The Legal News.

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## THE O'FARRELL CASE.

We insert, at the request of a correspondent, an opinion given by counsel in England on a case submitted to them in the matter of Mr. O'Farrell. This opinion was obtained, we presume, with a view to prosecuting an appeal to the Privy Council. Pending the decision of that tribunal, it is judicious to refrain from discussion of the questions involved. We might remark, however, that those who have had much acquaintance with opinions of counsel—not excepting even gentlemen as deservedly eminent as Sir J. F. Stephen and Mr. Benjamin—will hardly be disposed to pay the Quebec Court of Review so poor a compliment as to imagine that the unanimous judgment of that tribunal derives much additional weight from the opinion now published. Courts and Judges differ, and learned counsel differ with at least equal facility, and for anything we know, an opinion diametrically opposite may have been obtained on the other side from counsel of like celebrity.

## DISSENTIENT OPINIONS.

An article which is copied below from a contemporary, sets forth the reasons which may be adduced in behalf of the suppression of dissentient opinions in appellate tribunals. We reproduce this reply for the purpose of completing and closing the discussion for the present. It may be remarked that as our contemporary restricts his argument to "supreme appellate tribunals," it hardly applies, so far as the Province of Quebec is concerned, to the Supreme Court of Canada. For the direct appeal to the Privy Council still exists, and the highest Court of the Province has formally decided that even a concurrent appeal, as the law stands at present, may be taken to the Supreme Court and to the Judicial Committee of the Privy Council. See *The City of Montreal & Devlin*, p. 151. Conflicting decisions might, therefore, be pronounced at Ottawa and London, and in that event, Her Majesty's Judicial Committee would, no doubt, exercise their discretion, and allow an appeal from the judgment of the Supreme Court, which, therefore, can hardly be considered the supreme appellate tribunal for Quebec.

As our contemporary agrees with us in thinking "that there should be no cast-iron rule, but that the matter should be left to the discretion and wisdom of the Judges themselves," the difference between the views which we have expressed and those copied elsewhere is apparently a very narrow one. No one can deprecate more earnestly than we do lengthy unwritten arguments, by Judges who dissent in ordinary cases, in favor of their individual opinions. Such a practice is more than a waste of public time, and we think professional opinion ought to be brought to bear in every legitimate way to put an end to it.

## DISSENTING JUDGMENTS.

[Canada Law Journal.]

Our former article thus entitled has provoked a good deal of hostile criticism in the columns of our Quebec contemporary, *The Legal News*. The practice of the Privy Council in delivering one judgment which represents the joint opinion of the Court, though pronounced an admirable practice by the last editor of Austin's Jurisprudence, finds no favour with the Montreal critic. The sole reason given is the very insufficient one "that the suppression of dissentient opinions has proved highly inconvenient in several cases.....in passing over important issues on which both parties desired an opinion." It may gratify the individuals interested in the particular case to have all its niceties explored, and each judge giving his views thereon; but regarding the matter from the broader point of view of the profession, such judgments do not declare the law except in so far as the judges concur in the matter decided. All else is in the nature of *obiter dicta* and the accumulation of such opinions in the reports is by all thoughtful jurists deprecated. Life is too short for the professional man to master the growing accumulations of the law, even when most carefully expurgated in the reports. Why should he further be compelled to waste time in finding out what is decided by going through the reasonings of each particular judge and aggregating the results? With all deference to opposite views, we submit that

this is the work which the judges themselves should do; and, unifying their conclusions so far as may be, the result should be given by one voice as the judgment of the Court.

We are speaking, of course, of supreme appellate tribunals, and no better illustration can be given of the two systems than a comparison of the reports in the House of Lords and those in the Privy Council. If the most cumbrous plan for embodying judge-decided law were to be chosen, surely the method of the Law Lords could not be improved upon. If the most scientifically precise plan were to be sought, where could one better look for a model than in the best judgments of the Privy Council (say those of Lord Kingsdown)? When considering the import of a decision in the Lords, one must always bear in mind the observation of Lord Westbury, that what is said by a Lord in moving the judgment of the House of Lords does not by any necessity enter into the judgment of the House: *Hill* v. *Evans*, Jur. N.S., p. 528. The same matter is more elaborately put by Chief Justice Whiteside in a case which gave the Irish Bench a deal of trouble: "We are admonished," he says, "that it is the very decision of the House of Lords we are to obey, and not the observations of any noble Lord in offering his opinion. Noble Lords in giving their judgment often differ from each other in their reasons; they cannot all be right in opinions which conflict. It is not, therefore, the peculiarities of individual opinion which are to be obeyed, but the judgment of the House itself:" *Mansfield* v. *Doolin*; Ir. R. 4 C.L. 29.

Our contemporary proceeds to affirm that the suppression of dissentient opinions is deceptive in itself, is unfair to dissenting judges, and is calculated to retard the progress of jurisprudence. In contravention of these positions, anything that we could say would be of little weight as compared with the views which eminent judges have left on record. Of these, two may be cited, one from an English, the other from an American source. "I very much wish," is the language of Lord Mansfield to Sir Michael Foster, "that you would not enter your protest with posterity against the unanimous opinion of the other judges.... The authorities which you cite prove strongly your position; but the construction of the majority is agreeable to justice; and therefore, suppose it wrong upon artificial reasonings of law, I think it better to leave the matter where it is. It is not *dignus vindice nodus*."

In a letter of Mr. Justice Story to Mr. Wheaton, the reporter, he writes as follows: "at the earnest suggestion (I will not call it by a stronger name), of Mr. Justice Washington, I have determined not to deliver a dissenting opinion in *Olivera* v. *The United States Ins. Co.* 3 Wheat. 183. The truth is, I was never more entirely satisfied that any decision was wrong than that this is, but Judge Washington thinks (and *very correctly*) that the habit of delivering dissenting opinions on ordinary reasons weakens the authority of the Court, and is of no public benefit."

Of what use or value is a dissenting opinion in the Supreme Court? The decision of the majority fixes the law irrevocably, and their conclusions can be modified or reversed by nothing short of legislative authority. It is urged that the minority should proclaim their views—that they should take means to let the world know that they are not to be held responsible for the error of the majority. We submit that such self-assertion is made at the expense of the Court of which the minority forms a part. So our contemporary goes on urging that even where the decision turns on a question of evidence, an injustice may result from the suppression of dissent. For example, he says, the decision of the majority may attach a serious imputation of fraud to an individual. But surely this is regarding the reports from a personal instead of a professional view-point—the fallacy which pervades the whole of the article in question. For the purpose of exculpating or mitigating the guilt of the individual, the dissent may be of consequence; but it is a mere surplusage when the question is what does such a case decide? The *Central Law Journal*, one of the best informed of our American legal exchanges, heartily endorses the views we have expressed on this subject.

*The Legal News* is vexed at our slighting allusion to the Lower Canadian decisions—their uncertainty and want of unanimity. But his own correspondent, "S," points the contrast between the dignified self-repression of a Story and the effusiveness of those Courts where

"each judge thinks his own opinion quite as good as that of any other judge, or bench of judges expressed at different times, and rather better."

The writer of the letter in *The Legal News* continues in this strain:—"I have very little hesitation in saying that the decisions of our Courts have a larger degree of uncertainty about them than those of the Courts of any country with which we are familiar. And why? Because the judges in our Courts have not sufficient unanimity—or unity, perhaps, would express it better—in their bearing towards the jurisprudence of the Province as a whole; but treat each case separately and individually, and sometimes with very little regard for the opinions of each other."

We agree with our contemporary in one of his remarks, and that is that there should be no cast-iron rule, but that the matter should be left to the discretion and wisdom of the judges themselves, to decide when they should yield their individual opinion, and refrain from entering a dissent. As we know, some judges have no discretion, even when an Act of Parliament confers it upon them. The initial numbers of the Supreme Court Reports of the Dominion appear to us of evil omen from the length and repetition and conflict in the different judgments reported, and they suggested our protest against the manner of enunciating the conclusions of the Court. In such a Court, it would be well, in our view, to follow the English and United States precedents to which we have adverted, and, without making use of a "pious fraud" by concealing the dissent of any member of the Court, yet not emphasizing that disagreement by reporting it at length, we would in every such case hope that the old distich might be verified:

> "The judge dissents. Kind Lethe on its banks
> Receives his honour's useful gift with thanks."

## COMMUNICATIONS.

### *BRASSARD V. O'FARRELL.*

*To the Editor of* THE LEGAL NEWS:

Sir,—As the judgment of the Court of Queen's Bench in *O'Farrell* v. *Brassard* furnished the subject of an editorial in THE LEGAL NEWS, and was therein highly commended, I think it is but justice to those who may not take the same view of the case, that the subjoined opinion should be published in your columns.

In addition to the statement of facts, the eminent counsel had before them all the documents, extracts of the record and texts of local law which had any bearing on the case, and which I had taken good care to transmit to them.

I have the honor to be, Sir,
Your most obedient servant,
W. C. LANGUEDOC.

Quebec, April 2, 1878.

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JOHN O'FARRELL, Appellant, Plaintiff in Prohibition in Court below, v. THE COUNCIL OF THE SECTION OF THE DISTRICT OF QUEBEC OF THE BAR OF THE PROVINCE OF QUEBEC, THE SYNDIC, A. R. ANGERS AND H. BRASSARD, Respondents, Defendants in Prohibition in Court below.

*Case Submitted to Counsel.*

The Bar of the Province of Quebec is incorporated by Act of Parliament, and invested with the following rights:—

To admit candidates to the study of the law.

By its diploma, signed by the Batonnier, countersigned by the Secretary, and sealed with the seal of the section of the Bar, to confer the right of practising as an Advocate, Barrister, Attorney, Solicitor and Proctor-at-Law, in all Courts of the Province, upon those to whom it is granted.

To maintain the discipline and honor of the Bar.

To censure any member guilty of any breach of discipline or any action derogatory to the honor of the body, to deprive such member of the right of voting and even of assisting at the meetings of the section, and to suspend him from his functions.

All these powers are conceived to be franchises of the Corporation of the Bar.

The council of each section, with regard to such section, represents the members of the Bar, whenever the interests or duties of the profession require it.

These are the principal features of the Act of incorporation.

In 1874, the Syndic of the Bar, section of the district of Quebec, as bound to do, submitted to the council an affidavit of one Hypolite Brassard, relating to certain conduct of the appel-

lant, a member of the said section. The council thereupon ordered the Syndic to bring an accusation against the appellant, for conduct derogatory to the honor of the body. This was done conformably to the provisions of the Act of incorporation; the appellant was summoned, appeared, pleaded; evidence as well for the accusation as for the defence was adduced before the council, the appellant was heard in his defence, and in February, 1875, at a meeting of the council duly convened, he was by a unanimous vote found guilty of conduct derogatory to the honor and interests of the Bar, and was suspended for three months.

The appellant conceived himself entitled to prohibition, to restrain the council from proceeding further against him, and presented a petition to a Judge of the Superior Court, and requested him to append to it the authorization to proceed in prohibition, required by the Code of Procedure. The Judge declined to authorize proceedings in prohibition, and in consequence none could be or were in fact taken before the Superior Court. In this condition of facts, the appellant took a writ of appeal *de plano* out of the Court of Queen's Bench; it was returned in due course, and the judgment of the 22nd June, 1875, was rendered, ordering a writ of prohibition to issue out of the Superior Court. Upon the production of this judgment to the Prothonotary of the Superior Court, this officer assumed it to be equivalent to an order of a Judge of the Superior Court, issued the writ, and proceedings were then for the first time taken before the Superior Court. A judgment was rendered in the latter Court in the terms of that of the Queen's Bench of the 22nd June, 1875.

This judgment of the Superior Court was inscribed for revision before three Judges of the same Court, and reversed.

An appeal was taken in turn from this judgment of the Court of Review to the Court of Queen's Bench, who reversed the judgment. A motion for leave to appeal to Her Majesty in Her Privy Council, from this last judgment of the Court of Queen's Bench, has been made, and stands for argument in March next.

Whether a member of the Quebec Bar behaved in an unbecoming manner or not, is a matter of comparatively little importance. But whether the Courts have the right, by prohibition, to interfere with the councils of sections of the Bar, in the exercise of the disciplinary powers over members conferred upon them by law as a corporate franchise, and whether the Court of Queen's Bench, a Court of exclusively appellate civil jurisdiction, can inaugurate proceedings in a Court of original jurisdiction, are matters of grave importance to the Bar and public.

The opinion of counsel is requested upon the following questions in relation to the foregoing case.

1st. Did the council of the section of Quebec of the Bar of the Province of Quebec, in ordering an accusation to be brought by the Syndic against the appellant, in hearing him in his defence, in finding him guilty of conduct derogatory to the honor of the body, and in suspending him, exercise a corporate franchise and perform a mere corporate act?

2nd. If so, could they be interfered with, or restrained by prohibition?

3rd. If the proceedings of the council were judicial in their nature, would prohibition lie, when the Act of incorporation provides an appeal to the general council of the Bar, and enacts that no judgment of a council of section shall be reversed, except by means of such appeal?

4th. Are the disciplinary powers vested in councils subject to the condition precedent, that the Corporation of the Bar shall frame and adopt by-laws defining infractions of discipline and what actions are derogatory to the honor of the body?

5th. Whatever lawful remedy (other than the appeal to the general council) be resorted to against decisions of councils, can the finding by them that a member has been guilty of conduct derogatory to the honor of the Bar, under any circumstances, be challenged or enquired into by Courts in collateral proceedings, such as prohibition, *mandamus* to restore or action?

6th. Is the refusal of a Judge of the Superior Court to authorize proceedings in prohibition a definitive judgment of the Superior Court, from which appeal will lie to the Court of Queen's Bench?

7th. Has the Court of Queen's Bench any jurisdiction by appeal over proceedings which have never come under the previous cognizance of a Court of original jurisdiction?

8th. Was Hypolite Brassard a party to the accusation of the appellant by the Syndic, and had the Court of Queen's Bench jurisdiction in this case to impose upon him the costs in all the Courts through which it has so far gone, or was he a mere witness beyond the reach of any such condemnation?

W. C. LANGUEDOC,
Advocate.

Quebec, January 10, 1878.

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JOINT ANSWERS OF SIR JAMES F. STEPHEN, Q.C., AND MR. JUDAH P. BENJAMIN, Q.C.

We are of opinion,

1. That the council of the Quebec section in the proceedings against the appellant were acting in the exercise of a corporate franchise under their Act of incorporation.

2. That no Court had power to interfere with them unless they were usurping a jurisdiction not conferred on them, and in this case we think they were not acting without jurisdiction.

3. If the proceedings were judicial there would be power in our opinion in any Court of justice exercising general jurisdiction to prohibit the council from usurping jurisdiction; but we think that in the present case there was no power to prohibit, as the council were exercising jurisdiction conferred by statute.

4. No. The Bar, like army or navy officers, are bound by honor, as well as by statutory and common law. It is common practice to try an officer on a charge of "conduct unbecoming an officer and gentleman," and the Court determines whether the acts specified are *unbecoming*. So the council of the Bar may determine whether the conduct of a barrister is or not derogatory to the honor of the Bar. Their decision under their Act of incorporation cannot be questioned in Courts of law, where they are acting *bona fide*. *Possibly*, on proof that they were acting maliciously, under pretext of exercising their proper jurisdiction, some remedy might be found, but no such case is before us.

5. Answered above in No. 4.

6, 7 and 8. We prefer not to give an answer to these questions. They involve points of procedure under the local laws, to which the Privy Council would attach little or no weight, and on which we could only venture an opinion after an examination of local statutes, without any good purpose. We may say in general that upon all the main points of the case we think that an appeal would be successful, and that the judgment of the Superior Court, as given in the opinion of Mr. Justice Stuart, is substantially sound, and will be restored.

J. F. STEPHEN,
J. P. BENJAMIN.

Temple, March 5, 1878.

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## *QUEBEC DECISIONS.*

The following is a digest of the principal decisions reported in the 3rd volume of the Quebec Law Reports (1877):

*Accident.*—See *Negligence.*

*Adjudicataire.*—Under the Code of Civil Procedure, the adjudication of an immoveable is always without warranty as to contents, and the *adjudicataire* cannot, by opposition *afin de conserver* on the proceeds of sale, claim the value of a deficit in contents.—*Pelletier* v. *Chassé*, 3 Q. L. R. 65; *Douglas* v. *Douglas*, Ib. 197.

*Affidavit.*—1. In an affidavit for attachment before judgment, the words "may lose his debt or sustain damage" *held* sufficient.—*Andersen* v. *Brusgaard*, 3 Q. L. R. 287.

2. Affidavits to procure revendication, capias or attachment, are completely exhausted by the issue of the writ, and are of no value as proof in the case. *Crehen* v. *Hagerty*, 3 Q. L. R. 322. But otherwise held in *Bergevin* v. *Vermillon*, Ib. 134.

3. An affidavit for *capias ad respondendum*, alleging a debt to exist, need not state when the same was contracted, nor show that it was contracted within the five years next preceding.—*Maguire* v. *Rockett*, 3 Q. L. R. 347.

4. Nor that the sale and delivery were made to the defendant, when they are alleged to have been made "at his instance and request."—Ib.

5. When the facts upon which his belief is based are sworn to directly, and not as hearsay, the deposant is not bound to disclose the name of any informant.—Ib.

*Agent.*—A merchant in Quebec, acting as the agent of a principal in Ontario, and as such receiving goods subject to freight and demurrage, *held* personally liable for such charges, although the master of the vessel knew that the merchant so receiving the goods was acting as agent.—*Thwaites* v. *Coulthurst et al.*, 3 Q. L. R. 104.

2. But the contrary would be held if the merchant were acting for a home principal.—Ib.

3. An agent doing an act that injures a third party is personally liable to the person injured, though he only carried out the orders of his principal, if such orders were illegal.—*Holton & Aikins*, 3 Q. L. R. 289.

See *Election Law.*

*Appeal.*—1. There is no appeal to the Court of Queen's Bench from a judgment rendered by the Superior Court in proceedings concerning municipal matters, and falling under the dispositions of Chapter 10 of the Code of Procedure.—*Danjou & Marquis*, 3 Q. L. R. 335.

2. The amount demanded determines the right of appeal, and not the amount of the judgment appealed from.—*Boudreau & Sulte*, 3 Q. L. R. 336; *G. T. R. Co. & Godbout*, Ib. 346.

3. There is no appeal to the Circuit Court from a decision of a County Council sitting in appeal on a valuation roll.—*Meunier et al. & Corporation of County of Levis*, 3 Q. L. R. 345.

4. There is an appeal to the Queen's Bench from a judgment homologating an uncontested report of distribution.—*Shortis & Normand*, 3 Q. L. R. 382.

5. The proceeding by opposition, granted to the creditor under 761 C. P., does not deprive him of his appeal.—Ib.

*Attorney.*—See *Costs.*

*Bet.*—No action lies for the recovery of a bet made on a batteau race, this not coming within the exception mentioned in Art. 1927 C.C.—*Wagner* v. *L'Hostie*, 3 Q. L. R. 373.

*Capias.*—See *Affidavit.*

*Certiorari.*—A writ of *Certiorari* may issue after the six months from conviction, provided the application has been made within the six months.—*Ex parte Fiset*, 3 Q. L. R. 102.

*Clerical Intimidation.*—See *Election Law.*

*Collision.*—1. A steam tug proceeding down the St. Lawrence met two barques, and in passing between them came into collision with one which ported her helm. *Held*, that the tug was in fault for not keeping out of the way, and the barque also for not keeping her course.—*The Rosa*, 3 Q. L. R. 21.

2. Admissions of a master of a ship respecting a collision are evidence against the owners, although made after the collision; but the party affected by them may give counter evidence.—Ib.

3. Where two ships are each to blame for a collision in Canadian waters, an Act of the Parliament of Canada, which precludes recovery of damage by either, *held* operative, although the Admiralty rule which divides the loss prevails in England and has been recently applied in a case of collision on Canadian waters, on an appeal to the Privy Council, but without the Act being brought under special notice there.—*The Langshaw*, 3 Q. L. R. 143.

4. In a case of collision, the fault being mutual, the Admiralty rule will apply, as between the owners of cargo and the delinquent ships, dividing the loss; each ship is answerable for a moiety.—Ib.

5. On an appeal to the Privy Council, where their Lordships name assessors, an opinion on a nautical point given by Canadian assessors may be overruled.—Ib.

*Common Carrier.*—There is an implied engagement on the part of public carriers of passengers for hire towards those carried that they shall not be exposed to undue or unreasonable danger in embarking on or landing from the vessels of such carriers. And therefore a Steamboat Company, being a public carrier, using a wharf for the purpose of embarking and landing passengers, is bound to take all possible precautions for the prevention of accidents by the crowding of the public on the wharf, and any dangerous portion of the wharf should be sufficiently lighted at night to ensure the protection and safety of passengers.—*Borlase* v. *St. L. S. N. Co.*, 3 Q. L. R. 329.

*Contrainte par corps.*—See *Guardian.*

*Costs.*—An attorney *ad litem* cannot recover from his client costs in suits which are still pending and undecided.—*Molony* v. *Fitzgerald*, 3 Q. L. R. 381.

2. An attorney is not bound to refund the costs which he received by distraction granted him, though the judgment under which he obtained them was afterwards set aside by the Court of Appeal.—*Holton* v. *Andrews et al.*, 3 Q. L. R. 16.

3. Even if a party who has succeeded in first instance succeeds also in Review, the Court will not allow him costs in Review if it is of opinion that fraud has been proved against him, and that he succeeds only on technical grounds.—*Blouin* v. *Langelier*, 3 Q. L. R. 272.

*Costs, Security for.*—1. A seaman of a foreign

vessel suing for wages, and describing himself as "of Norway, now at Quebec," will be compelled to give security for costs.—*Andersen* v. *Brusgaard*, 3 Q. L. R. 287.

2. Where, by a letter addressed to the suppliant, the Public Works Department offered the sum of $3,950 in full settlement of the suppliant's claim against the Department, an application on the part of the Crown for security for costs was refused, on the ground that the Crown in this case could suffer no inconvenience from not getting security, and the application was not made in proper time.—*Wood* v. *The Queen*, 3 Q. L. R. 17.

*County Councils.*—County Councils have the same power as Local Councils to pass by-laws prohibiting the sale of intoxicating liquors.—*Hart* v. *Corporation of County of Missisquoi*, 3 Q. L. R. 170.

*Curé.*—See *Election Law.*

*Damages.*—1. Physical and mental pain may give rise to the action of damages resulting from a bodily injury.—*Pelletier* v. *Bernier*, 3 Q. L. R. 111.

2. The measure of damages for the detention of a vessel after a collision is the amount she can earn while unemployed by reason of it.—*The Normanton*, 3 Q. L. R. 303.

*Decret.*—See *Adjudicataire.*

*Delivery.*—Absence of delivery is only an indication of fraud, and it may be rebutted by other presumptions equally strong.—*Bell & Rickaby*, 3 Q. L. R. 243.

*Deposit.*—See *Notice of Deposit.*

*Election Law.*—1. The threat by a Catholic priest to refuse the Sacraments to those who should vote for a candidate, constitutes an act of undue influence within the terms of clause 258 of the Quebec Election Act.—*Hamilton* v. *Beauchesne*, 3 Q. L. R. 75.

2. Where the *curés* of a county take an active part in an election in favor of one of the candidates who, in a speech to the electors, declared himself the candidate of the clergy, that he was brought out by the clergy, and that without the assurance of their support he would not have accepted the candidature, the *curés* will be considered agents of the candidate, and the latter will be responsible for their acts. Therefore, if a *curé*, so constituted agent, threatens his parishioners in the presence of a candidate with a refusal of the sacraments in case they vote for the opposite candidate, the candidate present will be deemed to have consented to this act of undue influence and to have approved it, and will be disqualified, if in a speech pronounced some hours afterwards he declares himself the candidate of the clergy, and does not disavow the threats or free himself otherwise from responsibility.—Ib.

3. It is "treating" within the meaning of Sec. 257 of the Que. Election Act, for a candidate to give a glass of liquor to the representatives of the two candidates and the deputy returning officer, in the poll, saying: "Gentlemen, if you wish to take a glass of brandy there is some in the room; go and help yourselves, but before you go, go and vote for whom you like."—Ib.

4. A deed given to transfer property to a candidate merely to qualify him, and with the intention that the property shall for all other purposes remain in the possession of the transferor, is insufficient under Sect. 124 of the Election Act, even though it be clothed with all the formalities requred for the valid transfer of the property. And the proof of such intention appears in the fact of simulated payment of the price, and the transferor remaining in possession of the immovable as proprietor.—Ib.

5. Even if the petitioner succeeds, each party will be ordered to pay his own costs where the defendant succeeds in a recriminatory case under section 55 of the Election Act.—Ib.

6. The Provincial Legislature, in enacting the Quebec Controverted Elections Act, having created the Superior Court a tribunal for the purpose of trying election petitions in a manner which should make its decisions final, the prerogative right to admit an appeal from such decisions to Her Majesty in Her Privy Council does not exist.—*Landry* v. *Théberge*, 3 Q. L. R. 202.

7. Under the Election Act of 1875, (1) the valuation roll is conclusive as to the value of the property. (2) No one can be on the list of electors if he is not on the roll. (3) All those who by the roll appear qualified should be on the electoral list, unless there be personal disqualification which does not appear on the roll.—*Electoral Lists of Kamouraska*, 3 Q. L. R. 308.

8. The Municipal Code directs how a valuation roll may be attacked, and in a collateral

proceeding, such as a contestation of the electoral lists, what has been finally decided as to this roll cannot be questioned.—Ib.

9. The Secretary-Treasurer has no right to correct the valuation roll.—Ib.

10. A and B own conjointly and in equal shares, a property valued on the roll at $200 or $300. Neither should be put on the list. Similarly, if A and B are conjointly and in equal shares tenants of a property for which they pay annually, according to the roll, $20 or $30, neither should be put on the list. In the former case, to give both the right to vote, the property should be valued at $400 at least. In the second case, to entitle both to vote, the rent should be at least $40. But if A and B own together a property valued at $300, A one-third and B two-thirds, B may vote but not A.—Ib.

11. In the following cases complaint may be made to the Council against the list made by the Secretary-Treasurer, or an appeal taken to the Judge from the decision of the Council:—(1) Under Sect. 33 of the Electoral Act of 1875, which provides that if, on proof, the Council is of opinion that a property has been leased, ceded or transferred solely to give some one a right to vote, it may strike from the list the name of such person, on written complaint to that effect. (2) On facts depriving a person of the right to vote who otherwise would have all the necessary qualifications, when these facts are not apparent on the valuation roll or the voters' list, as when a person on the list is not a subject of Her Majesty, or is afflicted with legal incapacity, as, for example, interdicted for mental alienation, or a felon. (3) If the Secretary-Treasurer has placed on the list a person who is not entitled to vote, under arts. 11, 267 and 270 of the Act, Sect. 14, amended by 39 Vict. c. 13, s. 2. (4) If the Secretary-Treasurer has omitted a person who by the roll is entitled to vote, and not otherwise disqualified, or has inserted the name of a person who by the roll appears not to be qualified. (5) On facts affecting the right to vote, and which do not appear by the roll, as if a tenant does not reside at the place. (Sect. 2, par. 5, Election Act of 1875.)—Ib.

12. The *curé*, as occupying the *presbytère*, is not an occupant within the meaning of the Election Act.—Ib.

13. In an action for the recovery of a fine under sections 245 and 246 of the Quebec Election Act, it is sufficient to allege and prove the giving of drink or other refreshment by a candidate, to an elector during the election, without alleging or proving the existence of any wrong motive whatever.—*Philibert* v. *Lacerte*, 3 Q. L. R. 152.

*Evidence.*—In penal actions instituted under sections 125 and 130 of the Quebec Election Act, the strict rules of law will be applied to the evidence.—*Neault & St. Cyr*, 3 Q. L. R. 147.

2. Secondary evidence of the contents of an insurance policy will not be allowed, where the original policy, though deposited in another district, could have been obtained.—*Reg.* v. *Bourassa*, 3 Q. L. R. 359.

3. *Parole.*—Although ambiguous terms in a written instrument may be explained by parole evidence of a usage, they cannot be explained by parole evidence of a conversation which took place when the contract was made.—*Connolly* v. *Provincial Insurance Co.*, 3 Q. L. R. 6.

4. If secondary evidence be adduced without objection, it is presumed that the party who might have objected to such evidence, but failed to do so, has waived his right to urge such objection.—*Thwaites* v. *Coulthurst*, 3 Q. L. R. 104.

*Exception to the form.*—Where the writ of summons sets forth only one of plaintiff's three Christian names, and indicates the others by their initial letters, the action will be dismissed on exception to the form.—*Gauthier* v. *Callaghan*, 3 Q. L. R. 384.

*Exchange, Rate of.*—The promoters having stated and proved their loss in U. S. currency, the Registrar and merchants reported an equivalent amount in gold, not at the current rate of exchange, but at the rate as on the day of collision. The Court, upon contestation, maintained the report.—*The Frank*, 3 Q. L. R. 193.

*Expertise.*—Where, in consequence of a deed improbated having been drawn up, and the different parts put together, in an unusual and slovenly manner, doubt arises as to the genuineness of a part of it, an *expertise* may be ordered as to the genuineness of that part of the deed to which such doubt relates.—*Hamel et al. & Panet*, 3 Q. L. R. 174.

*Fabrique.*—1. Plaintiffs, styling themselves parishioners and freeholders, and seeking to set aside resolutions of the Fabrique for the

purchase of a lot for a cemetery and the payment of money therefor, and demanding that the churchwardens be forbidden to carry out the resolutions at the expense of the Fabrique, were not maintained in their action, which was dismissed on demurrer for want of interest, as well *ratione personae* as *ratione materiae*;—*ratione personae*, because their right of action, if any they had, could be founded only on their quality of fabricians, and Roman Catholic parishioners alone are fabricians. *Ratione materiae*, because parishioners and freeholders, even Roman Catholics, have no personal interest in the moneys of the Fabrique, and consequently they suffer personally no prejudice by the mode in which the moneys are disposed of.—*Carrier* v. *Les Curé &c.* de N.D. de la Victoire, 3 Q. L. R. 27.

2. The allegation, that the plaintiffs are parishioners and fabricians of a Roman Catholic parish, is not sufficient; it must be alleged that they are Roman Catholics.—Ib.

*Fraud.*—Fraud is not presumed, it must be proved.—*Neault* v. *St. Cyr*, 3 Q. L. R. 147.

*Guardian.*—1. The fact that the guardian appointed to a seizure is a minor does not invalidate the seizure, if the effects seized have remained in the possession of the defendant, and if the guardian is voluntary.—*Coté* v. *Jacob*, 3 Q. L. R. 5.

2. A judicial guardian, refusing to give up the effects seized to the bailiff who is the bearer of the writ of *vend. ex.*, is subject to *contrainte par corps* only after being condemned by the Court to give them up within a certain delay, and this rule has been served on him.—*Gauvreau* v. *Longobardi*, 3 Q. L. R. 195.

*Habeas Corpus.*—As a general rule, where a minor is brought before the Court by *habeas corpus*, if he be of an age to exercise a choice, the Court will permit him to choose as to the custody in which he will be.—*Reg.* v. *Hull*, 3 Q. L. R. 136.

*Semble*, the above rule would not apply in the case of a girl under 16, leaving the house of her father, mother or other person having lawful charge of her; nor in the case of a refactory child, under 14, liable to be sent to an Industrial School under 32 Vict. c. 17.—Ib.

See *Review*.

*Husband and Wife.*—1. Although, under the provisions of the Registry Ordinance, reproduced by Art. 1301 C. C, a wife cannot bind herself with or for her husband otherwise than as being common as to property, she may nevertheless legally renounce her hypothecary rights upon the property of her husband in favor of a creditor of her husband.—*Thibaudeau* v. *Perrault*, 3 Q. L. R. 71.

2. A *propre ameubli* of the wife may, during the community, be effectually hypothecated by the husband; and the wife, even if she have the *clause de reprises* in her favor, and though she may renounce the community, cannot defeat such mortgage.—*Hamel* v. *Panet*, 3 Q. L. R. 173.

3. A married woman cannot legally renounce, in favor of a creditor of her husband, her hypothecary rights on the property of her husband and of the community; and this notwithstanding the provision of the Registry Ordinance, declaring that "no married woman shall become security or incur any liability, other than as *commune en biens* with her husband, for debts or obligations entered into by her husband before their marriage, or which may be entered into by her husband during their marriage."—Ib.

4. The question whether, notwithstanding the Registry Ordinance, a married woman could legally become jointly bound with her husband for the debt of a third person, considered, and observations in the three Courts respecting the case of *Jodoin* v. *Dufresne*, 3 Q. L. R. 189.—Ib.

*Immoveable by Destination.* — The appellant purchased at a bailiff's sale, held under a writ of *fieri facias de bonis*, for taxes, certain moveable effects forming the plant of a brewery, (the proprietor of the brewery not objecting to a sale,) and allowed the same to remain on the brewery premises on storage. The brewery was some months afterwards sold by the sheriff under a writ *de terris*, the plant being still thereon, and adjudged to the respondent. The appellant gave no notice of his claim to the goods, and filed no opposition to withdraw them, but after the sale to respondent, sought to revendicate them in his hands. *Held*, (dismissing the action) that the effects were immoveables by destination, and although the bailiff's sale had under the circumstances passed the property therein to appellant, yet as he had allowed the effects to be virtually included in the sheriff's sale of a brewery, he had only him-

self to blame if an innocent purchaser of the brewery retained all the plant which he found therein, when adjudged to him.—*Budden & Knight*, 3 Q. L. R. 273.

*Injunction.*—1. The writ of injunction is a civil remedy provided and regulated by the laws of England for the protection of property and the maintenance of civil rights; and the Imperial Statute 14 Geo. III, c. 83, s. 8, having enacted in effect, that in the Province of Quebec "in all matters of property and civil rights resort should be had to the laws of Canada as the rule for the decision of the same," and that all suits respecting such property and civil rights should "be determined agreeably to the said laws and customs of Canada" until changed by subsequent legislation; and the proceeding by injunction not having been established by any subsequent legislation applicable to the said Province, it cannot be allowed as a general remedy, or as a remedy in a case such as the present.—*Carter* v. *Breakey*, 3 Q. L. R. 113.

2. The powers, of a civil nature, of the Court of King's Bench and of the judges thereof, as created, defined and regulated by the provincial statute 34 Geo. III, c. 6, s. 8, and now vested in the Superior Court, and in the judges thereof, do not include the power of granting writs of injunction.—Ib.

3. Although, for the reasons above mentioned, the writ of injunction never has been, and is not now, in the Province of Quebec, a legal remedy except in particular cases provided for by the legislature, yet the prerogative writ of *mandamus*, which is generally used "for public purposes, and to compel the performance of public duties," has, at all times, since the Province became a British colony, been a legal remedy therein, as an incident to the public law of the empire.—Ib.

4. The writ of injunction and the writ of mandamus, although they may in some cases produce nearly identical effects, are not in principle, nor generally speaking, the same; and, therefore, Art. 1022 C. P., expressly allowing the writ of mandamus in certain cases, cannot be considered as tacitly allowing the writ of injunction in the same cases.—Ib.

*Insolvent Act.*—1. It is not necessary that the affidavit under section 9 of the Insolvent Act of 1875 should show that the claim is not secured, provided such affidavit be in the form prescribed by the Act.—*Barbeau & Larochelle*, 3 Q. L. R. 187.

2. A creditor who has no domicile in the Province of Quebec is not bound to give security for costs in suing out a writ of attachment. —*Reed* v. *Larochelle*, 3 Q. L. R. 93.

3. The holder of negotiable paper, the maker and endorser of which have both become insolvent, and who has received a dividend from one of them, cannot prove his claim against the estate of the other for the full amount mentioned in the paper—on the contrary he must deduct the amount of dividend received from the estate of the other party. But if, after proof made, dividends are received from the estate of another party, the creditor is, nevertheless, entitled to dividends upon the whole amount proved; provided the dividends do not exceed 100 cents in the dollar on the balance really due.—*In re Rochette*, 3 Q. L. R. 97.

4. One Farmer, a hotel-keeper, being largely indebted to the appellant, a notarial deed of sale, duly registered, was passed between them, whereby Farmer sold to appellant, with right of redemption within three years, certain moveable and immoveable property, comprising the hotel and furniture, being the bulk of his estate, for a certain stated valuable consideration. Farmer remained in possession of the property under lease from appellant, and continued to carry on his business as usual. About ten months afterwards he became bankrupt and the respondent was appointed his assignee. In the meantime appellant had, with Farmer's consent, granted a lease of the moveables to Trihey and Johnson, in whose hands they were when respondent revendicated them as part of Farmer's insolvent estate. Trihey and Johnson did not contest, but the appellant intervened and claimed the effects under the deed of sale above mentioned. The respondent contested the intervention, prayed to have the deed in question annulled and set aside as having been made in fraud of Farmer's creditors. *Held*, that under the circumstances there was no fraud or illegal preference, either within the provisions of the Insolvent Act or of the Civil Code, and that even were fraud disclosed, the Court could not, on such an issue, declare fraudulent and annul that part of the deed affecting the immoveables.—*Bell & Rickaby*, 3 Q. L. R. 243.

5. An insolvent copartnership cannot under the Insolvent Act of 1875 and amending Acts, offer two compositions; one to the creditors of the copartnership, and the other to the creditors of the copartners individually or of any of them.—*Gelinas* v. *Drew*, 3 Q. L. R. 361.

6. A creditor for an amount under $500 is without quality to petition against resolutions passed at a meeting of creditors, or against the appointment of an assignee.—In re *Morgan & Sons*, 3 Q. L. R. 376.

*Insurance.*—1. Where an insurance company, in refusing to pay a loss, did not object particularly to informal notice of loss, *held*, that this was a waiver of their right to a formal or circumstantial notice.—*Garceau* v. *Niagara Mutual Insurance Co.*, 3 Q. L. R. 337.

2. Where by the terms of a policy of insurance, the statements and representations in the application are made part of the contract, and by the policy all such statements and representations are warranted to be true, false representations and fraudulent suppressions in the application may be urged by the insurer as a cause of nullity in the contract, in an action to have the policy cancelled and delivered up.—*N. Y. Life Ins. Co.* v. *Parent*, 3 Q. L. R. 163.

3. Where the misrepresentations in the application are to the knowledge of the assured, such nullity may be invoked by the insurer, without any return of premiums paid.—Ib.

4. An assignment of the policy can convey no greater rights than the assured himself had.—Ib.

*Interlocutory Judgment.*—The judge who renders the final judgment has power to reverse all interlocutory judgments.—*Archer* v. *Lortie*, 3 Q. L. R. 159.

*Jurisdiction.*—1. A District Magistrate's Court, in civil matters, has no jurisdiction over a defendant residing beyond the district wherein the Court sits.—*Ex parte Fiset*, 3 Q. L. R. 102.

2. An action *en déclaration d'hypothèque*, for a sum of $36, does not fall within the jurisdiction of the non-appealable branch of the Circuit Court.—*Massé* v. *Coté*, 3 Q. L. R. 322.

*Jury.*—On a trial for forgery, the panel of petit jurors contained the names of Robert Grant and Robert Crane. The name of Robert Grant was called from the panel, and Robert Grant, as was supposed, went into the box, and was duly sworn as Robert Grant without challenge. The prisoner was convicted. Before the jury left the box, it was discovered that Robert Crane had by mistake answered to the name of Robert Grant, and that Robert Crane was really the person who served on the jury. On a reserved case, *held*, that there had been a mistrial, and the prisoner should be tried again, (Dorion, C. J., and Sanborn, J., dissenting).—*Reg.* v. *Feore*, 3 Q. L. R. 219.

*Lessor and Lessee.*—1. C. purchased an agricultural implement from G., a dealer in such things, with the understanding that it should be removed without delay. Shortly after, C. went for the implement, but snow having fallen and the article being frozen in, it was allowed to remain until spring, when it was seized for rent due by G. *Held*, that under the circumstances the implement was transiently and accidentally on the premises, and not subject to the landlord's privilege. *McGreevy* v. *Gingras*, 3 Q. L. R. 196.

2. Where, by the lease, the lessee elects domicile at the premises leased, the rent is payable there, and if no demand of payment has been made, prior to suit, at such domicile, the action will be dismissed on defendant showing that he was ready to pay the rent there and bringing the money into Court.—*Hearn* v. *McGolrick*, 3 Q. L. R. 368.

3. Art. 889 C. C. P. is more extensive than 1641 C. C., and in giving the Court in vacation power to dispose of cases arising from the relation of landlord and tenant, it comprises a special action to cause to cease a trouble for which the lessor is responsible.—*Proc. Gen. pro. Reg.* v. *Coté*, 3 Q. L. R. 235.

4. A lessor who permits one of his tenants to change the destination of the premises leased, by carrying on therein a trade which renders uninhabitable the premises leased by the same lessor to neighboring tenants, is considered to have sanctioned this change of destination, and his responsibility is the same as if he had specially authorized it by a lease. If the stipulations of the lease are opposed thereto, the landlord alone can invoke them and sue for the faithful performance of them or the cancellation of the lease.—Ib.

5. Notwithstanding a clause in the lease stipulating that improvements and additions made by the tenant shall remain for the proprietor, a tenant may take away the double

windows which he put on the house.—*Plamondon* v. *Lefebvre*, 3 Q. L. R. 288.

*Legislatures.*—The provincial legislatures have no power to legislate on questions affecting trade, except to raise revenue for provincial purposes.—*Hart* v. *Corporation of County of Missisquoi*, 3 Q. L. R. 170.

*License Act.*—The Quebec License Act, 1870, as far as the Insolvent Act of 1869 is concerned, is *ultra vires*. The Insolvent Act of 1869 having for its exclusive object commercial matters, the Provincial Legislature cannot restrain its operation by imposing a duty on the proceeds of sales of insolvent's effects, or by limiting the powers of assignees in the operation of the Act.—*Coté* v. *Watson*, 3 Q. L. R. 157.

*Mandamus.*—1. A member of an incorporated building society is not entitled to demand an inspection of the minutes kept by the directors of the association, unless there be a parliamentary direction to that effect, or he shows an interest, or a lawful motive for demanding the inspection.—*Reg. ex rel. Langelier* v. *Laroche*, 3 Q. L. R. 239.

2. The fact of taking a reasonable time (*e. g.* three days) to consider and take advice before complying with the demand, is not a refusal sufficient to justify a resort to the remedy by mandamus.—Ib.

*Minor.*—See *Habeas Corpus.*

*Mistrial.*—See *Jury.*

*Municipal Corporation.*—An indictment will lie against the corporation of a rural municipality for non-repair of a highway, although it is a front road of which each proprietor is bound to repair his frontage.—*Reg.* v. *Corporation of St. Sauveur*, 3 Q. L. R. 283.

*Municipal Matters.*—See *Appeal.*

*Negligence.*—The plaintiff's wife, proceeding over a market place in the city of Quebec, stepped on a plank, forming part of the planking of the market. The plank broke and struck her in the face, inflicting injuries for which the action was brought. It appeared that the clerk in charge walked through the market every day, and no apparent defect existed at the place in question. On examination the plank was found to be decayed underneath. *Held*, that the defect was a latent one, due to the silent, unobserved effect of time, of which the defendants had no notice, and no negligence having been shown the action could not be maintained.—*Kelly* v. *Corporation of the City of Quebec*, 3 Q. L. R. 379.

*Notice of Deposit.*—A party who inscribes in review and makes the required deposit within eight days, is not bound to give notice thereof within the same delay to the adverse party, but may give notice at any time afterwards, the law not determining within what delay that formality is to be observed.—*Lewis* v. *Levis & Kennebec RR. Co.*, 3 Q. L. R. 372.

*Nullity of Deed.*—A deed attacked as made in fraud of creditors cannot be annulled by the Court on a plea to an opposition, if the conclusions of the plea do not ask that the nullity be declared.—*Blouin* v. *Langelier*, 3 Q. L. R. 272.

*Officer, Public.*—A laborer employed on a municipal work is not a public officer entitled to a month's notice, before being sued in damages, by reason of the part which he took in the work.—*Holton* v. *Aikins* 3 Q. L. R. 289.

*Penal Action.*—See Evidence; Election law, 13.

*Peremption.*—Peremption cannot be granted in a case where proceedings have been suspended by an inscription *en faux*.—*Anderson* v. *Sanborn*, 3 Q. L. R. 206.

2. The party obtaining peremption is entitled to costs.—*Germain* v. *Lacoursière*, 3 Q. L. R. 271.

*Pleas, Preliminary.*—Since the jurisdiction of the Circuit Court in Quebec and Montreal has been restricted to $100, no deposit is required with preliminary pleas in that Court.—*Kennedy* v. *McKinnon*, 3 Q. L. R. 358.

*Principal, Foreign.*—See *Agent.*

*Prescription.*—The prescription created by articles 2,260 and 2,267 of the Civil Code being not only a presumption of payment but a *déchéance* against the tardy creditor, and being a presumption *juris* and *de jure* of the extinction of the debt, does not admit of contradictory proof, and cannot be overcome by deferring the *serment décisoire*.—*Fuchs* v. *Legaré*, 3 Q. L. R., 11

2. But in commercial matters, where the sum in question does not exceed $50, the oath may be deferred to the party pleading prescription, as to the existence of a verbal promise or acknowledgment, or other interruption or renunciation.—Ib.

[To be Continued.]