The Legal News.

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CRIMINAL STATISTICS.

We have just received an appendix to the Report of the Minister of Agriculture for the year 1881, containing the Criminal Statistics of the Dominion for the year 1880. The return fills 179 pages, divided into four tables which give the following information:

TABLE No. I.—Crimes committed in Canada, their classification, etc., by Judicial Districts and Provinces.

TABLE No. II.—A Summary of Table No. I by Classes and Provinces.

The respective designations of the six classes of crimes into which these two tables are divided are as follows:

CLASS I. Offences against the person.
" II. " " property with violence.
" III. " " property without violence.
" IV. Malicious offences against property.
" V. Forgery and offences against the currency.
" VI. Other offences not included in any of the above classes.

TABLE No. III.—Divided by Judicial Districts and Provinces into three classes, viz: Offences tried by Jury.—Offences tried Summarily (by consent.)—Summary Convictions and Preliminary Examinations.

TABLE No. IV.—Cases in which the Prerogative of Mercy has been exercised during the year, (short Title "Pardons and Commutations.")

If the author of this labour of fifteen months has not laid the foundations of premature softening of the brain, he may be congratulated on the result of his tedious, if not uninteresting toil. But there remains much room for improvement, both in the material furnished and in the mode of presenting it. Improvements in the material can only be attained by extensive administrative reform, of a minute but not very difficult kind. The fashion of the material will readily be altered for the better by those who have the experience and intelligence to prepare the appendix now before us.

There is a radical defect in the classification. The general subject "Offences," though strictly speaking correct, is so wide as to be practically worthless. No two facts are really more unlike than a murder and a cabman loitering away from his stand, still both are offences. This has always been recognized. Formerly the classification was Treason, Felony and Misdemeanor; but these divisions were always very arbitrary, their ancient merit depending on the positive law, now much changed, as to felony and misdemeanor from which they resulted. Some reporters in England have adopted a useful classification of magistrates' cases. That would not do here, for many crimes are tried by magistrates. The compiler of these statistics is not unaware of the difficulty, and he has attempted to deal with it by means of Table III. Useful though that Table is, it is not the proper mode of classifying the matter. Starting with "offences" it is obvious that of this *summa divisio* there is greater and less, and as a fact of positive law the former are subject to trial by jury, the latter are not. Here then we have material for a first sub-division. This should be brought out in Table I, which would give:

Judicial District.
Persons charged.
Persons dealt with summarily by magistrate. See for details Table II.
Persons committed for trial.

Table II should deal with summary convictions and orders, classifying the offence as far as may be deemed advisable. It is evident that a biographical sketch of each of these delinquents, or a detailed history of his delinquency is unnecessary. This table might therefore be very short.

Table III. would deal with cases subject to trial by jury, and should stop with the fact of conviction. It should set forth:

Judicial District.
Trial: Summary by consent.
Not guilty.
Acquitted for insanity.
Convicted.
Tried by jury.
Not guilty.
Acquitted for insanity.
Convicted.
Totals: Tried.

Not guilty.
Acquitted.
Convicted.

Table IV. should deal with convicts, and it is in their previous life and punishment social science is interested. With regard to them every available fact that leads to a safe conclusion is of importance. The report before us seems to be adequate, so far as regards extent, but it is totally insufficient as to its figures. For example, we have 3,030 convictions in Ontario under Class I. Of these we learn that 695 make a moderate use of liquor, and 609 an immoderate use; but what are the habits of the remaining 1,726? Are they absolute abstainers? The other figures are equally inconclusive. Education only accounts for 1,316. Age leaves 1,730 unaccounted for. Nationality only accounts for 2,656. Again, we have been unable to discover on what data the report is founded for previous convictions.

Three of these tables would not exceed in width the full sheet of a blue blook in the form used. This is an advantage not altogether to be despised in statistical returns. Another small improvement might be made with little expense—that is not mixing the two languages. It is a poor device to use them alternately, as is sometimes done. The proper mode is to have two editions.

Without undue exultation the people of Quebec may compare with satisfaction the record of crime in their province with that of Ontario:

CONVICTIONS.

	Ontario.	Quebec.
Class I.....	3,030	907
" II.....	85	65
" III.....	1,414	686
" IV.....	474	94
" V.....	30	3
" VI.....	13,278	4,111
	18,311	5,866

This is more than in proportion to the representation of Ontario, in every class but No. II., and in that class, it seems, that 34 are committed for trial and not disposed of in Ontario, while all are disposed of in Quebec.

R.

LIBEL.

Mr. Irvine has introduced a bill into the legislature at Quebec to amend the law respecting the civil remedy for libel. The object of the measure is to admit the libeller sued in damages, to plead that the facts are true and that it was for the public benefit that the said matters should be published. There is abroad in the world at the present moment a great desire to bring the libeller into repute. It is rather up-hill work to get men to view the professional slanderer with other feelings than those of disgust, and therefore delusive arguments are made use of to overcome the natural repugnance. To those who cannot be induced to think that slander is a virtue, it is said: this bill will only give the same answer to the civil remedy that may now be given to the criminal charge,—to those who can be wheedled by sophistry, it is suggested that there can be no harm in saying what is true, if it be for the public good.

There was a paramount reason for passing the Statute of 1874, because it was anomalous to have the criminal law different in the various provinces. There is no kind of reason for saying that the civil remedy shall be similar in them all. Notoriously it is not in many cases besides libel. We are therefore perfectly free in the Province of Quebec to approach the consideration of Mr. Irvine's bill unfettered, and to accept or reject it on its intrinsic merits.

The argument alluded to as being used in its favour is full of false assumptions. Whether there is harm in saying what is true for the public good, depends greatly on the amount of mischief to the person of whom it is said, and the degree of good that will accrue to the public from saying it. Again, as the law now stands, no one is precluded from saying what is true for the public good. What the law prohibits is the raking up of injurious stories against your neighbour, even though true, to gratify malice. Recently, it has been held in Montreal, probably correctly, that the malice of the publisher did not affect the question; and it is not improbable that in practice it will come to be considered that exaggeration does not impair the truth. Such a law is anti-Christian; but though we have plenty of ecclesiastical squabbles, this reason does not count nowadays. Robbing a church is more

amusing than defending a principle. We have heard it said, that no change in the law can make matters worse than they are. There is much truth in the observation, so far as politics are concerned; but the legislature is scarcely justified in accepting as a moral level what exists, and working down to it. Besides the law goes beyond politics.

The practical result will be either that libel will be unconsidered, and therefore the public will not enjoy the promised good; or, honest people will be discredited by the favoured calumniator, they being unable to face the ordeal of the endless litigation which may be raised on this infamous plea.

R.

THE MARRIAGE BILL.

The bill concerning marriage with a deceased wife's sister was passed without any amendment by the Senate on Friday, April 14. The question of interference with provincial rights was earnestly pressed in the Senate, and an effort was made to restrict the bill to a simple declaration that a marriage valid in the province where it is contracted shall be valid throughout the Dominion. It was contended that the Federal Parliament has no right to declare that a marriage contracted within a Province the laws of which forbid such marriage, shall be valid within such Province. This contention will perhaps be raised hereafter before the Courts. In the meantime it may be remarked that the disability sought to be imposed on the Federal Parliament is rather a narrow one, and the point seems hardly worth contending for, because the same writers admit unreservedly that the Federal Parliament has power to declare that a marriage which is validly celebrated in one Province shall be considered valid in any other part of the Dominion to which the consorts go to reside. We take the following statement from *La Minerve*, a journal which has consistently supported provincial authority:—

"L'honorable M. Ferrier, en proposant l'adoption du bill du mariage des beaux-frères et belles-sœurs, au sénat, a rapporté le fait suivant:

Il n'y a pas très longtemps, l'un de mes intimes amis perdit sa femme, à Montréal. La sœur de celle-ci avait demeuré longtemps chez lui, prenant soin des enfants. Deux ans après le décès, plutôt que d'introduire une étrangère dans la maison, le veuf alla épouser sa belle-sœur, à Kingston. Mais il dut revenir demeurer à Montréal, où étaient ses affaires. Et il se trouva dans la position d'un homme *qui était légalement marié suivant les lois d'Ontario et non suivant celles de Québec*.... Voilà des cas auxquels la loi devrait pourvoir.

Le parlement Fédéral a incontestablement le moyen de "pourvoir aux cas" de ce genre. Ce sont même les seuls cas, en matière de lois sur le mariage, auxquels il puisse "pourvoir." On voit, en effet, par les explications officielles données en 1865 sur le mot *mariage*, placé parmi les sujets de législation fédérale, que ce mot avait précisément et uniquement ces cas pour objet.

M. LANGEVIN—Le fait est que tout consiste en ceci: Que le parlement fédéral pourra décider que tout mariage *contracté dans le Haut Canada*, ou dans toute autre province confédérée, d'après la loi de cette province, *quand bien même cette loi serait différente de la nôtre, sera considéré comme valide dans le Bas-Canada au cas où les conjoints viendraient y demeurer*, et *vice versa*. Le mot *mariage* a été placé là pour attribuer à la législature fédérale le droit de déclarer quels seront les mariages qui devront être *considérés comme valides dans toute l'étendue de la Confédération*, sans toucher pour cela le moins du monde aux dogmes ni aux rites des religions auxquelles appartiennent les parties contractantes.

Ainsi, le seul objet pour lequel on a placé le mot *mariage* dans la clause 92, est celui-ci: *pour que le parlement fédéral puisse obliger les autorités civiles, dans chaque province, à donner les effets civils aux mariages contractés dans une autre province conformément aux lois de celle-ci.* Le parlement fédéral n'a pas encore décrété cela. Que ne l'a-t-il fait? Il est en son pouvoir de déclarer que les mariages de beaux-frères et belles-sœurs, ou autres, contractés à Kingston, ou dans toute autre localité, conformément aux lois du lieu, devront avoir les effets civils dans la province de Québec. C'est incontestable. Mais ce qui ne dépend pas de lui, c'est de déclarer que les beaux-frères pourront épouser leurs belles-sœurs dans toute la Confédération, et de rappeler les lois au contraire qui existent dans la plupart des provinces, sinon dans toutes, et dans le Bas-Canada en particulier."

If persons residing in Hull, who cannot intermarry there, can be validly married by crossing the river to Ottawa, and, returning the same day, can secure all the civil effects of a marriage valid according to the laws of Quebec, they might as well be married at home. Yet this is precisely the case put by Mr. Ferrier, and which *La Minerve* concedes that the Dominion Parliament has power to regulate. We much prefer Sir John Macdonald's interpretation of the B. N. A. Act: "To say what marriage is,—whom a person may marry,—belongs to the Federal Parliament: the mode of making them man and wife belongs to the local legislature." (*Hansard Report*, March 13, 1882.)

To illustrate further the contention of the advocates of provincial rights, we may cite a case which occurred lately in Wyoming Territory. In April, 1881, Mrs. Lee, a white widow, and Lee Jim, a Chinaman, were arrested in the city of Cheyenne, Wyoming Territory, on the charge of "living in an open state of fornication."

Upon being arraigned before the examining magistrate, their plea of "not guilty" was entered. Mrs. Lee, who is described as a woman of fair education and of a good Mississippi family, desired to take advantage of a certain provision of the statute under which she stood charged, by wedding the Chinaman, and thus prevent further prosecution. The provision referred to is as follows: "That it shall be in the power of the parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized." But the proposed marriage could not be legally solemnized, because the statutes of Wyoming prohibit the intermarriage of white persons and persons of "one-eighth or more negro, Asiatic or Mongolian blood." Counsel soon saw a way of escape from the dilemma. They found the following section in the Wyoming statutes: "All marriage contracts without this territory, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this territory." The State of Colorado, lying just south of Wyoming, does not prohibit the intermarriage of white and black, or yellow persons, and upon the advice of counsel, Lee Jim and Mary Lee went to Denver, and were married according to the rites of the Christian Church. At the May term of the District Court of Laramie County, Wyoming Territory, "Mrs. Mary Lee and Lee Jim" were duly presented for living in an open state of fornication. A plea in bar was entered, the record of the marriage produced, and the indictment was quashed. But an argument intervened, on the motion to quash, the query being whether persons charged with crime can flee the territory and take advantage of the laws of another jurisdiction, to avoid the penalty of a pending prosecution? The Court held that the marriage having been "legally solemnized," though "without the territory," the offence of fornication was atoned for, in harmony with the statute which authorises the prevention or prosecution in such cases by intermarriage.

ARREARS OF BAR DUES.

To the Editor of the LEGAL NEWS:

SIR,—I am directed by the Council of the Bar of Montreal to ask you to publish in the "Legal News" the following resolution which has been unanimously adopted at the meeting held on the 15th instant.

"Moved by S. Bethune, Esq., Q. C., seconded by C. A. Geoffrion, Esq.:

"That all arrears of annual subscriptions due prior to the first May, 1869, be abandoned and remitted to the members of the Bar owing such arrears. It being understood that where suits for such arrears have been instituted, the payment of the costs of such suits shall be a condition precedent to the parties sued having any benefit under this resolution."

Yours, &c.,

L. FORGET,

Sec. of the Bar of M.

Montreal, 19 April, 1882.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, March 21, 1882.

MONK, RAMSAY, CROSS, BABY, J J.

LORD et al. (dfts. below), Appellants, and ELLIOTT et al. (plffs. below), Respondents.

Charter-party—Demurrage—"Prompt despatch."

A charter party was entered into, by which a steamer was to take on board a cargo of coal, at the port of Sydney, Cape Breton. In the charter party was this stipulation: "Taking her turn with other steamers, and taking precedence of sailing vessels, and receive prompt despatch in loading and unloading." Sydney is a coaling port, and the coal is brought straight from the pit to the vessels loading. There were a number of vessels waiting to load, and the steamer did not get her cargo until seventeen days after the captain protested the freighters. Held, that it was for the shipowner to establish want of diligence, and that there being no delay attributable to the master or crew, or except what was occasioned by the custom of the port, the shipowner was not entitled to damages by way of demurrage.

The appeal was from a judgment condemning the appellants to pay the sum of £850 stg., for seventeen days' demurrage, at the rate of £50 stg. per day. See *Dunkerly* v. *Lord et al.*, 3 Legal News, p. 170, for judgment of the Court below in a similar case.

The circumstances which led to the action were as follows:—The respondents, in June,

1873, by their agent J. G. Sidey, entered into a charter party with the appellants for the chartering of the steamship Gresham, then in Liverpool. The vessel was to proceed to Sydney, Cape Breton, and there load from the factors of the appellants a full and complete cargo of coal, (taking her turn with other steamers and taking precedence of sailing vessels, and receive prompt despatch in loading and unloading), and being so loaded the vessel was to proceed to Montreal and deliver the cargo to appellants. The steamship arrived at Sydney on the 19th July, 1873, and the captain gave notice that the vessel was ready to receive cargo. On the 28th of the same month the captain protested the appellants, but the latter (it was alleged) neglected to load the vessel and give her prompt despatch for more than seventeen days after this notification. It was for this detention that demurrage was claimed.

The defence was that the conditions of the charter party had been complied with; that the steamship Gresham had her turn with other steamers, taking precedence of sailing vessels, according to the custom and usage of the port of Sydney, and had prompt despatch in loading.

Kerr, Q.C., for the appellants: The evidence in support of the action consists of the depositions of the captain and the chief officer. The former states that the Gresham arrived on the morning of the 19th July, and that he notified Mr. Archibald that the vessel was ready to receive and load her cargo; that the appellants did not proceed to load the steamship in her turn with other steamers, but that other steamers which were berthed after the Gresham, and some small craft, were loaded at the same time as the Gresham. And he states that the detention amounted to 17 days, and that in his opinion £850 sterling would be the amount of damage suffered. The chief officer gives evidence to the same effect, alleging that prompt despatch was not afforded, and that the cause of detention was the loading of other steamers and the want of facilities for loading and trimming. On the part of the appellants (defendants) Mr. Gisborne was examined. This witness was in Sydney in 1873 as engineer to two or three coal companies, and he stated that vessels were loaded in the order in which they were booked, except that bunker coal vessels, in accordance with the custom of all coal ports, had the preference. He asserted that no steamers that were berthed after the Gresham were loaded before her. This evidence, it is submitted, rebuts that of the captain and first officer. As a principle of law, the custom of the port has to be taken into consideration, though no reference be made to the custom in the charter party. In the case of *Postlethwaite* v. *Freeland*, L.R. 5 App. Cases, Lord Chan. Selborne laid down the principle in these terms:—"There is no doubt that in general the duty of providing and making use of sufficient means for discharging cargo when a ship arrives at its destination, and is ready to discharge, lies upon the charterer. If by the terms of the charter party, he has agreed to discharge it within a fixed period of time, that is an absolute and unconditional engagement, for the non performance of which he is answerable, whatever the nature of the impediments which prevent him from performing it, and which cause the ship to be detained in his service, beyond the stipulated time. If, on the other hand, there is no time fixed, the law implies an agreement to discharge the cargo within a reasonable time under the circumstances. Difficult questions may sometimes arise as to the circumstances which ought to be taken into consideration in determining what time is reasonable. If an obligation, indefinite as to time, is qualified or practically defined by express or implied reference to the custom or practice of a particular port, every impediment arising from or out of that practice, which the charterers could not have overcome by the use of any reasonable diligence, ought, in my opinion, to be taken into consideration." It is contended by the appellant that whether the loading or unloading is expressed in the charter party, as to be done according to the custom of the port, or no mention of the custom is made, is a matter of indifference—in the latter case such loading or unloading according to the custom, is implied. The pretensions of the appellants, then, are, first, that although there was no reference to the custom of the port of Sydney in the charter party in this case, yet that it formed, impliedly, a portion of the conditions thereof; secondly, that the right to turn, the order of precedence, &c., are regulated by the custom of the port,

and every impediment arising from that practice which the charterers could not have overcome by the use of any reasonable diligence, ought to be taken into consideration. Thirdly, that the respondents must be presumed to have known the custom of the port of Sydney relating to precedence, &c. Fourthly, that if the delay was caused by any deficiency of the appliances in use at the port, the appellants could not be held liable.

Dunlop, for the respondents: By the terms of the charter party it was agreed that the Gresham was to proceed to Sydney, and there load from the agents of the appellants a full cargo. She did proceed there, but no cargo was ready for her. This was not owing to a crowd of steamships loading before her in turn, but, as sworn by Gisborne, owing to the production of the mines not being sufficient to provide a cargo for the vessel with prompt despatch, and owing to the coal companies not having sufficient cars to forward what was produced to the pier. There is no proof whatever that owing to a crowd of steamships, each loaded in turn, it was impossible to load the Gresham in less than twenty-six days, and that this was a reasonable time. On the other hand, the respondents have proved that the Gresham could easily have been loaded at Sydney in five or six days under ordinary circumstances. Other steamers were loaded in much less time. The Hibernia received 1,901 tons in six days; the Alpha 1,959 tons in nine days; the Kangaroo 761 tons in five days, while it took twenty days to give the Gresham 1,830 tons. The usages of the port apply, but not the rules of a particular colliery. It is unreasonable to extend the custom of the port to the mine whence the supplies are drawn. The appellants, in fact, entered into an improvident contract. They brought large and expensive steamers from England and the cargoes were not ready for them. The coal had to be dug out of the mines.

RAMSAY, J. This is an action for damages by way of demurrage. There is no stipulation for a limited number of lay days,— what the freighter undertook to do was to give "prompt despatch." It seems to be well established that when the charter-party fixes certain lay days, all delays beyond those days until the ship is loaded and ready to sail, are at the charge of the freighter, unless directly attributable to the act of the owner. Smith's Merc. Law, 371. Abbott, 310. But when prompt despatch is alone promised, the freighter only warrants diligence, (Abbott, 312-3,) and diligence evidently means such proceedings as are usual in the port. (Ib. 313.) Now whether that diligence has been used here is almost purely a question of fact. Want of diligence—that is negligence, has to be established by the plaintiff. In this case I do not see that any negligence has been proved. It is pretended that the coal had to be procured after the vessel was ready to load, and that this was a cause of delay; but it is evident that Sydney is a coaling port, and that the coal is brought straight from the pit and is entered on board. Again, it does not appear that the steamer lost her turn, and certainly it does not appear she lost it by the fault of appellants or their agents. I am to reverse with costs, and that is the judgment of the majority of the Court.

The judgment is as follows :—

"The Court, etc.

"Considering there is no sufficient evidence to establish that the appellants did not use prompt despatch in procuring cargo for and loading the steamship "Gresham";

"Considering that there is error in the judgment appealed from, to wit, the judgment rendered by the Superior Court at Montreal on the 21st day of May, 1880; doth reverse the said judgment, and proceeding to render the judgment which the said Court below ought to have rendered, doth dismiss the action of the plaintiffs now respondents in this cause with costs as well in the Court below as in appeal, (The Hon. Mr. Justice Cross dissenting.)

Judgment reversed.

Kerr, Carter & McGibbon for Appellants.
John Dunlop, for Respondents.

SUPERIOR COURT.

MONTREAL, March 31, 1882.

Before MACKAY, J.

MACDONALD v. THE MERCHANTS BANK OF CANADA.

Contract—Notarial deed.

The plaintiff, being indebted to a Bank, wrote to the manager proposing a compromise. The Bank stated that they had agreed to accept the proposal "with some slight modifications." A

notarial deed was subsequently executed, containing considerable modifications of the original proposal. Held, that the terms of the deed must prevail, bad faith not being proved.

PER CURIAM. This is a suit for $4,000 against the Bank. It is claimed that this money was by the Bank in bad faith compelled to be paid to it by the plaintiff, who did not really owe it.

The defendants had a claim against the plaintiff for $62,000 in August, 1878, and he wrote to the manager offering a compromise, $30,200, to be paid in the course of two years, with interest at seven per cent.; "*if accepted* I agree to carry out the offer at once." The letter mentions how the $30,200 was composed, $8,200 of it being stock in the defendants' bank. The declaration says that on the 21st of September the Bank accepted the offer, and as evidence wrote to plaintiff that the board had agreed to "accept plaintiff's proposal, with some slight modifications." These (said the letter) you can learn from Mr. Marler, and on their being acceded to we shall be prepared to have the proposal carried out, following upon which a discharge will be granted. The plaintiff never agreed to pay more, says his declaration, and in October a notarial deed was executed by which the plaintiff transferred the bank stock and a certain claim against George Whitfield, referred to in plaintiff's letter of the 14th of August, and also the plaintiff promised to pay in three years from the 12th of August the sum of $12,000, with interest on $8,000 at 7 per cent., and for security of the $12,000 and interest plaintiff mortgaged the real estate in the notarial deed mentioned. Notwithstanding this obligation it was not the intention of either party (says the declaration) that plaintiff should be bound to pay the $4,000 in addition to the amount of composition agreed upon by the compromise effected by the said letters, of which the $4,000 formed no part. The declaration says that in June, 1881, the plaintiff offered $8,000 and interest, and asked discharge from the bank, but it insisted on $12,000 with the interest due on the $8,000; that plaintiff had to submit, but paid the $4,000 under protest. This is the money that plaintiff now claims back.

There are two pleas: one, very long, goes into the history of the whole transaction; it denies that the plaintiff's offer of the 14th of August was accepted, insists that there were modifications of it, that these were submitted to by plaintiff, and that the notarial deed was based upon them; it insists that $4,000 were due and paid in the performance of plaintiff's obligations towards the bank under the deed of October.

Only two witnesses have been examined, namely, the general manager of the bank and the St. Johns agent. From what appears, it is manifest that plaintiff's first offers of compromise were not accepted purely and simply, but accepted with some modifications, called "slight modifications," in the letter from the bank, acknowledging receipt of plaintiff's first proposals. What were these modifications? The bank says: look at the deed of final agreement and you will see them.

The plaintiff has shown no others. The bank manager proves that the final agreement contains them, as agreed to. It is not suggested that the notary wrote down, by an error of his, something that the parties did not before him agree to. It is in vain for Macdonald to build upon the argument that here in the deed are modifications not slight, but large. No diplomatist receiving an offer of compromise which he did not intend to accept purely and simply, but only with modifications, would write to the proposer referring to modifications as *sine qua non*, and styling them serious modifications or large ones. As said before, whether the modifications finally insisted upon by the bank be large or slight, the deed finally settled was agreed to by Macdonald, and he shows no right nor just claim to have it disturbed. I believe that the notarial deed of October expresses the very last agreement of the parties. Macdonald did not sign it until his own lawyer had altered the first project and finally approved the deed as it now reads. Unless we reverse our rules of evidence, Macdonald cannot succeed. Look, for instance, at what Pothier says, and Bonnier, Traité des Preuves, No. 88, p. 84. *Pour parlers* whatsoever are not to modify and control solemn notarial later agreement.

Action dismissed with costs.

Ritchie & Ritchie for plaintiff.

Abbott, Tait & Abbott for defendants.

SUPERIOR COURT.

MONTREAL, April 5, 1882.

Before MATHIEU, J.

THE CANADIAN BANK OF COMMERCE v. MCGAUVRAN et al., and BARNETT et al., intervenants.

Security for Costs—Delay.

Where security for costs is asked for by motion, the motion must be made within four days after the return of the writ, or the production of grounds of intervention.

The plaintiffs moved that the intervenants resident abroad be held to give security for costs.

The judgment is as follows :—

" La cour, après avoir entendu les parties par leurs avocats et procureurs respectifs sur le mérite de la motion de la demanderesse demandant à ce que les intervenants qui résident dans la Province d'Ontario, soient tenus de donner cautionnement pour les frais à être encourus en cette cause sur la dite intervention et les moyens d'intervention, et sur le tout mûrement délibéré ;

" Considérant que la requête des requérants demandant qu'il leur soit permis d'intervenir, a été reçue et produite le 3 mars dernier, et que l'intervention et les moyens d'intervention ont été produits le 18 mars dernier ;

" Considérant que la motion de la dite demanderesse a été signifiée le 22 mars dernier, mais n'a été produite devant cette cour que le 3 avril courant ;

" Considérant que par l'article 107 du C. P. C., les exceptions dilatoires doivent être produites sous quatre jours à compter du rapport du bref, et que la motion de la dite demanderesse remplace dans l'espèce l'exception dilatoire, et que conformément au dit article 107, elle aurait dû être produite dans les quatres jours à compter de la production des moyens d'intervention ;

" Considérant que par l'article 129 du C. P. C., tel qu'actuellement en force, et en vertu de la section 3 du chap. 17 des statuts de Québec, 33 Vict., la demande pour cautionnement pour sûreté des frais, peut être faite devant la cour, ou devant un juge, ou le protonotaire durant la vacance, et que la demanderesse aurait pu produire cette motion et la faire adjuger par un juge en chambre dans les délais voulus par la loi ;

" A renvoyé et renvoie la dite motion, avec dépens," &c.

Carter & Co., for plaintiffs.

Abbott, Tait & Abbotts, for intervenants.

DUPUIS v. *DUCONDU.*

To the Editor of the LEGAL NEWS :

SIR,—" R." by his last letter, having apparently admitted that his criticism on the judgment of the Supreme Court is not well founded, and that the judgment is correct, provided the important fact be true, that the seller of the timber rights sold and took payment for limits for which he had not even licences, the task of completely satisfying " R." and your readers as to this point is not difficult. As " R." does not appear to be acquainted with the record, I give the following references. At page 105 of the Supreme Court Case, line 34, will be found the evidence of C. E. Belle, the crown lands agent, who had to do with the two limits in question viz : Nos. 97 and 98.

Belle says : Ces licences " ont été discontinuées " par Mr. Scallon " (now represented by Res- " pondent) " au mois de novembre 1857, et elles " ont été alors abandonnées par lui, et ces " licences n'ont pas été renouvellées depuis. * * " Ces deux limites étaient connues sous les " numeros 97 et 98."

At page 16 of the said Case will be found the original promise of sale by Scallon of the 10th July 1858 (eight months after he had abandoned these two limits), whereby he agrees to sell all rights obtained by him from the Crown, under licences there enumerated, to these two limits (97 and 98) and to others, together with a Mill, for the sum of $20,000, whereof $5,000 is there acknowledged paid in cash and the balance in promissory notes, which balance was paid in full as formally acknowledged in the notarial deed at page 30 of said Case.

In face of such proof of the seller having sold and taken payment for rights to limits for which he at the time had not even the licences, the presumption to the contrary invoked by " R." arising from the case having been argued in two courts, must fail. Oversights will occur, especially in cases of such enormous proportions as that in question. Further, the point as to the warranty was not discussed or mentioned in the present Appellant's Factum in appeal, but was apparently raised only in the factum of his opponent, and answered orally ; and as the case was argued before the long vacation and judgment only given after, the oversight is not inconceivable.

As to R.'s statement, that the Supreme Court does not appear to have been misled by art. 1576 cited by me in my last, I still think that by the principle of that article the seller was obliged to warrant that he at least held licences for the limits, which he professed to transfer, and that such misleading would save some judges in some cases from giving judgments that cost much time and expense to set right.

Montreal, 20th April, 1882.

N. W. T.