

(New York), *Grosvenor v. Atlantic Fire Ins. Co.*, 17 N. Y. 391; and in Pennsylvania, *State Mutual Ins. Co. v. Roberts*, 31 Penn. St. 438. See also the United States cases referred to on p. 129 of this volume.

COMMUNICATIONS.

THE COURT OF QUEEN'S BENCH.

To the Editor of the LEGAL NEWS.

SIR,—I understand the great objection made to the plan I proposed for hearings in appeal is the suggestion that the Court shall be held by four judges. As the law stands four is the quorum of the Court, and it is only in case of an even division that it becomes necessary to call in a fifth judge. It will naturally be said that although the quorum is four, the Court always, or almost always, sits with five judges. The question therefore comes to be this—Is there any advantage in this number? I fancy that in stating that a Court gains no increase of authority by number, when it is composed of more than three or four judges, I shall not be advancing an opinion likely to meet with much opposition. The House of Lords is now held by three law lords, and the Privy Council, ordinarily, by four councillors. In a word the unanimous decision of four judges is quite as satisfactory as the unanimous decision of five. Then, if there is dissent, and the judgment is to be reversed, it will be so by three judges at least against one. If the Court is equally divided, then the judgment of the Court below should be affirmed. I know many people object to this. But why? If the question is so involved as to have divided the judges in appeal, the presumption in favour of the former judgment remains. Therefore on strict principle the judgment in first instance should stand. This was Sir L. Lafontaine's opinion, and when the judicial organization was altered in 1849, he constituted the Court of Queen's Bench with only four judges. Although I don't think the argument sound, I can conceive it being said, that by this division the litigant is deprived of his appeal; but surely there can be no room for any grievance when the decision of which the party is deprived is only that of an intermediate Court. Above the Court of Queen's Bench there are now two jurisdictions.

It is not, however, an essential part of my system that in case of equal division the judgment of the Court below shall be confirmed. If the absolute *arrêt* of the Court of Queen's Bench be a special hobby of many influential persons, I am willing they should be allowed to rock it, if they will only contribute their little sum of influence to give the Court time to hear the cases on the roll and opportunity to decide them coherently.

T. K. RAMSAY.

St. HUGUES, 13th August, 1880.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[Crown side.]

DIST. OF OTTAWA, July Term, 1880.

BOURGEOIS, J.

REGINA v. BERTHE.

" v. Rev. E. FAURE.

" v. LANGLOIS.

" v. DOYLE.

Indictment—Setting fire maliciously to manufactured lumber—32-33 Vic., c. 22, s. 11.

The prisoner Berthé was indicted for having, "at the township of Wright, feloniously, unlawfully, and maliciously set fire to a certain quantity of manufactured lumber, to wit, three thousand shingles and nineteen piles of boards," and the indictments against the other prisoners, after setting forth that Berthé had set fire to the lumber in question, charged them with having aided and abetted Berthé in so doing.

Aylen and *Foran*, for Berthé, upon his arraignment, moved to quash the indictment, on the ground that it did not allege that the setting fire was done "so as to injure or to destroy" the lumber in question;—32-33 V., c. 22, s. 11 (Ca.)

Fleming, for the Crown, and *Gordon*, for the private prosecution, urged that if the indictment were insufficient under s. 11, it was valid under s. 21, which makes the setting fire to "any stack of corn . . . any steer or pile of wood or bark" a felony.

The defence replied that s. 21 applied only to firewood or wood in an unmanufactured condition.

BOURGEOIS, J. I have given much thought to the points raised by the defence. The indict-