The Legal News.

Vol. X. OCTOBER 1, 1887. No. 40.

An especially hard case of a man being ruined and made bankrupt by a law suit, though he was successful before the highest Court, is that of Mr. T. G. Dixon, a justice of peace for Flintshire, and late owner of the Nant Hall Estate, near Rhyl, and of a small estate in Cheshire. At the close of the examination in bankruptcy, the bankrupt said that in 1847 he held certain shares in an agricultural insurance company started in Edinburgh. That company was eventually amalgamated with a London company, and he was strongly advised to withdraw from it, which he did by paying the balance due on his shares. Twenty-three years afterwards, he received notice to appear in London to show cause why he should not be a contributory to this very thing. The upshot was, the case went into Court before the Chief Clerk, who gave his decision against Mr. Dixon. The bankrupt then went before the Master of the Rolls, who decided clearly in his favour. The other party then took the matter before the Lords Justices of Appeal, and their lordships, while acknowledging it to be the hardest case they had ever tried, said in strict law they must give their decision against him. The matter being a very serious one, and involving a very considerable sum of money, Mr. Dixon decided to appeal to the House of Lords. They gave a decision in his favour on every point, with costs, but notwithstanding this final success, the litigation had cost him just £5,000.

The law with regard to public meetings is stated as follows in the *Law Journal* (London): "In the first place, the idea that a proclamation not made under the special powers of a statute has any legal effect whatever must be placed out of sight once for all. Nothing is clearer than that the executive cannot make law by putting it in the mouth of a town crier or placarding walls with it. If the law they proclaim is bad law, or if the action taken upon the proclamation is illegal, every person concerned in enforcing it is liable to legal proceedings. In regard to criminal proceedings, the executive may, under circumstances which can justify it to the Attorney-General's conscience, maintain their own law by entering a *nolle prosequi*; but no such counter-move is open to them in civil proceedings, and civil proceedings are sufficient for the protection of the law-abiding subject when a meeting is proclaimed. He has only to proceed to the place of meeting accompanied by one or two of the more discreet of his fellows, and if he finds it occupied by a body of police to assert his right, protest, and go the nearest way to his lawyer's. Upon an action brought the defendants would have to prove that the object of the meeting was unlawful, or that it was likely to lead to a breach of the peace. They would not be bound, as Sir W. Harcourt supposed, to prove that the avowed object was unlawful; it would be enough if the real object was unlawful. As to the reporter, he has neither more nor less right to be present than anyone else; but if as a Government reporter he is obnoxious to the majority, the police, are entitled to assert his right to be present, using no more force than is necessary, just as private persons might assert their right to be present if it was purposely obstructed."

SUPERIOR COURT.

St. Johns, dist. d'Iberville, May 14, 1887.

Coram Loranger, J.

Lavallee v. Surprenant.

Compensation—Délit of wife—C. C. 1294.

To an action of damages brought by the plaintiff personally as well as being head of the community, alleging that the defendant had slandered plaintiff's wife, the defendant pleaded in compensation that the plaintiff's wife had slandered defendant, without specifying the occasion, or alleging that the plaintiff was present or had approved of the words uttered.

Held:—*That the plaintiff not being responsible for slander committed by his wife without his knowledge or approval, such slander could not be pleaded in compensation.*

The judgment is in the following terms :—

La Cour,

Après avoir entendu les parties au mérite et leurs témoins, avoir examiné la procédure et délibéré :

Attendu que le demandeur, époux commun en biens de Malvina Denaud, réclame du défendeur des dommages pour injures verbales proférées à l'adresse de sa femme, le 8 septembre 1886 ;

Attendu que le défendeur plaide entr'autres choses, que le dit jour 8 septembre, la femme du demandeur l'a injurié en se servant d'expressions propres à nuire à sa réputation et affecter son honneur ; que ces injures lui ont causé des dommages au montant de $1000, que le dit défendeur offre de compenser à l'encontre de l'action ;

Attendu que le demandeur a répliqué en droit à ce plaidoyer : 1o. qu'il n'y a pas lieu à compenser les dommages en question ; 2o. que le défendeur n'allègue pas que les prétendues injures proférées par son épouse à l'adresse du défendeur, ont été dites en présence du demandeur, ni qu'elles ont été approuvées par lui ; 3o. que le défendeur ne fait pas voir que les prétendues paroles injurieuses ont été dites dans l'occasion même où le défendeur a injurié la femme du demandeur ;

Considérant que pour que deux dettes puissent être compensées, il faut qu'elle soient liquides l'une et l'autre et également exigibles ; que bien que la créance en dommages-intérêts puisse être compensée, cette compensation ne s'opère que du moment que la quotité des dommages a été établie, et que ce n'est que de ce moment que cette créance devient liquide ;

Considérant que le défendeur n'allègue pas que les injures proférées par l'épouse du demandeur, à son adresse, ont été dites en la présence du demandeur, ni qu'elles ont été autorisées ou ratifiées par ce dernier ;

Considérant que le demandeur a poursuivi non-seulement comme chef de la communauté, mais qu'il a demandé en son nom personnel, une condamnation contre le défendeur ;

" Considérant qu'aux termes de l'article 1294 du C. C., le demandeur n'est pas responsable du délit qu'aurait commis sa femme en son absence ou hors sa connaissance, et que l'on ne peut opposer à la demande qu'il fait en son nom personnel, les dommages causés par sa dite épouse, à son insçu et hors sa présence ;

" Considérant que le défendeur ne fait pas voir que les prétendues injures ont été proférées à l'instant même où les paroles injurieuses qu'on lui reproche ont été prononcées ; qu'en conséquence il n'y aurait pas lieu à compensation, et que le défendeur doit se pourvoir par une demande incidente ;

" Considérant que la réplique en droit est bien fondée ;

" Maintient la dite réplique et renvoie cette partie du plaidoyer du défendeur avec dépens."

Girard & Quesnel, avocats du demandeur.
Paradis & Chassé, avocats du défendeur.

COUR D'APPEL DE PARIS (2e Ch.)

26 juillet 1887.

Présidence de M. Ducreux.

COUR D'APPEL DE PARIS (4e Ch.)

9 juillet 1887.

Présidence de M. Faure-Biguet.

Compagnie des Petites Voitures v. Vve Bergeret.

Responsabilité—Animal—Dommage—Cheval—Palefrenier—Preuve.

Aux termes de l'art. 1385 *C. civ. le propriétaire d'un animal est responsable du dommage causé par cet animal ; et il ne peut échapper aux conséquences de cette responsabilité légale que s'il prouve que l'accident est le résultat d'un cas fortuit, d'une circonstance de force majeure ou de l'imprudence de la victime elle-même* (1re et 2e espèces).

Et la victime de l'accident, en prenant l'initiative d'une enquête relative aux circonstances dans lesquelles le dit accident s'est accompli, ne peut se priver ainsi du bénéfice de la présomption que l'art. 1385 *établit en sa faveur* (2e espèce.)

Le propriétaire d'un cheval vicieux ne peut reprocher comme une imprudence au palefrenier, blessé par cet animal, en se fondant sur ce que celui-ci, connaissant les vices de ce cheval, n'aurait pas pris certaines pré-

cautions spéciales, s'il est constant que ces précautions n'étaient pas compatibles avec les nécessités du service (1re espèce.)

2e Ch.—26 juillet 1887.

Le 24 novembre 1886, le Tribunal civil de la Seine avait rendu le jugement suivant:

"Attendu que, le 18 septembre 1883, Bergeret, alors palefrenier au service de la compagnie des Petites-Voitures, a été tué d'un coup de pied, lancé par une jument appartenant à la compagnie défenderesse;

"Attendu qu'aux termes de l'art. 1385 C. civ. le propriétaire d'un animal est responsable du dommage causé par cet animal, à moins qu'il ne fournisse la preuve qu'il est le résultat d'un cas fortuit, d'une circonstance de force majeure ou de l'imprudence de la victime elle-même;

"Attendu qu'au moment où cet accident s'est produit, Bergeret réintégrait dans l'écurie un cheval qu'il venait de panser et passait pour les besoins de son service derrière la jument qui a lancé la ruade; que Bergeret, sachant cet animal vicieux, avait pris soin, selon l'usage et les règles, de lui parler de manière à éviter qu'il fût surpris ou frappé; que c'est en vain que la compagnie des Petites-Voitures fait grief à Bergeret d'avoir marché à la tête du cheval qu'il conduisait au lieu de s'etre placé derrière lui du côté opposé à la jument vicieuse; qu'un tel surcroit de précautions n'est pas compatible avec les nécessités du service incessant des palefreniers dans des écuries renfermant un très grand nombre de chevaux; que la compagnie défenderesse est, au contraire, en faute d'avoir conservé dans sa cavalerie un cheval vicieux ou tout au moins de ne pas l'avoir placé dans une partie de l'écurie où les palefreniers ne fussent pas constamment obligés de passer derrière lui;

"Attendu que, par suite de la mort de son mari, qui subvenait à ses besoins, la veuve Bergeret a éprouvé un préjudice dont il lui est dû réparation; que le Tribunal possède les éléments nécessaires pour fixer à 8,000 fr. l'indemnité qui lui est dû;

"Par ces motifs,

"Condamne la compagnie des Petites-Voitures, etc."

Sur appel de la compagnie des Petites-Voitures, arrêt:

La Cour,

Adoptant les motifs des premiers juges;

Confirme.

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*QUEBEC DECISIONS.**

Action for seduction of minor.

Held, Reversing the judgment of Superior Court, Quebec (15 L. C. R. 42), that the father cannot bring, in his own name, an action for the seduction of his minor daughter.—*Taylor & Neill*, in Appeal, Quebec, Sept. 18, 1865.

Arbitrator—Power of Court to appoint.

Held, That the Court has power to appoint an arbitrator to act on behalf of a party refusing to appoint an arbitrator, where the parties have covenanted that the matter in dispute shall be determined by arbitration.—*Quebec Street Ry. Co. & Corp. of Quebec*, in Appeal, Quebec, May 9, 1887, Baby and Church, JJ., *diss.*

Nullité de décret—Fausse description—C.P.C. 714.

Le shérif, à une vente judiciaire, vendit par décret les *quinze-cinquièmes* d'un lot de terre situé en la paroisse des Eboulements, et l'adjudicataire présenta une requête en nullité de décret, se plaignant qu'on lui avait vendu une chose indéterminée et indéterminable, et qui n'existait point.

Jugé, sur défense en droit, que sa demande était bien fondée en loi, l'objet mentionné dans le décret ne pouvant exister, et les trois moyens contenus en l'article 714 du Code de Procédure Civile n'étant pas les seuls donnant lieu à la demande en nullité de décret.—*Perron* v. *Bouchard*, Cour Supérieure, Saguenay, Routhier, J.

Vente—Vice redhibitoire—Délai.

Jugé, Qu'une action en résiliation de vente pour vice redhibitoire, peut, suivant les circonstances, être maintenue, quoiqu'elle ne soit intentée qu'un mois et huit jours après la vente.—*Picard* v. *Morin*, C. C., Montmagny, 12 oct. 1885, Angers, J.

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* 13 Q. L. R.

COPYRIGHT IN LECTURES.

It is satisfactory to have at last attained at the hands of the House of Lords, an authoritative exposition of the law governing copyright in lectures. For fifty years or more the question has been a moot one, and now, in *Caird* v. *Syme*, it has been laid to rest by Lord Watson. The question is whether the oral delivery of a professor's lectures to the students attending his class, is in law equivalent to communication to the public. The answer is emphatically, No.

The question was first asked in 1825, before Lord Eldon, in *Abernethy* v. *Hutchinson*, 3 L. J. O. S. 209, Ch.; and by permission, in 1 H. & T. 28. The chancellor, as his manner was, "doubted," and would not, in the first instance, make any order. The case stood over on more than one occasion and was re-argued; and upon the ultimate argument, an additional affidavit which had been made was read, stating in effect that Dr. Abernethy had given his lecture orally and not from written composition; but that he had notes which amounted to a great mass of writing, written in a very succinct manner, from which he delivered the lecture, and that a very considerable portion of such notes had been extended and put into writing with a view to publication, and that at the time of delivering his lecture he did not read or refer to any writing, but delivered it orally from recollection of his notes. Upon that additional evidence, after very mature consideration, the chancellor delivered judgment. He stated that where the lecture was orally delivered, it was difficult to say that an injunction could be granted upon the same principle upon which literary composition was protected, because the court must be satisfied that the publication complained of was an invasion of the written work; and this could only be done by comparing the composition with the piracy. But it did not follow, that because the information communicated by the lecturer was not committed to writing but orally delivered, it was therefore within the power of the person who heard it to publish it. On the contrary, he was clearly of opinion, that whatever else might be done with it, the lecture could not be published for profit. That is, every person who delivers a lecture which is not committed to writing, but which is orally delivered from memory, has such a property in the lecture that he may prevent anybody who hears it from publishing it for profit. Lord Eldon was of opinion, that when persons are admitted as pupils or otherwise to hear these lectures, although they were orally delivered, and although the parties might go to the extent, if they were able to do so, of putting down the whole by means of shorthand, yet they could do that only for the purposes of their own information, and could not publish for profit that which they had not obtained the right of selling.

Next in the year 1835, the Legislature intervened. By the Lecture Copyright Act (5 & 6 Will. 4, ch. 65,) it is provided that the author of any lecture, or the person to whom he has sold or otherwise conveyed the copy in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture; and that if any person shall, by taking down the same in shorthand, or otherwise in writing, or in any other way obtain or make a copy of such lecture, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied or published, without leave of the author thereof, or of the person to whom the author has sold or otherwise conveyed the same, and every person who knowing the same to have been printed or copied and published without such consent, shall sell, publish or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture, shall forfeit such printed or otherwise copied lecture or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale contrary to the true intent and meaning of that Act; the one moiety thereof to His Majesty, his heirs and successors, and the other moiety thereof to any person who shall sue for the same. The second section provides that any printer or publisher of any newspaper who shall

without such leave as aforesaid, print and publish in such newspaper, any lecture, shall be deemed to be a person printing and publishing without leave within the provisions of the Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing. The third section declares that no person allowed for certain fee and reward, or otherwise, to attend any lecture delivered at any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures. Unfortunately however the fourth section excludes from the protection of the act, all lectures of the delivery of which notice in writing shall not have been given two days previously to two justices living within five miles of the place of delivery. This notice must be given every time such lecture is delivered, and therefore the omission, says Mr. Copinger (the Law of Copyright [2d ed.,] p. 56, n.,) in any one instance to give the requisite notice would render any person at liberty to obtain a copy, and the lecturer would be unable to prevent him publishing. Further, those lectures are unprotected by the Act which are delivered in any university, or public school, or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment or foundation.

Nearly twenty years later, in 1854, the House of Lords gave judgment in what may perhaps be considered the most important case on the entire law of copyright. *Jefferys* v. *Boosey*, 4 H. of L. Cas. 815. The judges were summoned, and eleven attended and gave their advice. The importance of the case, from the present point of view, is as regards the effect of publication. The author of a lecture, or of any other original composition, retains a right of property in his work, which entitles him to prevent its publication by others until it has, with his consent, been communicated to the public. Since *Jefferys* v. *Boosey*, it must be taken as settled law, that upon such communication being made to the public, whether orally or by the circulation of written or printed copies of the work, the author's right of property ceases to exist. Copyright, which is the exclusive privilege of multiplying copies after publication, is the creature of statute, and with that *Caird* v. *Syme* was not directly concerned. Now the author's right of property in his unpublished work is undoubted, and it has also been settled that he may communicate it to others under such limitations as will not interfere with the continuance of the right.

Coming now to more modern days, the case of *Abernethy* v. *Hutchinson*, *ubi sup.*, and indeed the whole question of the publication of lectures, was fully discussed by Mr. Justice Kay in *Nicols* v. *Pitman*, 1884, 50 L. T. Rep. N. S. 254; 26 Ch. Div. 374. There the plaintiff, an author and a distinguished lecturer upon various scientific subjects, delivered at the Working Men's College, Great Ormond street, a lecture upon "The Dog as the Friend of Man." The admission to the room was by tickets issued gratuitously by the committee of the college. The defendant was present during the delivery of the lecture and took notes, nearly *verbatim*, in shorthand, and then, eighteen months afterward, published in shorthand characters in a number of his periodical, *The Phonographic Lecturer*. The plaintiff proved that he had written this lecture in 1882, and delivered it for the first time at the Working Men's College; that the MS. was his own property, being written and composed entirely by him, and was not a compilation, but was based upon and contained the results of many years' personal observation, experience and study of the physical and mental characteristics of various races of dogs; that all his lectures were written with a view at first to oral delivery, and ultimately to publication; that he had since delivered the same lecture at various places in the country, and that at each place where he had delivered it, no persons had any right to be present in the room except those who were admitted to that privilege by himself, or by the committee of the governing body of the institution or college at which the lecture was delivered. At the Great Ormond Street College, none except the holders of tickets have any right to be present, and the secretary of the college stated that it had always been understood that the privilege of attend-

ing and hearing the lectures there did not confer upon the persons who heard them any right to print or publish them for their own benefit, but that the sole and exclusive right of printing and publishing them belonged to the several lecturers by whom they were delivered, and that he always considered that there was an implied contract between the lecturers and the committee on the one hand, and the lecturers and the audience on the other hand, that neither the committee nor any of the audience should be at liberty to publish the lectures, or any part thereof, without the consent of the lecturers. Mr. Justice Kay could not regard the publication of the lecture in shorthand characters, the key to which might be in the hands of any person who chose to buy the paper, as being different in any material sense from any other mode of publication. And he held that where a lecture of this kind is delivered to an audience, limited and admitted by tickets, the understanding between the lecturer and the audience is, that whether the lecture has been committed to writing beforehand or not, the audience are quite at liberty to take the fullest notes they can or please for their own personal purposes, but they are not at liberty to use them afterward for the purpose of publishing the lecture for profit. The defendant consented to treat the motion for an injunction as the trial of the action, and accordingly a perpetual injunction was granted against him, any inquiry as to profits or damage being waived.

It remains only to notice the general effect of the recent decision (June 13, 1887,) of the House of Lords in *Caird* v. *Syme*. The appellant was the well-known professor of moral philosophy in the University of Glasgow, and the respondent was a bookseller and publisher in Glasgow. Professor Caird delivered certain lectures to his class in the course of the winter sessions of the university, and Mr. Syme published the substance of the lectures. The action was brought for the purpose of preventing this publication of the lectures being continued. The sheriff-substitute granted perpetual injunction as craved, and ordained the respondent to deliver up to the appellant all copies of the publications complained of remaining in his hands or within his control. By his interlocutor he found that "the said books or pamphlets are in substance reproductions, more or less correct, of the lectures in use to be delivered by the pursuer to his class of moral philosophy in the University of Glasgow," and he further found that "such lectures are the property of the pursuer, and that the defender has not shown that the pursuer has in any way lost his right of property therein, or that he has acquired from the pursuer, or in any other lawful way, a right to publish or reproduce said lectures." On an appeal to the Second Division, the cause, with minutes of debate, was ordered to be laid before all the judges of the court for their opinion. The result was that of the thirteen judges consulted a majority of nine were of opinion that the publications in question were substantially a reproduction of the professor's lectures. The Second Division however found that the pursuer's legal rights had been in no way infringed. The House of Lords reversed the judgment of the Second Division, in so far as it was adverse to Professor Caird, and restored the interlocutor of the sheriff-substitute. In effect, Professor Caird was held entitled, notwithstanding the delivery of the lectures as part of his ordinary course, to restrain the whole world of publishers from publishing the lectures without his consent, on the ground that the delivery of the lectures was no publication. It is unfortunate that Lord Fitzgerald could not see his way to concurrence in this view. In his eyes it seems that the professor's reading of the lectures was equivalent to publication to the public at large.—*London Law Times.*

NEGLIGENCE IN INVESTING TRUST FUNDS.

On August 9, judgment was given by Mr. Justice Stephen in the case of *Pretty et al.* v. *Fowke*. This was an action for negligence against a solicitor. The plaintiffs were trustees and their *cestuis que trustent*, for whom the defendant, a solicitor in Birmingham, had acted in an investment of certain of the trust moneys upon leasehold security.

The defendant was employed in 1880 to find a good security for 500*l.*, and himself employed a Mr. Edwards to value the property now in question, consisting of manufacturing premises. The valuers reported that the property was a sufficient security for 500*l.*, which sum the trustees advanced upon it. The interest at once fell into arrear, the mortgagor became bankrupt, the property remained unlet, and the trustees, being unable to realise, brought this action against their solicitor. The negligence imputed was that the defendant had neglected to inform Edwards, the valuer, of the terms of a tenancy under which one Smith held the premises of the mortgagor, Ward. Edwards was instructed by the defendant that Smith held at a rent of 80*l.*, and that there was no written agreement between him and Ward, whereas in fact there was a written agreement for a lease, under which the landlord was liable to pay the rates and taxes, amounting to over 20*l.* In his evidence, Edwards said that had he known the terms of this tenancy he should not have reported the property as a good security for 500*l.* The defendant, on the other hand, had, at the commencement of the negotiations, inquired of the mortgagor the nature of the tenancy, and had been informed by him that Smith held as a yearly tenant at a rent of 80*l.* At the completion of the mortgage, the mortgagor, being asked whether there was any written agreement in existence with reference to the tenancy, replied that there was none. He also purported to convey 'free from incumbrance.' The question, therefore, was whether the defendant had sufficiently instructed Edwards in telling him what he had heard from the mortgagor, or whether, as the plaintiffs contended, he ought to have ascertained from Smith himself the terms of the tenancy. At the trial, which took place on June 24, the jury found that the defendant had not made reasonable inquiries as to the terms of Smith's tenancy. They found, further, that if such inquiry had been made, the valuer's report would have been affected, supposing the agreement created a fourteen years' lease, to the extent of 350*l.*; that the premises were a good security for 150*l.*; that their actual value in 1880 was 300*l.*, and at present 200*l.* The case was argued on further consideration on August 6, when it was submitted on behalf of the plaintiffs that on the findings of the jury they were entitled to judgment for 500*l.*, or at the least for 350*l.* The recent case of *Learoyd* v. *Whiteley*, in the House of Lords, reported in the Court of Appeal, 55 Law J. Rep. Chanc. 864, and affirmed by the House of Lords; *Chapman* v. *Chapman*, L. R. 9 Eq. 276, and other cases, were cited.—On the other side it was argued that, as the agreement between Ward and Smith contained a clause empowering the landlord to mortgage in his own name as owner, Ward was entitled to a mortgage free of incumbrance, and the tenancy was in reality void as against the mortgagees. Apart from this it was urged that there was no negligence, and that the defendant was not bound to make further inquiries than he had done.—Mr. Justice Stephen, in giving judgment, said that, having regard first of all to the facts found by the jury that proper inquiries had not been made by Mr. Fowke; having regard also to the expression of the jury's opinion as to the value of the security itself; and, lastly, having regard to the fact that Mr. Fowke knew that his clients were trustees; taking all these considerations together, he was of opinion that he must give judgment for the plaintiffs for 400*l.*—350*l.* as the difference between the value of the security actually obtained and the sum which was to be advanced on it, and the remaining 50*l.* as a round sum in consideration of arrears of interest and other matters. His lordship arrived at this conclusion with some degree of doubt, and not without considerable regret, because it was certain that Mr. Fowke had acted quite *bonâ fide*. It had not even been suggested that he had acted otherwise. Judgment was given accordingly, but the learned judge granted a stay of execution on motion of appeal being given by Friday next.—*Law Journal.*

TRAVELLING ON A RAILWAY.

At Bristol, on August 9, before the Lord Chief Justice without a jury, the cause *Brown* v. *The Accident Insurance Company* was heard. In 1852 the plaintiff insured himself with

the defendants in a policy against railway accidents, whereby 2,000*l* was to be paid in case of his death by accident, and in case of an accident not causing death the plaintiff was to receive 'such sum by way of compensation as should appear just and reasonable and in proportion to the injury received.' In March, 1884, the plaintiff was knocked down by an engine at Risca Station on the Great Western Railway and seriously injured. The plaintiff now sued the defendants on this policy to recover compensation in respect of the injuries he received on that occasion. The defendants, however, contended that the accident was not an accident happening while the plaintiff was travelling on a railway, or within the terms of the policy. Also that the plaintiff had already obtained compensation in respect of the accident in an action which he had successfully brought against the Great Western Railway, and consequently was not in law entitled to recover any further compensation from them in respect of the accident. The facts were undisputed. The plaintiff on the day of the accident, having taken his ticket, was crossing the line to reach the proper platform, when he was knocked down by a train of empty carriages. In his action against the Great Western Railway he recovered 750*l*. The only points to be argued, therefore, were the two mentioned above.—Mr. Bullen argued that the plaintiff was at the time of the accident travelling on a railway within the meaning of the policy, citing *Theobald* v. *The Railway Passengers' Insurance Company*, 23 Law J. Rep. Exch. 249; 10 Exch. Rep. 45, and an American case in support of this view. As to the second point, he cited *Bradburn* v. *The Great Western Railway*, 44 Law J. Rep. Exch. 9; L. R. 10 Exch. 1, and *Dalby* v. *The India and London Life Assurance Company*, 24 Law J. Rep. C. P. 2; 15 C. B. 365.—Mr. Charles, for the defendants, argued that the policy did not apply to such an accident as this; and, further, that it was a contract of indemnity.—The learned judge said in his opinion the particular policy was a contract of indemnity; and, further, that it was only intended to cover an accident received while the assured was actually travelling in a train, which the plaintiff was not doing when he met with this accident. He accordingly gave judgment for the defendants, with costs.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Sept. 24.

Judicial Abandonments.

J. A. Giard, trader, Montreal, Sept. 21.

Arsène Neveu, trader, Montreal, Sept. 20.

Louis Philippe Pleau, trader, Three Rivers, Sept. 17.

Louis F. Rheaume, St. Henri, Sept. 15.

Bowen & Woodward, railway contractors, Sherbrooke, July 12.

James R. Woodward, Sherbrooke, July 12.

Curators appointed.

Re Pierre Beaudreau, hotel keeper, Montreal.—T. B. Lamarche, Montreal, curator. Aug. 30.

Re Irving & Sutherland.—A. W. Stevenson, Montreal, curator, Sept. 20.

Re Dolor Poirier, Valleyfield.—Kent & Turcotte, Montreal, curator, Sept. 15.

Re Treffié Vanier.—Kent & Turcotte, Montreal, curator, Sept. 22.

Re Louis O. Villeneuve.—H. A. Bédard, Quebec, curator, Sept. 20.

Dividends.

Re Toussaint Boyer, hotel keeper, Salaberry de Valleyfield.—Dividend, C. Desmarteau, Montreal, curator.

Re L. Polydore Gagnon, St. André.—First and final dividend, payable Oct. 8, H. A. Bédard, Quebec, curator.

Re Arthur Léonard.—First and final dividend, payable Oct. 12, C. Desmarteau, Montreal, curator.

Re Damase Rocheleau.—First and final dividend, payable Oct. 14, C. Desmarteau, Montreal, curator.

Re Emond & Ste. Marie.—First dividend, payable Oct. 11, C. Desmarteau, Montreal, curator.

Separation from bed and board.

Marie Anne Cloutier vs. Joseph Cloutier, restaurant keeper, Three Rivers, Sept. 16.

Appointments.

Louis Rainville, N.P., Arthabaskaville, to be Prothonotary of Superior Court, Clerk of Circuit Court, Clerk of Crown and Clerk of Peace, for district of Arthabaskaville.

Cadastre.

Subdivision of 1496, Jacques Cartier Ward, Quebec.

Circuit Court.

Circuit Court for County of Kamouraska to be held in village of Kamouraska.

GENERAL NOTE.

CONTRACTING FOR COOLNESS.—A refrigerating company is liable for damage caused to fruit stored by it, by reason of decay of such fruit, caused by raising the temperature of its storehouse to a height above that agreed upon; and the diminution in the market value by reason of such decay may be considered as an element of the damage (*Hyde* v. *The Mechanical Refrigerating Company*, Sup. Jud. Ct. Mass., 4 New Eng. Rep. 253.