Session, as he has given notice of a bill entitled "An Act to provide for the salaries of an additional Judge of the Court of Queen's Bench and an additional Judge of the Superior Court in the Province of Quebec." On the other hand, Mr. Blake has given notice of motion for a statement of "the number of judgeships in each Province at the time of the union of such Province with Canada, the incumbents of which were under the law entitled in certain events to retiring allowances; and the number of Judges in each such Province actually receiving such retiring allowances at such time; and a like statement for each year since Confederation, as to each Province during such year in the Union down to, and inclusive of, the year 1880."

Mr. Keeler has given early notice of his bill to repeal the Supreme Court Act.

CAPIAS.

The case of *Molson & Carter* presented some interesting questions under the law of capias. We shall not repeat the facts here, as the case is well known to the bar, and a report is to be found at page 258 of this volume. A special application was made to the Privy Council for leave to appeal from the judgment of our Court of Queen's Bench, but this has been refused. The judgment will be found in the present issue. Their lordships, according to their custom, looked into the merits of the case far enough to satisfy themselves that the judgment was sufficiently sustained by the facts. There were two dissentient opinions in the case (by Monk and Cross, JJ.), but their lordships do not appear to have considered the grounds on which the dissent of the minority was based as creating difficulties of a formidable character.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 24, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ., and DOHERTY, J. *ad hoc.*

GUY et al. (plffs. below), Appellants, & THE CITY OF MONTREAL (defts. below), Respondents.

Public street—Dedication by proprietor to the public—Prescription by open use by public.

A writing is not required to establish that property has been abandoned to the public for use as a public street; but the acts from which a dedication or abandonment can be inferred must be of a totally unequivocal character.

The fact that a street was openly used by the public without dispute for upwards of ten years as a highway, and that the corporation of the city exercised visible ownership by constructing a sidewalk thereon and filling in a swamp, more than ten years before the institution of an action, is sufficient proof of dedication by the proprietor.

The action was brought against the City of Montreal, claiming possession of a piece of land in the St. Joseph suburb, which, it was alleged, the city had unlawfully taken for the purpose of opening a public street.

The Corporation pleaded that the land in question, for more than 30 years before the institution of the action, had been used as a public street, forming the continuation of Guy street from its intersection with St. Joseph street; and, moreover, that the land in question had been destined by the late Etienne Guy, *auteur* of the plaintiffs, for a public street. That for more than ten years before the bringing of the action the land had been opened as a public street and registered as such in the defendants' register.

The Court below, Superior Court, Montreal, Dorion, J., Sept. 10, 1877, dismissed the action with costs.

As to destination, the respondents relied especially upon the fact that on the 26th Oct., 1831, the appellant, Michel P. Guy, proceeded with his brother Etienne and his sister Madame Berthelet to the partition of their father's estate, and in the deed the immoveable property south of St. Joseph street was designated as bounded on one side *by the continuation of Guy street*, and the part so referred to was excluded from the partition.

Sir A. A. DORION, C.J., after referring to the evidence, stated that the conclusion to which the Court had come was that there had been destination of the land on the part of the proprietor, and also open use by the public for many years as a public street. It was not necessary that the city should have a title in writing. His Honor referred to the case of *Myrand & Légaré*, 6 Q.L.R. 120, as a case in which a similar question had been decided.