

A DIGEST

—OF—

ALL REPORTED CASES DECIDED BY THE FEDERAL AND PROVINCIAL COURTS
IN THE DOMINION OF CANADA, AND BY THE PRIVY COUNCIL
ON APPEAL THEREFROM, DURING THE YEARS
1901 TO 1910 INCLUSIVE.

ABANDONMENT.

Service—Intervention—Arts. 276, 787, 1237 C.P.Q.]—An abandonment is only effective when it has been served on all the parties to the cause. An abandonment not so served does not put an end to the instance nor prevent a party from intervening to protect his rights.

McNally v. Prefontaine, 3 Que. P.R. 401 (Q.B.).

—Special authority—Proof of—Art. 548 C.C.P.]—An abandonment of a judgment should be signed by the party in whose favour it was rendered, or by his attorney furnished with special authority. If the judgment is for a sum of more than \$50 proof cannot be given by oral testimony that the attorney who signed the abandonment was authorized by the party or that the latter had ratified it, unless there has been a commencement of proof by writing.

Gauthier v. Barcelo, 4 Que. P.R. 224 (Sup. Ct.).

—Procedure.]—The prothonotary has no jurisdiction to give acte or issue an order on abandonment of proceedings; therefore, when notice of abandonment is filed by one party in the district in which the action should be tried, the opposite party should apply, by inscription, to the Court in order to obtain judgment pursuant to the notice.

Mageau v. Montreal Mutual Ins. Co., Q.R. 24 S.C. 208 (Sup. Ct.).

And see DISCONTINUANCE; BANKRUPTCY.

ABATEMENT.

See LIMITATION OF ACTIONS; PRE-EMPTION; WILL.

ABDUCTION.

Abduction of young girl.]—An application by the prisoner for leave to appeal from a conviction for unlawfully taking an unmarried girl under the age of sixteen

out of the possession and against the will of her mother, then having the lawful care and charge of her, contrary to sec. 315 of the Criminal Code, was refused, there being evidence to sustain the conviction, and the object or intention with which the girl was taken being immaterial.

Rex v. Yorkema, 21 O.L.R. 193, 16 Can. Cr. Cas. 189.

Unlawful taking or enticement of child —Decree of foreign Court awarding custody to mother — Validity.]—The decree of a foreign Court having jurisdiction over the parties and subject-matter, awarding the custody of a child of six years old to his mother, is of such validity and effect in Ontario—no fraud or collusion being shown—as to render the child's father liable, under s. 316 of the Criminal Code, to conviction for the offence of unlawfully taking or enticing away the child with intent to deprive the parent (mother) of the possession thereof. The Courts will recognize the validity of a divorce granted by a Court of the country where the parties were legally domiciled at the time when the proceedings were taken, although the decree was founded upon causes which would not be considered sufficient in an English Court.

Rex v. Hamilton, 22 O.L.R. 484.

ABORTION.

Counselling a person in Canada to submit in the United States to an operation.]—Counselling a person in Canada, to submit in a foreign jurisdiction to an operation which, if performed in Canada, would be a crime, is not an offence against the criminal law of Canada.

Rex v. Walkem, 14 B.C.R. 1, 14 Can. Cr. Cas. 122.

—Defence—Lawful operation—Evidence in reply of previous criminal act.]—Upon an indictment of the defendants (P., a physician and surgeon, and T., a boarding-house keeper), for procuring an abortion, the case for the Crown was that the defendants had