The Legal News.

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THE QUEEN v. SCOTT.

The Supreme Court of Canada, on the 25th of April, reversed the decision of the Court of the Queen's Bench for the Province of Quebec, in the above case, which was one that elicited considerable discussion, and on which the Provincial Court was divided. The question was whether the stealing of an unstamped promissory note from the maker is larceny. Scott stole a note from the possession of the drawers, stamped and endorsed it, and then tried to collect it. The Court of Queen's Bench (22 June, 1877) Chief Justice Dorion and Judge Sanborn dissenting, held that this was larceny, but the Supreme Court has reversed the judgment, and sustained the opinion expressed by the Chief Justice and Mr. Justice Sanborn, that a note unstamped, being null, has no value, and is not the subject of larceny. This judgment seems to be in accordance with the English decisions in which the same point has been considered.

EXTRADITION.

It is satisfactory to find the Court of Appeals of Kentucky taking the correct view of the Extradition Treaty between Great Britain and the United States, in relation to the much controverted question of the right to try surrendered fugitives for offences other than those for which their extradition was claimed. In the case of the *Commonwealth v. Hawes*, decided by the Court of Appeals on the 17th April, the surrender of Hawes had been claimed by the United States Government, while the accused was residing in London, Ontario, and he was given up by the Canadian authorities, under the treaty of 1842, to answer three charges of forgery. One of the indictments for forgery was not pressed, and the prisoner was acquitted on the others. But the prisoner was still detained in custody, and finally a day was fixed for his trial on an indictment for embezzlement. Hawes then presented an affidavit to the Court, setting out all the facts attending his surrender, and moved to set aside the returns of the Sheriff on the various bench warrants under which he had been arrested, and to release him from custody. The Court having, in effect, sustained this motion, the Commonwealth appealed. The judgment appealed from held that the tenth article of the Treaty of 1842 impliedly prohibited the government of the United States, and the Commonwealth of Kentucky from proceeding to try Hawes for any other offence than one of those for which he had been extradited, without first affording him an opportunity to return to Canada, and that he could not lawfully be held in custody to answer a charge for which he could not be put upon trial. This decision, which embodies the point contended for by Great Britain in the recent diplomatic correspondence on the subject, has been sustained by the Court of Appeals of the State of Kentucky. It was because a different view was entertained by other courts of the Republic, that the English government declined to give up Winslow. We quote the concluding remarks of Chief Justice Lindsay, in which he replies to one of the strongest arguments adduced by those who hold a contrary opinion:

"Hawes was surrendered to the authorities of Kentucky to be tried upon three several indictments for forgery. The Canadian authorities were of opinion that the evidences of his criminality were sufficient to justify his commitment for trial on said three charges. One of the charges the Commonwealth voluntarily adandoned. He was tried upon the remaining two, and found not guilty in each case by the jury, and now stands acquitted of the crimes for which he was extradited.

"It is true he was in court, and in the actual custody of the officers of the law when it was demanded that he should be compelled to plead to the indictment for embezzlement. But the specific purposes for which the protection of the British laws had been withdrawn from him had been fully accomplished, and he claimed that, in view of that fact, the period of his extradition had been determined; that his further detention was not only unauthorized, but in violation of the stipulations of the treaty under which he was surrendered, and that the Commonwealth could not take advantage of the custody in which he was then wrongfully held, to try and punish him for a non-extraditable offense.

"To all this, it was answered that 'an offender against the justice of his country can acquire no rights by defrauding that justice.' That 'between him and the justice he has offended, no rights accrue to the offender by flight. He remains at all times, and everywhere, liable to be called to answer to the law for his violations thereof, provided he comes within the reach of its arm.' Such is the doctrine of the cases of Caldwell and Lawrence (8th and 13th Blatchford's Reports), and of the case of Lagrave (59th New York). And if the cases of Caldwell and Lawrence could be freed from the complications arising out of the residence of the prisoners within the territorial limits of the British crown, and the fact that we received them from the authorities of the British government in virtue of, and pursuant to, treaty stipulations, it would be sound doctrine and indisputable law.

"But did Caldwell or Lawrence come within the reach of the arms of our laws? They were surrendered to us by a foreign sovereign to be tried for specified crimes, and were forcibly brought for the purposes of those trials within the jurisdiction of our courts, and the point in issue was not whether the prisoners had secured immunity by flight, but whether the court could proceed to try them without disregarding the good faith of the government, and violating the 'supreme law?'

"The legal right of a judicial tribunal to exercise jurisdiction in a given case must, from the nature of things, be open to question at some stage of the proceeding, and we find it difficult to conceive of a person charged with crime being so situated as not to be permitted to challenge the power of the court assuming the right to try and punish him.

"The doctrine of the cases of Caldwell and Lawrence has been sanctioned by several prominent British officials and lawyers, and has seemingly been acted upon by some of the Canadian courts, and in one instance (that of Heilbronn) by an English court. We say seemingly, for the reason that in Great Britain treatises are regarded as international compacts, with which in general the courts have no concern. They are to be carried into effect by the Executive, and the proceedings in the courts are subject to executive control to the extent necessary to enable it to prevent a breach of treaty stipulation in cases of this kind. Hence, when a party charged with crime claims immunity from trial on account of the provisions of the treaty under which he has been extradited, he must apply to the Executive to interfere, through the law officers of the Crown, to stay the action of the court; otherwise it will not, at his instance, stop to inquire as to the form of his arrest, nor as to the means by which he was taken into custody.

"But a different rule prevails with us, because our government is differently organized. Neither the Federal nor State Executive could interfere to prevent or suspend the trial of Hawes. Neither the Commonwealth's Attorney nor the court was to any extent whatever subject to the direction or control either of the President of the United States or the Governor of this Commonwealth.

"But the treaty under which the alleged immunity was asserted being part of the supreme law, the court had the power, and it was its duty, if the claim was well founded, to secure to him its full benefit.

"The question we have under consideration has not been passed on by the Supreme Court of the United States, and it therefore so far remains an open one that we feel free to decide it in accordance with the results of our own investigations and reflections.

"Mr. William Beach Lawrence, in the 14th volume of the *Albany Law Journal*, at page 96, on the authority of numerous European writers, said:

"'All the right which a power asking an extradition can possibly derive from the surrender must be what is expressed in the treaty, and all rules of interpretation require the treaty to be strictly construed; and, consequently, when the treaty prescribes the offenses for which extradition can be made, and the particular testimony to be required, the sufficiency of which must be certified to the executive authority of the extraditing country, the State receiving the fugitive has no jurisdiction whatever over him, except for the specified crime to which the testimony applies.'

"This is the philosophy of the rule prevailing in France. The French Minister of Justice, in his circular of April 15, 1841, said: 'The extradition declares the offense which leads to

it, and this offense alone ought to be inquired into.'

"The rule, as stated by the German author Heffter, is, that the individual whose extradition has been granted cannot be prosecuted nor tried for any crime except that for which the extradition has been obtained. To act in any other way, and to cause him to be tried for other crimes or misdemeanors, would be to violate the mutual principle of asylum, and the silent clause contained by implication in every extradition.

"And when President Tyler expressed the opinion that the treaty of 1842 could not be used to secure the trial and punishment of persons charged with treason, libels, desertion from military service, and other like offenses, and when the British Parliament and the American Congress assumed to provide that the persons extradited by their respective governments should be surrendered '*to be tried for the crime of which such person shall be so accused*,' this dominant principle of modern extradition was both recognized and acted upon.

"This construction of the tenth article of the treaty is consistent with its language and provisions, and is not only in harmony with the opinions and modern practice of the most enlightened nations of Europe, and just and proper in its application, but necessary to render it absolutely certain that the treaty cannot be converted into an instrument by which to obtain the custody and secure the punishment of political offenders.

"Hawes placed himself under the guardianship of the British laws, by becoming an inhabitant of Canada. We took him from the protection of those laws under a special agreement and for certain named and designated purposes. To continue him in custody after the accomplishment of those purposes, and with the object of extending the criminal jurisdiction of our courts beyond the terms of the special agreement, would be a plain violation of the faith of the transaction, and a manifest disregard of the conditions of the extradition.

"He is not entitled to personal immunity in consequence of his flight. We may yet try him under each and all of the indictments for embezzlement, and for uttering forged paper, if he comes voluntarily within the jurisdiction of our laws, or if we can reach him through the extradition clause of the Federal Constitution, or through the comity of a foreign government.

"But we had no right to add to, or enlarge the conditions and lawful consequences of his extradition, nor to extend our special and limited right to hold him in custody to answer the three charges of forgery, for the purpose of trying him for offenses other than those for which he was extradited.

"We conclude that the court below correctly refused to try Hawes for any of the offences for which he stood indicted, except for the three charges of forgery mentioned in the warrant of extradition, and that it properly discharged him from custody.

"The order appealed from is approved and affirmed."

DIGEST OF QUEBEC DECISIONS.

[Concluded from page 204.]

Insolvent Act.

5. Where a trader carries on business in more places than one, a writ of attachment under the Act can only issue at his chief or one of his principal places of business.—*Brockville & Ottawa R. W. Co.* v. *Foster*, S. C., p. 107.

6. The return day of a writ of attachment under the Act must not be later than five days after service of the writ.—Ib.

7. An order obtained by a creditor for the delivery of goods, by fraud and artifice, will be set aside on petition of the assignee.—*In re Cable*, ins., & *Stewart*, assignee, & *Bayard*, petr., &c., S. C., p. 121.

8. Where a composition deed provides that the insolvent shall be entitled to a re-conveyance of his estate, on placing in the hands of the assignee notes covering the composition, and the assignee has re-conveyed the estate without receiving a note for a creditor who had filed a claim, the Court will order the assignee to deliver such note to such creditor.—*In re Murray*, ins., & *Stewart*, assignee, & *Auerbach*, petr., S. C., p. 123.

9. An insolvent is not bound to answer a question which may tend to criminate him.—*In re Beaudry & Wilkes*, petr., S. C., p. 196.

10. Where an attachment has been issued under the Act and the defendant has petitioned to quash within the five days, the plaintiff cannot discontinue his attachment, and the

defendant has a right (notwithstanding such discontinuance) to a judgment on his petition. —*Ford* v. *Short*, S. C., p. 198.

11. An insolvent cannot stay the proceedings of a plaintiff, until the assignee take up the *instance* in place of the insolvent.—*Wilson et al.* v. *Brunet*, C. R., p. 209.

12. A debtor who, having failed to meet his liabilities, gives accommodation notes, knowing his insolvency, and buys goods on credit, without disclosing these facts to the vendor, commits a fraud within the meaning of the Act, and is liable to be imprisoned accordingly. —*Watson et al.* v. *Grant*, S. C., p. 222.

13. The provisions of sec. 14 of the Act do not apply to a creditor who desires to attack the validity of an attachment under the Act, on the ground that his debtor (the insolvent) is not really a trader within the meaning of the Act, and that he is moreover not really insolvent, and, therefore, such creditor may intervene at any time and contest the proceedings, and, in so doing, he does not require to allege that he is an unsecured creditor for an amount exceeding $100.—*Langevin & Grothé et al.* Q. B., p. 237.

14. "The Court" in section 136 of the Act of 1875, in the Province of Quebec, means the Superior Court, and not the Judge sitting in insolvency, and the demand for the imprisonment of the debtor provided by said section is made in an ordinary suit and not by a petition in insolvency.—*In re Gear*, ins., & *Sinclair*, assignee, & *Furniss*, petr., S. C., p. 279.

15. A demand of assignment under the Act will be set aside, unless it be distinctly proved that the defendant has failed to meet his liabilities generally as they become due.—*Beard* v. *Thomson*, & *Thomson*, petr., C. R., p. 299.

16. The privilege for wages due to journeymen does not extend to the proceeds of the sale of book debts, but is limited to the merchandise and effects contained in the store or workshop in which their services were required.—*In re Beaulieu*, insolvent, & *Dupuy*, assignee, & *Beaulieu et al.*, petrs., C. R., p. 304.

17. The demand, under sec. 39 of the Act of 1875, must be made within the four days after the return of the writ, and seems to cover every species of demand.—*Cartier* v. *Germain*, S. C., p. 310.

See *Married Woman*.

Inscription en Faux.—The correctness of a duly certified copy of a notarial *acte* may be attacked otherwise than by an inscription *en faux*, and, therefore, the procedure by way of such inscription is unnecessary and ought to be rejected.—*Dufresne et al.* v. *Lalonde et al.*, S. C., p. 105.

Insurance.—1. Where the assured, in his application, described the building to be insured as "isolated," the mere fact that this word was explained in a printed note below the assured's signature to mean at a distance of 100 feet from the building, and that the building was not at that distance, would not invalidate the insurance in the absence of proof that the assured knew of this explanation at the time he signed the application.—*Pacaud & The Queen Insurance Co.*, Q. B., p. 111.

2. Mere over-valuation will not of itself, in the absence of proof of bad faith, invalidate the policy.—Ib.

3. The condition in a fire policy, that the assured shall give notice and make proof of loss before any suit can be brought on the policy, is not complied with by a third person to whom the loss is made payable furnishing such notice and proof of loss; and, in the absence of any such notice and proof of loss by the assured himself, the action by such third person will be dismissed.—*Stanton* v. *The Home Fire Insurance Co.*, p. 211.

4. An insurance by an assignee under a deed of assignment under the Insolvent Act will not enure to the benefit of an assignee subsequently elected by the creditors, without the consent of the insurance company, where the policy contains the following clause or condition:—"If the property be sold or transferred, or any change take place in title or possession, whether by legal process or judicial decree, or voluntary transfer or conveyance; or if the policy shall be assigned before a loss, without the consent of the company endorsed thereon, etc., then and in every such case the policy shall be void."—*Elliot* v. *The National Ins. Co.*, S. C., p. 242.

5. Where it is impossible for the assured to give a detailed statement under oath of his loss, supported by books and vouchers, owing to their being burnt, the condition of the policy requiring such statement will be satisfied by his giving affidavits as to the value of the

property lost.—*Perry* v. *The Niagara District Mutual Fire Ins. Co.*, S. C., p. 257.

6. An insurance of goods described as being in No. 319 St. Paul street will be held to cover the same goods, although removed into the premises No. 315 adjoining, if the agent of the insurance company, at the end of the first year of the insurance, examined the premises and consented to a renewal of the policy; and such a variation does not constitute a new contract, but only a slight change in the old contract approved of by the parties.—*Rolland* v. *The Citizens Ins. Co.*, C. R., p. 262.

7. The question as to the consent of the company to a change of the location of the goods insured, is a matter of fact properly left to the jury.—Ib.

8. An agent of an insurance company, whose powers are limited to receiving applications for insurance for transmission to the head office and for the collecting of premiums, has no power to waive any of the conditions of the policies.—*Baillie* v. *The Provincial Ins. Co. of Canada*, C. R., p. 274.

9. The condition in a policy to the effect that all persons insured shall, as soon after the loss by fire as possible, deliver in a particular account of such loss or damage, signed with their own hand and verified by oath or affirmation, is waived by the fact of the agent of the company and the person insured each choosing valuators who make a valuation of the loss, and by the fact of the company offering the insured a less amount than the valuation in settlement, showing that they only disputed as to the amount to be paid.—*Converse* v. *The Provincial Ins. Co. of Canada*, C. R., p. 276.

Interest—1. In a commercial case, where interest has been charged in accounts current rendered from time to time and unobjected to, the Court will allow the interest without any proof of express promise to pay it.—*Greenshields* v. *Wyman et al.*, S. C., p. 40.

2. Arrears of interest on an obligation entered into before the Civil Code came into force, accrued since the date of the Code, are prescriptible by five years as provided by the Code. —*Smallwood* v. *Allaire*, C. R., p. 106.

See *Prescription.*

Judgment.—1. The draft of a judgment as paraphed by the judge, is the true record of such judgment, and cannot be contradicted by verbal evidence offered in support of a *requête civile* attacking the correctness of the entries thereon so paraphed by the judge.—*Carter* v. *Molson, & Holmes*, int. party, S. C., p. 210.

2. A judgment so recorded, cannot be set aside, on a *requête civile* by another judge of the same court, on the ground of error in such record.—Ib.

Judicial Sale.—It is necessary that more than one person bid to make the sale valid.—*Poirier* v. *Plouffe, & Calvi*, oppt., S. C., p. 103.

Jurisdiction.—1. Where a party endorses a note after it is due, with the fraudulent intent thereby to attempt to force the other parties to the note to answer in a suit on the note at the place of the domicile of such endorser where he is served with process, the Court will dismiss an action brought under such circumstances, *quoad* such other parties.—*Wilkes* v. *Marchand et al.*, S. C., p. 118.

2. The Circuit Court has jurisdiction in a case to rescind a lease where the amount of damages laid is within the jurisdiction of the C. C., although the yearly rent stipulated in the lease is in excess of the amount for which an ordinary suit might be brought in that court.—*Choquet* v. *Hart*, C. C., p. 305.

See *Cause of Action; Security for costs.*

Jury Trial.—See *Privy Council.*

Larceny.—An unstamped promise to pay is a valuable security, and, even in the hands of the maker, is such property as to be the subject of larceny.—*Regina* v. *Scott*, Q. B., p. 225.

License Act.—An applicant for a writ of *certiorari* to remove a conviction for violation of the Act is required to make the deposit provided for by s. 195 of the 34th Vic. ch. 2, before he can make the application.—Ex parte *McCambridge*, petr., & *Desnoyers*, Police Magistrate, & *Bellemare*, pros., S. C., p. 181.

Lottery.—See *Tirage au Sort.*

Latent Defect.—An imperfect wooden drain, connecting the water closets and drains of a house with the common sewer in the street of a city, is a latent defect against which the seller is obliged by law to warrant the buyer, when, from the character of the house, the buyer had reason to believe that the drains were constructed in a proper manner.—*Ibbotson & Ouimet*, Q. B., p. 53.

Lessor.—1. The lessor has a right, in suing his tenant for rent due, to seize all the move-

ables in the leased premises, notwithstanding that they may be in the possession of an assignee under the Insolvent Act of a sub-tenant, not accepted as such by the lessor.—*Boyer* v. *McIver, & Craig*, int. party, S. C., p. 160.

2. The mere receipt by the lessor of several instalments of rent due by his tenant from the sub-tenant does not create novation of the lessor's claim against his tenant.—Ib.

Lessor and Lessee.—See *Jurisdiction.*

Letters Patent.—A company may be incorporated by letters patent for the purposes of navigation within the limits of this Province, under the Provincial Statute.—*Macdougall et al. & The Union Navigation Co.*, Q. B., p. 63.

Mandamus.—1. A writ of mandamus does not lie to compel a Railway Company to deposit an amount awarded for expropriation by arbitrators.—*Bourgouin* v. *The Montreal, Ottawa & Occidental R. Co.*, S. C., p. 217.

2. A writ of mandamus will lie against the City of Montreal to compel the appointment of commissioners to fix the amount of indemnity to be paid to the owners of property affected by the change of level of a street, although no grade for such street had been formally determined previously. — *Joseph* v. *The City of Montreal*, S. C., p. 232.

Marriage Contract.—In the case of a donation under a marriage contract from the husband to the wife, of a sum of money to be applied to the purchase of household furniture for their joint use, the death of the husband before the donation was so applied, does not exempt the husband's estate from liability for the amount thereof.—*Symons* v. *Kelly et al*, S. C., p. 257.

Married Persons.—See *Practice.*

Married Woman.—1. A married woman, separated as to property, and becoming security for her husband, has a right to recover back, with interest from the date of service of process, an amount paid by her as such security.—*Buckley & Brunelle et vir*, Q. B., p. 133.

2. A married woman separated as to property, is not liable for groceries consumed in the house in which she and her husband live, when they have not been purchased by her or on her order, and have been charged in the merchant's books to the husband.—*Larose* v. *Michaud et vir*, C. C., p. 167.

3. The principle of the law Quintus Mucius, by which acquisitions made by a married woman were presumed to have been paid with the money of the husband until proof to the contrary, is applicable to the Province of Quebec.—*In re Plessis dit Belair et al.*, ins., & *Fair*, assignee, & *Landerman*, petr., S. C., p. 197.

4. A married woman, who with her husband makes a donation of a sum of money to one of their children, whilst *en communauté de biens* with her husband, remains liable for one half of the donation, notwithstanding she be subsequently separated judicially from her husband as to property, and renounce to the community. —*Vincent et ux.* v. *Benoit et vir.*, S. C., p. 218.

5. The property of a married woman will not be made liable for necessaries supplied to the family without proof of the insolvency of the husband.—*Laframboise et al.* v. *Lajoie, & Lauzon et vir*, oppts., C. C., p. 233.

6. If the husband is without means, the creditors may claim from the wife payment of household debts for necessaries supplied after the husband's insolvency.—*McGibbon et al.* v. *Morse et vir*, C. C., p. 311.

Montreal, City of.—See *Mandamus.*

Municipal Code.—The Municipal Code has not totally abrogated the provisions of The Temperance Act of 1864. *Exp. Sauvé & The Corporation of the County of Argenteuil.*—C. C., p. 119.

See *Practice.*

Navigation.—See *Letters Patent.*

Novation.—See *Lessor.*

Opposition afin de distraire.—1. An opposition *afin de distraire* cannot be filed by a person who has made himself voluntary guardian to a *saisie gagerie* of the effects claimed, and allowed judgment to go without opposition, declaring the *saisie* good and valid.—*Poirier* v. *Plouffe, & Calvi*, opposant, S. C., p. 103.

2. A document not alleged in an opposition *afin de distraire* and not produced at the filing of the opposition, cannot be produced and filed later.—Ib.

3. An opposition *afin de distraire* to a seizure of moveables, seized in the possession of the party condemned, will be dismissed on motion, if the allegations fail to set out any specific title and do not set up a possession in the opposants.—*Duhamet et al.*, v. *Duclos & Duclos*, T. S. & *Perreault et vir*, opposants, S. C., p. 308.

Partnership.—1. When a registered partnership has been dissolved, without registration of

the dissolution, and without notice thereof to the creditor, service of process on one of the partners at the place of business of the late firm is good against all the co-partners.—*Greenshields* v. *Wyman et al.*, S. C., p. 40.

2. An association of persons, formed for the purpose of trafficking in real estate, is not a commercial partnership.—*Girard & Trudel et al.*, Q. B., p. 295.

Peremption.—*Pour parlers* for the compromise of a case are of a nature to interrupt, but the proof thereof can only be made by writings.—*Phaneuf* v. *Elliott*, S. C., p. 221.

Perjury.—The crime of perjury cannot be assigned upon a deposition under 284, C. P., where the consent in writing required by that article has been omitted.—*Regina* v. *Martin*, Q. B., p. 156.

Pledge.—A clerk and salesman of a commercial firm cannot legally pledge the goods of his employers, which he has stolen, for monies borrowed in his own individual name and loaned to him in good faith, on the security of the goods so stolen, and of which he was apparently in open possession as proprietor.—*Cassils et al., & Crawford et al.*, Q. B., p. 1.

2. Where a pledged watch has been stolen from the party to whom it was pledged, without any fault or negligence on his part, he is not liable to make good the loss.—*Soulier* v. *Lazarus*, C. S., p. 104.

3. The *actio pignoratitia directa* does not lie, when the pledgee is allowed to sell or dispose of the thing pledged, by the very terms of the written instrument of pledge.—*Dempsey* v. *MacDougall et al.*, S. C., p. 328.

Power of Attorney.—Where the power of Attorney is not filed before the *exception dilatoire* claiming it, costs will be awarded on the exception.—*Westcott et vir* v. *Archambault et al.*, S. C., p. 307.

See *Agent.*

Practice.—1. A replication to a general answer is unnecessary, and will be rejected on motion.—*Fauteux* v. *Parent*, S. C., p. 12.

2. The "one day" referred to in 74 C. P., with reference to the service of summons in suits between lessors and lessees, must not be a *dies non.*—*Metayer dit St. Onge* v. *Larichelière*, S. C., p. 27.

3. A surveyor cannot prevent the opening of his report, unless a sum he chooses to name be first paid.—*Décary* v. *Poirier, S. C.*, p. 27.

4. The Court of Review has no power to revise a judgment on a petition to revise a bill of costs.—*Ryan* v. *Devlin*, C. R., p. 28.

5. In a plea to an action of damages, where a defendant specially denies, and in the same plea alleges, affirmative matter, which is not a justification, such matter will be struck out on motion of plaintiff.—*St. Jean* v. *Bleau*, S. C., p. 37.

6. In a district where there is no rule of practice fixing the hours of opening and closing the Prothonotary's office, but where the office was usually closed at 4 p. m., an exception *à la forme* left with the Prothonotary at his office between the hours of 4 and 5 p. m. was properly filed.—*The Carillon & Grenville R. Co. & Burch*, Q. B., p. 46.

7. The death of one of plaintiff's attorneys does not invalidate proceedings had in the case as if both were still such attorneys; the plaintiff being in such case really represented by the surviving attorney.—*Morin* v. *Henderson*, S. C., p. 83.

8. A report of collocation may be contested, by permission of the Court, and on special cause shown, after the delay of six days, if no proceeding to homologate the report has been adopted.—*Deladurantaye* v. *Posé & Lacroix et al.*, contesting, S. C., p. 100.

9. Where leave was granted to appeal to the Privy Council, and the appellant filed a consent that the judgment should be executed, and at the same time a City of Montreal Debenture was deposited with the Clerk of the Court as security for the costs of the appeal, the seizure of such bond in execution of the judgment will not prevent the Court from accepting it as a security.—*Jetté et al. & McNaughton*, Q. B., p. 192.

10. A plaintiff who seizes, as belonging to his debtor, real property which has been registered for some years in the name of another person, shall pay the costs of opposition which such person has been obliged to file to prevent the sale of his property.—*Robert et al.* v. *Fortin & La Société de Construction Jacques Cartier*, opposants, S. C., p. 219.

11. Where a bailiff, resident in another district, and charged with the execution there of a writ of execution issued out of the district of

Montreal, fails to comply with the exigencies of the writ, he is liable to imprisonment in the District of Montreal.—*Gnaedinger et al.* v. *Derouin et al.*, S. C., p. 220.

12. It is not necessary that the prisoner should be present at the hearing of a reserved case.—*Regina* v. *Glass et al.*, Q. B., p. 245.

13. A special answer, to which no replication has been filed within the eight days, may nevertheless be attacked by motion, and certain allegations therein struck out in accordance with such motion.—*Delbar* v. *Landa*, S. C., p. 247.

14. The City of Montreal will not be compelled to dispossess itself of documents forming part of the archives of the city, in order that the same may be filed as evidence in a cause. —*Cramp & The Mayor et al., of Montreal*, Q. B., p. 249.

15. When a husband and wife (separated as to property), are sued jointly and severally, a copy of the writ and declaration must be served on each of them.—*Dansereau* v. *Archambault et al.*, S. C., p. 302.

16. A bailiff may be sued for damages resulting from errors in his return, and cannot claim the preliminary notice of action provided by 22 C. P.—*Major* v. *Chartrand*, C. C., p. 303.

17. A bailiff is not a public officer entitled to notice of action under 22 C. P.—*Major* v. *Boucher*, C. C., p. 304.

18. An affidavit to an opposition in the Circuit Court may be sworn before a commissioner of the Supreme Court, and the prefix "*Commissaire* C. S." is sufficient, even when the affidavit is made out of the district in which the opposition is filed.—*Wood* v. *Ste. Marie*, & *Ste. Marie*, opposant, C. C., p. 306.

19 The service of a petition by a party not in the cause on the attorneys of the plaintiff who obtained the judgment condemning the *tiers saisi* to pay plaintiff a certain sum of money, asking for a special order to prevent said *tiers saisi* paying over the amount, is bad.—*Booth* v. *Lacroix et al.*, & *Rolland, T. S.*, & *Dupuy*, petr., S. C., p. 307.

See *Saisie-Conservatoire; Capias ad Respondendum; Foreign Judgment; Experts; Enquête; Partnership; Costs, Security for; Absentee; Requête Civile; Appeal; Insolvent Act; Cause of Action; Opposition à fin de distraire; Judicial Sale; Inscription en faux; Contrainte par Corps; License Act; Congé défaut; Judgment; Prescription; Mandamus; Habeas Corpus; Peremption; Adjudicataire; Election; Saisie-arrêt; Avou Judiciaire; Jurisdiction; Power of Attorney; Affidavit; Privy Council.*

Prescription.—1. The short prescription provided by articles 2250, 2260, 2261 and 2262 C. C., is liable to be renounced and interrupted, in the manner prescribed by art. 2227.—*Walker & Sweet*, Q. B., p. 29.

2. A loan of money by a non-trader to a commercial firm is not a "commercial matter," or a debt of a "commercial nature," and is not, therefore, prescriptible by the lapse of either 6 or 5 years.—*Darling & Brown et al.*, Q. B. p. 92, & *Supreme Court*, p. 169.

3. The prescription of 5 years under the Code against arrears of interest cannot be invoked in respect of debt due prior to the coming into force of the Code.—Ib.

4. The transmission of an unsigned account in a letter signed by the debtor takes the case out of the Statute, ch. 67 C. S. L. C., *Darling & Brown et al.*, S. C., p. 169.

5. In an action for damages resulting from a *quaisi délit*, instituted more than two years after the wrong complained of occurred, the court must dismiss the action, in the absence even of a plea of prescription.—*Grenier* v. *The City of Montreal*, S. C., p. 215.

6. The municipal taxes of the City of Montreal are only prescriptible by the lapse of 30 years.—*Guy* v. *Normandeau*, S. C., p. 300.

See *Interest.*

Priest.—A priest who defames the character of a person in his sermon is liable to be sued in damages.—*Vigneau* v. *Rev. Messire Joseph Noiseau*, S. C., p. 89.

Privy Council.—An appeal to the P. C. will be allowed by Her Majesty, in the case of a judgment of the Court of Q. B. setting aside the verdict of a special jury and ordering a new trial, even when such appeal has been refused by the Court of Q. B., on the ground that an appeal to the P. C. does not lie in such cases.—*Lambkin & The South Eastern R. Co.*, P. C., p. 325.

Promissory Note.—1. An action on a note not filed, will be dismissed.—*Hudon & Girouard*, Q. B., p. 15.

2. By granting delay to the maker and first endorser of a note, without the consent of the

second endorser, the holder's recourse against such second endorser is lost.—*Desrosiers* v. *Guérin*, S. C., p. 96.

3. A note signed by a person carrying on business as a grocer, to whom a judicial adviser has been appointed, without the assistance of such adviser, for goods sold and delivered to him as such grocer, is valid.—*Delisle* v. *Valade*, S. C., p. 250.

4. A note given to a creditor to induce him to sign a deed of composition, or the note given in renewal of such note, is null, and the nullity may be pleaded by the maker to an action by the creditor.—*MacDonald* v. *Senez*, S. C., p. 290.

5. A note given either by an insolvent or by a creditor to induce the payee to consent to the insolvent's discharge is null.—*Decelles* v. *Bertrand*, C. R., p. 291.

See *Larceny*.

Railway Ticket.—The holder of a railway ticket travelling from Montreal to Toronto, and marked—"Good only for continuous trip within two days from date"—and who leaves the train in which he starts at Kingston, where he remains several days, cannot afterwards avail himself of the ticket in payment of a trip on another train from Kingston to Toronto.—*Livingston* v. *The Grand Trunk R. Co.*, C. R., p. 13.

Redhibitory Vice.—See *Exchange*.

Registrar's Certificate.—See *Trouble*.

Requête Civile.—A *requête civile* which does not on its face come within the provisions of art. 505, C. P., may be rejected on motion.—*MacDougall et al. & The Union Navigation Company*, Q. B., p. 63.

See *Judgment*.

Reserved Case.—See *Practice*.

Review, Court of.—See *Practice*.

Saisie Arrêt.—The omission to allege in an affidavit for *saisie arrêt*, that the defendant "is secreting" his property, or (in the case of a trader alleged to be insolvent) "that he still carries on his business," is fatal.—*Osborn et al.* v. *Nitsch, & Nitsch*, petr., S. C., p. 252.

Saisie Conservatoire.—In an action claiming a resolution of a sale of moveables by the unpaid vendor, the plaintiff has a right to attach the property by a *saisie conservatoire*, and, although the attachment may be in the nature of a *saisie revendication*, it will nevertheless avail to him as a *saisie conservatoire*.—*Henderson & Tremblay*, Q. B., p. 24.

Sale.—1. The remedy of a purchaser of real estate in case of deficiency of quantity in the land sold is not in damages, but to claim either a diminution of the price or the revocation of the sale.—*Doutney* v. *Bruyère et al.*, S. C., p. 59.

2. A purchaser of real estate cannot seek to recover back a part of the price paid by him, or claim security from the vendor on the ground that he has just cause to apprehend being troubled in his possession, nor can he refuse to pay interest on the balance of the capital due by him.—*Hogan et al.* v. *Bernier*, S. C., p. 101.

See *Latent Defect; Trade Mark; Trouble; Unpaid Vendor*.

Séparation de Corps.—In an action of *séparation de corps* for adultery, the defendant cannot plead in bar acts of adultery on the part of the plaintiff.—*Brennan* v. *McAnnally*, S. C., p. 301.

Shareholder.—See *Calls*.

Sheriff.—See *Adjudicataire*.

Sheriff's Sale.—In the case of a sale by the Sheriff of an immoveable which by a donation was substituted, the purchaser is justified in claiming to be relieved from the sale, notwithstanding that the donor, by a second donation to the same donee, makes no mention of any substitution, and such relief may be claimed, by an answer to a rule against him for *folle enchère*.—*Jobin & Shuter et vir.*, Q. B., p. 67.

Signification.—See *Transfer*.

Stamps.—See *Bon*.

Stolen Goods.—See *Pledge*.

Substitution.—See *Sheriff's Sale*.

Summons, Service of, on Married Persons.—See *Practice*.

Supreme Court.—See *Appeal*.

Surveyor.—See *Practice*.

Tax.—See *Insurance*.

Temperance Act of 1864.—1. The provisions of this Act have not been repealed or amended by the Municipal Code or subsequent legislation, so as to prevent the enactment of a by-law thereunder for the prohibition of the sale of spirituous liquors.—*Ex parte Cooey, Jr., & The Municipality of the County of Brome*, C.C., p. 182.

2. The regulation of the traffic in intoxicating liquors is within the jurisdiction of the Parliament of Canada.—Ib.

See *Municipal Code*.

Tirage au Sort.—A *tirage au sort* by a building

society, providing for a distribution of lots of land among its members, is not a lottery within the meaning of Ch. 95 of the Consolidated Statutes of Canada, or article 1927 of the C. C. —*La Société de Construction du Coteau St. Louis* v. *Villeneuve*, C. C., p. 309.

Transfer.—The non-signification of a transfer cannot be the subject matter of an appeal from a judgment in an *ex parte* case.—*Stanley & Hanlon*, Q. B., p. 75.

Tripartite Community of Property.—1. A tripartite community is dissolved by the death of the second wife who dies without leaving any minor children, and therefore the third share of the second wife is an immoveable purchased during the existence of such tripartite community is a *propre* of the issue of such second marriage.—*Francœur & Mathieu*, Q. B., p. 288.

2. The surviving husband has no power to alienate such immoveable after the death of the second wife.—Ib.

3. The purchaser of the rights of said issue, of age at the death of the mother, has a right to obtain a *partage* of said immoveable.—Ib.

Trouble.—The production of a registrar's certificate showing that mortgages are registered against a property purchased, which mortgages do not appear to have been discharged, is sufficient to support a plea of fear of trouble under art. 1535, C. C., and in such case the balance of purchase money which the buyer has yet to pay on the property, is the only amount for which he can claim security.—*Parker* v. *Felton*, Q. B., p. 253.

Unpaid Vendor.—1. The unpaid vendor of moveables has a right under art. 1543, C. C., to demand the resolution of the sale, under the circumstances stated in that article, even after the expiration of the eight days allowed for revendication by art. 1998.—*Henderson & Tremblay*, Q. B., p. 24.

2. The 82nd section of the Insolvent Act has not taken away the right of the vendor to revendicate goods sold by him to the insolvent, and the price whereof has not been paid.—*In re Hatchette et al., & Gooderham et al.*, S. C., p. 165.

3. The vendor of real property has a right to sue the purchaser for the price, notwithstanding that by the deed of sale the payment of such price was delegated in favor of a third party, so long as the delegation is not accepted.—*Mallette et al.* v. *Hudon*, S. C., p. 199.

Usufructuary.—A usufructuary has no power to sell all the sand that can be removed during five years from the land of which he has the usufruct; such a sale being equivalent to a sale of the land itself.—*Dufresne* v. *Bulmer*, S. C., p. 98.

Wages.—See *Insolvent Act.*

Wills.—1. The registration of a will creating substitution, after the six months following the death of the testator, is good as against all persons acquiring right since.—*Dufresne* v. *Bulmer*, S. C., p. 98.

2. Legal questions arising out of the construction of the terms of a will are regulated by the laws of the domicile of the testator where he makes his will.—*Noad* v. *Noad*, S. C., p. 312.

3. Under a clause in a will worded as follows, the legatee is simply a fiduciary legatee or trustee such as specified in Art. 869, C. C.:—"I hereby give and bequeath unto my brother, William S. Noad, $3,000, which said sum I hereby direct to be invested by my executors in U. S. Government bonds, bearing interest, and the said bonds to be issued in his name and to be forwarded to him, to be used for the support of his family." But in the absence of fraud or collusion, the depositary of such bonds or their proceeds (even though he knew the nature of the trust and the terms of the will) would be free of all responsibility or liability on returning the same on the order of the trustee.—Ib.

THE TOOLS OF THE LEGAL TRADE, AND HOW TO CHOOSE THEM.

[Continued from p. 199.]

In former times it was the function of a preface to impart to the reader some correct idea of the book to which it is prefixed. And, even at the present day, we have among authors more or less "old fogies" who cleave to the old plan. At what precise date the new method came into being, or by whom it was originated, I do not know. It seems to work admirably, and, as far as I can judge, it gains daily in popularity. Some three years ago, if my recollection serves me, and I write only from memory, there were two law journals—possibly more—whose editors put in a protest against carrying the plan so far as to reprint an English book with an altered title-page, if

thereby the American reader will be led to believe it to be some book other than it is. But their protest was unavailing; and the plan, carried even to this extent, appears now to be established as entirely just and proper.

Yet I cannot doubt that what seems at first to work so well will be found in the end not profitable. The real, inner merit of the new plan—that for which considerate men will praise it—is that it tends to harden soft brains in our profession, and to open blind eyes. But, when the brains are hardened and the eyes are opened, there will be no more use for the "tool." It becomes like the stick which guided upward the expired rocket. And, when the fireworks are thus over for the season, the shop of the pyrotechnist will of necessity be closed.

The number of cases or the original date of a reprint, or the fidelity of its title-page to the original, or a question like that of drawing cases from *The Chum Cud*, is not the only thing to be considered in comparing together the preface and the book. For instance, I take into my hands a book, not the first edition. The author, in his preface to this edition, speaks of additions to it, and describes them as "large" and "new." A collating of it with the prior edition shows that truly there are additions, and they are "large," precisely as claimed. Are they "new?" A thought occurring to us, we collate the matter not in the old edition with two "new" books by other authors. Here we find nearly all of it so accurately transferred as to lead to the surmise that the type-setters had printed copy to guide them. A part of the additions are more or less distinctly—some quite distinctly, others not—credited to these authors; the rest is not credited. Both of the books bear the copyright impress; hence, of course, the copying from them was by permission. Hence, also, the additions, being taken from "new" books, are "new." The result is that the preface, as in the other instances, is borne out by the ascertained facts; yet, as in the other instances, it practically misleads readers not educated to be sharp. The latter class would infer that the author, instead of transferring matter from the "new" works of other authors, had made "large" additions from his own more valuable stores.

These illustrations of the varying sorts of preface in books to be used as tools for hardening brains and opening eyes are all for which I have room, but they do not exhaust the subject.

If the preface happens to be an old-fashioned one, it will help us in the examination of the book itself, to which we now proceed.

Though no question should arise as to any variance between preface and book, and though the book should be one in which we do not expect to find all the cases, still, for various other reasons, it may be important to see how fully they are collected, or with what discrimination the citations are made. This investigation can be conducted by the methods already described.

I now open a book, in the preface of which I do not discover any infusion of new blood demanding notice. Proceeding, therefore, directly to the book itself, our first enquiry is whether it is a digest under the name of treatise, or truly a treatise, as its title-page declares it to be. Not much examination is required to determine that it is true to its title—it is a treatise. This enquiry was important; because, though a digest may be either a good book or a worthless one, according to the manner and accuracy of its execution, and so may be a treatise, and each sort of book is desirable in its place, yet, as their objects differ, so also do the canons of criticism applicable to them.

But, before we proceed further, we must administer to ourselves a caution. The author of a treatise is a teacher; we who examine his work are his pupils. It is no stretch of modesty, therefore, to assume that, on his particular subject—how it may be on other subjects is of no consequence—he is, beyond comparison, our superior in knowledge. I am speaking of ourselves—of us who are considering whether or not to part with our hard-earned money for the book, to be used by us—not to be lent, but used personally—as a tool in our trade of practising lawyer. Of course, if we were merely writing a criticism for the guidance of others, we should know immeasurably more than the author on his subject, as well as on every other. But we, who are on more serious business, are to consider that the author carefully examined his subject, in all its parts, in connection with the authorities, before he began to write; that, besides mastering the authorities, he looked down through all the principles to the very bottom layer; and, in writing, he still further

perfected his examinations both of authorities and principles, stating his conclusions in forms to be enduring. When, therefore, he says something contrary to our prior ideas, we do not instantly condemn it, but institute a careful examination, to see whether, after all, we were not mistaken. With this caution, let us proceed.

Of prime importance in a treatise is the ability, in its author, accurately to discern the multitudinous distinctions in the law, and to state them with unvarying precision. How stands the work before us under this head?

The author commences by enumerating four causes which, he says, have "recently" revolutionized much of the doctrine of his subject—hence the necessity for his book. As we cannot examine everything, let us begin by seeing with what discrimination and accuracy of statement he deals with one of them. It is, in his own words, "the relinquishment, by England and the United States, of the maxim that the place of the commission of a crime has exclusive jurisdiction of its punishment, and the extension of such jurisdiction, with certain limitations, to the country of arrest." The connection in which this sentence stands, and the use of the word "country," not county, in the closing part of it, show that the author is treating of the question as between two nations—not of the venue, where no inter-state question arises. And we are startled by the statement, not by way of imparting information, but as of a fact known to all, that, within certain limits, we, if we can catch an Englishman who has committed an offence in his own country, may punish him for it, and the British Government may do the like with an American; the two nations having relinquished "the maxim that the place of the commission of a crime has exclusive jurisdiction of its punishment." And this has been done "recently." And it is one-quarter of the reason why a new book was needed. Well, as the author knows better than we, of course the presumption is overwhelming that he is right. So, let us proceed. Further over we shall come to the treaties or statutes by which this has been effected, or to the decisions in which the courts of the two countries have abandoned *stare decisis*, and announced the new laws. But, no; reading on we find that there is claimed to be no such doctrine; it is this: "In criminal cases the country of arrest has jurisdiction over all offences committed against the laws of such country, with the limitation that, as to offences committed in foreign countries, such country of arrest has jurisdiction only of offences committed against its sovereignty." We see no very great objection to this statement, which is a different thing from the other; but we look in vain for the authorities to show that the doctrine is, as one of international or inter-state law, "recent." In England and the United States there have been, at different periods, some changes as to the place of trial, or the tribunal; but these are local questions, having nothing to do with international relations. Nor, as to these, are we informed of anything special and "recent." Yet the assumed "recent" change is one of the four reasons for writing the book!

A single instance of the want of accuracy, or of stating a doctrine in two conflicting forms, should not condemn a book, for probably no author ever wrote much without committing some slip of the sort. Yet, when we find that the very motive for writing is the assumed existence of what does not exist, and of what with him is one thing on one page and another thing on another, we are put fairly on enquiry concerning his performance. We do not even for this reject it, but look into it further.

Turning over the pages, we come to a chapter largely occupied with showing that, should a certain question of law, assumed not to have been directly adjudged, be presented hereafter to the courts, it ought, in just reason and established principle, and in harmony with decisions already made, to be decided in a way mentioned. Looking into the authorities, we find that this exact question has been frequently adjudged, that there neither is nor ever was any real dispute about it, and that the decision is directly the reverse of what our author says it should, and probably will be. And we note that, to sustain his erroneous proposition, he actually cites and even states some of the cases which support the contrary, apparently not aware of their effect. I have not room here to explain the matter fully, but, in brief, it is as follows:

[To be continued.]