The Legal News.

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LEGAL PROCEDURE IN ENGLAND.

On the 7th of January last, the Lord Chancellor addressed to the Lord Chief Justice of England a letter, requesting him to preside over the committee "to consider and report upon any changes which it may be desirable now to make in the practice, pleading, or procedure of the High Court of Justice in connection with or consequential on the union of the Queen's Bench, Common Pleas, and Exchequer Divisions (if such union shall take place under the Order in Council of December 16, 1880) or otherwise, and also how far it may be expedient to limit in any respect any rights of appeal at present existing;" and upon obtaining the Lord Chief Justice's consent, requested the late Lord Justice James, Sir James Hannen, Mr. Justice Bowen, Lord Shand, the Attorney-General, the Solicitor General, Mr. (now Mr. Justice) J. C. Mathew, Mr. R. T. Reid, Mr. John Hollams, and Mr. Charles Harrison to serve upon the committee. The Lord Chancellor added that such of the recommendations which the committee might make as could be carried into effect by rules must, of course, be submitted at the proper time to the Committee of Judges appointed to make rules under the Judicature Acts.

In compliance with the Lord Chancellor's request, the committee, so constituted, proceeded to consider in numerous sittings the matters referred to them, and in the month of May presented to the Lord Chancellor a report, unanimously signed.

The Lord Chancellor, desiring to have the advantage of the confidential opinions of those learned judges who were not members of the committee to assist him in his further consideration of the subject, circulated the report with that view among their lordships. Before all the observations were received, the members of the committee intimated that it is desirable the terms of their report should be generally known to the legal profession and the public. It has been published accordingly.

There are several points in the report which are of interest here. Although much has been done to simplify procedure in England within the last forty years, and especially by the recent Judicature Acts, the committee are prepared to go much further in sweeping away technicalities. Firstly, they would do away with pleadings wherever it is possible to dispense with them. They see no necessity for a declaration even, unless the case is really going to be fought out. We quote from the report:—

"The committee had, in the first place, to consider how far it was desirable, in order to expedite the proceedings in an action, to combine with the writ of summons a statement of the plaintiff's demand to which the defendant, when he appeared, might be required to put in his answer.

The committee directed an examination to be made of the judicial statistics for 1879, with the view to the solution of this and the other questions relating to procedure submitted for their consideration, and the following results have been arrived at:—

"In the year 1879 there were issued in the divisions of the High Court in London—writs' 59,659. Of the actions thus commenced, there were settled without appearance, 15,372—*i.e.*, 25·68 per cent.; by judgment by default, 16,967—*i.e.*, 28·34 per cent.; by judgment under Order XIV., 4,251—*i.e.*, 7·10 per cent.; total of practically undefended causes, 36,590—*i.e.*, 61·12 per cent.; cases unaccounted for, and therefore presumably settled or abandoned after some litigation, 20,804—*i.e.*, 35·10 per cent. The remaining cases were thus accounted for:—Decided in Court—for plaintiffs, 1,232; for defendants, 521; before Masters and official referees, 512—total, 2,265;—that is, 3·78 of the actions brought.

"From these figures it seemed clear that the writ in its present form was effective in bringing defendants to a settlement at a small cost, and that it was unadvisable to make any alteration by uniting with it a plaint or other statement of the plaintiff's cause of action, which would add to the expense of the first step in the litigation."

In the next place the committee considered how far it was possible, in those cases in which litigation was continued after the appearance of the defendant, to adopt a procedure (1) for ascertaining the cases in which there is a real controversy between the parties; (2) for diminishing the cost of litigation in cases which are fought out to judgment. They arrived at the following conclusions:—

"The committee is of opinion that, as a general rule, the questions in controversy between litigants may be ascertained without pleadings.

In the 20,804 cases which, as appeared from the statistics of 1879, were either settled or abandoned without being taken into Court, it may reasonably be supposed that pleadings were of little use. Of the cases which go to trial it appears to the committee that in a very large number the only questions are—Was the defendant guilty of the tortious act charged, and what ought he to pay for it; or did the defendant enter into the alleged contract, and was it broken by him? And in a great many others the pleadings present classes of claims and defences which follow common forms. We may take, for instance, the disputes arising out of mercantile contracts of sale, of affreightment, of insurance, of agency, of guarantee. The cases of litigants are usually put forward in the same shape, the plaintiff relying on the contract and complaining of breaches; the defendant, on the other hand, denying the contract or the breaches, or contending that his liability on the contract has terminated. The questions in dispute are, as a general rule, well known to the plaintiff and the defendant. It is only when their controversies have to be reproduced in technical forms that difficulties begin.

On this they base the following recommendations:—

"1. The plaintiff shall on his writ indorse the nature of his claim, in a manner similar to that in use on indorsed writs at present. The defendant, shall, within, say, 10 days after appearance, give notice of any special defences—such as fraud, the statute of limitations, payment, &c., after which the plaintiff shall give notice of any special matter by way of reply on which he intends to rely.

"2. Every action shall be assigned to a particular Master's list. At any time after the writ, appearance, and time for notice of defence, a summons (hereinafter called a summons for directions) may be taken out by either party before the Master to whom the cause is assigned for directions as to any one or more of the following matters:—Further particulars of writ, further particulars of defence or reply, statement of special case, venue, discovery (including interrogatories), commissions, and examinations of witnesses, mode of trial, (including trial on motion for judgment and reference of cause), and any other matter or proceeding in the action previous to trial.

"3. No pleadings shall be allowed unless by order of a Judge.

"The existing practice of requiring a separate summons for each separate matter shall be discontinued; and upon any summons by either party, it shall be competent for the Judge or Master to make any order which may seem just at the instance of the other party.

"5. Any application which might have been made upon the summons for directions shall, if granted upon any subsequent application, be granted at the costs of the party so subsequently applying, unless the Master or Judge otherwise direct."

An important feature of the report is the method suggested for the purpose of avoiding the adduction of useless evidence. "Great expense," say the committee, "is now frequently caused by the proof of facts, about which there ought to be no dispute, and if provisions are made for enabling a litigant to give notice to his opponent to admit particular facts and rendering the party improperly refusing liable to costs, we think unnecessary expense might often be prevented." To deal with this matter the following resolution was passed:—

"7. The recommendation of the first report of the Judicature Commission (p.14), with reference to parties being required to admit specific facts, ought to be carried into effect—viz., if it be made to appear to the Judge, at or after the trial of any case, that one of the parties was, a reasonable time before the trial, required in writing to admit any specific fact, and without reasonable cause refused to do so, the Judge should either disallow to such party or order him to pay (as the case may be) the costs incurred in consequence of such refusal."

Another interesting feature of the report is the suggested doing away with juries in a great many cases in which they have always hitherto been had in England. This, if carried out, would approximate the English system more nearly to our own.

"To the existing modes of trial—viz., by Judge, by Judge and jury, by referee—we propose to add a power to the Master to direct a motion for judgment, where the rights of the parties are found to depend wholly or in part upon matters of law, and when there is no serious controversy as to the facts. This method of proceeding is used in the Chancery Division and in the Bankruptcy Court, and we believe that in many cases in the Queen's Bench Division it would be found to be convenient and expeditious.

"With a view to uniformity of procedure in the different divisions of the High Court, we recommend that, in the absence of directions to the contrary, the mode of trial shall be by a Judge without a jury. Experience shows that a large proportion of the cases that go to trial are unfit for the consideration of a jury, and in consequence great expense, delay, and inconvenience are occasioned. By the provision in No. 12, limiting the right of a party to demand a trial by jury, we desire to prevent what is now often felt to be a scandal—viz., that the parties go down to trial with all their witnesses and deliver their briefs, and then are coerced into a reference; the Judge, the Jury, and counsel all feeling that a jury is wholly incompetent to deal satisfactorily with the matter.

"We think that before a case is directed to be tried by a jury the Master should be satisfied that the case is one to which that mode of trial is best adapted. To this general rule we consider that there ought to be certain exceptions in the instances we have named.

"12. The mode of trial shall be by a Judge without a jury, but, on the summons for directions, on the application of either party, an order shall be made that the cause be tried by a jury, if it shall appear that the questions involved can conveniently be so tried; provided always that in the following cases the right of either party to a trial by jury shall be absolute—libel, slander, seduction, false imprisonment, malicious prosecution, breach of promise of marriage.'"

With reference to new trials, the report has the following:—

"The recommendation embodied in the following resolution (No. 18) may appear to confer a new and large power upon a Judge who tries a cause, but it does so in appearance rather than in reality. Without saying that at present when a Judge is, and expresses himself as being, dissatisfied with a verdict, the verdict is *never* upheld, it is now certainly, and has been ever since any of us have known the profession, the general rule, acted upon in the vast majority of cases, to set aside the verdict when the Judge so reports. And it has seemed to us, upon consideration, better to give to a Judge the power, subject to appeal, of doing that openly, directly, and inexpensively which, in the vast majority of cases, he really does now, but not openly, not directly, nor till after (in many cases) very considerable and useless expense to the parties:—

"'18. After the trial of any cause before a Judge and jury, the Judge may, upon application, certify that he is dissatisfied with the verdict, in which case a new trial shall take place unless the Court shall otherwise order.

"The following resolution was passed with the object of avoiding a new trial of the cause when the ground of objection is that the questions put to the jury have not exhausted the whole controversy between the parties.

"'19. Neither party shall have a right to a new trial on the ground that some question has not been left to the jury which the Judge at the trial has not been asked to leave to the jury. The Court shall have power in such cases either to direct a new trial, or, with the view of saving a further trial, to draw all inferences of fact, or take further evidence, or direct inquiry.

A very reasonable recommendation is that which proposes to tax the costs on a lower scale where the amount recovered is less than £200. At present the costs in the smaller actions in the Court of Queen's Bench are often four times larger than the sums in dispute.

The report concludes with suggestions for the diminution of appeals. We find the Committee strongly condemning the multiplication of tribunals of appeal, and they propose:—

"21. All appeals from a Judge without a jury shall be to the Court of Appeal; and also where a Judge has directed a verdict for plaintiff or defendant; and the Court of Appeal shall thereupon have power to dispose of the whole case.

The following observation might apply with equal force to our Court of Review and Court of Appeal system:—"That three Judges should overrule the judgment of one Judge is natural and intelligible enough, and no one objects to it; but that three Judges in one room should be overruled by three other Judges sitting in another, is not, we believe, satisfactory to the public or the profession."

PROOF OF NOTARIAL INSTRUMENTS IN CRIMINAL CASES.

Members of the notarial profession complain of the inconvenience they suffer occasionally in being obliged to attend Criminal Courts merely to produce their original deeds and prove the authenticity of official copies. It is suggested that no harm would result if copies, which are as authentic as the originals, made proof of their contents in criminal as well as in civil matters. Our criminal law, borrowed from England, does not give the same authenticity to certified copies of notarial instruments as the civil law introduced from France, where notaries are, as in this Province, a recognized profession. To this accident of the two-fold source of our law is traceable the different practice of our civil and criminal courts on this question.

In a recent case, *Kerby* v. *Thayer*, in the Court of Queen's Bench, Mr. Justice Monk permitted a considerable divergence from the general rule of evidence in this matter. Mr. Cushing, a notary, having declared that he had no authority to produce the original deeds of Mr. Hunter, his partner, absent in England, the Court admitted the copies as proof of the original acts, upon the mere attestation of the witness as to the notary's signature on the copies, and the production of the originals was dispensed with. The reasonableness of this ruling is obvious, and if the members of the notarial profession were to make proper representations on the subject, the existing criminal law would perhaps be modified so as to accord to copies of their instruments in criminal trials, where no special reason exists for the production of the originals, the authenticity allowed to them by the civil law.

LORD JUSTICE BRAMWELL AND THE AMERICAN BAR.

A contributor to the *Central Law Journal* of St. Louis recently wrote an article in that journal sustaining the view of Lord Justice (then Baron) Bramwell, expressed in Osborne v. Gillett, 42 Law J. Rep. Exch. 53. In that case the learned Baron held that an action was maintainable by a father for negligence, whereby "the plaintiff's daughter and servant" was killed. Chief Baron Kelly and Baron Piggott, on the other hand, held that the maxim *actio personalis moritur cum personâ* applied. A copy of the article was sent to the Lord Justice, who acknowledged it in a letter to the writer. Inclosed was a photograph of the learned Lord Justice in his judicial wig and robes, which, it is said, "gave the picture a very unique and antiquarian appearance to cis-atlantic professional eyes." The letter was as follows:—

"Four Elms, Edenbridge, Kent, June 26, 1881. Dear Sir,—I am much obliged to you for the number of the *Central Law Journal*. I have read your article with great interest. I am glad to see that on your side of the Atlantic the law is dealt with on higher considerations than profit and loss. I am somewhat ashamed to think that you, for mere love of our science, have brought more research and learning to bear on the question you discuss than I did when it was before me as a matter of duty. I am prone to decide cases on principle, and when I think I have got the right one (I hope it is not presumption), like the Caliph Omar, I think authorities wrong or needless. However, it is gratifying to be confirmed by them, as you confirm my opinion in Osborne v. Gillett. I am also very much gratified by the kind and flattering way in which you speak of me. Perhaps the reason you know me in America as well as you do is the length of time I have been on the Bench—twenty-five and-a-half years—longer than anyone else now living by about four years, so that I have had the time to be more chronicled than anyone else, and I suppose I have made an average use of it. I can assure you I am very glad to have the good opinion of lawyers on your side of the water, none the less that they are young. I may, without vanity say, that all the 'young ones' at our bar consider me their particular friend. I was in your city in 1853 only one night, during a Long Vacation ramble; but for the twenty-five and a-half years, and about 48 more, I would pay the States another visit. Repeating the expression of pleasure at your communication, yours faithfully, G. BRAMWELL."

The London *Law Journal*, in connection with the above letter, refers to the retirement of the Lord Justice: "The 'young ones' at the bar, where youth is perdurable, will be glad to learn that their regard for the Lord Justice is appreciated by him. All are sorry to know that the Lord Justice is about to 'burn all the books' for a different reason than that of Caliph Omar."

THE ARREST OF MR. PARNELL.

To the Editor of the LEGAL NEWS:

SIR,—The question of the legality of the arrest of Mr. Parnell, and other Irish agitators, is one which may fairly be discussed in a legal journal. Simple as the question is in itself, it is so surrounded by political and party exaggeration, that there is some difficulty in so dealing with it as not to lose sight of its purely legal side, which alone should occupy us, without leaving a false impression of the writer's views on the merits of the whole subject. In what follows I shall endeavor, as far as possible, to avoid both difficulties.

At Leeds, Mr. Gladstone denounced Mr. Parnell as a robber; and, at Wexford, Mr. Parnell retorted on Mr. Gladstone, describing him as a false philanthropist, and something very nearly akin to a political charlatan. Mr. Parnell was then arrested. If the motive of the arrest was that Mr. Gladstone did not like Mr. Parnell's personal criticism, it shows how little real liberty has gained by the transfer of power from the hands of an absolute prince to those of a popular leader. If it was because Mr. Parnell's agitation against the Land Bill threatened to deprive that measure of the only argument (and a very bad one) in its favor, then the act is prompted by the most flagitious motive conceivable. Mr. Parnell has just as much right to *stump* Ireland against the new Land Act as Mr. Gladstone had to agitate against the old one, to speechify in Scotland, or to make his nautical expedition round Ireland. So far as robbery goes, the difference between the two agitators is precisely the same as that which exists between the highwayman who leaves the lady he has robbed her wedding-ring and five shillings to pay her postillion, and the

highwayman who turns out her pocket and takes everything. If, then, Mr. Gladstone has some slight advantage over his rival, in this that his confiscatory projects are the less plenary of the two, from another point of view the position of Mr. Parnell is more logical than that of Mr. Gladstone. The former says, in effect, the whole condition of Ireland is so bad, she has been, and is, so mis-governed and oppressed, that we are justified in revolution. Mr. Gladstone, on the other hand, denies all this, but says that Ireland is passing through a crisis which justifies a partial confiscation. Taking it for granted that Mr. Parnell's statement be true, his argument is a good one. It will hardly be denied that there are conditions so unbearable that they justify revolution. But to take the property of one class to give it to another in a moment of distress, is an expedient by no means new, but which, in all ages, has been considered atrocious.

I do not, of course, agree with Mr. Parnell in his appreciation of the position. For more than fifty years Ireland has had no grievance to complain of. The absurd outcry against the land laws demonstrates how completely the political agitator is at a loss for a real grievance. The Irish land laws do not differ materially from those of other parts of civilized Europe. To pretend that the agricultural backwardness of parts of Ireland is due to the land laws is an imposition too transparent to delude anyone. If it were so, the backwardness would be general, which it is not. A large part of the country is so well cultivated, that, in spite of the improvident manner in which the rest is managed, Ireland comes next after England and Scotland, and not much after, in its rate of production of wheat to the acre. Everyone knows that it was the improving landlord—he who sought to apply commercial principles to agriculture—who was shot at. It is, therefore, an assertion as reckless as anything to be found in Mr. Gladstone's pamphlet on Bulgarian atrocities, or in his denunciations of the Government of Austria, to maintain that the Irish tenant has been prevented from making improvements by the land laws or even by the land system, except in so far as the land system has been created, or, at any rate, perpetuated by his own improvidence and obstinate opposition to progress.

But allowing, for the sake of argument, that Mr. Parnell's position is defensible from a moral point of view, what ground can there be for pretending that his arrest is *illegal?* His ethical defence is, "I am forced into revolution," and that being the case, he is infringing the law. It is not the Coercion Act alone he has set at defiance. The avowed purpose of himself and his associates is to alter the Constitution by driving the landlords out of possession of their property by vexation and annoyance. As a matter of fact, there can be no real difficulty in tracing the connection of the Land League and its supporters with much of the agrarian crime, and particularly that organized kind which has obtained the name of "Boycotting." An organization to prevent one man working for another, or to prevent a shop-keeper dealing with anyone, is, to all intents, a conspiracy, and one of the most objectionable kind. It is not less a conspiracy to agree not to pay rent. In a burst of eloquence of almost a national type, Mr. Parnell exclaimed, "It is as lawful not to pay rent as to pay it." It is vain to reason with wilful unreason. No one is so stupid as not to perceive that the failure to fulfil an obligation is as illegal as wrong-doing.

If Mr. Parnell desires to secure for himself any portion of the sympathies of those who are at once honest and intelligent, he will do well not to run two hares at a time. As a daring revolutionist, he may hope to be a hero of romance; but the pretention that his arrest is illegal is a foolish pretext.

R.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1881.

JOHNSON, RAINVILLE, JETTÉ, J J.

[From S. C., Montreal.

LECLERC et vir v. THE MUTUAL LIFE INSURANCE CO. of JOLIETTE.

Procedure—Closing enquête.

The judgment inscribed in Review was rendered by the Superior Court, Montreal (Mackay, J.), July 4, 1881.

JOHNSON, J. Judgment was given in this case for the plaintiff; and the Insurance Company inscribes for review, not because by the evidence given in the case they ought not to have been

condemned; but because they failed in an endeavour to put off the case when it was called for final hearing, and also failed in an attempt to get the *délibéré* discharged and to re-open the *enquête* after the hearing, both attempts—the one by motion and the other by petition—being unsuccessful. The case went to evidence before a *commissaire enquêteur* at Malbaie; and we have had of course to put ourselves in the position of the learned judge who decided the motion and the petition, and if we saw that they ought under the circumstances to have been granted, we should have to say so; but we see very distinctly that the defendants are in default; that they were duly notified to proceed, and neglected to do so, and the *enquête* was declared closed. Therefore there was no ground for granting the defendant's motion, or his subsequent petition, and the rejection of them was right; and the judgment on the merits was a matter of course, and must be confirmed, and it is confirmed with costs.

Ouimet & Co., for plaintiff.
Church & Co., for defendants.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1881.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From S. C., Terrebonne.

SICOTTE v. BRAZEAU, and PREVOST et al., *avocats distrayants*, SICOTTE, opposant, and PREVOST et al., contesting.

Procedure—Désaveu—Party.

The case came up on the inscription of the opposant from a judgment of the Superior Court, Terrebonne, (Bélanger, J.), Jan. 24, 1881.

JOHNSON, J. This was an *action hypothécaire* brought in the name of the plaintiff against the defendant, and which was dismissed with costs against the plaintiff of record; and the defendant's attornies, as *avocats distrayants*, took out execution against the plaintiff's property, and the latter now comes into court by opposition, and asks that all the proceedings may be set aside as regards him.

It appears to the court *in limine* that whether we regard the opposition, the notice to Mr. Champagne, and the affidavit, as tantamount to a *désaveu* or not, (and this is, of course, a question upon which we abstain from expressing any opinion whatever), both the opposant and the *avocats distrayants* who contest his opposition have fallen into a wrong course as regards one of the principal parties interested; that is Mr. Champagne himself. It was he who was interested in contesting this opposition. It is he whose rights are guarded by the law; whether we consider the present proceeding as involving a *désaveu* or not. It is he with whom the opposant is waging the right which he sets up. He says to him: "You had no authority from me; your acts do not bind me;" therefore, it is he, Mr. Champagne, who must answer this, and the *avocats distrayants* are in no position to urge the answer that Mr. Champagne may have to make. We think, therefore, that this record should be remitted to the Court at Ste. Scholastique, and we put Mr. Champagne under an order to answer the opposition within eight days.

Mercier & Co., for opposant.
Prévost & Co., for contestants.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1881.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From C. C., St. Francis.

RICE v. LIBBY, and ANDROSS, plaintiff *par reprise* v. LIBBY.

Death of defendant after inscription in Review—Taking up instance.

The inscription was by the defendant Libby from a judgment rendered by the Circuit Court, St. Francis, (Doherty, J.), May 30, 1881.

JOHNSON, J. This case was inscribed for Review by the defendant, Wesley Libby, who subsequently died. The plaintiff now moves that proceedings be stayeduntil the *instance* has been taken up, and he has given notice to the defendant's attorneys, and produces the *extrait mortuaire*. We are of opinion that this motion must be granted, and therefore the record must go back to the jurisdiction where the necessary proceedings can be had. We reserve the costs.

Bélanger & Co., for plaintiff.
Brooks & Co., for defendant.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1881.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From S. C., St. Francis.

In re MCLELLAN, insolvent, HALE, petitioner, and MCLELLAN, Respondent.

Review—Deposit—Writ of possession.

The review was from a judgment of the Superior Court, St. Francis, (Doherty, J.), July 2, 1881.

JOHNSON, J. Hale, the petitioner, was *adjudicataire* of a lot of land brought to sale by the assignee of the insolvent, who could not give him possession, and Hale applied for and got a writ of possession from the Court. It is from the judgment granting the writ that the present inscription is taken, the petition having been contested on a variety of grounds, and evidence having been heard. The petitioner for the writ now moves to reject the inscription, on the ground that the deposit of twenty dollars made with the inscription is insufficient; and his contention is that under article 497 of the Code of Procedure the deposit should have been of forty dollars. That article provides that the review cannot be obtained until the party demanding it has deposited in the office of the Prothonotary of the Court which rendered the judgment, and within eight days from the date of the judgment, twenty dollars, if the amount of the suit does not exceed $400, and of forty dollars, if the amount of the suit exceeds $400, or if it be a real action, &c. The argument is that this is a real action; but we think we must look at this subject with reference to the reason of the rule, and refuse the motion. The article 497 I have given the substance of, but it adds expressly that "the amount thus deposited is intended to pay the costs of the review incurred by the opposite party." Now, the tariff provides for the costs in cases of writs of possession, they are not at all assimilated to the costs in real actions. Writs of possession cannot be said properly to be actions at all. They are awarded in execution of judgments, and they are so looked upon apparently in the tariff; see numbers 40 and 41 of the tariff as published in Foran's C. of P. So that the tariff gives in this case $18, where, if the proceeding, instead of being considered an execution, had been considered a principal action, it would have given $60. We are of opinion to reject the petitioner's motion with costs.

Brooks & Co. for petitioner.

F. O. Bélanger for respondent.

COURT OF REVIEW.

MONTREAL, February 28, 1881.

SICOTTE, PAPINEAU, JETTÉ, J J.

CHAUSSÉ v. LAREAU.

Charges de la mitoyenneté—Loss suffered by the rebuilding of a mitoyen wall.

The action was instituted by the plaintiff for $197, and was based on alleged loss and inconvenience suffered by the taking down and rebuilding of a *mitoyen* wall. It was proved at *enquête* that the proper precautions had been observed and no unnecessary delay or neglect had taken place. The action was dismissed in the court below, and the judgment was confirmed in review.

Vide: Toullier, vol. 3, No. 215; Pardessus. Servitudes, No. 166; Peck v. Harris, 6 L. C. J. p. 206. (Q. B.).

Ethier & Pelletier, for plaintiff.

Lareau & Lebeuf, for defendant.

CIRCUIT COURT.

MONTREAL, June 30, 1881.

Before RAINVILLE, J.

VICTORIA MUTUAL FIRE INSURANCE CO. v. CARPENTER.

Security for costs—Foreign company—A foreign company which has a place of business in the province of Quebec, is not bound to give security for costs in an action instituted in this province.

The defendant moved for security for costs on the following grounds:

1. Because the plaintiffs have no office or place of business in the city of Montreal and province of Quebec.

2. Because the head office and chief place of business of the said plaintiffs is situated at Hamilton in the province of Ontario, and they have no office in Montreal.

3. Because the said company, plaintiffs, is

insolvent, and especially the branch which claims from defendant the sum of $28.47 by the present action.

4. Because the said company plaintiffs has withdrawn its business, and especially the branch which claims to have taken defendant's risk, from the city of Montreal and province of Quebec.

An affidavit was filed showing that the company had an office in Montreal.

The COURT rejected the motion, but without costs; on the ground that the company, though having its chief place of business in Ontario, had an office and place of business in the province of Quebec.

[See 21 L. C. J. 224; 1 Legal News, pp. 53, 62 and 139.]

Walker & McKinnon for plaintiffs.

Greenshields & Busteed for defendant.

RECENT DECISIONS AT QUEBEC.

Natural child—Paternity—Evidence.—Jugé (1) que, dans la recherche de la paternité par l'enfant naturel, la preuve testimoniale ne peut être admise que lorsqu'il y a commencement de preuve par écrit ou des présomptions ou indices résultant de faits, *constatés avant l'enquête,* assez graves pour en déterminer l'admission.

(2) Qu'une transquestion posée par le prétendu père à un des témoins de l'enfant, ne peut pas être un commencement de preuve par écrit ni une présomption qui puissent autoriser la preuve testimoniale, et que les faits que l'enquête constate, quelque graves qu'ils soient, ne sont pas suffisants pour la justifier, la loi exigeant une constatation antérieure.—*Turcotte es-qual.* v. *Nacké,* (Court of Review,) 7 Q. L. R. 196.

Inventory—Community.—The inventory of a succession is not null for want of having been judicially closed, nor by reason of errors or omissions, when there is no fraud nor dishonesty of any kind.—*Gingras* v. *Gingras et al.,* (Superior Court, opinion of Meredith, C. J.), 7 Q. L. R. 204.

Action en bornage—Costs.—Jugé, que tous les dépens de l'instance, rendus nécessaires par les prétentions de l'une des parties, doivent être mis exclusivement à sa charge, quoiqu'elle ne soit pas autrement refusée au bornage, et qu'elle n'ait pas plaidé à l'action; et que les frais d'expertise et de bornage sont les seuls qui doivent être également partagés.—*Roy* v. *Gagnon* (Court of Review, Stuart, J. *diss.*), 7 Q. L. R. 207.

Judgment by default—Requête civile.—A defendant retained an attorney to defend his case upon the merits; the attorney so retained prepared an appearance which he believed he had filed, but owing to an omission in some quarter, the proper register did not show that an appearance was ever received at the office of the Prothonotary, and judgment was rendered by default. *Held,* that, in such case, a petition in revocation of judgment would be allowed, the judgment complained of not being susceptible of appeal. The list of cases mentioned in Art. 505 C. C. P. as giving rise to the *requête civile,* is not exclusive.—*Neil et al.* v. *Champoux et al.* (Court of Review, Meredith, C. J., Stuart, Caron, JJ), 7 Q. L. R. 210.

Petitory action—Special replication.—Jugé : (1) Que dans une action pétitoire revendiquant la partie qui lui est échue dans la succession de son père, d'une propriété qu'a appartenu à la communauté entre son père et sa mère, la demanderesse n'est pas obligée d'alléguer sa renonciation à la succession de sa mère qui a vendu toute la propriété du défendeur, et qu'elle peut opposer ce moyen par réponse spéciale.

(2) Qu'une réplique spéciale à une réponse spéciale ne peut être produite sans la permission du tribunal; mais que, s'il est démontré, sur la motion pour la rejeter, que la réplique spéciale est nécessaire pour développer les moyens des parties, le tribunal peut permettre qu'elle reste au dossier, à la condition que celui qui l'a produite paie les frais de la demande de son rejet.—*Guay* v. *Caron* (Superior Court), 7 Q. L. R. 217.

Séparation de corps et de biens—Community—Adultery.—An adulteress loses all the advantages granted to her by her husband: but not her part of the community, which is regarded, not as a gift from her husband, but as representing what she contributed to, or earned, or saved for the community.—*L'Heureux* v. *Boivin,* (Superior Court), 7 Q. L. R. 220.

Lease—Sale.—Jugé : (1) Que sous l'acte de faillite de 1875, un juge a le droit de prononcer la résiliation d'un acte.

(2) Qu'un acte contenant un bail et une promesse de vendre acceptée, mais aucune promesse d'acheter, ne transfère pas la propriété, même s'il est accompagné ou suivi de la prise de possession.—*Levis* et *Bouchard* v. *Connolly,* (Superior Court), 7 Q. L. R. 224.