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POLYGAMY IN THE UNITED STATES.

The case of *Reynolds* v. *The United States* involved questions of great importance, and the judgment of the United States Supreme Court is worthy of attention. The plaintiff, a member of the Mormon Church, was indicted for bigamy under section 5352, Revised Statutes, which provides that "every person having a husband or wife living, who marries another, whether married or single, in a territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than five hundred dollars, and by imprisonment for a term of not more than five years," and was found guilty. Among other questions presented to the Supreme Court by the assignments of error, was this: Should the accused have been acquitted if he married the second time because he believed it to be his religious duty? On this point the Court (WAITE, C. J.) said;—

"As to the defence of religious belief or duty.

"On the trial, the plaintiff in error, the accused, proved that at the time of his alleged second marriage he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church 'that it was the duty of male members of said church, circumstances permitting, to practise polygamy;.... that this duty was enjoined by different books which the members of said church believed to be of divine origin, and among others the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to practise polygamy by such male members of said church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come.' He also proved 'that he had received permission from the recognized authorities in said church to enter into polygamous marriages;.... that Daniel H. Wells, one having authority in said church to perform the marriage ceremony, married the said defendant, on or about the time the crime is alleged to have been committed, to some woman by the name of Schofield, and that such marriage ceremony was performed under and pursuant to the doctrines of said church.'

"Upon this proof he asked the court to instruct the jury that if they found from the evidence that he 'was married as charged—if he was married—in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be not guilty.' The request was refused, and the court did charge 'that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that it was right—under an inspiration, if you please, that it was right—deliberately married a second time, having a first wife living, the want of consciousness of evil intent—the want of understanding on his part that he was committing a crime—did not excuse him; but the law inexorably in such cases implies the criminal intent.'

"Upon this charge and refusal to charge the question is raised whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the territories, but as to the guilt of one who knowingly violates a law which has been properly enacted, if he entertains a religious belief that the law is wrong.

"Congress cannot pass a law for the government of the territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as Congressional interference is concerned. The question to be determined is whether the law now under consideration comes within this prohibition.

"The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the his-

tory of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed.

"Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects, to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784 the house of delegates of that State, having under consideration 'a bill establishing provision for teachers of the Christian religion,' postponed it until the next session, and directed that the bill be published and distributed, and that the people be requested 'to signify their opinion respecting the adoption of such a bill at the next session of assembly.'

"This brought out a determined opposition. Amongst others, Mr. Madison prepared a 'Memorial and Remonstrance,' which was widely circulated and signed, and in which he demonstrated 'that religion, or the duty we owe the Creator,' was not within the cognizance of civil government. Semple's Virginia Baptists, Appendix. At the next session the proposed bill was not only defeated, but another, 'for establishing religious freedom,' drafted by Mr. Jefferson (1 Jeff. Works, 45; 2 Howison's Hist. of Va. 298), passed. In the preamble of this act (12 Hening's Stat. 84) religious freedom is defined, and, after a recital 'that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty,' it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.' In these two sentences is found the true distinction between what properly belongs to the church and what to the state.

"In a little more than a year after the passage of this statute, the convention met which prepared the Constitution of the United States. Of this convention Mr. Jefferson was not a member, he being then absent as minister to France. As soon as he saw the draft of the Constitution proposed for adoption, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion (2 Jeff. Works, 355), but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations. 1 Jeff. Works, 79. Five of the States, while adopting the Constitution, proposed amendments. Three, New Hampshire, New York and Virginia, included in one form or another a declaration of religious freedom in the changes they desired to have made, as did also North Carolina, where the convention at first declined to ratify the Constitution until the proposed amendments were acted upon. Accordingly, at the first session of the first Congress, the amendment now under consideration was proposed, with others, by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association (8 Jeff. Works, 113), took occasion to say: 'Believing, with you, that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of the Government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between church and state. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.' Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Con-

gress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

"Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, almost exclusively a feature of the life of Asiatic and African people. At common law the second marriage was always void (2 Kent's Com. 79); and, from the earliest history of England, polygamy has been treated as an offence against society. After the establishment of the ecclesiastical courts, and until the time of James I., it was punished through the instrumentality of those tribunals, not merely because ecclesiastical rights had been violated, but because, upon the separation of the ecclesiastical courts from the civil, the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial causes and offences against the rights of marriage, just as they were for testamentary causes and the settlement of the estates of deceased persons.

"By the statute of 1 James I. chap. 11, the offence, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was, at a very early period, re-enacted, generally with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact that on Dec. 8, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended, as an amendment to the Constitution of the United States, the declaration in a bill of rights that 'all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience,' the legislature of that State substantially enacted the statute of James I., death penalty included, because, as recited in the preamble, 'it hath been doubted whether bigamy or polygamy be punishable by the laws of this Commonwealth.' 12 Hening's Stat. 691. From that day to this, we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts, and punishable with more or less severity. In the face of all this evidence it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is, nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. 2 Kent's Com. 81, note *e*. An exceptional colony of polygamists, under an exceptional leadership, may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

"In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and, while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one religiously believed that human sacrifices were a necessary part of religious worship, would it be

seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice! Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

"So here, as a law of the organization of society, under the exclusive dominion of the United States, it has been prescribed that plural marriages shall not be allowed. Can a man excuse his practices to the country because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

"A criminal intent is a necessary element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. Here the accused knew that he had been once married, and that his first wife was living. He also knew that his second marriage was forbidden by law. When, therefore, he married the second time, he is presumed to have intended to break the law. And the breaking of the law is the crime. Every act necessary to constitute the crime was knowingly done, and the crime, therefore, was knowingly committed. Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law. The only defence of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion; it was still belief, and belief only.

"In *Regina* v. *Wagstaff* (10 Cox Crim. Cases, 531), the parents of a sick child, who omitted to call in medical attendance because of their religious belief that what they did for its cure would be effective, were held not to be guilty of manslaughter, while it was said the contrary would have been the result if the child had actually been starved to death by the parents, under the notion that it was their religious duty to abstain from giving it food. But when the offence consists of a positive act, which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made. No case, we believe, can be found that has gone so far."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, March 8, 1879.

CLARK v. THE EXCHANGE BANK OF CANADA.

Action against Bank on Check.—Defence "no funds" —Production of checks by Bank at enquête— Alleged forgery—Pleading.

MACKAY, J. On the 7th January, 1879, a check for $510 was drawn by plaintiff, a broker, on the Exchange Bank; it was presented on the 8th; payment was refused, and it was protested. The present suit was to compel payment by the Bank. The plea was that there were no funds of the plaintiff in the bank on the 8th of January. The plaintiff filed a special answer, setting up the state of his account on that day, and alleging that there was a balance of $510 to his credit, which still remained unpaid, and that his check for that amount ought not to have been dishonored.

The parties filed articulations of fact and answers, without giving note of any kind that the battle would be on the genuineness or forgery of a check for $510 previously paid by the bank and charged to the plaintiff's account. Only on the 17th February, when Barton, accountant of the Bank, was being examined, did the real difficulty appear. Barton produced checks of Clark, covering the entire amount of his deposits. Among these checks was one for $510, dated Dec. 26, 1878. Clark, on sight of this check, filed his affidavit denying the genuineness of the signature. His Honor had permitted this to be done, though directly applicable to no plea. From the moment of the production of the plaintiff's affidavit, his Honor saw how much more fittingly this case would have been tried by a jury. Next best would have been trial by three *experts*, as it would have been under the French Code. A jury would have been the superior mode, because there would have been less chance of error by a majority of nine against three than of two against one. History records that the Emperor

Titus used to boast that he could imitate any person's signature, and disputes as to handwriting are usually very embarrassing; it was matter of opinion after all, and a witness could only say that it was his belief that the writing produced was that of the supposed writer. In the present case it was curious to see by what process the witness Lyman arrived at his conclusion. On the other hand, there was a man named Edwards who said it was the veritable signature of Clark. His Honor did not think he ought to send the case now to *experts*, the evidence being all before him. He took the case up as a jury would; they would consider all the evidence, listen to the arguments on both sides, and say whether in their opinion it was the veritable writing of the plaintiff. His Honor could not bring himself to hesitate. This writing was, he believed, the veritable signature of Clark, and therefore he passed judgment against him, and the action must be dismissed with costs.

Judgment: "The Court, etc.,

"Considering that plaintiff has failed to prove his allegations material of declaration; considering that the cheque he sues upon he drew against no funds; considering defendants' plea proved;

"Finally, whereas a question was raised at *enquête* of material importance in this cause, to wit: as to whether a check for $510 debited by defendants to the plaintiff, check of Dec. 26, 1878, to order of J. R. Deal, was plaintiff's check, and properly debited, the Court here, passing as a jury might upon this question, answers in favor of defendants, and pronounces said check genuine work and signature of plaintiff; and doth dismiss the said plaintiff's action with costs."

Gilman & Holton for plaintiff.

Macmaster, Hall & Greenshields for defendants.

SUPERIOR COURT.

MONTREAL, March 5, 1879.

PARENT v. SHEARER et al.

Injunction against proceeding in Court in Ontario —Meuble incorporel.

An injunction of an unusual character was asked for in this case. The plaintiff, widow of F. X. Groulx, was suing the defendant Shearer as trustee of the insolvent succession of her late husband, and the other defendant, the Sun Mutual Life Insurance Company, to annul the transfer of a policy of $2,000 on her husband's life, which Madame Groulx had transferred, before her husband's death, for the benefit of his creditors. The plaintiff joined in the suit the Insurance Company, praying that the insurance money be paid over to her. This suit was taken at Montreal, where Shearer resided.

Shearer thereupon instituted proceedings in the Court of Chancery of Ontario, to enjoin the Insurance Company from paying the amount to Madame Groulx.

The Insurance Company now prayed that Shearer be enjoined to desist from his proceedings before the Court of Chancery.

Shearer answered the petition by alleging that the rights of the parties had to be determined by the law of Ontario, where Groulx and his wife were married, and had resided, where also the insurance was effected, and Madame Groulx still lived. It was also urged that the Court had no jurisdiction.

JETTÉ, J., held that the Court had no jurisdiction. The Quebec Statute 41 Vict. c. 14, limited the issue of injunctions to the cases especially mentioned therein. Further, the *créance* resulting from the insurance was a *meuble incorporel*, and whether it were considered the property of the wife or of the succession of the husband, was governed by the law of Ontario, and would be more properly discussed in the Court of Chancery of that Province. The petition for injunction was, therefore, rejected.

Carter, Church & Chapleau for plaintiff.

Abbott, Tait, Wotherspoon & Abbott for defendant Shearer.

Bethune & Bethune for Sun Mutual Insurance Company.

SUPERIOR COURT.

MONTREAL, Feb. 22, 1879.

PERRY v. PELL.

Insolvency—Security for costs.

The defendant moved that the plaintiff, having become insolvent since the institution of the action, be held to give security for costs, under Sect. 39 of the Insolvent Act of 1875.

TORRANCE, J., said that security might be exacted from the plaintiff if he continued his action; but it appeared that since his insol-

vency he had been perfectly quiescent, and therefore, the case did not come under the statute.

Motion rejected.

Bethune & Bethune for plaintiff.
Calder for defendant.

SUPERIOR COURT.

MONTREAL, Feb. 25, 1879.

LORTIE, insolvent, EVANS, assignee, and LORTIE, petitioner.

Insolvent—Costs of obtaining discharge.

The insolvent, who had obtained his discharge from the Court after the lapse of a year, asked that the assignee be ordered to pay over to him the costs of his discharge, under s. 118 of the Insolvent Act, 1875.

The assignee answered that he was not bound to retain any money for the insolvent's discharge, and that he had obtained his own discharge.

TORRANCE, J., said that s. 118 of the Act of 1875 was amended by 40 Vict. c. 41, s. 25, the effect of which was to strike out the provision for the costs of the insolvent's discharge. This amendment became law on the 28th April, 1877, and it did not appear that the proceeding for the discharge of the insolvent began before this date, so as to take it out of the operation of the amending Act.

Petition dismissed.

Lareau & Lebeuf for insolvent.
Macmaster, Hall & Greenshields for assignee.

COURT OF REVIEW.

MONTREAL, March 31, 1879.

LORANGER, JOHNSON, TORRANCE, JJ.

[From S. C., Montreal.

LES CURÉ et MARGUILLIERS, &c., DE LA PAROISSE DE MONTREAL v. BEAUDRY.

Interpretation of Contract—Agreement to pay a sum of money when the promissor shall do something else—Conditional or absolute.

LORANGER, J. The defendant, on the 10th September, 1869, at the time of the transfer of bodies from the old cemetery to the new Cote des Neiges cemetery, entered into an agreement of exchange with the plaintiffs by which he was to pay them the sum of $75 as a balance or *soulte* when he should have erected a vault or monument on his lot in the new cemetery for the reception of the bodies of his relatives. The clauses of the agreement were as follows:

"Le présent échange est ainsi fait pour et "moyennant la soulte et retour de $75 en "argent dur, au pair, trente sols pour trente "sols, en faveur de la dite Œuvre et Fabrique, "laquelle dite somme, le dit M. François "Xavier Beaudry promet et s'oblige de payer "à la dite Œuvre et Fabrique, ou ayant droit, "lorsqu'il fera construire son charnier ou mon- "ument sur le terrain ci-dessus en premier "lieu échangé."

"Il est de plus convenu et entendu, entre "les dites parties, que la dite Œuvre et Fab- "rique devra mettre et garder les corps qui "seront exhumés du dit ancien cimetière, ap- "partenant à la famille du dit M. Frs. Xavier "Beaudry, dans le charnier du dit cimetière de "Notre-Dame de la Côte des Neiges, *d'ici à ce* "*que le dit M. François Xavier Beaudry*, ou ayant "droit, *ait fait construire un charnier* dans son "terrain qu'il a acquis par le présent échange."

In the meantime, the Fabrique undertook to keep the remains of his relatives which had been disinterred. Nine years had elapsed and the defendant had never constructed his vault. The plaintiffs had frequently requested him to do so, but without avail; and they now brought suit for the $75 and interest, and also for $19 for the keeping of the body of defendant's wife in their *charnier*. The Court below considered that the obligation was conditional, and that it did not appear that the intention was to construct the vault forthwith, and gave judgment in favor of the defendant. This Court took a different view. The obligation of the defendant to construct the vault was absolute. He was a man of means, and he stipulated that he would pay the $75 when he had constructed a vault and placed therein the remains of his family. In the meantime the bodies remained in the keeping of the plaintiffs. Was it to be supposed that they would have undertaken to keep these bodies, unless the intention of the parties by the agreement was that the vault should be constructed within a reasonable time? The Court thought not, and the judgment must be reversed.

JOHNSON, J., said the single point in the case seemed to him to be this: Was this a condi-

tional obligation or not? His first impression was in favor of defendant's pretension, but upon reflection he was convinced that this was not a conditional obligation. The defendant undertook that he would pay this money so soon as he built his vault. He never said that he would pay the money if he built the vault. Was it proper or decent that the plaintiffs should be bound to keep for ever the remains of the defendant's family? Certainly not. The obligation was evidently an absolute one, that the vault would be constructed within a reasonable time, and any other interpretation would be an impossible one. Judgment reversed; defendant condemned to pay $75 and interest, and authorizing the plaintiffs, after notice to defendant, to bury the remains in a proper manner.

The following is the judgment of the Superior Court (Rainville, J.), and that of the Court of Review:

"La cour, etc....

"Considérant que les demandeurs réclament du défendeur, la somme de $128.50, dont partie, savoir, $109.50 étant pour une soulte et les intérêts sur icelle, *ex naturâ rei*, due en vertu d'un acte d'échange intervenu entre les parties le 10 Septembre 1869;

"Considérant qu'aux termes du dit acte la soulte de $75 y stipulée, n'est payable que lorsque le défendeur fera construire son charnier ou monument sur le terrain par lui reçu en échange des demandeurs;

"Considérant qu'il est de plus stipulé au dit acte, que les demandeurs mettraient et garderaient dans leur charnier au cimetière de la Côte des Neiges, les corps qui seraient exhumés de l'ancien cimetière où était situé le terrain donné en échange aux demandeurs par le défendeur, et appartenant à sa famille, jusqu'à ce que le dit défendeur ou ayant droit, aient fait construire un charnier sur le dit terrain reçu par lui en échange des demandeurs;

"Considérant que les termes du dit contrat sont généraux et ne fixent aucun délai dans lequel le dit charnier ou monument devait être construit; qu'au contraire, les termes mêmes du dit contrat, 'jusqu'à ce que le dit Frs. Xavier 'Beaudry *ou ayant droit aient fait* construire un 'charnier,' indiquent suffisamment que le défendeur ne voulait pas fixer de terme, lequel est en conséquence conditionnel;

"Considérant que les demandeurs n'ont pas prouvé, ni fait voir par aucune circonstance que l'intention des parties était que le dit charnier devait être construit presque immédiatement; qu'il résulte, au contraire, des dispositions de l'acte et des circonstances que l'intention des parties a été que le défendeur ne serait obligé de payer la dite soulte que lorsqu'il voudrait exercer le droit de construire un charnier;

"Considérant que le défendeur se reconnait endetté envers les demandeurs en la somme de $19 pour l'usage de leur charnier, et $3.45, frais de l'action avant rapport, formant $22.45, laquelle a été offerte légalement avant le rapport de l'action et est déposée en Cour; maintient l'exception péremptoire en droit temporaire du défendeur, déclare ses offres valables, et ordonne qu'elles soient payées aux demandeurs, et déboute ces derniers du surplus de leur action, quant à présent, avec dépens."

The judgment in Review is as follows:—

"La cour, etc.....

"Considérant que par l'acte d'échange fait entre les parties le 10 Septembre 1860, le défendeur s'est engagé à payer aux demandeurs une soulte de $75 lorsqu'il ferait construire son charnier ou monument sur le terrain consacré à la sépulture du défendeur et des siens, faisant partie du cimetière catholique de Notre-Dame-des-Neiges, et donné en contre-échange par les demandeurs au défendeur;

"Considérant que par le dit acte d'échange les demandeurs se sont engagés envers le défendeur à mettre et garder les corps appartenant à la famille du défendeur, qui devaient être exhumés du terrain jusque là appartenant au défendeur dans l'autre cimetière et par ce dernier donné en échange au défendeur, dans le charnier du dit cimetière de Notre-Dame-des-Neiges, de là jusqu'à ce que le défendeur eût fait construire un charnier dans le terrain acquis des demandeurs: que d'après ces stipulations le terme du paiement de la dite soulte de $75 est resté indéterminé; mais qu'il devait être déterminé par l'intention des parties contractantes, présumable d'après les circonstances; qu'il paraît au tribunal d'après le contexte de l'acte, et de l'ensemble des faits et circonstances qui l'avaient précédé, l'ont accompagné, et devaient naturellement le suivre, que le défendeur a donné aux demandeurs de justes raisons de croire qu'il construirait, sur son nouveau ter-

rain, un charnier ou monument dans un délai raisonnable ; que c'est dans la prévision de ce fait que la stipulation trouve sa raison d'être, et qu'il est évident que si le défendeur n'eût pas paru lui donner cette interprétation, les demandeurs n'auraient pas consenti à cette stipulation, ou auraient assigné au paiement de la soulte un terme fixe et déterminé, que surtout ils n'auraient pas consenti à garder dans le charnier commun les restes de la famille du défendeur jusqu'à ce qu'il plût à ce dernier de faire un charnier sur son nouveau terrain et d'y inhumer ses parents ;

" Considérant que le délai dans lequel le défendeur devait raisonnablement faire un charnier ou monument sur son terrain pour l'inhumation de ses parents, est depuis longtemps expiré, que le défendeur interpellé et mis en demeure de le faire, a toujours, au mépris de son engagement, et sans égard à la foi de son contrat, refusé de remplir l'obligation à laquelle il avait subordonné le terme de paiement de sa soulte, et qu'il est dans les attributions et du devoir du tribunal de fixer ce terme, ou de le déclarer expiré ;

" Considérant que ce terme est depuis longtemps expiré, que les demandeurs ne doivent pas souffrir des retards non justifiés du défendeur, à se soumettre aux stipulations du dit acte d'échange, et que notamment ils sont aujourd'hui en droit, et l'étaient à l'époque de l'institution de l'action, de réclamer le paiement de la soulte, et d'inhumer dans le terrain du défendeur, les corps des parents de ce dernier, qui sont jusqu'ici déposés dans le charnier commun ;

" Considérant enfin que dans le jugement qui a donné au contrat une interprétation contraire à celle ci-haut énoncée, qui a déclaré qu'il était facultatif au défendeur, de construire ou de ne pas construire sur son terrain, le monument en question, que jusqu'à telle construction les demandeurs ne pourront pas réclamer le prix de la soulte, et devront garder dans le charnier commun, les corps de la famille du défendeur, lequel jugement a, partant, débouté les demandeurs de leur demande, moins la somme de $19, offerte par le défendeur pour la garde des restes de son épouse, dans le charnier commun, il y a erreur et mal jugé, a infirmé et cassé, et infirme et casse pour autant, le dit jugement du 30 Novembre 1878, et faisant ce que le premier jugement eût dû faire, a autorisé et autorise les demandeurs, après avis raisonnable donné au défendeur, à transporter suivant les formes ordinaires, les restes de la famille du défendeur, déposés dans le charnier commun du cimetière de Notre-Dame-des-Neiges, sur le terrain du défendeur, situé dans le dit cimetière, et de les inhumer dans des cercueils ou tombeaux convenables, le tout à leurs frais ; a condamné le défendeur à payer aux demandeurs en sus de l'adjudication déjà portée sur les offres et actes de la défense, la dite somme de $75 avec intérêt *ex naturâ rei*, à compter du 17 Mai 1872, étant pour cinq ans échus lors de l'institution de l'action, avec dépens des deux instances, c'est-à-dire, tant ceux encourus par les demandeurs, sur la demande originaire, que sur la présente instance en révision."

Beïque & Choquet, for plaintiffs.
A. Dalbec, for defendant.

RECENT ENGLISH DECISIONS.

Sale.—Shares were sold by auction August 1. Under the conditions of sale, twenty per cent of the price was paid down. The transfer was to be made August 29, and the balance paid, " when and where the purchases are to be completed, and in this respect time shall be of the essence of the contract." If a purchaser failed to " complete the purchase on August 29," the deposit money was to be forfeited. August 28, a dividend was declared. *Held*, to belong to the purchaser.—*Black* v. *Homersham*, 4 Ex. 24.

Salvage.—The *Cleopatra*, built for conveying the obelisk Cleopatra's Needle from Egypt to London, was abandoned in the Bay of Biscay, and was found on her beam ends by the steamship *Fitzmaurice*, and towed safely into the port of Ferrol. The court, by consent, fixed the value of the property saved at £25,000 and awarded £2,000 salvage, giving £1,200 to the owner, £250 to the master, and the balance to the crew, according to their rank and their services as salvors.—*The Cleopatra*, 3 P. D. 145.

Set-off.—H., by will dated in 1862, left E. property. H. died in 1875. A week before her death, E. had been adjudged bankrupt. He owed H. a debt contracted in 1869. *Held*, that there could be no set-off, but the whole of the legacy must be turned over to the trustee in bankruptcy.—*In re Hodgson*, *Hodgson* v. *Fox*, 9 Ch. 673.