

The Legal News.

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The smallpox epidemic in Montreal has already given rise to a discussion on a point of criminal law. In the Queen's Bench, Crown Side, a jury had been impanelled in a capital case, and the trial had proceeded for some time, when it was discovered that one of the jurors came from a house in which a bad case of smallpox had just been detected by the medical inspectors. Mr. Justice Baby, after taking time for consideration, decided that it was prudent to discharge the jury, which was done, and the Court room was disinfected. The counsel for the prisoner, who had offered to allow another juror to be substituted for the objectionable one, subsequently opposed the swearing of another jury, on the ground that the prisoner's life had already been in jeopardy. This objection was overruled by the Court. It may be added that this case of *Reg. v. Considine* is rather unfortunate, because after the second jury had sat for a day or two, they also were discharged, owing to the illness of one of their number, who was attacked by so-called "Canadian cholera." The effect of the discharge of jury without verdict was fully discussed in the famous case of *Winsor v. Reg.*, L. R., 1 Q. B. 289, 390.

In *Creed v. Henderson*, 54 Law J. Rep. Chanc. 811, the question came up in Chancery, whether a promise to contribute to a charity can be enforced against the estate of a dead person. In 1881 a Mr. Hudson promised to contribute £20,000 to a fund for paying off debts on Congregational churches. The donation was payable in five annual instalments, and Mr. Hudson died before the last two were paid. The question was whether his estate was liable for the £8,000 remaining unpaid. Mr. Justice Pearson had no difficulty in deciding that, apart from the consent of all parties interested, no executor can lawfully pay a charitable donation promised by his testator, however solemnly, be-

fore his death. The reason, of course, is the absence of consideration for the promise. The donor, if he wishes to secure his charity to the proposed recipients, should by his will direct his executor to pay any balance which may remain due.

The case of *Reg. v. Sheppard* is of some interest, partly because the defendant was brought here from another province to undergo his trial for libel, and partly for other reasons to which it is not necessary to advert. It has shocked some persons that a defendant should be criminally prosecuted for the publication of a libel which he did not see until it was in print. In the result no undue severity is shown. Mr. Sheppard escapes with a fine. In the case of Mr. Edmund Yates, a literary man of some distinction, the defendant under similar circumstances was condemned to four months' imprisonment. Chief Justice Coleridge said (7 Leg. News, 138) "We have considered whether "it would suffice to inflict a fine, but a fine "on a person conducting a successful paper "with a large circulation, is a matter of comparative indifference."

SUPERIOR COURT.

[District of Iberville.]

St. Johns, P.Q., 18 & 19 Aug., 1885.

Before TORRANCE, J.

LOUIS MOLLEUR, *file*, v. CHARLES LOUPRET *et al.*
Prohibition—Information under Banking Act,
 34 Vict. Cap. 5, s. 62—*Language of Affidavit—Recusation.*

HELD:—1. *That the information in a case of making a false return under the Banking Act, 34 Vict. Cap. 5, s. 62, may be sworn to by a non-shareholder, and even by a citizen who is a debtor of the Bank.*

2. *The affidavit should be written in the language spoken by the informant, or in one which he understands perfectly.*

3. *Where prejudice is charged against a magistrate, and he denies under oath the existence of any such feeling, the Court will not grant a writ of prohibition on this ground.*

This was the merits of a writ of prohibition addressed to Charles Loupret, district magis-