The Legal News.

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## *EXPERTS IN HANDWRITING.*

The *Albany Law Journal* notes the fact that the indictment against Philps and others, for forging and uttering the Morey letter, is to be quashed, the prosecution being satisfied that the defendants were not the authors of the letter, but were imposed upon by the real forger, yet four "experts" testified that Philps wrote the letter! Three of these persons are also witnesses in the *Whittaker* case—the colored cadet at West Point—and they all say that the cadet himself wrote the letter of warning which he alleges he received from an unknown hand. This may be so, but the evidence of these gentlemen will hardly make the proof more convincing. On the other hand, the defence have now introduced a Boston lawyer who swears, according to our contemporary, to several very bad blunders made by Mr. Southworth, one of the experts, in cases with which this witness had a professional connection; and that while Mr. Southworth is a man of veracity, he has become a monomaniac on the subject of handwriting, who "can see things about it that no one else can see, and can tell things about it that no one else can tell."

This Mr. Southworth is the same gentleman, we believe, that was so positive as to the address of the *Macdonald-Pope* letter being in the handwriting of Mr. Palmer, of the Montreal Post Office; nay, he is said to hold that opinion still, although the mystery has been fully cleared up by the acknowledgment of the real actor. So many blunders have been brought home to professional experts in handwriting that juries are justified in exhibiting a certain amount of distrust of their statements, however sincere and honest the witnesses may be.

## *RESTRAINT OF TRADE.*

In a note by Mr. E. H. Bennett, in the *American Law Register*, to the English case of *Roussillon* v. *Roussillon*, (English Chancery Division), the author says:—

"In this case, more than in any other, ancient or modern, is distinctly brought out the true ground upon which contracts in restraint of trade are declared void; viz., that under the particular circumstances of each case, and the nature of the particular contract involved in that case, the contract must be *unreasonable*. In determining that question of reasonableness or unreasonableness, the extent of territory covered by the prohibition is one element, and only one element, in arriving at the conclusion. Some cases seem to have made this a final and conclusive test, without any regard to the nature of the contract, or whether the public would or not suffer, or be likely to suffer, any inconvenience or detriment if the contract should be enforced. On the other hand, it seems more reasonable to consider the question of area only a subordinate and not a dominant consideration; and that while some contracts might be void, because unreasonable, if the territory covered by them were small, other contracts of an entirely different nature might be valid, even if a much larger area was included. It depends, or should depend, upon the nature of the business, and whether such business could be done throughout a large area by one occupying a central position therein; or whether such business must from its very nature be limited to a circumscribed locality. In the latter case a contract might be void when embracing a much smaller territory than in the former."

## *SUPREME COURT DECISIONS.*

To the Editor of the Legal News:

Dear Sir,—Although "R." kindly informed me through your columns, (4 vol. p. 97) that some "*critic, writer or pleader*" would soon be "*on the heels of the Reporter of the Supreme Court,*" I really did not expect that, before the judgments were published, my short notes would be so severely criticised. I may as well take this opportunity of informing your hypercritical readers that I do not pretend to give in these short notes, often prepared without the advantage of having all the judgments before me, a full digest of the case or an unassailable head note. All I was asked to do was to give in effect the result of the judgment in each case.

1st. "R." refers to the case of *Abrahams* v. *The Queen*. The judgment of the court in this case is very short, and if I have misled the profession, I can do no better than ask you to be

so kind as to publish the learned Chief Justice's judgment in this case, which is as follows:

"RITCHIE, C. J.—(After reading the reserved case) In acting under this statute the Attorney or Solicitor General or Judge, as the case may be, exercises what is in the nature of a judicial function, he is to judicially decide whether the indictment is proper to be presented to or found by the Grand Jury, so that, while on the one hand the rights of the public are to be guarded, individuals are to be protected from (as Cockburn C. J., in *Queen* v. *Bray* [3 B. & S. 258] says) "the abuse of the right of prosecution, by proceedings instituted either vexatiously or from corrupt or sinister motives;" and the duty of exercising this judicial discretion, when the prosecutor or other person presenting an indictment has not been bound by recognizance to prosecute or give evidence, or when the person accused has not been committed to or detained in custody, or has not been bound by recognizance to appear to answer an indictment to be preferred against him, is vested in the Attorney General or Solicitor General or Judge to be by them personally exercised; "the circumstances (as Cockburn, C.J., in the same case says) under which the direction shall be given, having been left entirely within the discretion of one or other of these officers; and with the exercise of which the Court will not interfere." *The Queen* v. *Heane*, [4 B. & S. 947] shows that where an indictment has been preferred without either of the three conditions mentioned having been performed, the matter may be brought before the Court on affidavit after plea pleaded, and the indictment may in the discretion of the court be quashed, or the party on a doubtful case be left to his writ of error.

"I think therefore that there being a special statutory power, it must be strictly pursued; the propriety of sending a bill before the Grand Jury having been confided to the judgment and discretion of the Attorney General, *he cannot extend the provisions of the Act and delegate to the judgment and discretion of another the power which the Legislature has authorized him personally to exercise, no power of substitution having been conferred.* In the present case it is admitted that the Attorney General gave no directions with reference to this indictment; that the gentlemen who put the indorsement on the indictment did do so merely because they were representing the crown at the criminal term of the Queen's Bench in Montreal under a general authority to conduct the crown business at such term, but without any special authority over or any directions from the Attorney General in reference to this particular indictment. Under these circumstances the indictment in this case having been presented to and found by the Grand Jury without any compliance with the provisions of the statute, must be quashed."

2nd. In the case of *Shaw* v. *Mackenzie* "R." states: "There was no question as to the suffi-"ciency or insufficiency of the affidavit. In the "second place, no one pretended, that refusal "to pay an over-due debt, accompanied by de-"parture, was sufficient and probable cause "that the debtor is leaving *with intent to defraud* "*his creditors.*"

In appellant's factum before the Supreme Court and on the argument it was contended:

"This affidavit is plainly insufficient to "justify the issuing of a *capias*. By Art. 798 C. "P. C. quoted above, Mackenzie should have "*specially stated in his affidavit* his reasons for "believing that Shaw's leaving Canada was "with intent to defraud his creditors in general "and the plaintiff in particular," and he should "also have specially stated his reasons for believ-"ing that "such departure would deprive the "plaintiff of his recourse against the defend-ant."

Then I find that the defendants by their plea contend:

"That the said Kenneth Mackenzie having given, in the said affidavit, the reasons which led him to swear that the said plaintiff was to leave immediately this Province with the intent to defraud his creditors, has complied with the requirements of the law, and unless it is proved in the cause in which said *capias* has been issued, that it is false that said Mackenzie has been so informed, such affidavit is sufficient to grant to said defendants a writ of *capias*."

On this Mr. Justice Cross, one of the dissenting Judges of the Court of Queen's Bench, says:

"The Art. 798 of the C. C. P. requires, among other things, that deponent should state in the affidavit that he has reason to believe, and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave immediately the Province of Canada with intent to defraud his creditors in general or the

plaintiff in particular. The leaving is, of itself, of little consequence, save as connected with the fraud: the reasons most material to be shewn are the reasons for belief in the intent to defraud, and, on reference to Mackenzie's affidavit, it will be found that these are wholly wanting, and the reasons there stated, only go to show that the defendant intended to leave, thereby allowing the assertion of intent to defraud wholly unsupported by special reasons.

"As I view the matter, the affidavit is insufficient in a material requirement; the deponent has not assumed the responsibility of swearing to particular reasons of intent to defraud, and on this point tenders no issue to be rebutted. Having failed to show sufficient reasons for the arrest, Shaw had no proof to make, and the burden was thrown upon Mackenzie, Powis & Co., to show a case for arrest, if this could be done outside of the affidavit, which affidavit had failed to do it. Had the affidavit contained these reasons, it would still have been the right of Shaw to have disproved them in this action, and it seems to me that he has proved an affirmative case sufficient to establish his good faith, even at the disadvantage of not being informed of the particulars he had to answer."

And on the 2nd point Mr. Justice Ramsay says in his judgment: "It is the first time I ever heard that it was an evidence of integrity to dispute the payment of an account that was due. It is frequently done by people otherwise respectable, but it is a *fraud*, nevertheless." And Mr. Justice Taschereau who delivered the judgment of the Supreme Court, in his reasons says:

"In fact, not only in this case, but also in their case against the appellant, and by the very terms of their own affidavit, upon which they arrested the appellant, it is clear and apparent that the respondents were and are under the impression that the fact alone of the departure of their debtor from the country was a sufficient ground to arrest him;" and after reviewing the facts concludes by saying that "Shaw's arrest was entirely unjustifiable, and that it is clearly established in the present case that the respondents had no reasonable and probable cause for issuing the writ of capias in question."

Now by referring to my notes (4 Legal News, p. 89), it will be seen that I gave a short statement of the facts of the case, and as in the opinion of the Supreme Court there was, *at the time of the arrest, "no misrepresentation, false excuse or precarious credit,"* and the only probable and reasonable cause Mr. Mackenzie had for believing that his debtor was leaving *with intent to defraud*, was the fact that Mr. Shaw had refused to make a settlement of an overdue debt and was about to depart for England, this was considered not to be a sufficient reasonable and probable cause.

3rd. As to the cases of *Desilets* v. *Gingras*, and *Reed* v. *Levi*, the counsel who argued the case, and some of the Judges who delivered judgments, relied on the decision of the Privy Council in the case of *Lambkin* v. *The South Eastern Railway Co.*, 5 App. Cas. 352, where it was held on appeal from a judgment of the Court of Queen's Bench, Province of Quebec, that "inasmuch as the damages awarded by the jury, were not of such an excessive character as to shew that the jury had been either influenced by improper motives or led into error, there ought to be a new trial." It may be that the motives of a Judge can never be said to be improper, and therefore it would perhaps have been better to say, as in the case of *Penn* v. *Bibly*, 15 L. T., N. S. 399, also relied on, to insert instead of "*influenced by improper motives*" the following, "had acted on a wrong principle."

Reference is then made to some decisions of the Court of Queen's Bench, which have been reversed, and the cases not yet reported.

In *Bulmer* v. *Dufresne* the judgment of the court below was not *reversed*. *Chevallier* v. *Cuvillier*, was argued last term, and judgment has not yet been delivered.

*Connolly* v. *Provincial Insurance Co.* is in the hands of the printer. This leaves *Fuller* v. *Ames* and *Reeves* v. *Geriken*, which will be published if the Judges direct them to be published.

Now, Sir, as I have already stated, I do not hope to give your readers in advance *short notes* of cases, which cannot be improved on when preparing a full report, but I do hope that they will not be *all* and *altogether defective*.

Yours truly,

G. D.

## NOTES OF CASES.

### SUPREME COURT OF CANADA.

OTTAWA, March, 1881.

ALMON et al., Appellants, and LEWIS et al., Respondents.

*Will—Annuities—Sale of Corpus to pay.*

The bill in this case was filed by the executors and trustees under the will of John Robertson, deceased, to obtain the direction of the Court, as to the rights of the several persons interested under the will.

John Robertson died on the 3rd August, 1876, leaving a will dated 6th Aug. 1875, and a codicil, dated 21st July, 1876. By the will he devised to his widow an annuity of $10,000 for her life, which he declared to be in lieu of her dower. This annuity the testator directed should be chargeable on his general estate. The testator then devised and bequeathed to the executors and trustees of his will certain real and personal property particularly described in five schedules marked respectively A, B, C, D and E, annexed to his will upon these trusts, viz:—Upon trust during the life of his wife, to collect and receive the rents, issues and profits thereof which should be, and be taken to form, a portion of his "general estate;" and then from and out of the general estate during the life of the testator's wife, the executors are to pay to each of his five daughters the clear yearly sum of $1,600 by equal quarterly payments, free from the debts, contracts and engagements of their respective husbands." Next, resuming the statement of the trusts of the scheduled property specifically given, the testator provides, that from and after the death of his wife, the trustees are to collect and receive the rents, issues, dividends and profits of the lands, etc., mentioned in the said schedules, and to pay to his daughter Mary Allen Almon, the rents, etc., apportioned to her in schedule A; to his daughter Eliza, of those mentioned in schedule B; to his daughter Margaret, of those mentioned in schedule C; to his daughter Agnes, of those mentioned in schedule D; and to his daughter Laura, of those mentioned in schedule E; each of his said daughters being charged with the insurance, ground rents, rates and taxes, repairs and other expenses with or incidental to the management and upholding of the property apportioned to her, and the same being from time to time deducted from such quarterly payments. The will then directed the executors to keep the properties insured against loss by fire, and in case of total loss, it should be optional with the parties to whom the property was apportioned by the schedules, either to direct the insurance money to be applied in rebuilding, or to lease the property. It then declared what was to be done with the share of each of his daughters in case of her death. In the residuary clause of the will there were the following words:—"The rest, residue and remainder of my said estate, both real and personal, and whatsoever and wheresoever situated, I give, devise and bequeath the same to my said executors and trustees, upon the trusts and for the interests and purposes following." He then gives out of the residue a legacy of $4,000 to his brother Duncan Robertson, and the ultimate residue he directs to be equally divided among his children upon the same trusts with regard to his daughters, as are hereinbefore declared, with respect to the said estate in the said schedules mentioned.

The rents and profits of the whole estate left by the testator proved insufficient, after paying the annuity of $10,000 to the widow and the rent of and taxes upon his house in London, to pay in full the several sums of $1,600 a year to each of the daughters during the life of their mother, and the question raised on this appeal was whether the executors and trustees had power to sell or mortgage any part of the corpus or apply the funds of the corpus of the property to make up the deficiency.

*Held*, on appeal, that the annuities given to the appellants and the arrears of their annuities are chargeable on the *corpus* of the real and personal estate, subject to the right of the widow to have a sufficient sum set apart to provide for her annuity.

*Weldon, Q.C.*, for the Misses Robertson.

*Gilbert*, for Mrs. Almon.

*Kaye, Q.C.*, for Respondents.

### COURT OF QUEEN'S BENCH.

MONTREAL, March 22, 1881.

DORION, C.J., MONK, CROSS, & BABY, JJ.

NOEL (petr. below), Appellant, and THE CORPO-

RATION OF THE COUNTY OF RICHMOND (respdts. below), Respondents.

*Temperance Act of* 1864 *preserved in force by the Confederation Act—Canada Temperance Act,* 1878 (41 *Vict., Cap.* 16, *sec.* 3).

The appeal was from a judgment of the Superior Court at Sherbrooke (Doherty, J.), dismissing a petition on demurrer.

The petitioner, appellant, prayed for an injunction to order the respondent to desist from carrying out a by-law passed by the Corporation on the 14th March, 1877, under the authority of the Temperance Act of 1864, generally known as the Dunkin Act. The petitioner represented that he was a hotel-keeper and elector of the county, and that the effect of the by-law in question was to prevent him from continuing the sale of spirituous liquor. He urged that the Temperance Act of 1864 (under the authority of which the by-law was enacted) had ceased to have validity since the passing of the B. N. A. Act, inasmuch as by the latter Act power was given to the Dominion Parliament alone to regulate trade and commerce, and the Temperance Act of 1864 and the by-law in question were an infringement upon the trade and commerce of the country. He therefore sought to have the by-law set aside, and the Corporation enjoined from enforcing it.

The Corporation demurred to the action, assigning, amongst other grounds of demurrer, the following:

"Because at the time of the enactment of said by-law the respondents had full power and authority to enact the same, inasmuch as for that purpose the said 'The Temperance Act of 1864' was in full force and effect, and was specially continued in force and effect by the Confederation Act cited by the petitioner;

"Because the continuance in force and effect of the said 'The Temperance Act of 1864' has been fully approved and confirmed by the Legislature of the Dominion of Canada in and by the Temperance Act of 1878."

The demurrer was maintained, and on appeal it was

*Held* (confirming the judgment of the Court below), that the Temperance Act of 1864 was kept in force by the B. N. A. Act, section 129, which enacted: "Except as otherwise provided "by this Act, all laws in force in Canada, Nova "Scotia, or New Brunswick at the Union, etc., "shall continue in Ontario, Quebec, Nova Scotia "and New Brunswick respectively, as if the "Union had not been made." Further, the Parliament of Canada, in passing the Temperance Act of 1878 (41 Vic. cap. 16), specially recognized the validity of the Temperance Act of 1864. (See sec. 3.)

Judgment confirmed.

*L. C. Belanger* for appellant.

*Hall, White & Panneton* for respondents.

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## COURT OF QUEEN'S BENCH.

MONTREAL, March 22, 1881.

DORION, C.J., MONK, CROSS & BABY, JJ.

BENNETT (petr. below), Appellant, and THE PHARMACEUTICAL ASSOCIATION OF THE PROVINCE OF QUEBEC (respdts. below), Respondents.

*Powers of Local Legislatures—Quebec Pharmacy Act,* 34 *Vict., Cap.* 52.

Appeal from a judgment rendered by the Superior Court at Montreal, Rainville, J., Nov. 30, 1880, dismissing appellant's petition.

The object of the petition was to obtain a writ of injunction against the respondents, to prohibit them from prosecuting the petitioner, and also praying that the Act of the Quebec Legislature known as the Quebec Pharmacy Act of 1875, 34 Vict., cap. 52, be declared unconstitutional and *ultra vires.*

It appeared that the petitioner, who holds a license from the Ontario College of Pharmacy, for about a year had been carrying on the business of chemist and druggist in the city of Montreal. He had recently been prosecuted in the Police Court, under the Quebec Pharmacy Act of 1875, for using the title of chemist and druggist. He contended that the Act was *ultra vires* of the local legislature, being an interference with trade and commerce, a matter which falls exclusively within the jurisdiction of the Parliament of Canada.

In answer to this it was urged on behalf of the respondents, (1) that pharmacy is a branch of the medical profession; and (2) that the Pharmacy Act does not touch what may properly be called acts of trading, but merely prohibits certain things which are recognized as being the legitimate business of a pharmacist,

and debars certain persons, in the interest of society, from practising or holding themselves out as pharmacists. In thus legislating, the legislature has acted within its jurisdiction over the subject of civil rights.

These pretensions of the respondents were in substance maintained by the judgment of the Court below, which was in these words :—

"Considérant que l'acte d'incorporation de l'association pharmaceutique de la Province de Québec : 34 Vict. c. 52, et l'acte d'amendement de 1875 n'ont pas pour but de réglementer le trafic et le commerce, mais seulement d'exiger certaines connaissances des personnes qui voudront pratiquer la pharmacie ; que la pharmacie n'est qu'une branche de la medecine et tombe sous le contrôle de la législature de la province de Québec, et qu'en conséquence la dite requête et demande pour bref d'injonction est mal fondée, renvoie et rejette la dite requête avec dépens," &c.

On the appeal,

The COURT held the judgment to be correct. Where power is entrusted to Parliament or to a local legislature for a certain purpose, and the exercise of that power by one legislature for the purpose contemplated by the law, trenches incidentally upon the powers assigned to the other legislature, the incident is included in the general power. Thus, in the case of *Cushing & Dupuy* (see 3 L.N. 171), the Privy Council said : "It is to be presumed, indeed it is a necessary implication, that the Imperial Statute, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property, civil rights, and procedure within the Provinces, so far as a general law relating to those subjects might affect them." Here the Pharmacy Act touched the subject of trade and commerce no further than was incidental and necessary to the exercise of general provincial powers, and the Act was therefore not *ultra vires*.

Judgment confirmed.

*Robertson & Fleet* for Appellant.

*Kerr, Carter & McGibbon* for Respondents.

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## COURT OF REVIEW.

MONTREAL, March 31, 1881.

JOHNSON, RAINVILLE, JETTÉ, JJ.

[From S.C., Montreal.

SLEETH v. HARBOR COMMISSIONERS OF MONTREAL.

*Harbor Commissioners—Obstructions on the wharf.*

The judgment inscribed for review was rendered by the Superior Court, Montreal, Torrance, J., Dec. 29, 1880, maintaining the plea to an action of revendication. See 4 Legal News, p. 2.

The Court of Review confirmed the judgment, (except as to $3) holding that the defendants had a right to remove the obstruction in question, and to be repaid their disbursements.

*McCorkill* for plaintiff.

*Abbott & Co.* for defendants.

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## SUPERIOR COURT.

MONTREAL, March 31, 1881.

*Before* RAINVILLE, J.

HOWARD et al. v. YULE.

*Testamentary Executor— Grounds of Removal— Dissipation of Estate—Loans without security— C.C. 917—Appointment of sequestrator.*

The action was brought by certain of the legatees under the will of the late William Yule, asking for the removal of the defendant John Yule, sole surviving executor under the will, and for the appointment of a sequestrator to the estate.

The grounds of the action as well as the defence are fully set out in the written judgment of the Court, which is as follows :—

"La Cour, etc .....

"Attendu que les demandeurs allèguent que feu Wm. Yule, par son testament exécuté devant témoins le 14 de mai 1842, et son codicile en date du 7 sept. 1843, a institué son fils le défendeur, et ses six filles ses légataires universels, et ses légataires particuliers pour certaine portion de sa succession ;

"Attendu que par les dits testament et codicile le défendeur a été institué exécuteur conjointement avec d'autres personnes aujourd'hui décédées ;

"Attendu que par les dispositions du dit testament les dits enfants ont droit aux intérêts des sommes qui leur sont respectivement léguées, et qu'après le paiement des dits intérêts, le surplus du capital, s'il y en a, leur revient à chacun d'eux en pleine propriété ;

"Attendu que par le même testament il est stipulé que si l'un des dits légataires meurt sans enfants, alors sa part accroit aux autres ;

"Attendu qu'il est, en outre, stipulé par le dit testament que chacun des dits co-héritiers aura

droit de disposer de la portion à lui léguée, par testament seulement, en faveur de l'un ou de plusieurs de ses enfants, selon qu'il le jugera à propos ;

" Attendu que par le dit codicile il est stipulé que chacune des dites filles du dit testateur, aura droit de disposer, par testament seulement, en faveur de son mari, pour sa vie durante, de telle partie de la portion à elle léguée qu'elle jugera à propos, mais qui ne devra pas excéder la moitié du revenu annuel qu'elle pourra retirer de la dite succession ;

" Attendu que le demandeur J. W. Howard est intéressé dans la présente cause en vertu du testament de sa femme feue Margaret C. Yule, l'une des dites légataires, exécuté le 21 d'août 1858, devant trois témoins, par lequel acte la dite Dame M. C. Yule a légué au dit J. W. Howard, son mari, les intérêts qui lui seraient dûs et échus à la date de son décès, sur sa part de la dite succession, et aussi la vie durante de son dit mari, la moitié du revenu annuel qui pouvait lui revenir de la dite succession ;

" Attendu que les autres demandeurs sont les héritiers du dit feu Wm. Yule ;

" Attendu que les demandeurs allèguent que le défendeur n'a pas rempli ses devoirs comme tel exécuteur, savoir : 1o. qu'il n'a pas fait inventaire des biens de la dite succession ; 2o. qu'il a prêté des sommes d'argent considérables, savoir, au montant de $22,422.35, sans aucune garantie quelconque, à des personnes qui étaient alors ou sont devenues depuis incapables de payer, sur lesquelles sommes aucun intérêt n'a été payé depuis plusieurs années, excepté sur la somme de $5,400, et que le dit défendeur aussi lui-même a emprunté de la dite succession la somme de $26,203.84, que ces faits constituent une dilapidation et dissipation des biens de la dite succession et indiquent, de la part du défendeur, une incapacité complète de remplir ses devoirs d'exécuteur ;

" Attendu que les demandeurs demandent en conséquence que le dit défendeur soit destitué de ses dites fonctions, et qu'un séquestre soit nommé pour prendre soin des dits biens ;

" Attendu que le défendeur plaide : 1o. quant au défaut d'inventaire, qu'il a pris possession des dits biens depuis plus de 40 ans, à la suite d'un inventaire fait par son dit père, quelque temps avant sa mort, et qui constatait que les biens de sa succession valaient £44,000, et que les héritiers ne se sont jamais plaint de tel défaut ; et sur le second point, que les sommes qu'il a prêtées l'ont été à des héritiers futurs, et que les droits des demandeurs n'en sont nullement lésés ;

" Considérant qu'il est prouvé qu'en effet le dit feu Wm. Yule, quelque temps avant sa mort, avait fait un état des biens de sa succession, lequel état est produit et en constate les forces ;

" Considérant que les co-héritiers du défendeur ne se sont jamais plaint du défaut d'inventaire, et que le dit état doit valoir entre les parties et tenir lieu d'inventaire ;

" Considérant qu'il est prouvé que le dit défendeur a prêté ou avancé à deux de ses fils et à d'autres descendants des héritiers du dit feu Wm. Yule différentes sommes de deniers, se montant à plus de $17,000, sur lesquelles des intérêts se sont accrus au montant de plus de $9,000 ;

" Considérant que les dits prêts ont été faits sans aucune garantie, et qu'il est admis par le défendeur lui-même que l'un des dits emprunteurs est mort sans laisser aucuns biens, et que les autres sont sans moyens pécuniaires ;

" Considérant qu'aux termes du dit testament, si les dits emprunteurs venaient à mourir avant leurs auteurs, et si ces derniers venaient aussi à décéder sans descendants, les dits emprunteurs n'auraient jamais eu aucun droit à aucune partie des biens de la dite succession ;

" Considérant en outre que les dits entrepreneurs peuvent être deshérités par leurs auteurs, aux termes du même testament, que dans ce cas les sommes à eux prêtées se trouveraient complètement perdues ;

" Considérant que le défendeur a négligé de fournir régulièrement les intérêts sur les sommes par lui prêtées, savoir sur la somme de $26,203.84 ;

" Considérant que dans le bilan fourni par le dit défendeur, une somme de $939.29, au paiement de laquelle il avait été condamné envers M. C. Yule et autres par jugement de cette Cour, représentant leur part dans les intérêts accrus sur les dites sommes prêtées par le défendeur, apparait à l'actif comme due par feue M. C. Yule, tandis que la dite M. C. Yule n'a reçu que ce qui lui était dû ;

" Considérant qu'il résulte de ces faits que le défendeur a mal administré les biens de la

dite succession, et qu'il est démontré qu'il est incapable de les administrer ;

" La Cour destitue le dit défendeur de ses dites fonctions d'exécuteur testamentaire et fidéi-commissaire de la succession de feu Wm. Yule, et ordonne qu'il soit nommé un séquestre pour prendre soin des biens de la dite succession, jusqu'à ce qu'un autre administrateur fidéi-commissaire soit nommé à la place du dit défendeur," etc.

*Bethune & Bethune*, for plaintiffs.

*Ritchie & Ritchie*, for defendant.

## *RECENT ENGLISH DECISIONS.*

*Master and Servant—Assault—Submission.*—*Held*, by the Court of Appeal, (affirming the judgment of the Court of Common Pleas, noted at p. 111) that the verdict was right. Bramwell, L.J., said: " I dare say the woman thought that her master and mistress had a right to have her examined. But what she did was to submit under the influence of other considerations. The truth is that it is impossible to say the jury was wrong in finding that she submitted, not in consideration of violence, but for some other reason. It is not like the case of a boy holding out his hand to be struck, for the boy knows that if he does not submit he will be compelled to submit to something worse." Baggallay, L.J., said: " I think the verdict was right. It appears that the girl voluntarily led the way up-stairs. She went into the room, and following out her statement, her objection was not so much to be examined as to strip off her clothes one by one. The doctor was in the performance of his ordinary duty. She might have resisted if she had pleased, but she did not resist." Brent, L.J., said: " I think there was no case to go to the jury against the doctor. think he did not act in any way so as to make the girl think force would be used to her. she had so supposed, but without any such reason as would make a reasonable person think so, he would not be liable. It must be shown that he did use actual force, or that she acted under conduct of his which would make her think he was going to use violence. If there was no threat, and she submitted, there was no assault."—*Latter* v. *Braddell.*

*Negligence, Evidence of—Railway Crossing.*—The defendant's railway crossed a level crossing which was some 20 yards distant from a footbridge. Both the crossing and the bridge were private crossings. About 30 yards from the crossing a railway servant was stationed, who was sometimes shouted to by persons wishing to pass the level crossing with carts, and answered, "all right." The plaintiff, a boy of 11 years of age, having occasion to go over the line, was waiting at the level crossing until one train had passed, but was knocked down and severely injured when in the act of crossing it another train which he had not observed, and which was passing in the opposite direction. At the trial there was evidence that the bridge was dirty, and not lighted at the time of the accident; that the train did not whistle; that the plaintiff knew the bridge, having crossed it several times; and that the railway man used to bring out a stick to stop him from going over the bridge, but that when the accident happened he was not present. There was no evidence to show what the man's special duties were, or whether, he had any duties in respect to foot passengers. *Held*, that there was evidence of negligence to go to the jury, and that the conduct of the railway man was a distinct breach of duty which amounted to negligence and contributed to the accident. *Clarke* v. *Midland Railway Co.* (Exchequer Division) 43 L. T. Rep. (N.S.) 381.

## *GENERAL NOTES.*

If there is one thing more than another that we have given our English friends credit for understanding thoroughly, it is the law of costs, yet now we find the *Solicitor's Journal*, of January 29, saying: " The law as to costs under the Judicature Act appears to be, with respect to certain questions, in a most lamentable state of doubt and confusion."

Under the present law in Illinois, the Appellate Courts are required to write opinions only in cases where the judgments of the Courts below are reversed. A bill is now pending in the House of Representatives which proposes to require the judges to write opinions in all cases. It is stated that, in fact, the judges have written opinions in all affirmed cases involving important legal questions.

EXPERTS AT FAULT.—In Dr. Taylor's Manual of Medical Jurisprudence (of which an eighth American edition has just appeared), a case is referred to which occurred in April, 1843. At a town meeting in Salisbury, Conn., when the election was very close, a person proposing to vote was challenged by a physician, on the ground that he was a woman. Another physician stated to the meeting that he had examined the person, and found him a man. The individual then ptired with the two physicians to a separate room, and both came to the conclusion that he was a man, and, upon their report, he was permitted to vote. And yet, a few days later, circumstances occurred which indicated pretty plainly that, after all, he was a woman.