

decidedly of opinion that the prisoner is innocent, in practically all cases, procure a pardon; I think he ought to have a legal right to direct a new trial. On the other hand, he may not unfrequently feel that the jury have done substantial justice in overlooking some deficiency or weakness in the legal proof of the case, which had occurred to his mind, and in this case the result is that, without any default on his part, a criminal meets his deserts, although the proof against him may not quite come up to the legal standard. I remember a case many years ago in which a surgeon was convicted of manslaughter for causing the death of a woman in delivering her of a child. The judge (the late Baron Alderson) summed up strongly for an acquittal, remarking on the slightness of the evidence that the man was drunk at the time; but the jury convicted him, well knowing that he was a notorious and habitual drunkard.

"For these reasons, the institution of trial by jury is so very pleasant to judges that they may probably be prejudiced in its favour. I think, however, that the institution does place the judge in the position in which, with a view to the public interest, he ought to be placed—that of a guide and adviser to those who are ultimately to decide, and a moderator in the struggle on the result of which they are to give their decision. The interposition of a man, whose duty it is to do equal justice to all, between the actual combatants and the actual judges of the result of the combat, gives to the whole proceedings the air of gravity, dignity, and humanity, which ought to be, and usually is, characteristic of an English court, and which ought to make every such court a school of truth, justice, and virtue. In short, if trial by jury is looked at from the political and moral point of view, everything is to be said in its favour, and nothing can be said against it. Whatever defects it may have might be effectually removed by having more highly qualified jurors. I think that to be on the jury list ought to be regarded as an honour and distinction. It is an office at least as important as, say, that of guardians of the poor, and I think that if arrangements were made for the comfort of jurors, and for the payment of their expenses when on duty, men of standing and consideration might be willing and even desirous to fill the position."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, July 9, 1883.

Before TORRANCE, J.

HATTON V. SENECAI.

SENECAL V. HIBBARD.

Contract—Default—Delivery of bonds.

Where S. transferred to H. his interest under a contract in consideration of the delivery to him of certain railway bonds, and S. afterwards repudiated this transfer, and himself collected the claim so transferred, but still retained the bonds, held, that H. was entitled to recover the bonds or to be paid their face value, with interest coupons, etc.

The demand of the plaintiff was, as transferee of Ashley Hibbard, to recover 35 bonds of the Montreal, Chambly & Sorel Railway company, of the par value of \$1000 each, or the sum of \$35,000, with interest from 2nd January, 1874.

The declaration set forth an agreement, dated 17th Oct., 1872, between the company and Sénécal, by which the contract between them was cancelled for the consideration of 25 per cent. of the Government subsidy to be drawn by Sénécal; that on the 15th May, 1875, Senecal, in consideration of the delivery to him of 35 of said bonds, transferred to Hibbard all his interest in the contract of 17th Oct., 1872; that Sénécal afterwards, in 1877, repudiated the transfer of 15th May, 1875, alleging that the same had been cancelled, and claimed from the Government said 25 per cent.; that afterwards on the 22nd November, 1877, he transferred his claim under the agreement of 17th October, 1872, to Isidore Hurteau, who obtained payment from the Government on the 5th Nov., 1879, of \$20,742.74; that the defendant, notwithstanding said repudiation and cancellation, retained said bonds and sold and disposed of them for his own benefit; that on the 26th January, 1882, Hibbard sold and assigned, for value, the bonds and coupons to the plaintiff; and said assignment was served upon Sénécal on the 2nd May, 1882.

The plea of Sénécal admitted the agreement of the 17th October, 1872, and the receipt of the bonds from Hibbard on the 15th May, 1875, and the order on the company on the 19th May, for the payment to Hibbard of 25 per cent. of the