The Legal News.

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INTEREST ON COUPONS.

A question of some importance was decided in *Desrosiers* v. *Montreal, Portland & Boston Ry. Co.*, by the Court of Review at Montreal on the 30th ultimo. The Court unanimously overruled that part of the decision of the Court below which disallowed interest on railway coupons from the date of maturity. The coupons themselves represent interest on railway bonds, and the question was whether, in the absence of any formal demand, the holder was entitled to interest on the amount of each coupon from the date of maturity. The Judge of first instance ruled that he was not, but this decision has been unanimously reversed by the three judges sitting in Review, (Johnson, Torrance and Rainville, JJ.) It appears that the Judge of first instance was misled in part by a citation from Abbott's Digest, the text of which was not supported by the decisions on which it purported to be based. The Supreme Court of the United States, in a series of decisions, has laid down the doctrine that interest runs from the date of maturity of each coupon. The latest case is *Walnut* v. *Wade*, 103 U. S. Supreme Court Rep., p. 683. In that case reference was made to the previous decision by the same Court in *Aurora City* v. *West*, 7 Wallace, p. 82, as well as several other judgments of later date, all of which treated coupons as negotiable instruments, bearing interest from date of maturity.

This question was decided incidentally in the same sense by Mr. Justice Torrance in the case of *Hatton* v. *Senecal*, 6 Legal News, p. 220. Although the point does not appear to have been specially discussed in that case, the text of the judgment (p. 222) shows that the learned Judge granted the prayer of the plaintiff asking for interest on each coupon from the date when the same became due. It is to be remarked, however, that the action was not against the company, but against a person who unlawfully retained the debentures and coupons, and thereby prevented the plaintiff from making a formal demand for payment of the coupons as they fell due. This case is now in appeal.

We remember that the same question was raised some years ago in the Superior Court in a case of *Macdougall* v. *Montreal Warehousing Co.*, of which a short note will be found in 3 Legal News, p. 64. Mr. Justice Mackay in that case did not think that our law sustains the demand for interest where the debtor is not put *in mora*.

THE MONTREAL COURT HOUSE.

We are glad that Mr. Justice Johnson, in some pointed remarks, on the 30th ult., has drawn attention to the disgraceful condition of the Court House in Montreal. The bulk of the judicial business of the Province is transacted in this building, and a golden rain of fees extracted from the pockets of suitors falls upon the thirsty provincial exchequer, yet the accommodation afforded to the judges and to the bar is as remote from what health and convenience require as can possibly be conceived. The atmosphere within the building during the month of November was loathsome and oppressive to a degree which we have never known paralleled during an experience of nearly a quarter of a century. This is due partly to the holding of the Criminal Court, the Circuit Court, and the Election Courts under the same roof. Chief Justice Dorion drew attention to this grave inconvenience some months ago (see p. 193 of this volume). The Criminal Court, with the Police and Session Courts, and probably the Circuit Court, should be transferred to a detached building, and this would leave space enough for the Superior Courts for twenty years to come. Apart from this overcrowding, we suffer from the ignorance or stupidity of those in charge of the building. A little more attention to ventilation would do much to diminish the evil effects of the poisonous atmosphere. We have a strong impression that the exhaustion of Court House work is due as much or more to the foul air breathed there as to the intellectual fatigue actually undergone. It is to be hoped that the Council of the Bar will follow up the suggestion of the Judges, but it will take a great many knocks from the judicial and legal hammers to drive the nail home.

MALICIOUS PROSECUTION OF SUIT.

The *Albany Law Journal* (Vol. 28, p. 304) has collated some authorities on this question, (*ante*, p. 378) which may be interesting. It refers to *Closson* v. *Staples*, 42 Vt. 209; S. C., 1

Am. Rep. 316, and adds: Counsel also cited *Page* v. *Cushing*, 38 Mo. 523; *Cox* v. *Taylor's Adm'r*, 10 B. Monr. 17. Cooley approves the present doctrine, Torts, 187, 188. Underhill (Torts, 99) lays down the same doctrine. Mr. Moak considers his definition defective because it "does not include an ordinary civil suit," and cites Cooley on Torts, 180; but on examination it will be found that Judge Cooley limits his remarks at that place to criminal proceedings (p. 181), and afterwards says: "There is much good reason in what has been said in a Pennsylvania case"—*Mayer* v. *Walter*, *supra*—"that 'if the person be not arrested, or his property seized, it is unimportant how futile and unfounded the action might be; as the plaintiff, in consideration of law, is punished by the payment of costs.' If every suit may be retried on allegation of malice, the evil would be intolerable, and the malice in each subsequent suit would be likely to be greater than in the first."

To the same effect, in *Potts* v. *Imlay*, *supra*, the court said: "The courts of law are open to every citizen, and he may sue, *toties quoties*, upon the penalty of lawful costs only. These are considered as a sufficient compensation for the mere expenses of the defendant in his defence. They are given to him for this purpose, and he cannot rise up in a court of justice and say the Legislature have not given him enough." "Merely for the expenses of a civil suit, however malicious and however groundless, this action does not lie, nor ever did so far as I can find, at any period of our judicial history. It must be attended, besides ordinary expenses, with other special grievance or damage, not necessarily incident to a defence, but superadded to it by the malice and contrivance of the defendant; and of these an arrest seems to be the only one spoken of in our books."

And in *McNamee* v. *Mink*, 49 Md. 122, it was held that an action is not maintainable for a false and malicious prosecution of an ordinary action of ejectment wherein the plaintiff failed to recover all that he claimed, and that such action is generally maintainable only where there has been an alleged malicious arrest of the person, or a groundless and malicious seizure of property, or the false and malicious placing the plaintiff in bankruptcy, or the like. The court said: "It is true, a party may be held liable for a false and malicious prosecution of either a criminal or civil proceeding; but when it has been attempted to hold a party liable for the prosecution of a civil proceeding, it has generally been in cases where there has been an alleged malicious arrest of the person, as in the case of *Turner* v. *Walker*, 3 Gill & Johns. 377, or a groundless and malicious seizure of property, or the false and malicious placing the plaintiff in bankruptcy, or the like. In the case of *Goslin* v. *Wilcox*, 2 Wils. 302, which was an action for a malicious prosecution of a civil proceeding wherein the party was arrested, it was said by Lord Camden, C.J., that 'there are no cases in the old books, of actions for suing where the plaintiff had no cause of action; but of late years, when a man is maliciously held to bail, where nothing is owing, or when he is maliciously arrested for a great deal more than is due, this action has been held to lie, because the costs in the cause are not sufficient satisfaction for imprisoning a man unjustly, and putting him to the difficulty of getting bail for a larger sum than is due.' But there is a clear and well defined distinction between the actions for a false and malicious prosecution of a civil proceeding, and a false and malicious prosecution of a criminal proceeding. This distinction is stated in 1 Bac. Abr., tit. Action on the Case (H) page 141, where it is said: 'But it must be observed, that there is a great difference between a false and malicious prosecution by way of indictment, and bringing a civil action; for in the latter, the plaintiff asserts a right, and shall be amerced *pro falso clamore*; also the defendant is entitled to his costs; and therefore for commencing such an action, though without sufficient grounds, no action on the case lies.' For this the author cites Salk. 14; 3 Lev. 210; Hob. 266; 3 Leon. 138 and Cro. Jac. 432. But if the plaintiff declares that he has been falsely and maliciously arrested, or that by reason of a false claim maliciously asserted by the defendant, he was required to give bail, and upon failure he was detained in custody, or his property was attached, there the action lies, because of the special damage sustained by the plaintiff. It is not enough however for the plaintiff to declare generally that the defendant brought an action against him *ex malitia et sine causa*, *per quod* he put him to great charge, etc.; but he must allege and show the grievance specially.

Savil v. *Roberts*, 1 Salk. 13, 14 ; S. C., Ld. Raym. 374; *Goslin* v. *Wilcox*, 2 Wils. 305 and 306; Add. on Torts (3d Eng. ed.), 599; 4 Rob. Prac. 670; 671. Otherwise, parties would be constantly involved in litigation, trying over cases that may have failed, upon the mere allegation of false and malicious prosecution."

On the other hand, *Whipple* v. *Fuller*, 11 Conn. 581, it was held that if an action is brought and prosecuted maliciously and without probable cause, so that the defendant suffers damage, an action of malicious prosecution lies, although there was no arrest nor attachment.

That doctrine and decision were followed in *Woods* v. *Finnell*, 13 Bush, 628. The court said: "After the statute giving costs to the defendant, it was held by the common-law courts that no action could be maintained on account of the institution and prosecution of a civil action without probable cause, and therefore no action could lie for a vexatious ejectment. In all such cases the plaintiff must have gone beyond the proper remedy for the enforcement of his claim, such as procuring an illegal order of arrest, or requiring excessive bail before the action could be maintained. This entire doctrine is based on the idea that the plaintiff bringing the action is sufficiently punished, and the defendant fully recompensed by the statute requiring the plaintiff to pay all the costs. We perceive no good reason for following this rule, and denying to the defendant a remedy when his damages exceed the ordinary costs of the action. The fact that a plaintiff has been subjected to the payment of costs *pro falso clamore*, is no recompense to the defendant when the latter has, by reason of the malicious proceeding on the part of the plaintiff, sustained damage. In cases where the plaintiff has mistaken his action, or been nonsuited, or where, by reason of some imaginary claim, he has seen proper to sue the defendant, it is not pretended that any action for damages can be maintained; but where the claim is not only false, but the action is prompted alone by malice and without any probable cause, the defendant's right of recovery, for the expenses incurred and damages sustained, should be as fully recognized as if his property had been attached or his body taken charge of by the sheriff. While the damages may be less in the one case than the other the legal right exists and some remedy should be afforded. If the facts alleged in these petitions are true, and they must be so treated on demurrer, it would be a singular system of jurisprudence that would admit the wrong and still withhold the remedy. * * * Following the doctrine of the common law, *that for every injury there is a remedy*, we see no reason for denying a remedy to the plaintiffs in each of these cases; and where a party seeks a judicial tribunal for the purpose alone of gratifying his malice he should be made to recompense the party injured for the damages actually sustained, and the court should see that a remedy is afforded for that purpose."

The same doctrine was adopted in *Marbourg* v. *Smith*, 11 Kans. 554, where the malicious prosecution was for slander. The court said: "We suppose the only question of law arising upon the last assignment of error is, whether an action for malicious prosecution can be maintained in a case like the one at bar where neither the person nor property was seized nor bail nor security required, and the ordinary costs of defending the alleged malicious prosecution have already been allowed. Our opinion upon this question has already been foreshadowed. We suppose that an action for malicious prosecution can be maintained in any case where a malicious prosecution, without probable cause, has in fact been had and determined, and the defendant in such prosecution has sustained damage over and above his taxable costs in the case. *Whipple* v. *Fuller*, 11 Conn. 581; *Classon* v. *Staple*, 42 Vt. 209; S.C., 1 Am. Rep. 316. *Pangburn* v. *Ball*, 1 Wend. 345. At common law the defendant in such a case always has a remedy. Originally it was an action for malicious prosecution. Subsequently it was amercement of the plaintiff *pro falso clamore*. But now and in this State, as amercement is abolished, the defendant must return to his original remedy of malicious prosecution. It is an old maxim that there can be no legal right without a remedy. And the legal right in such a case has always been recognized. Indeed, it would be strange if the defendants in the case we have heretofore supposed while discussing the second and third assignments of errors should have no remedy."

In *Classon* v. *Staple*, *supra*, the court say: "But where the damages sustained by the

defendant in defending a suit maliciously prosecuted without reasonable or probable cause exceed the costs obtained by him, he has and of right should have a remedy by action on the case."

It seems that the doctrine of the principal case is heavily overborne by the weight of modern authority.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 19, 1883.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.

PANGMAN, Appellant, and BUCHANAN, Respondent.

Procedure—Contestation of report of distribution—Security in Appeal.

On an appeal from a judgment dismissing the contestation of a report of distribution, the contestant is obliged to give security for costs only.

The appellant, creditor collocated, contested the privilege of the respondent, another collocated creditor. The contestation was dismissed in the Court below. He now appealed and gave security for costs only, fixed by the prothonotary at $150.

The respondent moved to reject the appeal, because the security was insufficient.

The COURT dismissed the motion, but without costs, because the word damages had been struck out of the security bond.

De Bellefeuille & Bonin for appellant.

Archambault & Archambault for respondent.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

JOHNSON, TORRANCE, RAINVILLE, JJ.

DESROSIERS v. THE MONTREAL, PORTLAND & BOSTON RY. CO.

Coupons of Railway Bonds—Interest.

Interest runs on the interest coupons of railway debentures from the dates on which they respectively fall due, without the necessity of putting the debtor en demeure.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Doherty, J., July 5, 1883.

JOHNSON, J. The only question here (and a sufficiently important one) is whether the coupons, representing interest on certain railway debentures—themselves bear interest without a demand for payment. Judgment was given for the amount of the coupons, but without interest, and it is the latter part of this judgment, refusing the $513 interest accrued since the coupons became due, that is now before us. It is said for the defendant that the coupons themselves represent interest on the bonds. That may be; but they are nevertheless, each of them, a negotiable instrument payable on a certain day which has elapsed; and there can be no doubt as to our own law applicable to such facts. Art. 1069 C. C. puts the debtor *in mora* by the sole expiration of the term of payment; and if he had any defence to make, it could only be, under Art. 2323, by showing that he had the funds ready. I am told that two cases have already been decided in this sense by this Court; but I am not acquainted with them. Daniel on Negotiable Instruments, Vol. 2, Nos. 1490, 1493, 1500, 1505, 1513, and 1514, cited at the bar, place the matter beyond doubt, and the error of the judgment complained of arose from taking the text of a digest as law, while the cases relied on in the digest were the other way. We therefore reverse the latter part of this judgment, and allow the interest since the date of the maturity of these instruments.

Judgment reversed.

Béique & Co., for plaintiff.

Lonergan, for defendant.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

TORRANCE, DOHERTY & RAINVILLE, JJ.

MCDONALD v. DILLON.

Prescription—Loan—Evidence.

The five years' prescription does not apply to a loan not of a commercial nature. If the bon or note given in acknowledgment of such loan be prescribed, it cannot serve as proof of the debt, but the claim may nevertheless be established by other evidence.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Taschereau, J., Sept. 7, 1883, (6 Legal News, p. 291).

TORRANCE, J. This is an action to recover a loan of $100 made to the defendant in 1867.

Defendant denied the loan, and alleged that the only claim which the plaintiff could have against him was for a *bon* of date 26th November, 1867, which was prescribed. The plea was overruled. The proof was that the defendant had borrowed the money. The authorities are clear that the prescription would not apply to the loan. The leading case is *Wishaw & Gilmour*, 6 L. C. J. 319, and the last case was that of *Robitaille* v. *Dénéchaud*, 5 Q. L. R. 238, where the earlier cases are cited.

Judgment confirmed.

D. E. Bowie for plaintiff.
J. L. Morris, counsel.
Duhamel & Rainville for defendant.

SUPERIOR COURT.

MONTREAL, November 30, 1883.

Before JOHNSON, J.

BROUSSEAU v. SEYBOLD *et al.*

Capias—Affidavit—"Intent to defraud"—Probable cause.

Held, following Shaw v. *McKenzie*, (6 *Supreme Court Rep.* 181), *that the fact that the debtor is leaving the province is not of itself evidence of an intent to defraud, but the affidavit for capias must contain reasons sufficient to satisfy the court that the plaintiff had reasonable and probable cause to believe that the debtor was actually about to leave with a fraudulent intent. If sufficient reasons are not set forth and proved, and the capias is shown to have issued improvidently, the defendant is entitled to damages.*

PER CURIAM. The well-worn and ever recurring question as to what is sufficient probable cause for arresting a debtor about to leave the Province without paying his creditor is once more presented in this case. I decline to be for ever repeating what I have so often said in these cases. I shall merely observe that the law, as I understand it to be now settled upon this point by the more recent decisions is not what it was under the old 25 Geo. III.,—a law which enables creditors to keep their debtors within the jurisdiction of the Court, irrespectively of their means to pay, or of their honest or dishonest motives for leaving their creditors in the lurch; but it is a law which, since the passing of the 12 Vic., c. 41, requires, before you can arrest your debtor, that there should be an "intent to defraud" on the part of the debtor leaving. I refer simply on this head to the well known cases of *Hurtubise* v. *Bourret*, and *Henderson* v. *Duggan*. What is, and what is not, an intent to defraud is a question of fact which will of course present itself differently to different minds. In the case of *Shaw* v. *McKenzie* there could be no doubt of the trickery and dishonesty of the debtor in postponing wantonly and indefinitely the payment of his debt, which seemed to me to imply not only a clear intent to defraud; but also something worse—an intent to injure and embarrass, and possibly to ruin—yet those circumstances, though beyond doubt of themselves, were subsequently held by better judges of commercial uprightness than I pretend to be—not to constitute the "intent to defraud." So that we are brought down clearly to the point of saying that you cannot arrest a man who is leaving the country merely because he has not the means to pay you; nor yet because he is tricky and dishonest, or postpones or evades payment; nor yet because the plain consequence of his conduct is to prevent you from ever getting a half-penny of your debt, as far as can be reasonably foreseen; you can't touch him so long as there is a distant possibility of his return, (of which he alone is the arbiter); you can't say there is an "intent to defraud," as long as he can reply, (truly or not does not matter), that he will get rich some day, and come back and pay you. Now, I don't say that this is my individual opinion—on the contrary, it is the reverse of my individual opinion; but it is incontestibly the doctrine resulting from the decisions of *Hurtubise* v. *Bourret*, *Henderson* v. *Duggan*, and *Shaw* v. *McKenzie*. I concur, of course, with these cases in saying there must be the "intent to defraud"; but I fear it is too late in the day for me to alter my notions of what is fraud and what is plain dealing. I feel the more difficulty in yielding to the modern notions of "intent to defraud," when I refer to such cases (both of them since the passing of the 12 Vic., c. 41,) as *Wilson* v. *Reid*, and *Berry* v. *Dixon*, reported in 4 L.C.R., where the debtors were seafaring men going to leave in their ships, and that fact alone was held sufficient evidence of fraudulent intention. In both of those cases the question was as to the sufficiency of the affidavit. The fact was the going over the sea: and in both, that fact alone

was held sufficient evidence of the intent. In the last case, Caron, J., said: "It is discretionary with the judge to say whether the affidavit "contains sufficient evidence of a fraudulent intention. I am of opinion there is enough to "establish it. This is a commercial case, and "the discretionary power of the Court ought to "be exercised for the protection of trade." In the same case Chief Justice Duval said, although he also laid stress on the fact of the debtor being a stranger without property in the country, and who was going to leave without any certainty of his ever returning,—"In one word, either "the defendant has means of paying, or he has "not. In either case, he commits a fraud when "he refuses to pay. If he has the money, it is "a fraud to refuse payment; if not, he has got "goods under a promise to pay which he cannot "fulfil, and he is going to leave the Province "without giving security." I admit there is a sound distinction to be taken, as to the intent to defraud, between persons who have property in the country, and persons who have not. I don't mean to say that the law (as I once heard it put) makes an invidious distinction between rich and poor, but it certainly sees and applies a distinction of common sense between a man who has thousands of pounds worth of property in this country to pay all his debts ten times over, and one who has nothing—as regards their right to leave the jurisdiction, and whatever it may say in the case of the poor man, it reasonably concludes that mere absence can't defraud a man's creditors if he leaves behind him plenty of means to pay; but nothing of that sort applies in this case, or applied in the case of *Shaw* v. *McKenzie*. If a man leaving no property behind him to pay his debts, says to his creditor, I am going to leave the country, and I will pay you or not just as, and when, I choose, it has been said that it would not show an intent to defraud; certainly it is not an avowal of such intent in so many words. He does not say, I am going to defraud you; but it is an avowal that he intends to exercise the option of defrauding you or not at his pleasure, and if he can do that under the law, and escape arrest, the law would seem to require amendment. These are the principles which have always guided me in endeavoring to ascertain the intent to defraud, which must be alleged and reasonable grounds shown for it—before arresting a debtor who is leaving the country. But I should only be doing an injury to the defendant here if I acted on my individual views against the prevalent notions as expressed in the cases of *Hurtubise* v. *Bourret*, *Henderson* v. *Duggan*, and *Shaw* v. *McKenzie*. Therefore, I apply the law, as I find it in those decisions, to the present case; and upon the evidence I say it appears that the debtor, the present plaintiff, was arrested. The affidavit insufficiently alleged the intent to defraud; and he was discharged. The intent to defraud, if it exists, of course could be shown now under the defendant's plea, which says he had probable cause for issuing the capias—whether he sufficiently alleged it in his affidavit or not; but under the decisions I am bound by, the intent is not sufficiently shown. There is only the intent to leave, and to take upon himself the duty of saying whether he would ever come back, or ever pay his debts: and this, we have seen, is not sufficient under the recent cases. When it comes to damages, however, the Court has something to say. This man was arrested and went to jail, and was liberated on his petition; but he cannot put forward the length of his incarceration—which was of his own choosing—before he petitioned to get out, as an aggravation of damage. The conduct of this debtor towards his creditor was as dishonest as it well could be, (I say it of course subject to correction). I only mean to speak of what I consider honesty. He ought not to make money out of a creditor whom he cannot or will not pay; but there is the legal cause of action according to the decisions. There is the arrest, without the proof of intent to defraud—which proof the defendant took upon himself by his plea; and estimating the damages, as a jury would, I give $20 with costs of action as brought.

Judgment for plaintiff.

Augé & Lafortune, for the plaintiff.

Church, Chapleau, Hall & Atwater, for the defendants.

CIRCUIT COURT.

MONTREAL, November, 1883.

Before RAINVILLE, J.

THE VICTORIA MUTUAL FIRE INSURANCE COMPANY v. MULLIN.

Mutual Insurance Company—Insurance Act of 1877.

The action was brought to recover the amount of assessment due upon a premium note.

The defendant pleaded that since the passing of the Dominion Insurance Act of 1877, Mutual Fire Insurance Companies having their head office in the Province of Ontario had no right to do business in the Province of Quebec.

The COURT held that the Company plaintiff, having its head quarters in the City of Hamilton, Ontario, and doing business in the Province of Quebec previous to 1877, had a right to do business in this Province since. The action was therefore maintained.

W. S. Walker, for plaintiff.

Pagnuelo & St. Jean, for defendant.

THE MONTREAL COURT HOUSE.

On taking his seat on the bench, on the 30th November, Hon. Mr. Justice Johnson remarked: It has been mentioned among the members of the bench, and I think it will be recognized as a fact by the profession, that there is a great want of accommodation in the Court House. During the present month it occurred upon more than one occasion that I was called upon by gentlemen of the bar to hear certain cases, the jndge sitting at *enquête* being otherwise occupied. It happened that I had nothing to do, that is to say, with the exception of *délibérés* from which we are never entirely free—and I was ready and desirous to hear these cases in the discharge of my duty, but there was not a hole or corner of the building in which I could sit. Now we want the Government to provide us with one or two additional rooms. It is most desirable that cases should be proceeded with when there are judges at liberty to sit, but it is impossible under the present conditions of the building. We want the corporation of the bar to ask the Government to give us the accommodation so necessary to the despatch of business. There is one thing that ought not to be lost sight of—the discipline and order of the Court House are at the present moment of the lowest description. The entrance is through a burrow, stinking of soup. Then one meets a crowd—I don't wish to say anything offensive—but it is often a mere rabble, in attendance on the Circuit Court: they spit, they talk, they make a noise. One of the first things to be done is to get rid of the Circuit Court—to get it out of the building altogether and give us the room which is now occupied by that Court. The remarks about the Circuit Court apply also to the room used for *enquêtes*. If this work could be transferred to another building it would facilitate us very much. As we are at present situated the public can hardly get justice. It is not fair—I will not say to the Judges—but to a respectable profession, that they should have to struggle with a rabble in order to get up the staircase, and then have to witness the scenes which are transpiring in the Circuit Court and in the *enquête* room. I trust some plan may be devised, either by annexing the adjoining building, and having a covered way between, or by some other method, for giving us the additional accommodation so urgently needed.

PECULIAR LEGISLATION.

Physicians in Kansas must be careful how they prescribe beer, and how they take their own prescriptions. *State* v. *Curtis*, 29 Kans. 384, was a conviction under the statute for prescribing intoxicating liquors, to wit: two bottles of beer, in a case where there was no actual sickness and no necessity for such liquors. The court said: "It is testified that the witness Blau, for whom the prescription was made went to the defendant and claimed that he was sick. The defendant made an examination, and prescribed the beer. The defendant testified that he acted in good faith, believed that the beer was the proper remedy, and so believing, prescribed it. Now it seems to us that upon the testimony the only real question was the good faith of the defendant; and in respect to this it appears that the witness Blau had been in the habit of drinking beer in moderate quantities for several years; that he had had none for many days, and that he went to the defendant and told him that he wanted him to prescribe two bottles of beer, and the defendant gave him the prescription. He told the defendant wherein he was feeling badly; that he thought he needed beer, and the defendant agreed to it. After getting the beer he took the bottle back to the office of the defendant, and was invited by him to go and eat some oysters. He accepted the invitation, and the two went to a bakery near by and got some oysters, taking with them two bottles of beer, of which each drank one. Whether these bottles were the two which he obtained on this prescription, or

two furnished by the defendant, may not be certain; for it appears that two or three hours before getting this beer he had taken a prescription from defendant to the same place and obtained for him four bottles of beer, and it may be that the beer which was drunk was a part of the beer then obtained. It also appears that the defendant and the witness after eating the oysters and drinking the beer, attended a party, remained there awhile, and then returned to the office of the defendant and stayed there until ten or eleven o'clock, and then the witness went home. It does not appear that the witness was confined to his house at any time, or disabled from attending to his ordinary business. Upon this testimony, as we have said, we think the only substantial question for the jury was whether the defendant was acting in good faith, and made the prescription in the honest belief that the witness was sick and needed the remedy prescribed, or was seeking simply to enable a habitual drinker to continue his regular potations. We do not think that it can be held that upon this testimony the jury were bound to acquit."—*Albany Law Journal.*

GENERAL NOTES.

A divorce suit was brought recently in the Shasta Court, the complaint made out, service acknowledged, and decree of divorce entered up, all within a space of two hours. Beats Chicago.—*Pacific Coast Law Journal.*

The Law Times (London) says: "It is satisfactory to know that his American observations have not inspired Lord Coleridge with any desire for further drastic legal reforms. The Master of the Rolls announced at the Mansion House that nothing of the sort is to be immediately apprehended. Great as are the arrears in the English Court of Appeal, he said those in America are three times greater. It may therefore be hoped that procedure will be left alone for the present."

APPOINTMENTS.—The Honorable Featherston Osler, a Judge of the Supreme Court of Judicature of Ontario, a Justice of the High Court of Justice for Ontario and a member of the Common Pleas Division of the said High Court, has been gazetted (Nov. 17) to be a Judge of the Court of Appeal for Ontario with the title of Justice of Appeal. Mr. Justice Osler's place has been filled by the appointment of Mr. John E. Rose, Q. C. The Hon. John O'Connor, Q. C., has been appointed one of the Commissioners to consolidate and revise the Statutes of Canada, *vice* James Cockburn, Esq., deceased. C. R. Horne, Judge of the county court of the county of Essex, has been appointed Surrogate Judge of the Maritime Court of Ontario.

It is curious to note (says a well informed correspondent in Newfoundland) how the government of the eastern coast of Labrador has been tossed about between Canada and Newfoundland. While Canada was held by France, extensive fisheries were carried on by the French on the Labrador Coast, near the Straits of Belle Isle, to which they attached great importance. After the conquest of Canada by Britain, a company established in Quebec obtained a monopoly of these fisheries which lasted for sixty years. Until 1763 the fisheries of the whole southern and eastern shores of Labrador were placed under the Government of Quebec, but at that date the east coast of Labrador was annexed to Newfoundland. Ten years later, in 1773, it was considered advisable to restore this portion of Labrador to Canada, owing to difficulties arising out of grants made to a number of persons under the rule of the French. In 1809, it was again transferred to the jurisdiction of Newfoundland under which it has remained ever since. A special court of civil and criminal jurisdiction, called "The Court of Labrador" and presided over by one judge, appointed by the Governor in Council, secures the administration of justice.

An interesting case has been decided in the Brooklyn, N. Y., courts. Mr. James claims to be a spiritual medium, and was backed in his pretentions by Mr. Jonathan M. Roberts, the publisher of a journal called *Mind and Matter*. A *séance* was held, at which Messrs. W. R. and T. S. Tice were present. Mr. James was about entering the cabinet, when the brothers Tice seized him by the lappels of his coat and out tumbled wigs, beards, masks, white drapery, and angels' wings. The brothers Tice denounced the medium as a fraud, whereupon the *Mind and Matter* published a series of libellous articles respecting the detectors of the palpable impostor. An action was brought for libel, and in the course of the trial it was contended that spirits required the medium to have a supply of earthly garments on hand out of which to manufacture heavenly vestments. These robes would be necessarily very thin, and the jury thought that the explanation partook of the same quality, and returned a verdict for the plaintiffs for $6,000.

The proceedings in an Arizona court were disturbed by a little incident the other day. The press dispatch says:—While Chief Justice French was hearing the case of *Kelsy* v. *McAtee* regarding water rights, Attorney-General Churchill and District Attorney Ruch had an excited discussion and came to blows. McAtee drew a knife and rushed upon a man named Moore, aged 70, and stabbed him fatally, and then stabbed C. W. Beach, late editor of the Prescott *Miner*, in the neck. He then made a rush for the court reporter, and was about to plunge the knife into him when Beach shot him through the spinal column. Order was finally restored." Court and counsel are not likely to sleep so long as the monotony of the proceedings is relieved by playful scenes like the above. Two men murdered and one stabbed in the neck, not to mention the imminent peril of the court reporter—makes a fair record for one day. However, the court is to be congratulated on the restoration of "order."