FILIATREAULT *v.* MCNAUGHTON.

HELD—That it is not necessary for a person, when offering a builder the balance due him under a contract to reserve his rights of action against the builder in respect to defects in the building. But if such reserve be made, the builder cannot on this account refuse to accept the balance tendered him.

This was an action for a balance due under a builder's contract. Mrs. Adams entered into a contract with plaintiff for the building of a house. When the whole thing was finished, a certain amount was found to be due to plaintiff. Mrs. Adams tendered him the money through M. Labadie, her notary, but with reserve of her rights under certain protests respecting supposed or alleged defects in the building. Now whether she had made this reserve or not was a matter of very little consequence, as she could always exercise the right of action against plaintiff in respect to those matters. Plaintiff declined to take the money under this reserve. The tender was made in American gold pieces, and was not quite so legal as it might have been. But it was clear that the money was ready for him. Under these circumstances judgment would go for the amount tendered, but (as he had refused to receive this money) without costs.

KELLY *v.* MCGEE.—The plaintiff was the owner of certain lots of land in Chatham. Defendant wishing to purchase, they went over the land together, and the defendant being quite satisfied, the deed was drawn. When the present action was brought for the recovery of the amount of the purchase money, defendant pleaded that there was no loghouse upon the land, and that a certain deduction should be made on this account. Now the defendant must have been perfectly well acquainted with this fact from the first.—*Judgment for plaintiff.*

BLUMHART *v.* BOULE; HUBERT, curator.

HELD—That a wife *separee de biens* must be authorized by her husband to make an opposition to a sale; and that the wife's admission that she was not authorized will invalidate the opposition.

In this case the defendant's property being seized under a writ of execution on a judgment, defendant's wife, M. A. X. Archambault, made an opposition in her own name as *separée de biens* from her husband and authorized by him. Plaintiff answered that she never was authorized by her husband. The parties went to proof, and the lady, being brought up, swore that she was not authorized, and that she did not require any authority from her husband. Unfortunately she had thus proved the exception herself. The difficulty was that upon the face of the opposition, the husband appeared to have come in and authorized her. But it was her own opposition and she said she was not authorized. Now an authorization was necessary; the exception would, therefore, be maintained, and the opposition dismissed with costs.—*Opposition dismissed.*

MONK, J.,

SCOTT *v.* INCUMBENT AND CHURCHWARDENS CHRIST CHURCH CATHEDRAL.

HELD—That an architect is responsible for defects in a building erected by him, though the plans were made by another architect before he assumed charge.

This was an action for Architect's commission, &c. There was no difficulty as to the 3 per cent. charged on the bulk of the outlay, but there were other items in the account which the Church authorities disputed. These sums, however, were of little consequence, inasmuch as the plaintiff was liable for want of skill. It was true he built the Church upon the plans of another architect, but it was his duty, as the work went on, to see what he was about. There was no difficulty as to his liability. The damages occasioned by his want of skill might be opposed in compensation, and the action would, therefore, be dismissed.

Ex parte C. GAREAU, for *certiorari.*

HELD—That a conviction for disturbing the public peace, "in premises off McGill Street," does not come under the Statute.

This was an application on the part of the petitioner to quash a conviction by the Recorder for disturbing the public peace "in premises off McGill street," by using insulting language towards Michael Ryan, constable. The petitioner represented that the alleged offence, which he denied *in toto*, was not committed in the public street at all, but merely a conversation that took place in his own store. Ryan had entered the store on the 20th March last, and requested Mr. Gareau to have the ice removed from the side-walk, as his neighbour was getting his removed. Mr. Gareau (who had been notified in the morning of the same day by another policeman to remove the ice, and who thereupon sent his boy out to do so) answered that it was already commenced, and the boy was then at his dinner. The policeman said it was not commenced. Mr. Gareau told him he lied, and then went with him to the door to point out where the job had been begun. It was here that Ryan said he was insulted by Mr. Gareau, but the book-keeper and another person in the store, who were within a short distance, testified that they did not hear Mr. Gareau make use of any insulting language. The Court was disposed to maintain the pretensions of the petitioner. Premises off McGill Street, simply meant a house on McGill Street, and the alleged offence, therefore, did not come under the terms of the statute. The conviction, too, repeated the same thing "in premises off McGill Street." The conviction was therefore bad, and must be quashed with costs.

MASSON *et al. v.* MCGOWAN, and PETER MCGOWAN, opposant.—This was an opposition to the seizure of real estate. The plaintiffs said the opposant had previously put in an opposition to the sale of the moveable property, which opposition was based on a deed which the Court held to be fraudulent. The same deed being made the basis of the present opposition, the plaintiffs pleaded the former judgment as *chose jugée*. The Court was convinced from the evidence that the deed was fraudulent, and the opposition must be dismissed with costs.

ROWAND *v.* HOPKINS.—A question between the plaintiff and the executor. Plaintiff must render the account as prayed for.