CLEMENT *et al. v.* LEDUC.

HELD—*That where two wills, exact copies of each other, and made at the same time, by husband and wife, contain the same legacy, the legacy is only payable once.*

This was an action for certain legacies. Old Gilbert Leduc and his wife were married at the end of the last century, and lived together *communs en biens*. Having attained the age of 70, they died within a few months of each other. They had a numerous family, and as the children grew up and married, the old people purchased properties for them or gave them money, and established them in life. In 184i, the old couple thought it better to settle their estate, and they called in Brault, a notary, who made a will for each of them. But these two wills were exactly the same; they contained the same charges, the same conditions, the same usufruct; and were made at the same time and with the same object. In these wills the old people specifically referred to what they had done for their children, then it was stated in each that the testator gave to two of his grand-daughters 3,000 livres, and afterwards made the defendants, their grand-sons, the universal residuary legatees of each testator. After the death of the old man, an inventory was made of his estate, and it was shewn that the property of the community was so charged with debt that it was of little value. Several years passed after this without anything being done by the plaintiffs, the special legatees, except that they had received from the universal residuary legatees their 3,000 livres, as appeared by receipt given by the sisters to the brothers. The grand-daughters now claimed 6,000 livres more, 3,000 under each will. The only question then was this, were these two wills, made at the same time and containing exactly the same words of bequest, to be considered in the nature of a *don mutuel*, or were they to be considered two wills, giving 6,000 livres to each of the grand-daughters, *i. e.*, 3,000 from each of the grand-parents. It was shewn that this would give the grand-daughters twice as much as the daughters had received. Now, the law was this with respect to legacies:—If there were several legacies by the same will, payable to the same person for the same sum, the legacy would be only payable once, unless the legatee proved that the testator intended to make several legacies. But if the legacies were made by different instruments, the sum would be due under each instrument, subject, however, to proof of actual intention. The plea in this case was that the wills were joint wills, and, therefore, there was only one sum due. The wills were exact copies of each other, not made by strangers but by husband and wife, and the only difference seemed to be that the notary preferred to make two wills instead of one. Therefore the Court considered them as a *testament mutuel* upon which only one legacy was due. But the authorities laid down that these inferences might be controverted or established by testimony. Now, in this case, there was the evidence of a woman who was a relation of the parties, and she stated that before the wills were made, the old woman told her they were going to give their grand-daughters 1,500 livres from the two grand-parents together, but on the representations of witness, they increased the joint legacies to 3,000 livres, and after the wills were made, both testators declared the same thing. This testimony was good under the French law, and, therefore, the action would be dismissed.

MCFARLANE *v.* LYNCH & RAPIN *et al.* petitioners.

HELD—*That the sureties of a debtor, who has been ordered to be imprisoned for not fyling a statement, are not discharged till the debtor has been delivered into the hands of the Sheriff under the original writ of Capias ad respondendum.*

The plaintiff having obtained a judgment against Lynch, the usual proceedings were taken to make him fyle a statement; and on his default to comply, the plaintiff took proceedings to have him incarcerated for punishment under the Statute, and he was therefore ordered by the Court to be imprisoned for six months as a punishment. The Sheriff could not find the defendant; but at a subsequent period one of the sureties petitioned the Court for the issue of a *contrainte par corps* against the defendant, who, he said, could now be found, and he was, in consequence, arrested and imprisoned for six months as a punishment. The sureties now said they had done everything the law required, and prayed to be released from the bail bond because the defendant was in jail. But the Court did not consider that the imprisonment of the defendant as a punishment had the effect of discharging the sureties. He had not been delivered into the hands of the Sheriff under the original writ of *capias ad respondendum*. Under these circumstances, the petition in this and two other cases must be rejected with costs.

In re FERON, insolvent.

HELD—*That the wife of an insolvent cannot be examined as a witness by the assignee respecting her husband's affairs.*

In the case of this insolvent the assignee petitioned for the examination of the insolvent's wife under the Act, when it was objected that she could not be examined, there being no law which authorised the examination of a wife respecting her husband's affairs. The case was submitted upon the deposition. It was the opinion of the court that she could not be examined. The clause giving authority to examine "persons" respecting the estate of the insolvent, was copied from 6 Geo. 4, but in the English Act special authority was given to the commissioner to examine the wife. In this country, strange to say, a similar clause was in the bill, but it was struck out in committee and formed no part of the act as it now existed. There was a reason for this. Public policy did not allow domestic incidents to be brought before a court of justice. The ordinary statute law said specially that the wife shall not be a witness for or against her husband. Looking, therefore, at the policy of the law and the fact