduced into architectural theory are miniscule compared with its devastating effect on legal theory; and although American jurisprudence has now more or less recovered from Jerome Frank's shattering assault on the traditional theory of legal judgement, the nature of this assault, and the peculiar vulnerability which theories of legal judgement display to such attacks, makes legal theory an ideal "model" (as the sociologists would say) for elucidating the fundamental problems of professional judgement in architecture.

Professor Frank's argument in *Law and the Modern Mind* may be summarized as follows: "It has long been a tradition among lawyers to assert that judicial decisions are reached by a process of reasoning. But in fact, this overt display of reasoning is sheer bunkum. When a judge hears a case, he gradually makes up his mind (since the law insists that he *must* make up his mind); but he does so in response to a variety of factors which have nothing to do with reason, and range from the bias of his social prejudices to the rawness of his ulcers. The so-called 'reasons' which he finally sets forth in his official opinion are nothing more than rationalizations of predetermined hunches. If he has decided to give judgement in accordance with precedents cited on behalf of the plaintiff, his trained intelligence and mastery of legal jargon will easily allow him to demonstrate their relevance. If, on the contrary, he favours the defendant, he can just as easily demonstrate the opposite. Judicial opinions are simply the expression of a subconsciously persisting chidhood image of a 'father-figure;' and anyone who studies such opinions in the hopes of understanding the nature of law will be wasting their time."

Much of the force was taken out of Jerome Frank's argument by the simple expedient of promoting him to the Bench, when, as Judge Frank, he discovered that the judicial process was rather more objective than he had hitherto supposed. But even if we accept that Jerome Frank's original theory has now been shown to be incorrect, we are not thereby dispensed from analysing the rationalist theory of architectural judgement with the same scepticism that he displayed. Viollet-le-Duc, the father of modern architectural rationalism, approached the same problem from the other end when he wrote: "Observe in how many cases Reason confirms the judgement pronounced by Taste. Often—perhaps always—what we call taste is but an involuntary process of reasoning whose steps elude our observations."[5]

Similarly, the careful analysis made by Mrs. Johnson Abercrombie with respect to the psychology of perception and reasoning[6] must not be allowed to obscure the fact that the legal profession long ago accepted, as one of the facts of life, that eye-witnesses frequently give contradictory evidence without the slightest taint of perjury. Indeed, it is one of the commonplace duties of a court of law to fashion justice from such contradictions and inconsistencies, asserted in perfectly good faith. Hence, although it is certainly useful for an architect to understand the psychology of perception, professional judgements in architecture, like professional judgements in law, become little more than academic exercises if we subscribe to a theory that all humanity can be so schooled in perceptiveness as to describe uniformly both the shape and significance of objects seen, and to draw identical conclusions from occurrences observed.

Every architect knows perfectly well that, when designing a building, his initial reasoning process is a sequence of rationalizations, in the sense that it is a series of "inspirations rigorously analyzed by reason."[7] He visualizes some relationship of forms intuitively, and then tries to justify it in relationship to the programme. Often it is only with the greatest reluctance that he can bring himself to abandon his brainchild and search his mind for another. In practice, therefore, the question is not so much "why does the architect *choose* certain relationships of space?" but rather "why does he *reject* certain relationships of spaces?" The quality of an architect's creative talent may well be measured by the variety of spaces he is capable of conceiving; but the quality of his judgement depends upon his criteria of rejection, and the scruples with which they are applied.

Here, perhaps, lies the only real difference between the judicial functions of law and architecture. However creative the celebration of a High Court judge may be, it must necessarily be of a somewhat different order from that of an architect. Admittedly, it is quite possible, in theory, for a High Court judge, like an architect or an advocate, to envisage the solution of each particular problem as a process of selection and permutation from among every precedent he has ever encountered throughout his career. But in practice, judges rarely need to range beyond those precedents which are actually cited to them by the lawyers in charge of the case. Famous disputes have indeed been decided on the basis of one of the judge's own discoveries. Chief Justice Best's decision

in *Jones v. Bright* (1829) was largely influenced by a precedent not cited at the bar.[8] *Norway Plains Co. v. Boston and Maine R.R.* (1854)[9] was decided on the basis of *In re Webb*, which Chief Justice Shaw seems to have come across accidentally when looking up another case in the same unreliable volume of Taunton's Law Reports.[10] But such occurences must be rare. In fact, architectural judgement seems to be an amalgam of the functions of all the participants of a legal trial, in that an architect must not only weigh the merits of arguments, both for and against each potential solution, with judicial impartiality, but he must stimulate the adversary system of a Common Law trial by some kind of private intellectual debate within his own mind.

If this analysis of the creative process of architecture is correct; if architectural judgement is in fact more concerned with rejection than selection, then perhaps the most apt legal definition of reason is that given by Blackstone two centuries ago, when defining customary law. "Customs," he wrote, "must be reasonable, or rather taken negatively, they must not be unreasonable."[11] This, essentially, is all that the traditional Rationalist has ever demanded of an architectural design. He does not ask that it should demonstrably fulfil its function to perfection, that its structural system should demonstrably be the most elegant and economical that any civil engineer could devise, and that its environmental amenities must be proved to be unsurpassably exquisite. He simply asks that no architect should continue working on a project once he has become aware that it is unsuitable in its composition, illogical in its structure and incapable of harmonizing with its environment or with its component parts. This moderation partially explains why Rationalism is so unfashionable today. Rationalism has always been essentially a tolerant doctrine; hence it is as uncongenial to those for whom architectural creativity is analogous to Action Painting as it is to technocrats who dream of creating an everlasting urban utopia within five years.

Another reason why Rationalism is unpopular is that it conceives of reason in much the same way that the law conceives of a "reasonable man." Whenever litigation involves alleged negligence, the traditional Common Law test is usually: "what would a reasonable man have done in the circumstances?" Judicial definitions of a reasonable man have been numerous, varied and picturesque; but the frequency with which a jury of twelve reasonable men can stubbornly refuse to give a reasonable verdict has so persistently exasperated the judiciary, that jury trials in civil cases are becoming increasingly rare. Reasonable men also exasperate famous architects; for whatever definition we may choose for a reasonable man, it is unlikely that any architectural Form-Giver would recognize him as his ideal client. The basis of Le Corbusier's housing units (as they evolved from the mock-up exhibited in Paris in 1925 to their culmination in the various Unités d'Habitation) has been the Parisian artist's ideal dwelling since the mid-nineteenth century, i.e. a large glazed studio at the front, with an indoor balcony at the back covering the kitchen area and containing a bed. How suitable this is for a reasonable man, is difficult to assess, though the transformation of Pessac,[12] and the alacrity with which *béton brut* interior walls are covered with wallpaper suggest that the proletariat is more conservative than *avant-garde* architects care to admit. The sociological surveys of three housing units (including the Unités d'Habitation at Nantes) conducted by Paul Chombart de Lauwe estimated that thirty-two percent of the housewives at Nantes considered their kitchens to be too small, whilst forty-five per cent considered them so small as to be totally inadequate.[13] "Whilst granting to architects the role of educator of the occupants, and wise promoter of a new way of life in new dwellings and new cities, we nevertheless think that more attention should be paid to the needs and desires of families," the author writes. "For example, the solution which consists in providing a wide opening from a bedroom onto a living room is unacceptable."[14]

Rationalism has recently come under attack from another quarter. With the sudden advent to popularity of architectural theorists who advocate complete permissiveness, and affectionately regard Las Vegas as the twentieth-century equivalent of Versailles, it is no longer enough for Rationalists simply to demand greater tolerance in judging what is reasonable; they must reaffirm their belief that their kind of tolerance does not exclude criteria, and that such criteria can be enunciated in the form of rational principles.

The classical concept of "architectural principles" was unfortunately undermined by well-meaning but inept treatises published in the first half of this century, when "principles" were discussed rather aridly in terms of platitudinous generalizations such as "unity," "contrast," "balance," "punctuation," "inflection," and so on. In the present context, it will be profitable to forget such classifications for the moment, and examine whether any help can be obtained by analogy with the notion of "principles" as understood by practioners of the law.

The popular idea of a legal principle is of an orotund Latin epigram. This idea was probably first popularized by Lord Bacon, who announced in his *Elements of the Common Laws of England* that "the rules themselves I have put in Latin, which language I chose as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest authority and majesty to be avouched and alleged in argument."[15] However, the idea proved so infectious that when, in 1863, Chief Baron Pollock absent-mindedly made the comment: *res ipsa loquitur*[16] instead of simply saying "the thing speaks for itself," the phrase was adopted with such enthusiasm and alacrity by the Bar, that it was eventually used to designate a principle enunciated by Chief Justice Erle (in Scott v. London & St. Katherine Docks)[17] to the effect that "where an accident is such as in the ordinary cause of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." By 1896, we find the principle being specifically referred to as "the rule of *res ipsa loquitur*" in an American court of law;[18] and it has been so termed ever since.

If, however, we seek the essential character of legal principles, as expounded or implied by judges when deciding cases, it seems clear that they stem from an entirely different concept, first enunciated (also in Latin) about a century ago: the concept of a *ratio decidendi*. The full implications of *rationes decidendi* are a favourite topic of professors of jurisprudence, since they allow full play for the intellectual sport of demonstrating the inherent contradictions of previous scholars' definitions. For our purposes, however, it can be defined quite adequately as the doctrine that there must always be some fundamental reason for deciding a case one way rather than another, and that this reason is the principle, or fundamental criterion, on which the case has been adjudged (whatever other remarks may have been made by the Court in its published opinion).

To demonstrate the relevance of this concept to the problems of architectural judgement, let us take, as an example, a critique published by Professor Peter Prangnell on the

Amsterdam City Hall Competition.[19] After describing the Toronto City Hall, the Boston City Hall, and Wilhelm Holzbauer's winning project for the Amsterdam City Hall as "three monuments to the idiocy of our times," he justifies this rebuke by explaining that, traditionally, city halls have housed the secular organization by which city services are provided and regulated, and thus a city hall should demonstrate those qualities that citizens really value. Such qualities, he says, vary with the occupations and interests of each citizen; hence a city hall should be, in microcosm, the image of streets and places of cities; freely accesible and interiorized.

After describing the prize-winning Amsterdam scheme as simple-mindedly boorish, Professor Prangnell amiably continues: "the whole package does not make one civil gesture towards that extraordinary example of the city Amsterdam. This must be the crucial issue..." Then, after elaborating upon the nature of this crucial issue, he expresses the view that two projects, one by Heijdenrijk and the other by Hertzberger, *did* take it into account.

If Professor Prangnell had been one of the official judges of the competition,[20] he would obviously not have asserted that the qualities praised in these schemes were *alone* sufficient to justify giving their authors the prize. He would, for example, have had to make sure that both Heijdenrijk and Hertzberger had complied with all the published conditions of the programme. But if we assume, for the sake of argument, that the judges were wrong in specifically asserting that Heijdenrijk did not comply with the condititons,[21] then the *ratio decidendi* of Professor Prangnell's judgement could be stated as the principle (which he enunciates) to the effect that "a project for any public building must have, at its root, a concern with the city-like fabric of support and fill, and must be concerned primarily with supporting all those elements and actions of life that make for agreeable citizenship."[22]

Whether or not this *ratio decidendi* is valid, or whether it means anything at all, is, in the present context, immaterial. It need simply be noted that Professor Prangnell very logically based his judgement of this whole complex issue on one single principle which he considered of over-riding importance, and that he supported it by reference to two *precedents* which he considered authoritative, namely Shadrach Woods' Free University of Berlin and Le Corbusier's Venice Hospital.[23]

The second important aspect of Professor Prangnell's principle of judgement, which is also relevant to the judicial theory of a *ratio decidendi*, is its implicit assumption of a context. It is appropriate here to note that there has long been a lively controversy among jurists as to whether a *ratio decidendi* is totally dependent on its context, or whether it constitutes a principle with a life of its own. Cardozo seems to have taken the latter viewpoint, since in *The Nature of the Judicial Process* he criticized[24] Lord Halsbury's pronouncement that "a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."[25] Yet if we examine the context of Lord Halsbury's statement, there seems much to be said for his point of view, which was by no means novel, and had been made by numerous judges, as for example by Chief Justice Best in *Richardson v. Mellish (1824)*.[26]

The particular case referred to by Cardozo (*Quinn v. Leatham*, 1901) revolved around the general issue as to whether a dispute between members of a trade union and an employer of non-union workmen was a trade dispute within the meaning of the *Conspiracy and Protection of Property Act* of 1875. The crucial problem which eventually confronted the House of the Lords was whether or not a decision in an earlier case (*Allen v. Flood*, 1898) constituted a binding precedent. Lord Halsbury contended that it did not, since in *Allen v. Flood*, it had been decided[27] that the defendant had uttered no threat, the trade union had passed no resolution, and the defendant had done nothing except express his personal views in favour of his fellow members. In *Quinn v. Leatham*, however, the evidence had shown that there had indeed been a conspiracy to induce the plaintiff's workmen to go on strike; hence whatever might have been the *ratio decidendi* of *Allen v. Flood*, it could never, according to Lord Halsbury, be applicable to a lawsuit based on the Statute in question.

This doctrine had been stated even more forcibly by Lord Halsbury in an earlier case (*Monson v. Tussaud*, 1894):[28] "I have some difficulty," he said, "In following the argument that a decision of the Court on one set of facts is an authority upon another and a totally different set of facts. Of course, if the two sets of facts are governed by some principle of law, the principle of law affirmed by the Court is equally authoritative to whatever facts the principle may be applied; but where the strength and cogency of the facts themselves, or the interference derived therefrom, is in debate, I cannot, as a matter of *reasoning*, compare one set of facts with another and bring within any governing principle."

These judicial opinions have been quoted in detail since they illustrate a principle of legal judgement which seems highly relevant to architectural judgement, even though it seems to have been generally overlooked by those who have written about architectural "rules." There is undoubtedly a whole *corpus* of architectural principles, enshrined in precedents, which can be aduced by the aid of reason, and applied to new or even hypothetical situations. But the congruity of the context is essential to the proper application of such principles, otherwise they produce only mechanical, alien and moribund *pastiches* of a type which brought "the rules of architecture" into justifiable disrepute. According to Howard Robertson's *Principles of Architectural Composition*, "the examination of the practical factors which influence the design of buildings in a direct and concrete sense forms a study quasi-independent of the consideration of design in the abstract."[29] But even the most superficial study of legal judgements will convincingly demonstrate that there is no such thing as "the consideration of adjuction in the abstract," and that even the broadest of legal generalizations depend for their application, in the last resort, on the context in which they are applied. Consider, for example, the maxim which can be translated as: "no one will be heard to assert his own shameful conduct."[30] At first sight, this proposition that no one may come into Court simply to ask for punishment might seem so obviously in accordance with the administration of temporal justice as to be applicable automatically, as indeed it *was* so applied by Lord Mansfield when he refused to allow a juror to testify to his own impropriety.[31] But it eventually became clear that a jury *does* reach its decision by improper means (such as by casting lots), there is literally no other way of detecting such impropriety other than by a sworn confession from one of its members.[32]

I claim then, that if we regard the principles of architecture in the same light that judges regard the principles of law, those principles are equally meaningful and genuine, since they form part of a creative "cybernetic" process involving *reasoning within an appropriate context*. For although the primary

ing is ostensibly the specific requirement of a client, in law and architecture any valid decision must depend on wider contexts: the context of history (which provides precedents), the context of society (which provides safeguards for the public with regard to the possible effects of any decision on those not immediately involved) and the context of the physical environment (which provides both a sense of place and the judicial guidelines of customary law). All these factors must be in context of legal reasoning is ostensibly the specific issue in dispute, just as the primary context of architectural reasonvolved in the process of reasoning, just as the process of reasoning must be involved in the process of evaluation, and when an architect can enunciate his reasoning with the same clarity and precision as a High Court judge, he may feel assured that his judgement is professional in the noblest and most apt sense of the term.

*NOTES:*

1. Op. cit., vol. xxiv, col. 3.
2. J. Summerson, *Heavenly Mansions* (paperback ed.), p. 149.
3. See B. M. Lane, *Architecture and Politics in Germany, 1918-1945* (1968), p. 130.
4. Op. cit. (1935 ed.), pp. 19-20.
5. E. E. Viollet-le-Duc, *Entretiens* (1863), vol i, p. 29, here given in Bucknell's translation, p. 29 (*très-souvent peut-être toujours le sentiment du goût n'est qu'un raisonnement involuntaire dont les termes nous échappent.*")
6. In *The Anatomy of Judgement* (1960), ch. 2 and 3. The author of this book is now Reader in Architectural Education at London University; but when it was written she was in the Department of Anatomy, studying "perception in cerebral palsied children." The book is not therefore specifically concerned with architecture.
7. Viollet-le-Duc, *op. cit., vol. i, p. 179:* "*... l'inspiration revêtue d'une distinction particulière à toute oeuvre produite par un sentiment vrai analysé rigoureusement par la raison, avant d'être exprimé.*"
8. 5 Bing. 533 at p. 543: "However, I do not narrow my judgement to that, but think on the authority of a case not cited at the bar, *Kain v. Old*...&c., &c."
9. Supreme Court of Massachusetts, I Gray 263.
10. Unfortunately, the eighth volume, to which Chief Justice Shaw referred, was notoriously unreliable. Cf. remarks (quoted in a footnote to chapter six) by Baron Parke in *Hadley v. Baxendale.*
11. Sir William Blackstone, *Commentaries on the laws of England,* p. 77 (Intro., sec. 3).
12. See: Philippe Boudon, *Pessac de la Corbusier* (1969).
13. P. Chombart de Lauwe, *Famille et Habitation* (1960), p. 80.
14. *Ibid.*, p. 107.
15. *Op. cit.*, Preface.
16. A phrase he doubtless recollected from Cicero's *Oratio pro Milone* (though Cicero wrote "*res loquitur ipsa*"); or from *Roberts and Tremayne's Case* reported in Cro. 16 Jac. I, p. 508.
17. 1865, 3 H. & C. at 601.
18. In *O'Neal v. O'Connell* (167 Mass. 390), per Lathrop J. The term appears in the 1867 edition of Bouvier's Law Dictionary, but in no earlier edition.
19. *The Canadian Architect,* March 1969, pp. 60 ff.
20. Which included Professor Sir Robert Matthew and Professor J. Schader.
21. *Jury Report,* p. 23.
22. *The Canadian Architect,* March 1969, p. 62.
23. *Ibid.*
24. *Op. cit.* (paperback ed.), p. 32.
25. *Quinn v. Leathon* (1901) A.C. 495 at 506.
26. 2 Bing. at 248.
27. It is important, in the present context, to note that when *Allen v. Flood* was decided in the House of the Lords, Lord Halsbury dissented from the majority opinion. In other words, he differed as to the interpretation of the facts constituting the subject of the *ratio decidendi.*
28. 1894 I Q.B. at 689.
29. *Op. cit.*, p. 3.
30. "*Nemo turpitudinem suam allegans audietur.*" Professor Wigmore, in his famous treatise on *Evidence,* describes this as an eighteenth-century maxim; but in fact it occurs in Coke's *Institutes* (Bk. IV, ch.64) in the form: "*allegans suam turpitudinem non est audiendus.*"
31. *Vaise v. Delaval* (1785) I Term. Rep II.
32. Cf. the Pennsylvania case of *Commonwealth v. Weizman* (1936) (25 Pa. Dist. & County 469), where the members of the jury were fined $10.00 for Contempt of Court.

*Grand Stair Hall, Bordeaux Opéra, by Victor Louis*