THE LEGAL NEWS.

Vol. IX. MONTREAL, JULY 17, 1886. No. 29.

Editor.—James Kirby, D.C.L., LL.D., Advocate.
Notre Dame Street, (Royal Insurance Chambers, opposite the Seminary.)

CONTENTS OF Vol. IX., No. 29.

Montreal:
GAZETTE PRINTING COMPANY
1886.

The Legal News.

VOL. IX. JULY 17, 1886. No. 29.

An interesting question is presented by the recent case of *Taillon* v. *Poulin*, reported and commented upon in the communication of a Quebec correspondent in the present issue. It is difficult to imagine that the legislature contemplated that a provision, framed in a merciful spirit, to prevent the sale of an immoveable with heavy costs for a debt of forty dollars or under, might be converted into an occasion for making double costs. As to the policy of the exception made by the law with reference to judgments under forty dollars, we are somewhat doubtful. It does not seem to be very important, and might be abolished, perhaps, without much hardship. Its existence may possibly in some cases give rise to actual injustice. Suppose a person with a small property has several creditors much poorer than himself, for sums of twenty-five or thirty dollars each. On what principle should he be allowed to retain his homestead at the expense of other people who are less favoured by fortune?

The recent general elections in Great Britain and Ireland brought out lawyer candidates in great numbers. It is stated that 248 in all presented themselves, of whom a large number aspired to represent "the masses" under the leadership of Mr. Gladstone. A curious incident occurred in Edinburgh. Two candidates, both bearing the name of Robert Wallace, both barristers-at-law from London, and both enthusiastic supporters of Mr. Gladstone, presented themselves, one in East Edinburgh and the other in the Western Division.

Business in the United States Supreme Court is so greatly in arrear that the list of our Appeal Court, which is so constantly deplored, looks quite insignificant in comparison. The cases undisposed of by the U. S. Supreme Court have increased from 851 at the close of last year's sittings, to 900 at the close of the term which has just adjourned.

ABANDONMENT OF PROPERTY—PROTHONOTARIES' FEES.

Notice is given, under the authority of article 29 of the Code of Civil Procedure and of chapter 93 of the consolidated statutes for Lower Canada, that the fees hereafter determined be in future paid to prothonotaries of the Superior Court for the Province of Quebec, so soon as a copy of the present order in council shall have been published in the *Official Gazette*, and shall have been recorded in the registers of the said Superior Court, in the several districts of this Province respectively, to wit:

Upon proceedings and things done in virtue of the act respecting the abandonment of property (48 Vict., ch. 22), and described in the following tariff:

1. Upon the production of a demand of abandonment	$0 50
2. Upon the production of the balance sheet by the debtor and the appointment of a provisional guardian	2 00
3. For the attendance of the prothonotary at the meeting appointing a curator	2 00
4. Upon the production of a petition contesting a demand for abandonment of property or the balance sheet furnished by the debtor	4 00
5. Upon every answer in writing given to such contestation	2 00
6. Upon every petition or demand not specially mentioned above	1 00
7. Upon every contestation of dividend sheets prepared by the curator	2 50
8. Upon every answer in writing given to any motion, petition or contestation	1 00
9. Upon every motion, rule, ordonnance, copy of rule, judgment, order, commission to examine witnesses, and other incidental proceedings not specified above, the same fees as those required by the tariff of the Superior Court in first class actions.	

HYPOTHECARY ACTIONS.

[For "The Legal News."]

COURT OF REVIEW.

Quebec, May 31, 1886.

Present: Casault, Caron, Andrews, J J.

Taillon v. Poulin.

In this case, the plaintiff, having obtained, in the Circuit Court, Quebec, a judgment against the defendant in this cause for $16, amount of a promissory note, with interest and costs (the costs amounting to $4.34), caused an authentic copy of that judgment, with an authentic certificate, on that copy of judgment, of the taxed costs, to be enregistered, with the notice required by art. 2121 of the C. C., against that defendant's immovables.

The plaintiff then brought, upon *that* judgment, in the Superior Court, Quebec, a suit, which he termed a *hypothecary* action, for $20.34, against *that* defendant.

On the 20th March, 1886, the Superior Court, held by Hon. Chief Justice Stuart, at Quebec, dismissed that suit with the following *motivé*:—

"Considering that the present action, styled "a *hypothecary* action, is based on a judgment "of the Circuit Court for this district, of the "24th December last, in favor of the present "plaintiff, against the present defendant, for "$16, in an action on a promissory note, with "interest and costs;

"Considering that, by law, judgments for "sums not exceeding $40, can *only* be exe-"cuted upon the "movable" property of the "debtor, *except* in the case of *hypothecary ac-"tions*, or of rents created under "The Seig-"niorial Act of 1854," in which cases the court "may issue execution against the immovable "charged; and that the said judgment does "not fall within the cases mentioned, wherein "the said immovables could be seized and "sold in satisfaction of such judgment;

"Considering that the alleged enregistra-"tion of the mortgage, flowing from the said "judgment, did not give it more inherent "potency than the mere rendering of the "judgment gave it; and that there exists a "legal disability to enforce the said judg-"ment against the immovable property of "the defendant;

"Considering that the present action is not "a hypothecary action against a *tiers-déten-"teur*, nor does it "conclude" as such actions "should do; but that it is a special action "*in factum*, praying that, in default of the "defendant paying to the plaintiff, within 15 "days from the service on him of the judg-"ment in this cause, the "amount" of the "judgment of the said Circuit Court, the "plaintiff be allowed to issue a writ of execu-"tion against the immovables of the defend-"ant;

"Considering that no such judgment can "be rendered, so long as the law exempts "from seizure the immovables of a defend-"ant, condemned to pay a sum not exceed-"ing $40;

"Considering that no such action as the "present exists in law,—doth hereby dismiss "the same with costs."

The plaintiff inscribed in review from that judgment; and, on the 31st May, 1886, the following judgment, confirming that judgment, was rendered by the Court of Review, composed of Justices Casault, Caron and Andrews.

Hon. Mr. Justice Andrews was of opinion that the judgment appealed from should be confirmed, for the *reasons* "assigned by the court below," and thus expressed his dissent from the *motivé*, as given by the other two judges:—

[After stating the facts of the case]:—"It will, I presume, not be disputed that, as a general rule, a judgment cannot form the basis of a new action for the same debt against the same debtor. *Non bis in idem.* It was this rule which caused many to doubt whether, after the abolition of the *capias ad satisfaciendum*, a judgment debtor about to abscond could be arrested on a *capias ad re-spondendum*; the latter being regarded as a new action; and therefore not sustainable on a judgment. But the manifest injustice of refusing all effective remedy against a fraudulent debtor *because* his creditor's claim had been rendered certain by a judgment, coupled with the wording of the statute, prevailed; and the *Ca. ad Res.* on a judgment was sanctioned by our courts (*Gale* v. *Allan*, 3 L. C. R.

456, and *Perry* v. *Milne*, 8 L. C. J. 222, and see *Matthewson* v. *Bush*, 3 Q. B. R. 195). It was, nevertheless, deemed advisable in our code of procedure (Art. 802) to specially authorize it. No such provision is to be found in our code to sanction an action such as the present. This of itself would seem to suffice to establish that none such can be brought. A judgment upon a judgment, for the same debt, between the same parties, is an anomaly which it would, I think, require an express text of law to authorize.

But it is said that in this case the provisions of our code of procedure *impliedly* give the action, and that equity requires that we should sanction it. For my part, I think that the code, in its letter and spirit, refuses such a recourse as that which the plaintiff seeks, and that the injustice, and I may even say oppression, of such a system of double actions for small debts is palpable. The plaintiff says he is entitled to a second judgment, because, by reason of his enregistration of his first judgment, he has a mortgage upon the defendant's immovable, and that he cannot bring such immovable to sale unless his present action be maintained. But does the law intend that, for a debt of only $16, he should be permitted to deprive his debtor of a home, by a sheriff's sale, with all its attendant costs, superadded to the costs of two actions, one of them in the Superior Court?

Art. 1102 C. P. says that "Judgments for "sums not exceeding forty dollars can only "be executed upon the *moveable* property of "the debtor, except in the case of hypothe-"cary actions, or of rents created under the "seigniorial act of 1854, in which cases the "court may issue execution against the *im-"movable charged*, according to the formali-"ties prescribed in the preceding chapter." But the plaintiff contends that the words:— "Except in the case of hypothecary actions," come to his aid, and give him the remedy he seeks. I, however, think that the hypothecary actions alluded to in this article are those brought against *third* holders (*tiers détenteurs*). These have acquired the immovable, already encumbered with a mortgage, and must be presumed to have been aware of its existence, and their title thereto was thereby affected; they must be considered to have agreed to perfect their title by extinguishing the mortgage, or in default to give up the property.

But the interpretation, sought to be given to this exception by the plaintiff, would nullify, and even render worse than useless, the whole article of which it forms a part.

By a merely formal act of the plaintiff, and without the participation or consent of the defendant, the latter would always find himself entirely and forcedly deprived of all the protection which the law intended to give him by the opening enactment of the Article: the rule contained in which is moreover one of public policy long existent in our law. It will be found in the Ordinance 25 George III., Cap. 2, Sec. 36, in connection with that other provision of mercy, which refuses a creditor the right to sell the bed and bedding of his debtor. Is it reasonable to hold that, by this ambiguous form of expression in Art. 1102 C. P., the authors of the code intended to practically nullify and abrogate this old and humane rule, that for debts not exceeding $40, the debtor should not lose his home; while at the same time ostensibly introducing the article to reaffirm it? Moreover, if so, then another old rule of similar character, to be found in Art. 554, C. P., that a plaintiff "cannot proceed to the sale of the immov-"ables until after the movables shall have "been discussed," will also be made of none effect, and the general rule instead of being that "Judgments for sums not exceeding "forty dollars can only be executed upon the "moveable property of the debtor," will in fact and practically be, "So soon as a credi-"tor chooses to enregister a judgment for a "debt not exceeding $40 against the immove-"ables of his debtor, he may proceed to bring "to sale any one of them he may please, with-"out discussing the moveables, provided, "however, that the debtor must pay the costs "of two actions instead of one."

In the absence of an express enactment in these words, I cannot believe such ought to be held to be our law; and I concur in the reasons assigned by the judgment of the learned Chief Justice for the dismissal of this case."

The following is the *motivé* of the judgment, as given by the other two judges in review:

"Considérant que l'enregistrement d'un ju-
" gement et d'un avis, contenant la descrip-
" tion des immeubles appartenants au défen-
" deur, confère au créancier, demandeur, une
" hypothèque judiciaire sur les dits immeu-
" bles, et que l'hypothèque est un droit réel
" affectant l'immeuble, et en vertu duquel le
" créancier peut le faire vendre *en quelques*
" *mains qu'il soit*, et être préféré sur le produit
" de la vente;

"Considérant que l'article 1102 du Code
" de Procédure Civile *excepte*, de la prohibi-
" tion qu'il fait de saisir et vendre les im-
" meubles en exécution de jugement pour
" $40 ou moins, les *jugements* sur *l'action hy-*
" *pothécaire*, dans lesquels la cour, y est-il
" dit, peut décerner l'exécution contre l'im-
" meuble affecté, et que cette règle s'applique
" 'aussi bien' aux *actions personnelles hypo-*
" *thécaires* qu'à celles *hypothécaires simplement*
" *dites;*

"Considérant que le créancier a, contre le
" DÉBITEUR *détenteur* de l'immeuble hypothé-
" qué, *l'action* PERSONNELLE *hypothécaire* pour
" être autorisé à le faire vendre et à réaliser
" sa dette;

"Considérant que les droits que confère
" l'hypothèque *judiciaire* ne sont 'ni moins'
" *effectifs*, 'ni moins *étendus*,' que ceux résul-
" tant de l'hypothèque *conventionnelle;* que le
" *droit* de poursuivre hypothécairement le
" DÉTENTEUR de l'immeuble hypothéqué et de
" faire vendre celui-ci, pour être payé de sa
" créance, appartient 'aussi bien' au créan-
" cier qui a une hypothèque *judiciaire* qu'à
" celui qui en a une *conventionnelle*, et que
" partant, le 'premier' peut, comme le 'se-
" cond,' prendre l'action PERSONNELLE *hypo-*
" *thécaire;*

"MAIS, considérant que le demandeur n'a
" pas prouvé que le défendeur était proprié-
" taire des immeubles, désignés dans l'avis
" donné au régistrateur et enregistré avec le
" jugement, à la date, où il a obtenu le dit
" jugement contre le défendeur, savoir: le 16
" décembre 1884, ni lorsqu'il a fait enregis-
" trer le dit jugement, ni qu'il en fût en pos-
" session lors de l'institution de l'action en
" cette cause, le jugement prononcé par la
" Cour Supérieure, le 20 mars 1886, est, POUR
" CE MOTIF, confirmé avec dépens."

The above case presents the anomaly of the judiciary of the city of Quebec being equally divided in opinion, as to the interpretation to be given to the term "hypothecary," to be found, in the C. of C. P. Art. 1102: "Judgments for sums, not exceeding
" forty dollars, can *only* be executed upon
" the *movable* property of the debtor, EXCEPT
" in the case of *hypothecary actions*, or of rents
" created under 'The Seigniorial Act of 1854,'
" in which cases, the court may issue execu-
" tion against the immovable charged, ac-
" cording to the formalities prescribed in the
" the preceding chapter."

The opinion that such a case as this one is covered by the word "hypothecary," used in that article, arises from a *misapprehension* of WHAT IS

1o. A *personal* action.

2o. A *hypothecary* action.

3o. A *personal hypothecary* action.

GUYOT, *Rép. de Jur.*, vbo. *Action*, tells us what is

1o. A *personal* action.

2o. A *hypothecary* action.

At page 154, col. 1, of that article GUYOT says:

"Par l'*action personnelle* nous agissons contre celui qui est obligé envers nous par une des quatre causes d'où peut dériver l'*obligation personnelle*. Ces causes sont, le *contrat*, le *quasi-contrat*, le *délit* et le *quasi-délit*."

At page 154, column 2, of the same article, GUYOT says:

"L'*action hypothécaire*, par laquelle le cré-
" ancier agit contre *tout possesseur* de l'héritage
" hypothéqué par le *débiteur*."

It is, therefore, clear that there is a broad distinction between a personal and a hypothecary action. Whenever a person is desirous of enforcing against another person an obligation, arising from a *contract*, a *quasi-contract*, a *delict*, or a *quasi-delict*, he sues out a *personal* action.

Having obtained, by a judgment, the *object* of his *personal* action, he has *expended* that personal *recourse*, that *personal* action; he has a *titre exécutoire*, upon which NO ACTION, under the old French law, could be brought against the *personal* debtor; under that judgment, all the debtor's property, liable to execution, could have been seized and

sold, for the benefit of his creditors. As regarded his "personal" creditor, he was not a *détenteur* of his own immovables, against whom that "personal" creditor could bring a hypothecary action. So says

GUYOT, *Rép. de Jur.*, vbo. *Hypothèque*, page 652, column 1:

"L'effet de l'hypothèque est que les biens "du débiteur sont engagés à ses créanciers, "pour sûreté de leur dû; engagement qui "donne aux créanciers le droit de les SUIVRE "en quelques mains qu'ils passent; d'où "naît l'*action* hypothécaire."

"Cette action peut être considérée sous trois "rapports différents:—1o. à l'égard du *débi*"*teur*,—2o. à l'égard de la veuve ou de ses "héritiers,—3o. à l'égard du *tiers-détenteur*.

"Par rapport au DÉBITEUR, NOTRE PRATIQUE "*est* DIFFÉRENTE de celle des Romains. *Sui*"*vant* le droit romain, le créancier *était obligé* "d'intenter l'*action d'hypothèque* contre le "*débiteur*, par laquelle il concluait à ce que "celui-ci fût tenu de lui abandonner les biens "hypothéqués pour les vendre, et être payé "sur le prix."

The *judicial* hypothec is, therefore, neither more nor less "effective" or "extensive," as a remedy against the original "personal" debtor, than the *conventional* hypothec; neither the one, nor the other, can serve as a basis for a hypothecary suit against the original "personal" debtor. That is still the law of this province.

There is, however, a case, in which, as to "judicial" and "conventional" hypothecs, *created* "before" the promulgation of our Civil Code, the "conventional" hypothec is a more "effective" and "extensive" remedy than the "judicial" hypothec. I shall now proceed to prove that.

It was, while making researches, as to a question of prescription submitted to me, that I came to thoroughly understand the distinction between

1o. A *hypothecary* action and

2o. A *personal hypothecary* action.

That action *alone* is a *personal hypothecary* one, wherein we find "united" in the plaintiff and in the defendant, also, *two* "distinct" qualities; that is to say, when the defendant is BOTH *tiers-détenteur*, as owner of the hypothecated immovable, and is, moreover, PERSONALLY *liable*, as *heir*, or otherwise, of the person who charged that immovable with that hypothec. The plaintiff is, in that case, both "personal" and "hypothecary" creditor.

The following authority defines, and treats of the *personal hypothecary* action:

2 HENRYS, book 4, ch. 6, question 19, page 240, col. 1.

"De fait, sans parler des actions hypothé"caires qui se prescrivent par 10 ans, entre "présens et majeurs, et par 20 ans entre "absens, suivant le titre du code *si adversùs* "*creditorem præscriptio opponatur:* il est cer"tain que le tiers-acquéreur et possesseur de "bonne foi prescrit par semblable intervalle "de 10 ans entre présens et majeurs, et par "20 ans entre absens, l'héritage qu'il a acquis "de celui qu'il présumait en être le vrai "maître. C'est de cette prescription que "parle le titre du code *de præscript. longi temp.* "10 *vel* 20 *annorum:* AU CONTRAIRE, *si ce n'est* "*pas un* TIERS-ACQUÉREUR qui possède le fonds "qui nous est hypothéqué, MAIS *que ce soit le* "DÉBITEUR même, ou SON HÉRITIER, *il ne peut*, "EN CE CAS, prescrire la dette et l'hypothèque "que par 40 ans, *à cause du* CONCOURS *de l'ac*"*tion personnelle* ET *hypothécaire*, suivant le "texte formel de la loi *cùm notissimi Cod. de* "*præscript.* 30 *vel* 40 *annorum*, dont la disposi"tion a été étendue aux pays coûtumiers, "par l'arrêt que monsieur LOUET a mis dans "son recueil, en la lettre H, nombre 3, et par "un autre que le sieur BRODEAU cotte au "même *endroit*."

Therefore, that action *only*, wherein the *two* qualities of *personal* creditor (conferring on him the *personal* action) and of *hypothecary* creditor (conferring on him the *hypothecary* action) ARE UNITED in the plaintiff, is a *personal hypothecary* action. In that action, the defendant, for the same reason, *must be* the personal debtor and also the hypothecary debtor, as *tiers-détenteur*.

IT REQUIRES A PERIOD OF 40 YEARS TO PRESCRIBE, IN THIS PROVINCE, THE "PERSONAL HYPOTHECARY" ACTION, WHOSE CAUSE AROSE PREVIOUSLY TO THE PROMULGATION OF THE CIVIL CODE OF QUEBEC.

That is established by the following authorities:

ARRÊT of the Parliament of Paris, of the 7th September, 1587.

BRODEAU'S edition of LOUET'S ARRÊTS, letter H, No. 3, p. 744.

ARRÊT of the Parliament of Paris, of the 9th August, 1668.

BRODEAU'S edition of LOUET'S ARRÊTS, letter H, ch. 3, p. 745.

ARRÊT of the Parliament of Paris, of the 12th August, 1608.

MORNAC, part. 5, ch. 8.

FONMAUR, Droits seigneuriaux, No. 84, p. 66.

DE LA COMBE, vbo. *Prescription*, section 2, p. 67.

2 DUMOULIN, Custom of Poitou, on Art. 372, Nos. 7 to 9, p. 564.

2 BRETONNIER, Questions de Droit, p. 77 and 78.

SERRES, Institutions du Droit Français, p. 158.

ACTES DE NOTORIÉTÉ DU CHATELET DE PARIS, p. 344 (with observations of *J. B. Dénizart*).

2 BACQUET, Droits de Justice, ch. 21, Nos. 183 to 187 (with observations of *de Ferrière*, Dean of the Faculty of Law, Paris).

2 HENRYS, Prescription, ch. 6, question 19, p. 240, column 1.

POTHIER, Obligations, No. 667.

LE MAÎTRE, Coûtume de Paris, title V, ch. 1, sect. 2, p. 164.

2 DE FERRIÈRE, Grand Coûtumier, Coûtume de Paris, No. 1, p. 382 (with observations of *Le Camus*, Lieutenant Civil du Châtelet, on articles 113 and 114 of the Custom of Paris.)

1 D'ESPEISSES, Contrats, partie 4, *Hypothèque*, titre 4, *de la Prescription*, p. 796. col. 2, (edition of *de la Combe*).

BRODEAU, Coutume de Paris, art. 118, p. 263, *in fine*.

2 BOURJON, ch. 4, sect. 1, *Prescription*, Distinction 2, p. 565.

LE BRUN, Successions, liv. 4, ch. 2, No. 45, p. 283, 284 (edition of 1775).

JOVET, *de la Jurisprudence du Parlement de Paris*, pages 167 and 224.

GUYOT, Rép. de Jur., vbo. *Hypothèque*, p. 667, column 1, *in initio*.

J. O'FARRELL.

Quebec, 30 June, 1886.

COUR D'APPEL DE BORDEAUX (1re CH.)

24 février 1886.

Présidence de M. DELCURROU, premier président.

CALMETTES v. VILLE DE BORDEAUX.

Responsabilité—Commune—Feu d'artifice—Accident.

Une ville, qui fait tirer pour son compte, un feu d'artifice, a le devoir rigoureux, non seulement de traiter avec des artificiers expérimentés et de les surveiller dans l'exécution de leur travail, mais encore de prendre toutes les mesures nécessaires, soit pour éloigner le public de l'enceinte du tir soit pour le protéger contre la chute ou l'explosion des fusées.

Un défaut de surveillance et de précautions, à cet égard, est de nature à engager la responsabilité de la ville vis-à-vis d'un spectateur blessé par l'explosion d'une fusée.

Calmettes, blessé par l'explosion d'une fusée tirée dans un feu d'artifice, organisé par la municipalité de Bordeaux, sur l'une des places de cette ville, le 14 juillet 1884, a assigné la ville de Bordeaux et l'artificier Varinot devant le Trib. civ. de Bordeaux, aux fins de s'entendre condamner solidairement à lui payer une certaine somme à titre de dommages-intérêts à raison de cet accident. Le Tribunal, accueillant, en principe, la demande en ce qui concernait Varinot, autorisa le demandeur à faire preuve par témoins de certains faits, qu'il avait articulés, se réservant de recourir ultérieurement à une expertise à titre de supplément d'instruction, s'il était nécessaire. Mais par le même jugement, le Tribunal mit, dès à présent, hors de cause, la ville de Bordeaux, à l'égard de laquelle il refusa de reconnaître l'existence d'un principe de responsabilité.

Sur appel interjeté par Calmettes au regard de la ville de Bordeaux, ce jugement a été partiellement infirmé par l'arrêt suivant:

" La Cour,

" Attendu que, dans ses conclusions d'appel, Calmettes se borne à conclure au maintien de la ville de Bordeaux dans l'instance pendante devant le Tribunal; que l'appel est ainsi limité à la question de savoir si la ville de Bordeaux peut être éventuellement déclarée responsable des conséquences de l'acci-

dent, dont Calmettes a été victime, par suite et à l'occasion du feu d'artifice du 14 juillet 1884;

" Attendu que les premiers juges ont écarté la responsabilité éventuelle de la ville de Bordeaux en décidant: 1o. que l'artificier n'était pas le préposé de la ville; 2o. qu'il n'était allégué à la charge de celle-ci aucune faute personnelle;

" Attendu, sur le premier point, que l'artificier Varinot n'ayant pas été mis en cause en l'instance d'appel, la Cour n'est pas régulièrement saisie de cette difficulté, et qu'en l'état, elle n'y peut statuer;

" Attendu, sur le second point, qu'il est formellement articulé par l'appelant que l'accident doit être, en partie tout au moins, attribué à l'insuffisance des précautions prises par la ville de Bordeaux dans l'intérêt de la sécurité publique;

" Attendu, en principe, que les villes qui font tirer pour leur compte des feux d'artifice présentant un réel danger pour les spectateurs, ont le devoir rigoureux non seulement de traiter avec des artificiers expérimentés, et de les surveiller dans l'exécution de leur travail, mais encore de prendre toutes les mesures nécessaires, soit pour éloigner le public de l'enceinte du tir, soit pour le protéger contre la chute ou l'explosion des fusées;

" Et attendu que le défaut de surveillance et de précautions, reproché à la ville de Bordeaux, pourrait résulter de l'offre de preuve admise par les premiers juges complétée par l'articulation produite par l'appelant devant la Cour; qu'elle pourrait aussi être établie au moyen de l'expertise réservée par le jugement attaqué; qu'il y a lieu, dans ces conditions, d'accueillir les conclusions de l'appelant;

" Par ces motifs,

" Infirme;

" Ordonne le maintien de la ville de Bordeaux dans l'instance pendante devant les premiers juges."

NOTE.—V. conf. dans une espèce identique: Riom 11 juin 1884 (Gaz. Pal. 84. 2. 174) et observ. dans le même sens sous le jugement du Trib. civ. du Puy du 22 décembre 1883, infirmé par le dit arrêt (Gaz. Pal. 84. 1. 262) Comp. sur l'application aux communes des principes du droit commun, en matière de responsabilité: Cass. 3 novembre 1885 (Gaz. Pal. 86. 1. 342) et la note.—*Gaz. du Palais.*

CHIEF JUSTICE HALE.

Sir Matthew Hale, born in 1609, was the son of a lawyer in moderate circumstances. When only five years old he lost both parents, and became the ward of a kinsman, who was a noted Puritan. Being put to school under another Puritan, and sent to Oxford (at the age of sixteen) under the tuition of still another, he grew up in the faith and manners of that sect. Like many country boys, however, when they get to college, he became "so much corrupted by seeing many plays that he almost wholly forsook his studies." Abandoning the intention he had entertained of becoming a clergyman, he came very near entering the army. But a lawsuit against his patrimonial estate changed his plans, and in consulting with counsel as to his defence, he conceived the notion of studying law, and in 1629 was admitted to Lincoln's Inn. Cutting all his gay companions, he studied sixteen hours a day for seven years. "He not only read over and over again all the Year Books, and Reports, and Treatises in print," (there were not so many then as now) "but visiting the Tower of London, he went through a course of records from the earliest times, and acquired a familiar acquaintance with the state and practice of English jurisprudence during every reign since the foundation of the monarchy."

Called to the bar when twenty-eight years old, he at once came into good practice,—chiefly in chambers, for "he had neither a natural flow of eloquence, nor boldness of manner, nor a loud voice." Although living in the troublous times of the Commonwealth, he managed to avoid pronounced partisanship, and being by education a Puritan, and by conviction a believer in monarchical government, he retained the respect and confidence of all parties, both before and after the Restoration.

In 1653 he was made a Judge of the Court of Common Pleas, and so served acceptably until the death of Cromwell, 1658, when he refused to accept a new commission.

After the Restoration of Charles II. (having served as one of the special commission to try the Regicides), he was appointed, in 1660, Chief Baron of the Court of Exchequer, be-

coming thereby Sir Matthew Hale. In this office he continued eleven years, and was then made Chief Justice of England. Retiring from the bench in February, 1676, on account of illness, he died in the following December.

Hale's "Pleas of the Crown" and "History of the Common Law" are still well known and widely read; but it is as a learned and upright judge that his fame chiefly survives. Cowper speaks of

> "Immortal Hale, for deep discernment praised
> And sound integrity."

Lord Campbell says: "In the list of our great magistrates there is no name more venerated than Hale. . . . His qualifications as a judge always shone with lustre in proportion as the occasion called forth their display. . . . He was not only above the suspicion of corruption or undue influence, but he was never led astray by ill-temper, impatience, haste, or a desire to excite admiration."

Lord Chancellor Nottingham spoke thus of Hale: "A man that was so absolutely a master of the science of the law, and even of the most abstruse and hidden parts of it, that one may truly say of his knowledge in the law, what St. Austin said of St. Hierome's knowledge of divinity,—*Quod Hieronimus nescivit nullus mortalium unquam scivit.*"

Sir Samuel Shepherd mentions him as "the most learned man that ever adorned the bench, the most even man that ever blessed domestic life, the most eminent man that ever adorned the progress of science, and also one of the best and most purely religious men that ever lived."

And Richard Baxter sums up his character in these words: "He was most precisely just, insomuch that I believe he would have lost all he had in the world rather than do an unjust act: patient in bearing the most tedious speech which any one had to make for himself; the pillar of justice: the refuge of the subject who feared oppression, and one of the greatest honors of his Majesty's government. Every man that had a just claim was almost past fear if he could but bring it to the court or assize where he was judge, for the other judges seldom contradicted him."

A minor merit, especially appreciated by a bookseller in these days of keen competition and close prices, is thus mentioned by Campbell: "When he bought any articles, after he became a judge, he not only would not try to beat down the price, *but he insisted on giving more than the vendors demanded;* lest, if they should afterwards have suits before him, they should expect favor because they had dealt handsomely by him."—*Soule's Legal Bibliography.*

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, July 10.

Judicial Abandonments.

G. N. Brown, district of Arthabaska, June 19.
John Sexton, Jr., trader, St. Nicolas, July 8.

Curators Appointed.

Re Jacques Beaudoin, Three Rivers.—U. Martel, Jr., Three Rivers, curator, July 3.

Re Charles David, Montreal. — Seath & Daveluy, Montreal, curator, June 25.

Re N. Mailhot & Cie., cigar merchants, Three Rivers. —Seath & Daveluy, Montreal, curator, June 30.

Re Joseph Simon, Montreal. — Seath & Daveluy, Montreal, curator, June 21.

Dividend Notices.

Re J. A. Bouthillier, Longueuil.—Div. payable July 27, C. Desmarteau, Montreal, curator.

Re N. Fréchette & Cie., match manufacturers, district of Three Rivers. Div. payable July 27, C. Desmarteau, Montreal, curator.

Re Joseph A. Giroux, jeweller, district of Bedford. —Notice of dividend; Henri Boivin, Granby, curator.

Re Philias Picher, district of St. Francis. — Div. sheet, C. Millier, Sherbrooke, curator.

Re Timothé Rhéaume, district of Joliette. — Div. payable July 15, H. H. Ethier, Les Laurentides, curator.

Re A. T. Robert and Paré, carriage makers, Montreal.—Div. sheet, Seath & Daveluy, Montreal, curator.

Re Dame P. Sauvé, wife of P. Poulin.—First and final div. payable July 26, A. A. Taillon, Sorel, curator.

Re Elias Shutan, cigar merchant. — Div. sheet, David Seath, curator, Montreal.

Separation as to property.

Dame Adèle Hélène Lussier v. Octave Buteau *alias* Bluteau, trader, Nicolet, June 7.

Mathilda Ratelle v. Omer Marchand, painter, Pointe aux Trembles, July 7.

GENERAL NOTES.

To show how exceptionally severe is the prevailing 'frost' at the bar, it is stated that a few days ago between three and four hundred young 'gentlemen of the long robe' replied to an advertisement for 'a secretary to a public company, salary 300*l.* a year; application to be made to Mr. Hall Dare, steward of the Inner Temple.—*Law Times* (London.)

THE

MONTREAL LAW REPORTS.

QUEEN'S BENCH

VOL. I.

SUPERIOR COURT

VOL. I.

"The source of the purest and most accurate legal information lies in the various books of reports of cases argued and determined in the different Courts of judicature."—*Hoffman.*

GET THE SERIES COMPLETE.

Vol. I. of each Series, bound, now ready.

PRICE $8 PER VOLUME.

GAZETTE PRINTING CO.,
RICHARD WHITE, Man. Dir.