

separately, and without reference to the others. The rule of Roman law relied upon, be held, was not in force in the Parlement de Paris.

MONK, J., concurred in the judgment of the majority for this reason. This was precisely one of those donations which, supposing the law revoking donations to be in force, would not have been set aside in France under the circumstances of the case, the donation constituting but a small portion of the lady's wealth, and her motives in making it being easily understood.

Judgment reversed.

*E. Barnard*, for Appellants.

*Bethune & Bethune*, for Respondents.

BULMER et al., appellants, and DUFRESNE et al., respondents.

*Substitution—Sale of sand by the Grévé.*

The *grévés de substitution* sold to the appellants all the sand they could take from the property for five years. Held, that the sale was illegal, and that the purchaser might be sued by the substitute for the value of the sand so taken. (21 L. C. J. p. 98.)

The action had been brought by the substitutes to a succession against the appellants to whom the *grévés de substitution* had sold all the sand they could take from the property for five years. The judgment had condemned the appellants to pay about \$800.

CROSS, J., dissenting, thought the judgment should be reversed.

RAMSAY, J., also dissenting, held in the first place that no such action was known to the law either of this country or of England. No trace of such a proceeding could be found in the books. On the merits there was no evidence to show the quantity of earth taken at all, except the admission of Bulmer, and the amount awarded was exorbitant.

DORON, C. J., said that Dufresne, the *grévé*, long after the registration of the substitution, sold this sand to Bulmer, who must be taken to have knowledge of the substitution. The sale was beyond the powers of the *grévé*, as the removal of the sand might destroy the value of the property altogether. Bulmer, by removing the sand, stood in the same position as any one who caused damage to his neighbor—he was bound to repair the damage. He might not have had actual knowledge of the substitution, but it had been published and he was bound to

know it. The action resembled the action of trover in England. The judgment was correct in principle, but the amount must be modified to the extent of two-eighths, and the costs would be awarded in the same proportion.

*H. W. Austin* for appellants.

*Geoffrion & Co.* for respondents.

## DISPUTED QUESTIONS OF CRIMINAL LAW.

(Continued from page 298.)

*II. "Obscene" Indictments.*—The ruling of the English Court of Appeal in *R. v. Bradlaugh*, 38 L. T. (N. S.) 118, will shake a practice which, in the American courts, has been heretofore unquestioned. The defendants, Charles Bradlaugh and Annie Besant, who argued their case in person, and with remarkable shrewdness and force, were convicted in the Court of Queen's Bench on an indictment which charged that they, "unlawfully and wickedly devising, contriving, and intending, as much as in them lay, to vitiate and corrupt the morals as well of youth as of divers other subjects of the queen, and to incite and encourage the said subjects to indecent, obscene, unnatural, and immoral practices, and to bring them to a state of wickedness, lewdness, and debauchery, unlawfully, &c., did, print, publish, sell and utter a certain indecent, lewd, filthy, and obscene libel, to wit, a certain indecent, lewd, filthy, bawdy, and obscene book called 'Fruits of Philosophy,' thereby contaminating, etc." The jury found that the book was calculated to deprave public morals, but exonerated the defendant from all corrupt motive in publishing it.

A motion in arrest of judgment was made, on the ground that the libel ought to have been set out. The motion was overruled by the court, consisting at that time of Cockburn, C. J., and Mellor, J. The case was argued in error in January, 1878, before Bramwell, Brett, and Cotton, L. J.J., who unanimously concurred in reversing the decision of the Queen's Bench. Bramwell, L. J., who leads off, begins by announcing the general rule that an indictment, if it give simply a conclusion of law, is bad, but that it must set out the facts necessary to constitute the offence in the concrete. The