The Legal News.

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LEGISLATION AT QUEBEC.

Several important changes in the Civil Code have been proposed during the present Session at Quebec.

A bill was introduced by Mr. Mathieu, to repeal articles 2172 and 2173 C. C. The bill was read a second time, July 16th, and referred to the committee on privileges and hypothecs, composed of Hon. Messrs. Ross and Langelier, and Messrs. Racicot, Loranger, Mathieu, Wurtele, Gagnon, Lecavalier, Champagne, Bouthillier, and Molleur. It is unnecessary to remark that a measure which would alter so materially the law of registration claims the most attentive consideration before it is adopted. The bill, we notice, is designed to have a retroactive effect, "so that, in so far as regards the effect "of the registration or renewal of the regis- "tration of real rights, articles 2172 and 2173 "shall be considered as having never existed," and pending suits are not excepted.

In a bill introduced by Mr. Wurtele, Q.C., it was proposed to amend the law respecting the rights and liabilities of innkeepers. The first and principal section enacted that "where the "keeper of an inn, tavern or hotel, provides a "safe in the office thereof, or in some other "convenient place therein, for the safe keeping "of money, jewels and ornaments, belonging to "his guests, and notifies a guest thereof, by "posting in a conspicuous manner, in a room "occupied by the guest, a copy of this section "and a notice stating the fact that a safe is so "provided, in which money, jewels and orna- "ments, may be so deposited, he is not liable "for the loss of any money, jewels, or ornaments, "sustained by theft or otherwise, by a guest "thus notified, who has omitted to deposit them "in the safe." This amendment of the law, if it had been sanctioned by the legislature, would have been rather hard upon exhausted travellers, who, arriving at a hotel late at night, and failing to examine with care the walls of their sleeping apartments for the notices referred to, would find themselves deprived of remedy. The six months' hoist, moved by Mr. Irvine, Q. C., was, however, carried (July 16).

Another bill introduced by Mr. Wurtele, proposes to amend Art. 2093 C. C., under which "registration avails in favor of all parties "whose rights are mentioned in the document "presented for that purpose," by adding thereto the following paragraph: "But such registra- "tion does not have the effect of an acceptance "by a third person of a stipulation or of an "indication of payment in his favor, unless it "be made at his request; and when such "registration is not made at the request of "such third person, until an acceptation has "been registered, the party who made the "stipulation or the delegating debtor may "cause the registration of the stipulation or of "the indication to be cancelled, saving the "case of substitution mentioned in the third "paragraph of article 930."

The English version of article 2098 of the Civil Code, it is proposed, shall be amended by striking out the word: "purchaser," in the last paragraph, and substituting the word: "acquirer;" and article 2099 is repealed.

A bill, introduced by Hon. Mr. Chauveau, regulating the security to be given by public officers in the Province, was read a third time and passed, July 16. The security is in future to be given by means of a guarantee assurance policy, or by a deposit in money or approved debentures.

The Hon. Mr. Ross introduced a bill to provide for the institution of suits against the Crown in this Province by petition of right. The petition is to be presented to the Superior Court of the district where it would have been tried if against a subject, and the *fiat* of the Lieutenant-Governor is required before service on the Attorney-General. Mr. Irvine proposed in amendment that the Lieutenant-Governor should not be bound to grant his *fiat* until the suppliant should have furnished good security to the Attorney-General for the costs of the petition; but the amendment was lost. The proceedings are assimilated to the procedure governing suits between subjects. The bill was read a third time and passed, July 16.

We shall notice some other measures in our next issue.

TRAINING FOR THE BAR AND BENCH.

[Concluded from p. 235.]

"Passing from this subject to another, in which I fear the comparison is still more unfavourable to you, with your brethren of the East, I must first deprecate your censure by saying that this is mainly attributable to their superior opportunities. I allude now to literary attainments, outside of the profession. The law has in all times been called one of the learned professions. The members of the profession have received that consideration which the possession of such learning deserves; not mere technical learning in the law, but learning in the more liberal sense of scholarship, or some general acquaintance with what, in Doctor Johnson's day, would have been called polite literature. The lawyer, therefore, who is deficient in this, falls to the extent of that deficiency, below the true standard of his profession, and, permit me to add, has the scope of his usefulness correspondingly restricted.

"Let me, however, be clearly understood in this matter. I am not advocating a collegiate course as a prerequisite to the study of law, or admission to the bar. Least of all do I attach the importance which so many classical scholars do to proficiency in Greek and Latin languages, or familiarity with the classics of those tongues. On the contrary I am a strong believer in the rapidly growing opinion, that in the accelerated pace at which modern human beings are propelled, under the influence of railroads, telegraphs and the press, it is, in nine cases out of ten, absurd to spend the usual period of four collegiate years in the study of dead languages and theoretical mathematics. Nor do I intend to say that a lawyer either should or can, unless he is one of those learned prodigies of whom we all read but whom none of us imitate, become a proficient in the natural sciences, or in any of them. But independent of this, it is within the reach of every man, without using time which belongs to professional pursuits, to acquire some general knowledge of the map of the heavenly spheres and the laws which govern their movements; some idea of the classification and quality of trees, shrubs, and flowers; some acquaintance with the more fundamental principles of geology and the laws of the electric fluid.

"If, however, circumstances should place the natural sciences wholly beyond his reach, there can be no reasonable excuse for entire ignorance in any man who can read, of the history of his own race. To one who claims to be ranked as a member of a liberal profession, Marathon and Thermopylæ, Thrasymene and Pharsalia, Leonidas and Alexander, Hannibal and Cæsar ought to represent something more definite than mythical ideas of successful warriors and renowned battle-fields. And no lawyer can by any means be excused, who does not know something of the personal history of the two great representatives of the profession in the days of republican Greece and Rome—Demosthenes and Cicero. For let it be understood that while these men are most frequently thought of and spoken of as orators, and as senators and statesmen, it is very sure that the highest efforts of their genius, which have been transmitted to us, were delivered in the character of advocate, in the prosecution or defence of some individual on trial before a tribunal competent to punish or vindicate. Who does not wish to know the circumstances under which Cicero prosecuted the tyrant Verres, or defended his friend Milo? Or can appreciate Demosthenes without some knowledge of the Phillip whom he denounced in a manner that has given the name Phillipics to that kind of oratory for all time?

"But apart from the pleasure and profit which such learning affords in a general way, and aside from the illustrations which history gives of the motives, the passions, the vices and virtues that move and control men in all ages, and under every variety of circumstances and character, there is to the lawyer a peculiar value in the cultivation of general literature. I allude to his own improvement in the use of language.

"I am prepared to admit, of course, that words without ideas are of little value to the lawyer, or any one else. But there is, sometimes, a charm in the mere use of words, in their orderly and symmetrical arrangement, in the melody of their musical sound, which, with a very small modicum of vigorous thought, is still quite pleasing. It is not of this I speak now. On the other hand, it must be acknowledged that the most profound reasoning, the most vigorous thought, the most pleasing

suggestions of the imagination, are wholly lost to others without appropriate words. They are as valueless as the diamond without polish or setting. To the men, then, whose main business in life is to persuade and convince others, to convey to them forms most likely to arrest their attention, to satisfy their judgment and enlist their sympathy, the ideas necessary to effect their objects, the right use of words is a first necessity.

"Undoubtedly there are men born with a special gift for language. But there is no natural gift more dependent on cultivation, on knowledge, on use, on discipline, and, above all, on a taste to be acquired by assiduous study of the best models. Fortunately English literature abounds with the first masters of style, in prose and in poetry. The vocabulary is among the largest in any language, living or dead.

"Another subject of congratulation in this regard is, that while for a thousand years the language was fluctuating and changeable, so that what was written or spoken in one century was with difficulty understood a century or two later, it has now become comparatively fixed, both in words and idioms. So true is this, that all sound critics concede that the perfection of style in the English tongue was attained nearly two hundred years ago, in the reign of Queen Anne, including a few writers a little earlier or a little later. Here we have Milton and Pope, Dryden and Goldsmith, Dr. Johnson, Bolingbroke, Addison, Steele, the writers of the Spectator, the Idler, the Tattler. No man will ever develop the best that is in him, in the use of the English language, who has not read with care and interest these masters of composition. There is in the English prose writing of the last two or three centuries a rich mine where the seeker may find models of taste and style, with both vigour and beauty of expression, in all the branches of intellectual pursuits. In the cultivation of this mine, and in the advantage which it confers, I am compelled to say the lawyer of the East has been more industrious, as a general rule, than his brother of the West. This is easily accounted for by the facilities of collegiate education, by the easy access to superior public and private libraries, by the earlier age at which necessity drives the western lawyer to leave the school and take to the office.

"Much of this can be remedied, however, and ought to be remedied in after life. No lawyer's office should be without an unabridged Webster or Worcester dictionary, as well as a good law lexicon. A good book on synonyms is equally indispensable. Then, in time, as money and opportunity serve, the resort to the English classics should be constant and steady, until the taste once acquired will enforce its own gratification. So, also, the modern magazine is indispensable to a man who is not content to remain in ignorance of what all the world is doing all around him. The reading of one or two of these monthly and quarterly visitors, or of a few articles in them, as leisure serves, enables a professional man to acquire, in a condensed form, a very useful, if not a very full, knowledge of the progress of the world in science, in art, and in literature.

"There is one other mistake to which the western and southern lawyer is peculiarly liable, and which, as it grows on him with years and the increase of his practice, I desire to call your attention to. It is the reliance on spontaneous or impromptu oral argument. Nothing is more misleading and deceptive to the speaker himself, especially if he be endowed by nature with a ready flow of language and an animated delivery. Warming to his work as he proceeds, stimulated by the flow of blood to his brain, he seizes upon every suggestion which his vivid fancy presents, and with no time to consider its value, or its legal force, he presses with equal earnestness the crudest ideas and the soundest propositions. The words, the thoughts, the law, the facts, are thus presented to the court or jury without method or system, with no natural sequence to enable the hearer to retain and consider them afterward. The speaker's mind and soul are all aglow. He knows he has said *some* good things. He believes he has *argued* his case well, and sits down with a profound conviction that if that speech don't win the case, nothing could have done it.

"Perhaps such efforts do occasionally carry a jury, but not as frequently as they are supposed to do it.

"The day has passed in this country when, except in a limited class of cases, the verdict of a jury can be won, or will be permitted to stand when won, unless it is in accord with the view of the court as to the law of the case.

There is no more fatal delusion for a promising young lawyer than to lay out, as one of the purposes of his life, to win verdicts by eloquent appeals to juries.

"As to judges, they listen to such efforts as I have described, when unaccompanied by ample previous preparation, by labour, by full consideration of all that can possibly affect the argument, as the observer of a storm at night looks at the vivid flash of lightning across the sky, whose brilliant coruscations charm and delight the eye, but leave only a darker gloom when they pass away. Nothing more inconsiderate can well be suggested to a court than that which is very common, namely, prefacing an effort at argument with the observation that counsel has just come into the case, or for some other reason has not examined it, but he will make a few unpremeditated remarks. If counsel has not considered a case, and considered it well, he should have too much respect for the court to impose his crudities upon it.

"And now, gentlemen, if I have dealt plainly with you it is because the love I have borne the bar of this State makes it worth while that I should do so. The practice of the profession in the great cities, east or west, is unfavourable to the discipline and training I have endeavoured to inculcate as indispensable to the perfect lawyer. It is for this and other reasons unfavourable to the production of the highest and best professional character. Large proportion of chamber work makes wise counsellors, who prevent, rather than conduct, litigation. There are many law firms in New York who make thousands of dollars a year, no member of which ever tries a case in a court. There are others composed of several members, of whom only one attends to trials. The business in the court itself is hastily and, therefore, slovenly dispatched. The pressure is such that, except in some great case attracting public attention, like the Beecher trial, no sufficient time is given to develop the case or the skill of the lawyers engaged in it. And the Beecher case! Such a trial! A reproach to the court, the profession and the public who read its proceedings every morning with such keen delight. As a legal proceeding it was a mockery. As a theatrical performance, with the whole reading American public for an audience, the judge, the counsel, the parties were actors who kept themselves before the public for two or three months, more by the vulgar spiciness of the play than the merit of the performance. Great lawyers are not made in that manner, nor by cases before referees, nor by foreclosure of railroad mortgages.

"But here in agricultural Iowa, where every case presents an honest contest of law or fact, where there are no great cities to foster shysters, nor great wealth to tempt or mislead the lawyer, where in his village office, with ample time and a well-selected, if small, library, the attorney, who is at the same time counsellor and barrister, traces in each case the principles involved in their original sources, imbibes their spirit, discovers their philosophy and assures himself of their application to his case. It is here that we must look for the continuation of the race of great lawyers. It is here that the learning is sound, the principles pure, the practice established. It is from some western prairie town rather than some metropolis that future Marshalls and Mansfields shall arise and give new impulse and add new honour to the profession of the law."

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, June 30, 1879.

JOHNSON, MACKAY, TORRANCE, JJ.

[From S. C. Montreal.

LA COMPAGNIE D'ASSURANCE DE STADACONA v. RICE.

Action for calls on Stock—Notice of calls—Insolvent Shareholder not divested of Shares—Liability not inventoried.

JOHNSON, J. Action against a shareholder for calls. Plea, discharge under the Insolvent Act. Answer, that the debt was not included in the list of liabilities by the insolvent, and therefore there is no discharge.

This case was heard twice, and at the first hearing nothing was submitted but the question whether under the Act the defendant was divested of this stock, so as to make the assignee liable for the calls. That is also the only question submitted in the *factum*, but at the last hearing a point was raised as to the sufficiency of the notice for these calls. The

1st was the 10th August, 1877; 2nd, 10th Nov., 1877; 3rd, 10th Feb., 1878; 4th, 10th May, 1878. The demand now is for the three last calls. It is true that the three full months have not intervened between all these calls, but it has not been pleaded, and it has not been complained of in the factum, as required by the rule of practice.

The question to be looked at, therefore, is merely as to who is the person liable. The judgment under consideration condemned the defendant, on the ground that this liability was not included in the list furnished to the assignee, as required by law; and we all think that the discharge can only apply to such liabilities as are included in the list. The Act of 1869, under which the assignment was made, is in this respect identical with that of 1875. (See sections 3 and 98 of first Act, and sections 17 and 61 of the Statute of 1875.) After the first argument of this case we drew the attention of the learned counsel for the defendant to the case of *Denison* v. *Smith*, vol. 43, U. C. Q. B. Reports, which expressly decided that stock in such a case, apart from the question of whether it was included in the list of liabilities or not, did not pass to the official assignee. That decision rested in part on the cap. 66 of the Consolidated Stat. of Canada, secs. 71 and 74, respecting the transfer of railway shares, and it was held that there had been no compliance with the Railway Act in that particular. The shares in that case were railway shares, and I have not found (and none have been cited) any similar provisions respecting shares in an insurance company. The general principle upon which the Court proceeded in that case, however, and on which we also put this part of the case, is that all the assignment could pass to the official assignee under any circumstances, was the beneficial interest in the shares, and the right to have his name substituted for the name of the defendant in the books of the Company as the holder of them, and that the person who appears on the books of a company as the holder of shares is liable for calls thereon, and to an action by a creditor for what is unpaid, so long as his name so appears; and if his shares have been transmitted by sale or by insolvency, the only mode in which he can be freed from liability is by having the name of his vendee or his assignee substituted for his on the books. This is almost verbatim the language of Mr. Justice Armour in the case of *Denison* v. *Smith*. It is to be observed also that that was a case where, by a composition, the insolvent had been re-invested with his estate. We are not obliged, however, in the present case to rest our judgment on any other ground than that mentioned in the judgment of the Court below, and on that ground it will remain undisturbed.

Trudel & Co., for plaintiffs.

Kerr & Co., for defendant.

JOHNSON, MACKAY, PAPINEAU, JJ.

[From S. C. St. Hyacinthe.

HALL v. THE CANADIAN COPPER & SULPHUR CO.

Liability of Employer—Injury sustained by Workman—Interference of company, employers, by their foreman.

JOHNSON, J. This is a very important case indeed. There is no question on which more discussion has taken place than the one at issue in the present case: not so much, however, as to the principle itself that has to be applied, as with reference to the difficulty of applying that principle with some necessary modification in peculiar cases, and under the infinite variety of circumstances ever arising in different instances. The general question in most of these cases is whether a servant has an action against his employer for an injury he may sustain through the negligence of his fellow-servants; and the general principle is that there is no such action. I do not understand our code, 1054, to interfere with that principle. That article merely states the responsibility to third persons of masters and employers for the damage caused by their servants and workmen in the performance of the work for which they are employed. It is not stated as new law; it is the old law, the law laid down in a series of old cases: the law laid down in this country in *Fuller* v. *The Grand Trunk Railway Company* in 1865 (L. C. Law Journal, vol. 1, p. 68). But the application of that law in the present case is to be made in view of the modifying element of the participation of the master. The judgment in review now gave the plaintiff $2,000, on the principle that Verres, the foreman of the defendant, gave express direction to use the steel drill which was the cause of the accident, and if the evidence proves that, the judgment ought not to

be disturbed. Now there is no doubt some conflict of proof; but on the whole we think that the Court below took the right view of the evidence. There have been cases where there has been great difficulty in determining the precise extent of the master's interference—the general principle seeming to be that there must be *personal interference*. In the case of *Wigmore* v. *Jay*, which was cited, it was held that a master builder was not liable for the loss of life of a bricklayer, caused by the unsoundness of scaffolding built by his foreman; but that case proceeded expressly on the principle that an employer does not warrant the soundness of materials, but is only bound to use reasonable care in their selection. The principles applying to such cases are ably collected and stated by Mr. William Evans in the *Law Times* (London), quoted in the LEGAL NEWS (Montreal) vol. 1, p. 159. In the present case we have to ask ourselves what is the personal interference—what in the nature of things can be the personal interference—of a company like this defendant? Obviously it can only be by managers, superintendents, foremen, and that sort of person. We do not expect to see presidents and directors of such companies personally descending into the bowels of the earth, and drilling or blasting rocks. We think this judgment is a well considered one, and ought to be confirmed.

Fontaine & Co. for the plaintiff.
Hall & Co. for the defendants.

MACKAY, TORRANCE, RAINVILLE, JJ.

[From S. C. Joliette.

ARCHAMBAULT v. PANGMAN.

Costs—Defendant not pleading de novo.

RAINVILLE, J. The action was brought on a promissory note. The defendant pleaded a general denegation. There was a replication and articulations of facts. Then the plaintiff discovered that by a clerical error the date of the note was stated in the declaration to be 1878 instead of 1876, and he moved to be permitted to amend his declaration. The motion was granted on payment of $10 costs, with right reserved to the defendant to plead *de novo*. The defendant thereupon declared that he did not intend to plead, and submitted to the judgment of the Court. Judgment went for the debt and costs. Defendant complained now that he had been subjected improperly to costs of contestation, as he had not pleaded, and there was no plea in the record. The Court below went upon the ground that the declaration made by defendant, that he did not intend to avail himself of his right to plead *de novo*, did not constitute an acquiescence equivalent to a *désistement* from his plea, and this judgment was confirmed.

Godin & Co., for plaintiff.
Baby & Co., and *Lacoste & Co.*, for defendant.

RAINVILLE, PAPINEAU, JETTE, JJ.

[From S. C. St. Hyacinthe.

ARESSE v. DUBREUIL.

Action en complainte—Travail mitoyen.

RAINVILLE, J. This was an action *en complainte*. The plaintiff complained that defendant had committed a trespass, by making holes in plaintiff's land, and carrying earth therefrom. It appeared that the parties were neighboring farmers, and defendant had taken a few shovelfuls of earth for the purpose of fixing his fence posts, and he offered $5 to cover any damages. The judgment of the Court below held that as defendant was performing a *travail mitoyen*, he might go on plaintiff's land without any question of disturbing his possession. The damages offered were more than were proved, and the action was therefore dismissed, save as to the $5 which had been offered. The action was evidently unfounded, and the judgment must be confirmed with costs.

Mercier & Co., for plaintiff.
Sicotte & Co., and *Loranger & Co.*, for defendant.

TORRANCE, RAINVILLE, JETTE, JJ.

[From S. C. Montreal.

BOUTHILLIER v. CAIRNS.

Division of Assessment between co-tenants—Proportion of rent paid by them the basis of division.

TORRANCE, J. The demand of the plaintiff is for $120, amount of taxes alleged to be payable by the defendant as tenant of the plaintiff on Notre Dame Street, for the year 1877-8. The defendant pays a rental of $650, and the plaintiff receives a rental of $1,500 from William Wilson for another portion of the same

property. The two portions together are assessed in the corporation books at $420. The plaintiff was obliged to divide the assessment between his tenants, and claims from the defendant $120 as his proportion. It happens that the part of the property leased to Wilson is sublet by him at an increased rental of $2150, but the whole of it was not collected from the subtenants by Wilson. The defendant contends that he is entitled to a diminution in consequence, and that $120 out of $420 is an overcharge, and he makes the same pretention as to the *two* preceding years, and concludes by offering $61 as the sum total of his indebtedness. First, as to the proportion justly payable by the defendant. It is a question of fact to be settled by evidence, and I am of opinion that the proportion settled by the City Treasurer, which is a few dollars more than the amount of the claim of plaintiff, is a perfectly fair assessment, notwithstanding the pretention of the defendant, unsustained by evidence, that he should benefit by and share in the small profits made by the co-tenant Wilson out of his subleases. The plaintiff had nothing to do with this.

The next question is whether the defendant has established any claim against the plaintiff for overcharges in the assessments of the previous years. The evidence here would require to be of the most positive character, as in case of a *condictio indebiti*, to justify the Court in opening up accounts once settled between the parties.

The pretension of the defendant is that he paid plaintiff in 1875 $97.02, whereas under the most favorable circumstances he should not have paid more than $80, less 2 p. c. discount, thus making an over payment with interest added of $21.08. That similarly in 1876 he overpaid $25.64. All this was based upon the assumption that the defendant's portion of the premises assessed at $420 was one fourth, as he would have it, and not a little less than one third, as the judgment complained of made it. As the Court has viewed the matter, the defendant underpaid for 1875 about $10, and for 1876 the payment was about right. The plaintiff's letter of date 25th October, 1877, offering a rebate, appears to have been based upon an erroneous calculation of what was due by defendant. He has a prudent dread of a law suit, and properly said to the defendant that he wished to keep on good terms with his tenants. At any rate the defendant refused the offer of plaintiff and "*offre non accepté ne vaut rien.*" The condemnation was a fair one and it should stand, save as to the interest at 10 per cent., which is reduced to 6 per cent.

Lacoste, Q.C., for plaintiff.

Hall for defendant.

SUPERIOR COURT.

MONTREAL, June 30, 1879.

BOURASSA v. ROY.

Surety when débiteur solidaire—Interest.

JOHNSON, J. The plaintiff's action is to recover from the defendant as a *caution solidaire*, money due under an obligation of the 23rd November, 1864—by one Pagé, and to which the defendant became party. The plea is: 1st, That the money was payable in March following the execution of the deed, and the obligation of the defendant was limited to that time; and that no demand was then made, and he thought the debt had been paid by Pagé, who was then solvent, and therefore that the defendant is discharged. 2nd. The defendant pleads that Pagé hypothecated his property, and the plaintiff, by not registering his obligation, has put the surety in a worse position. The fact appears to be that Pagé has been discussed by other creditors, and the plaintiff only registered after them in 1869; but the *caution solidaire* could preserve his own rights, and could himself look after the debtor. By 1961 C. C., the surety is not discharged by the delay given to the debtor by the creditor. He may, in the case of such delay, sue the debtor in order to compel him to pay. The *caution solidaire* here is the *débiteur solidaire* (see Art. 1941), and it is not a case where by the act of the creditor, the surety cannot be subrogated in his rights, for the surety as soon as this obligation became due, and even before, might have sued the debtor, if the debtor was insolvent.

As to the amount due, the plaintiff can only get the interest stipulated up to 1st August, 1866, when the Civil Code came into force; and thence for five years—the prescription enacted by Art. 2250, C. C. These sums of capital and interest, accumulated at the time of bringing the action, give rise to interest since

that time by operation of law. Nothing was said on this subject, because, as I suppose, we have settled it already in several well known cases; but it deserves notice perhaps on account of the case of *Darling* v. *Brown*, 1st vol. Supreme Court Reports, about which there is probably some misunderstanding. As the parties, however, have not noticed it, I adhere to our own decisions. Judgment for $360.46.

Loranger & Co. for plaintiff.

J. E. Bureau for defendant.

CAMPBELL v. CHABOT et al.

Broker—Commission.

JOHNSON, J. The defendants are sued, one as tutor to some minors, and the other as curator to two substitutions created by the wills of the minors' parents, and the object of the action is to recover one per cent., alleged to be the amount agreed upon by the plaintiff and the defendants as remuneration by way of commission on a loan of money for this succession. But, unfortunately, the loan could not be effected: the plaintiff says so himself in his declaration; but he insists he did all he was obliged to do by his contract to get it, and he wants his stipulated remuneration. There was a demurrer to the declaration, on the ground that the tutor was not alleged to have been authorized; but it was dismissed—the thing alleged being a purely administrative act. It is further pleaded that the tutor never authorized Mr. Coutlee, the notary, to employ the plaintiff, and that if he did, the plaintiff's contract was to get the money, and he never got it. The questions now are, What was the contract, and has the plaintiff performed his part of it? As far as I can make out, (for there is nothing but verbal evidence) the contract was to procure the money—not merely to find out who had money to lend; but to get somebody to lend it. The plaintiff never performed his part of such a contract. As a general rule, I infer from the authorities that a broker employed to negotiate a loan, cannot get his commission unless the money is loaned. (See *Stubbs* v. *Conroy*, 2 Quebec L. R, p. 53, and the authorities cited there). The plaintiff argues that his contract was not to get the money, but merely to find some one who had money to lend. I cannot assent to that. A directory would have done as well as a broker for such a purpose as that. In the present case there was some talk of allowing the plaintiff $100, a perfectly reasonable thing in itself, considering the trouble he went to; but the tutor was no party to that proposition. I am constrained to dismiss the plaintiff's action. Action dismissed with costs.

Longpré for plaintiff.

Trudel, DeMontigny & Charbonneau for defendants.

RITCHOT v. HAYVREN.

Liability of person to whom a judicial adviser has been appointed.

JOHNSON, J. The defendant was an interdict, and was sued in his own name, because his name, as it appeared in the *tableau des interdits*, was not spelled in the same way; but the *conseil* was called in, and the case is to be looked at now as to the amount due. The sum asked is $106.61. The plea is to the supplementary demand—made after the *conseil* was called in—so that I do not see that the regularity of the proceeding can now be questioned under a plea of general issue. But as to the liability of the present defendant, at all, that is a different thing. This account charges things got in 1876. The interdiction is as long ago as 1861, but there was a settlement made in 1878, in July, and made with the man and the person who is now his *conseil judiciaire*, now defendant, and under Labelle's evidence the plaintiff is entitled to his judgment for the amount asked, but against the *conseil* only. (See C. C. 351, 986.)

Loranger & Co. for plaintiff.

Davidson & Cushing for defendant.

GENERAL NOTES.

"LIEN."—Lord Eldon always pronounced the word as though it were "lion," and Sir Arthur Pigott pronounced it "lean." On this Jekyll wrote the following epigram:

"Sir Arthur! Sir Arthur! what do you mean,
By saying the Chancellor's 'lion' is 'lean.'
Do you think that his kitchen's so bad as all that,
That nothing within it will ever grow fat?"