vice of writ in term, and eight days in vacation. The defendants objected to the service on the ground that they were entitled to the five days' delay between service and return prescribed by another clause of the statute. Plaintiff urged that the leaving of a copy at the prothonotary's office might be done at any time before the return of the action, within the three and eight days respectively. The Court was of opinion that there was no difficulty about the case. The language of the law termed this leaving of the copy of the declaration a service, and being a service there must be the same delay allowed as prescribed by the 107th clause for services in general. The time of service must, therefore, be held to be short, and the *exception à la forme* maintained. (See Godfrey *v.* Kitchener, and Ward *v.* Cousine cited as precedents. But see also a ruling by Mr. Justice Monk, in Raphael *v.* McDonald, same day, holding that the usual delays are not necessary with respect to service of declaration.)

RODIER *v.* TAIT.

HELD—That a right of *mitoyennete* cannot be established by mere verbal evidence, when there is no title and the marks on the will do not indicate any such right.

This was an action for the value of a *mur mitoyen*. The plaintiff had acquired certain property on St. Paul Street, the back of which abutted on the property of the defendant, by a high stone wall made to separate the properties. The defendant had built against this wall and made holes in it. The plaintiff said, this is not a *mitoyen* wall; if you want it to be a *mitoyen* wall, I am ready to consent on the price being paid me. Now it was true that division walls were by presumption *mitoyen*. The right of *mitoyenneté*, however, could only be established by title, or by such marks upon the wall itself as would show its *mitoyenneté*. Now there was no title produced, and the pretensions of the defendant rested upon verbal testimony alone, whilst it was proved that the wall was built in such a way that the coping turned down into plaintiff's lot. There being no title or marks the plaintiff's action must be maintained.

CROWN CASES.

COURT OF QUEEN'S BENCH— CROWN SIDE.

MONTREAL, 25th Sept., 1865.

QUEEN *v.* DAOUST.

NEW TRIAL FOR FELONY.

RAMSAY, for the Crown, moved that the Court do proceed with this case, which had been held over from the preceding term, under the following circumstances:—Two indictments for forgery had been found against Mr. Daoust, and a conviction obtained on the first. At the trial on the second indictment, new and important evidence was adduced which satisfied the jury that the prisoner had been authorized to sign the name of the prosecutor, and he was acquitted. An application was then made for a new trial on the first indictment, that the new evidence might be presented. Mr. Justice Mondelet granted this motion, being of opinion that the prisoner should have an opportunity of proving his innocence, and he was held in the sum of $1,000 to appear for trial next term.

AYLWIN, J., said that the Court would not proceed to hear this case. The order given by the Court last term was so novel and extraordinary, that he could not take on himself the responsibility of proceeding. He would, therefore, reserve the point for the opinion of the five judges of the Court of Queen's Bench, and in the meantime the prisoner was admitted to bail in £500 for his appearance at the next term of the Court of Queen's Bench, in appeal, and on the first day of next term of Queen's Bench, Crown side.

QUEEN *v.* FOREMAN.

Oct. 4, 1865.

HELD—That a defect such as the omission of the word 'Company' in an indictment for embezzling funds belonging to the Grand Trunk Railway *Company* of Canada, comes under the class of formal defects which are cured by verdict.

Judge Aylwin being about to pronounce sentence upon the prisoner Foreman, convicted on an indictment for embezzling monies belonging to the "Grand Trunk Railway of Canada,"

CLARKE, for the prisoner, moved for arrest of judgment on the ground that there was no such body incorporated as the Grand Trunk Railway of Canada, and contended that the prisoner could not be sentenced for embezzling money belonging to a Corporation which had no existence.

RAMSAY, for the Crown, said the omission of the word 'Company,' even if fatal, was a formal defect, which was cured by verdict. Besides the prisoner had really suffered no wrong, for if the omission had been objected to earlier, the Court could have ordered the error to be corrected.

AYLWIN, J., said the objection had been made too late. If it had been raised before, the Court would have taken notice of it; but the prisoner had been convicted of having embezzled monies the property of the Grand Trunk Railway of Canada.

Sentence was then pronounced, condemning the prisoner to three years' imprisonment in the Provincial Penitentiary.

(See Consol. Stat. Can. Cap. 99, Sec. 84, as to formal defects which are cured after verdict.)

OCT. 4, 1865.

QUEEN *v.* HOGAN *et al.*

HELD—That on the trial of a misdemeanour, the Crown has the same right to order a juror to stand aside, without showing cause until the panel is exhausted, as in a felony.

RAMSAY for the Crown having ordered a juror to stand aside;

DEVLIN for the prisoners objected, saying that as in a misdemeanour the defence had no peremptory challenge the Crown could not exercise any.

RAMSAY said the Crown never had any peremptory challenge. It could only challenge for cause, with this privilege, that it was not compelled to show its cause, until it appeared that without such jurors the trial could not