

**THE MONTREAL LAW REPORTS  
FOR NOVEMBER.**

The Montreal Law Reports for November comprise pp. 432-480 of the Queen's Bench Series, and pp. 448-480 of the Superior Court Series. In the former, eight cases are reported. In *Hamilton Powder Co. & Lambe* the Court were unanimous in maintaining the decision of the Court below, which affirmed the right of the local legislature to enact a penalty for keeping a powder magazine without a license. But the judges differed as to the reasons. The Chief Justice and Judge Cross held that the local legislature had the right to enact the penalty as a police regulation, even assuming the license fee to be *ultra vires*. Judge Ramsay, on the other hand, holds that the local legislature has the right to exact a license fee under the B. N. A. Act, sect. 92, No. 9. In *City of Montreal & Walker*, it was unanimously held that the City of Montreal, under a power 'to license and regulate' junk stores, could not levy a revenue tax of fifty dollars on each license issued (in addition to the ordinary taxation). In *Reg. & Provost*, a Reserved Case was sent back for amendment, and subsequently the validity of the 32 & 33 Vict., c. 29, s. 24, was maintained without hesitation. In *Bury & Samuels* an interesting question of procedure upon execution was settled. Where the judgment creditor has seized and sold sufficient to cover his claim, and oppositions on the moneys are filed alleging the defendant's insolvency, the plaintiff cannot obtain an *alias* writ, to sell the remainder of the defendant's effects, without proof of his insolvency.

In the Superior Court Series for November sixteen cases are reported. In *Cité de Montréal v. Séminaire St. Sulpice* it is held that the exemption from municipal taxes enjoyed by educational institutions extends to taxes imposed for special purposes. In *Macfarlane v. McIntosh* it was decided that a tender of rent, not being a commercial matter, cannot be proved by parol evidence. In *La Cie. de Prêt & Lemire*, the Court held that there is no such thing as a demurrer to a demurrer. In *Cité de Montréal & Beaudry*, it was decided that a proprietor in the City of Montreal cannot be sued

for failure to remove snow or ice from the sidewalk before a house or lot owned by him, unless he occupies the house himself, or the lot be a vacant lot. In *Minto v. Foster*, it was held, on demurrer, that the condition annexed to a bequest of money to a married woman *commune en biens*, that it shall not be subject to the control of her husband, and shall be for aliment, and not subject to seizure, is valid, and the husband cannot bring any action in respect of such money. In *Gaudry v. Judah*, the Court of Review held that where dealings between the parties have been conducted upon the basis of pass-books held by each, and only one is produced, and it is reasonably substantiated by testimony, it must prevail. The case of *Desmarais v. Picken* illustrated the right of the vendor to re-sell at the purchaser's risk, where the latter refuses to accept on a frivolous pretence. The case of *Minogue v. Quebec Fire Ass. Co.* shows how a material concealment voids the contract of insurance. There are also a number of other cases of considerable importance.

**COURT OF QUEEN'S BENCH—MONTREAL.\***

*Procedure—Execution—Insolvency of defendant—Opposition.*

**Held:**—That where a judgment creditor has caused the seizure and sale of a portion of the defendant's effects, sufficient to cover his claim as stated in the writ of execution, he cannot subsequently, upon a mere allegation that the defendant is insolvent, and that oppositions *afin de conserver* have been filed by other creditors, obtain an order for an *alias* writ of execution, for the purpose of seizing and selling the remainder of the defendant's effects. *Bury*, Appellant, and *Samuels*, Respondent.—Dorion, C. J., Monk, Ramsay, Cross, Baby, J.J. (Ramsay and Baby, J.J., *diss.*). March 24, 1885.

*Ship—Charter-party—Demurrage—Dead Freight.*

The charter-party provided that the ship was to be loaded "as fast as can be received" in fine weather, and ten days' demurrage

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