The Legal News.

Vol. XIV. APRIL 11, 1891. No. 15.

The difficulty with reference to Mr. Justice Stephen, noticed last week, has been terminated by the resignation of the learned judge. Mr. Justice Stephen's career has been a distinguished one, and he will have much sympathy in the affliction which has compelled his retirement from an office of which he was so bright an ornament. Touching the judicial tenure of office the *London Law Journal* has the following note:—"Prior to the Act of Settlement, the commissions of the judges of the land were *durante bene placito* (see Stephen's 'Commentaries,' 11th edit. vol. ii. p. 481), but by that Act (12 & 13 Wm. III. c. 2) they were directed to be made out *quamdiu se bene gesserint*, and it was also directed that on the address of both Houses of Parliament it might be lawful to remove them. Afterwards by 1 Geo. III. ch. 23, after reciting that 'His Majesty had been graciously pleased to declare from the throne that he looked upon the independence and integrity of judges as essential to the impartial administration of justice, &c., and had recommended to the consideration of Parliament to make further provision, &c., and that,' in return for his paternal goodness, and in the justest sense of His Majesty's 'tender concern for the religious laws and liberties' of his people, Parliament 'had taken this important work into their consideration, and had resolved to enable His Majesty to effectuate the wise, just, and generous purposes of His Royal Heart,' it was enacted that the commissions should be during good behaviour, subject to power of the Crown to remove on Parliamentary addresses as before, notwithstanding the demise of His Majesty, his heirs, and successors. The next alteration was that effected by the Judicature Act, 1873, which by section 9 enacted that 'all the judges of the High Court and Court of Appeal should hold their offices *for life*,' subject to removal as before. This was repealed by the Judicature Act, 1875, which substitutes for it the enactment now in force of section 5, that 'all the judges' of the Supreme Court, '*with the exception of the Lord Chancellor*, shall hold their offices as such judges respectively *during good behaviour*, subject to a power of removal by Her Majesty on an address presented to Her Majesty by both Houses of Parliament."

The communication referring to *La Bibliothèque du Code Civil*, which appears on p. 89, *ante*, was based on a misapprehension. The work has been brought to a close at Art. 2277, the fourth book of the Code, treating of commercial law, not being undertaken. It was supposed that the work would have been completed in the 20th volume, but eleven articles having remained, it was necessary to issue Vol. 21, which, being of less extent than the preceding volumes, will be sold at a reduced rate. We regret to say that the work has been wholly unremunerative to the learned annotator, and that the assistance obtained from the government has been merely an aid to the publisher to issue the last volumes of the series, without any profit to the author.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Principal and Agent—Diversion of money intrusted to agent for a specific transaction—Prescription—Transfer of debt—Signification.

Held:—1. An agent who is entrusted by his principal with a sum of money, to be invested or employed in a particular transaction, is bound to comply with the instructions received, and if he employs the sum otherwise, he is liable to repay the same to his principal.

2. An action by the principal for the reimbursement of the money, is not a claim for damages resulting from an offence or quasi offence, and is not prescribed by two years.

3. Where a sale of a debt is made in duplicate under private signature, and one of the duplicates is delivered to the debtor, the transfer is sufficiently signified, and the

* To appear in Montreal Law Reports, 6 Q. B.

buyer is entitled to bring suit for the debt.—*Moodie & Jones*, Tessier, Cross, Baby, Bossé, Doherty, JJ., (Tessier, J., *diss.*) June 19, 1890.

Libel in pleadings — Justification — Probable cause—Counsel's opinion—Evidence of attorney of record.

Held:—Affirming the judgment of TASCHEREAU, J., M. L. R., 4 S. C. 219, 1. That libels in pleadings are actionable, when the allegations complained of are false, or made without probable cause.

2. That malice is inferred by law from the nature and the falsity of such accusations.

3. That an unproved plea of justification constitutes an aggravation of the libel.

4. That executors are personally liable for libels published by them in their said quality.

5. That the mere fact of having taken counsel's opinion, apart from any other circumstances, does not excuse a party making libellous allegations.

6. That the attorney of record is only allowed to offer his testimony in favour of his client under exceptional circumstances; and that the introduction of the evidence of the defendant's attorney as to a private conversation between himself and the plaintiff, was under the circumstances improper, and such testimony would be rejected by the Court.—*Benning et al. & Rielle*, Dorion, C. J., Tessier, Baby, Bossé, Doherty, JJ., Nov. 22, 1890.

Married woman—Personal injuries—Right to sue for damages—Accident caused by defect of leased premises.

Held:—Affirming the judgment of TAIT, J., M. L. R., 5 S. C. 182, 1. A married woman, common as to property, or who is presumed to be so in the absence of proof of her matrimonial domicile or of the law which regulates it, may bring an action in her own name, authorized by her husband, to recover damages for bodily injuries. (*Waldron & White*, M. L. R., 3 Q. B. 375, followed.)

2. The owner and lessor of a building is responsible for damages caused by a defect in its construction, to a person rightfully on the premises, *e. g.*, the wife of the lessee.

Semble, where the plaintiff alleges that she is separated as to property, the defendant if not admitting the allegation, ought to deny it specially by his plea.—*Elliott & Simmons et vir*, Cross, Baby, Bossé, Doherty, JJ., Nov. 25, 1890.

Petitory action—Promise of sale—Commencement of proof.

Held:—1. Where there has been a sale, or promise of sale, of an immovable accompanied by possession, at a price to be subsequently determined by the parties, and afterwards fixed by a memorandum of the vendor's manager, the vendor is not entitled to bring a petitory action to recover the property, his recourse being an action to compel the purchaser to take a deed.

2. A promise of sale may be proved by verbal evidence where there is a commencement of proof in writing.

3. In the present case, a memorandum of figures in the handwriting of appellants' manager, with his statements when examined as a witness, constituted a sufficient commencement of proof.—*Montreal Loan & Mortgage Co. & Leclair*, Dorion, C. J., Cross, Baby, Bossé, Doherty, JJ., June 19, 1890.

Railway—Expropriation—2 R. S. C., ch. 109, s. 8, s. s. 33, 36, 37—Interest.

Held:—Affirming the judgment of TAIT, J., M. L. R., 5 S. C. 211, That where a railway company obtains possession of land on making a deposit, and the arbitrators subsequently make an award of a sum of money for the value of the land, and "in full payment and "satisfaction of all damages resulting from "the taking and using of the said piece of "land for the purposes of said railway," the company is liable for interest on the amount of the award only from the date thereof—and not from the date when the company obtained possession of the land. It will be presumed that the arbitrators included in their award compensation for the company's occupation of the land prior to the date of the award.—*Reburn & Ont. & Quebec R. Co.*, Dorion, C. J., Tessier, Baby, Bossé, Doherty, JJ., Nov. 22, 1890.

Expropriation under Railway Act (R. S. C., cap. 109)—Requirements of arbitrators' award—Inadequate compensation amounting to fraud—Objections to arbitrators.

Judgment of WURTELE, J., M. L. R., 5 S. C. 136, affirmed, Dorion, C. J., Baby, Bossé, Doherty, JJ., Nov. 22, 1890.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER X.

NOTICE OF LOSS.

[Continued from p. 88.]

§ 247. *Fraudulent statement of loss.*

In Louisiana it has been held that a mere difference between the amount demanded and that proved at a trial is not conclusive evidence of fraud and false swearing. [1]

In Lower Canada in *Dill* v. *Quebec Ass. Co.* (before referred to) there was a clause in the policy avoiding it in case of false or fraudulent swearing, and the insurers objected to plaintiff that the verdict of the jury was itself proof clear of a false and fraudulent overvaluation, in violation of the policy; but the court held that false swearing and declaration were not to be presumed easily, and that it was not necessary to conclude that the insured had never possessed things, merely because he had failed to prove perfectly. He claimed £600 and the verdict awarded him only £387 16s 1½d.

In *Grenier* v. *Monarch F. & L. Ass. Co.*, [2] the female plaintiff insured £500 on stock and £100 on furniture. A fire happened and she filed statement of loss, and swore to a loss of £485 4s 11d for which she sued. The policy contained a clause against fraud, and vacating it in case of false swearing. The defendants pleaded that the plaintiff's statement was fraudulent, that she had sworn falsely, etc. The plaintiffs were man and wife, and the wife kept a small store in a country village. She stated more silk plush lost by the fire than the largest wholesale houses in Montreal were in the habit of importing in a year; she could not produce any invoices for this plush, or for many other things. Her stock had been assessed, under the municipal act, as of a value of £25, etc. The plaintiff's action was dismissed in 1859 in the Superior Court, Montreal, and the judgment dismissing it was afterwards confirmed in the Queen's Bench.

[1] *Hoffmann* v. *Western M. & F. I. Co.*, 1 Annual R. by Robinson, 216.

[2] 3 L. C. Jurist.

CHAPTER XI.

ADJUSTMENT AND SETTLEMENT OF LOSSES.

§ 248. *Adjustment of losses.*

There is a distinction between marine and fire insurance as regards the mode of adjusting losses. In the former, in all cases of partial loss, the insurer pays only such a proportion thereof as the amount insured bears to the whole value of the property at risk; while usually in the latter he is to make good all the damage sustained within the amount insured, whether the loss be total, or partial.

In the case of partial loss or damage to goods insured by a valued policy, there must be an enquiry. The insured can only recover his real loss: the value in the policy is the agreed standard of value by which the amount of indemnity is to be ascertained, the ratio being found by a comparison of the prices of the sound and of the damaged goods.

In the case of *McNair* v. *Coulter* there was total loss save of about £23 value which was deducted from the value stated in the policy and the insured got the balance.

In *Harris* v. *Eagle Ins. Co.*, Harris got a proportion of the value of the policy equal to the proportion that the kegs lost bore to the total kegs insured. The insurer was held liable for a total loss *pro tanto*.

Is an adjustment binding before actual payment? No, if the insurers can show a strong case against it. [1]

A loss once paid, the money paid cannot be recovered back, unless gross, actual fraud be proved.

Adjustment signed by the assurer in ignorance of fraud practised against him by the assured may be set aside. [2]

[1] 1 Camp. 134, also 274.

[2] *Matthews* v. *The Gen. Mutual Ins. Co.*, Vol. 9. Louis. Annual R. of year 1854.

P. 383. 2 Alauzet. Payment once made by assurer cannot be *répété* unless fraud of assured have caused it to be made. A mere good ground to refuse payment before made will not entitle to recover it back after made. Boudousquié, No. 304, says that the assurer who pays without reserve losses claimed cannot *répéter* the money paid, founding himself on exceptions which he did not know, unless he prove that the assured's acts were the cause that he was ignorant of the means he might have opposed to the demand for the loss, and unless he prove that the adversary by fraud obtained the amount of the policy to be paid.

In *Pearson* v. *Lord*,[1] one of several owners of a vessel and cargo took a policy in his sole name (he intended the insurance for all). On a loss the insurers paid insured more than considering his individual interest he was entitled to, and insurer was declared entitled to recover back the excess, as paid in ignorance of fact.

If the insured sell the subject insured and the policy lapse, so, and the subject be burnt afterward, and after the fire the original insured get paid on demand (insurers ignorant of the sale) semble, they can recover back the money paid.

"If the facts were all known, but the law of the case mistaken," says Bell, "claim of insurer cannot be sustained." P. 602, Vol. 1, 5th edition.

If a man get paid more by an insurance company than his interest entitled him to get, *assumpsit* for money had and received will lie against him for over payment in favor of those who overpaid him.[2] In *Irving* v. *Richardson*, the defendant insured £1,700 with A and £2,000 with B on a ship valued (in both policies) at £3,000. The ship was lost and he received both sums, B paying not being aware of the earlier payment by A. B afterwards sued for £700 excess of amount paid above the value declared, and was held entitled to recover; as defendant was not entitled to more than the valuation in the policy, though the ship really was worth £3,700.

[1] 6 Mass. R.

[2] *Irving* v. *Richardson*, 2 B. & Ad., 1 M. & Rob., (A.D. 1831.)

Money had and received to plaintiff's use is the action, 1 Salk., 22; 1 Show., 156.

In the United States the only remedy in such a case is in a Court of Equity, and even there, no relief will be granted unless the complainant clearly shows that his failure to avail himself of the fraud, or other legal defence, did not arise from his default or negligence, *Duncan* v. *Lyon*, 3 *Johnson Ch. R.* 351; *LeGuen* v. *Gouverneur*, 1 *Johns. Cases* 494; *Smith v. Lowry*, 1 *Johns. Ch. R.* 320.

In Massachusetts where there is no Court of Chancery, it was held that an insurer could not recover back the amount of a loss recovered of him in a former action on a policy, which was discovered, after the judgment, to have been fraudulently procured by the insured. *Homer* v. *Fish*, 1 *Pick.* 435.)

If by fraud is meant *moral* fraud, in distinction from *legal* fraud, on the part of the defendant, this position can hardly be sustained. It seems to be sufficient, in order to enable the plaintiff to recover back the money, to show that it was paid by him in innocent ignorance of some circumstance constituting a legal defence, and it is not necessary that this circumstance, or the plaintiff's ignorance of it, should result from the moral or intentional fraud of the defendant.

§ 249. *Option to replace things lost or damaged.*

"In case of any loss on, or damage to the property insured, it shall be optional with the company to replace the articles lost or damaged, with others of the same kind and equal goodness; and to rebuild or repair the building or buildings within a reasonable time; giving notice of their intention so to do within thirty days after the preliminary proofs shall have been received at the office of the company." (Ætna clause.)

Sometimes the clause is this: "Option, however, being retained by the company either to pay said sum or to supply the insured with the like quantity of goods of the same kind and of equal goodness with those destroyed or damaged by fire." (See *subject insured*, ante.)

Such clauses only operate obligations facultative; between them and obligations alternative there is a world of difference. The

demand and declaration would have to be different in the two cases. I have seen conclusions in the alternative made where it was quite unnecessary and lead to embarrassment, *e. g.* "that defendants be condemned to pay plaintiff said £500, or (at their option within such delay as the court may fix) to supply plaintiff with a like quantity of goods of the same sort, etc."

In insurance, generally, only the money is due. There is no law nor usage which authorizes an insurer to rebuild, instead of to pay.[1] So he must stipulate for the right, if he want it.

What the debtor has the faculty of doing, instead of paying the money, is not due. Argument from Pothier, Obl. Nos. 243, 244. A plaintiff insured need only ask one thing: the money, but defendant may pay, in place of that, whatever is *in facultate solutionis*.

Where the insurers have a right within twenty days after proof of loss, to elect to replace the articles lost or damaged by fire, yet there is no power at law or equity to restrain the assured during the 20 days removing or disposing of his goods saved; to enable insurers to make an inventory, etc., with a view to such election.[2]

§ 250. *Right to rebuild not affected by transfer of insured's claim.*

The loss was stipulated to be paid "in 60 days after notice of loss, unless the company, within the 60 days, shall have replaced the property lost with other of like kind and quality, at the election of said company." Fire happened. The insured afterwards directed the loss to be paid to another person, and the insurers assented. The insurers elected to and did rebuild. The assignee afterwards sued, as if there had been no rebuilding, but his action was dismissed; it was held that the right of the insurers to rebuild was not diminished by their assent to the transfer made by the insured.[3]

§ 251. *Effect of declaration of option.*

Where the insurance company makes option to rebuild, once this is notified, the company must rebuild. The contract to pay the insurance is thus superseded, and the suit of the insured can only be brought on the contract to rebuild.[1]

In the case of *Morrell* v. *Irving F. Ins. Co.*.[2] where there was option of rebuilding, on notice, it was held that after this notice the contract of insurance is changed into one to build; and if the building be commenced but discontinued by the insurers, damages may be gotten sufficient to complete the building (even beyond the original insurance amount.) And where several companies have insured and given the notice and acted so, any one can be sued for the whole, going or having right to go against the others for contribution.

Where the insurer has made option to reinstate, if from any cause, even *vis major*, he be unable to do so, he must pay. In *Brown* v. *R. Ins. Co.*,[3] the insurer made option to reinstate; then an order was made by the municipality, forbidding any building there. The insured then sued for his money, the defendant (he said) not paying, compensating or reinstating.

A, a mortgage creditor in Lower Canada, insures for £500 B's house mortgaged for £500. B insured the same house previously for himself for £500. The insurers were two different companies. Both policies had this clause. A fire happened. B got paid. A asks to be paid and his insurers say the house was only worth £400. They claim to reinstate. Can they reinstate? If B consents. But if B refuse to allow entry, *semble* in the latter it makes a *vis major* preventing reinstatement, and so the insurer must pay.

§ 252. *Undamaged goods.*

Undamaged goods must be kept by the insured; even a box of goods may be overhauled, the good and bad separated, the bad sold, and the insurers required to pay on these the difference between what they produce net, and what they would have sold for before the fire.

Can old furniture be put into a house in place of former old furniture that was insur-

[1] *Wallace* v. *Ins. Co.*, 4 La. R. by Miller.
[2] *N. Y. Fire Ins. Co.* v. *Delavan*, 8 Paige Chan. R. 419.
[3] *Tolman* v. *Man. Ins. Co.*, 1 Cush.

[1] *Heilman* v. *Westchester F. Ins. Co.*, N. Y. Court of Appeals, Alb. L. J., Feb. 1879, p. 132.
[2] 33 N. Y.; [255] Note, Sedgwick on Damages.
[3] 1 Ell. & Ell.

ed? Apparently yes, under such a clause as the Ætna's.

Under a clause like the Ætna's at the head of this chapter, the defendants did, within the thirty days, give notice. Plaintiff, who had commenced rebuilding, refused permission to defendants to rebuild, and sued for the insurance money. His action was dismissed. *Semble*, the notice of intention may be by the insurers' agent and vice-president, notice from them would certainly be good if plaintiff raise his objections on other grounds.[1]

§ 253. *Submission to arbitration.*

In case differences shall arise, touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties.

Though the courts of law are the regular tribunals to entertain demands upon policies of insurance, there is no doubt that, all over the world, the parties to a policy may agree that any differences between them shall be referred to arbitration. In England care must be taken only that the Courts of Law be not *totally* ousted of their jurisdiction. In 1853 it was held that agreement, by policy, that the sum to be paid to insured for loss should, in the first instance, be ascertained and fixed by a committee, and in case of any difference arising that certain arbitrators should be selected to settle the same, which settlement should be a condition precedent to the right of the insured to maintain any suit or action, was not an agreement ousting the Superior Courts of their jurisdiction, as it did not deprive plaintiff of his right to sue, but only made it a condition precedent that the amount to be sued for or recovered should be first ascertained by the committee, or arbitrators.[2]

Afterwards in 1854 the Common Law Procedure Act enacted that, whenever the parties to any deed or agreement in writing shall agree that any existing or future differences between them shall be referred to arbitration, and any one of the parties shall nevertheless commence any action against the other it shall be lawful for the Court or a judge, on application by the defendant, after appearance and before plea, upon being satisfied that no sufficient reason exists why such matters should not be referred to arbitration according to such agreement, and that the defendant was at the time of bringing the action willing to join in the reference, to make a rule to stay proceedings in the action on such terms as to the Court or judge may seem fit. The working of this Act is well illustrated by *Russell* v. *Pellegrini*. This was a rule calling on the plaintiff to show cause why the action should not be stayed and the subject matter in dispute referred to arbitration. The rule was granted under the 11th section of the Common Law Procedure Act, 1854. The plaintiff was a shipowner, and had entered into a contract of charter party with the defendant, whereby the defendant chartered a ship as so much per month. The ship was considered by the defendant to be unseaworthy, and he claimed of the plaintiff damages for the breach of an implied warranty of seaworthiness. The plaintiff also claimed of the defendant one month's freight. This difference having arisen, the defendant called on the plaintiff to have the dispute referred to arbitration, under a clause in the charter party, that if any difference should arise out of the contract the matter in dispute should be decided by an arbitrator; but the plaintiff refused on the ground that the defendant's claim was for unliquidated damages which could not be set off against his demand for the freight. He accordingly brought the present action for one month's freight, and the defendant obtained the present rule, on the ground that the plaintiff ought to have joined in the reference.

Lord Campbell said he thought the rule ought to be made absolute. The enactment on which the application was founded was a most salutary one. At one time the courts in Westminster hall had the greatest horror of arbitrations, and it had even been made a question whether such a clause as the present was not illegal, and whether an action could be sustained for the breach of such an agreement to refer. He (Lord Campbell)

[1] *Beals* v. *Home Ins. Co.*, New York; 9 Tiffany, A.D., 1867.

[2] *Avery* v. *Scott*, 8 Exch.; 20 E. L. & E. R.

could not understand why parties should not be allowed to settle their differences as they themselves might think proper. It was right that the courts should not be ousted of their jurisdiction; but the case of *Avery* v. *Scott* had decided that parties might make an agreement whereby there should be no cause of action until there had been an arbitration; and this enactment (the 17th and 18th of Victoria, chap. 125, sect. 11) had for its object to give those who were parties to such an agreement to refer the full benefit of it. That benefit could not be enjoyed if a man could bring an action for a clearly admitted demand, at the same time that he was liable to a greater demand arising out of the same contract. There was no dispute that freight was due for the month which had expired, and there was a claim by the defendant on the ground that there had been a breach of an implied warranty of seaworthiness; and it might have been the intention of the parties that such damages should be referred, and that an arbitrator should see to which side the balance was due. He (Lord Campbell) thought the action ought to be stayed and that the arbitration ought to proceed.

The other judges expressed similar opinions.

Rule absolute.[1]

"In whatever form this clause is put," says Angell, § 354, "it will not take away the jurisdiction of the ordinary courts of law."

In modern France arbitration is not viewed unfavorably, but it is absolutely necessary, in any agreement for it, to state its objects, and the names of the arbitrators. C. Proc., 1006, 1 Alauzet, p. 386. Dalloz of 1844, 1 p. 97.

In old France such agreement was good, though no arbitrators were named.

In Lower Canada if parties state the questions between them, agree to refer to arbitrators, name them, and state their powers, and that no suit shall be brought but for the amount that shall be found due by the arbitrators, and to give effect to the reference derogate from the common law, their agreement is valid, and will bar any suit brought before such report of arbitrators.

Usually the clauses meant to secure arbitrations are too general. Such is the clause at the head of this section, under which such decisions as in *Scott* v. *Phœnix Ass. Co.*, Stuart's Rep., and *Kill* v. *Hollister*, 1 Wils., would have to be repeated to-day.

In *Goldstone et al.* v. *Osborn et al.*,[1] by one of the conditions in a policy it was stipulated, that "if any difference should arise on any claim, it should immediately be submitted to arbitration," and directed how the arbitrators should be chosen, and added, that no compensation, damages or debt should be payable until after an award determining the amount thereof should be made; it was nevertheless held that the insured might maintain an action on such policy notwithstanding the condition; as the insurers denied the general right of the insured to recover anything, and did not merely call in question the amount to be recovered. The plaintiff had never been unwilling to agree to a reference as to the amount of his loss, to be paid to him; but the defendants insisted that the condition clause meant reference even as to right whatever, to receive anything, and so thought the judge at the trial.[2]

[1] Q. B., Nov. 1856.

[1] 2 Carr. & P.

[2] For further on arbitration as a condition precedent, see 16 Alb. L. J. 465. Also 21 Am R. p. 80, (a Pennsylvania case.) But the latest debate is in *Edwards* v. *Aberayron Ship Ins. Society*, 17 Eng. Rep., Law Rep., 1 Q. B. Div. 563. In the case in 21 Am. Rep., the clause was held of no force to oust ordinary courts. But that a condition that shall order the amount of loss to be determined by arbitrators (loss admitted and liability admitted) would work. If in a building contract certificate of architect be condition precedent, this works.

EXCHEQUER COURT OF CANADA.

A special sitting of the Court, for the trial of causes, etc., will be held at the Court House, Montreal, commencing on Tuesday, April 21st, at 11 a.m.

Special sittings of the Court will be held during the year 1891, as follows:—

At the Court House, St. John, N.B., commencing on Tuesday, 26th May.

At the Court House, Charlottetown, P.E.I., commencing on Tuesday, 2nd June.

At the Court House, Sydney, C.B., commencing on Tuesday, 9th June.

At the Court House, Halifax, N.S., commencing on Tuesday, 16th June.

At the Court House, Quebec, commencing on Tuesday, 23rd June.

At the Court House, Winnipeg, Manitoba, commencing on Thursday, 1st October.

At the Court House, Regina, N.W.T., commencing on Monday, 5th October.

At the Court House, Calgary, N.W.T., commencing on Thursday, 8th October.

At the Court House, Vancouver, B.C., commencing on Tuesday, 13th October.

At the Court House, Victoria, B.C., commencing on Tuesday, 20th October.

At Ottawa, on Tuesday, 10th February; on Tuesday, 24th March; on Tuesday, 28th April; on Tuesday, 15th September; on on Tuesday, 17th November.

General Order.

In pursuance of the provisions contained in the 55th section of "The Exchequer Court Act," it is ordered that the following rules in respect of the matters hereinafter mentioned shall be in force in the Exchequer Court of Canada:—

1. Rule 116 of the Exchequer Court of Canada is hereby repealed and the following substituted therefor:

TRIALS.

Rule 116.

When any action is ripe for trial or hearing, a Judge may, on application of any party and after summons served on all parties to the suit, fix the time and place of trial and hearing, and may direct when and in what manner and upon whom notice of trial or hearing together with a copy of the Judge's order is to be served, and such notice and order shall be forthwith served accordingly.

Sittings of the Exchequer Court of Canada, at which any action ripe for trial or hearing may be set down for trial by either party thereto, upon giving the opposite party ten days' notice of trial, or by consent of parties, and without taking out any summons, may be held at any time and place appointed by a Judge, of which notice shall be published in the *Canada Gazette*.

Such sittings will be continued from day to day until the business coming before the Court is disposed of.

On the first day of each of such sittings, the Court will hear any argument of demurrer, special cases, motion for judgment, appeal from the report of the registrar or other officer of the Court, or other motion, application or business which cannot be transacted by a judge in Chambers.

2. Rule 120 of the Exchequer Court of Canada is hereby repealed and the following substituted therefor:

Rule 120.

In case the Judge is unable from any cause to attend on the day fixed for any sitting or for the trial of any issue, such sitting or trial shall stand adjourned from day to day until he is able to attend.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, April 4.

Judicial Abandonments.

Adolphe Dépatie, lumber merchant, Montreal, Mar. 28.

Amédée Gagnon, grocer, Rivière Ouelle, April 1.

Fabien Marleau, St. Télesphore, March 26.

Moïse Monette, grocer, Montreal, April 1.

Joseph Noël, junk dealer, Quebec, March 24.

Curators appointed.

Re F. X. Comptois.—Millier & Griffith, Sherbrooke, joint curator, March 28.

Re John Couturier, trader, Murray Bay.—H. A. Bedard, Quebec, curator, March 26.

Re Antoine Desjardins.—Bilodeau & Renaud, Montreal, joint curator, March 31.

Re Dufour & Couturier, and A. Dufour.—H. A. Bedard, Quebec, curator, March 26.

Re Pierre Fleury, fils.—Millier & Griffith, Sherbrooke, joint curator, March 28.

Re Guay & Co., (Amanda Gagnon), Yamachiche.—O. Lesieur, Yamachiche, curator, Feb. 27.

Re Joseph Hamel.—E. Poulin, Montreal, curator, March 24.

Re John Heney et al.—Millier & Griffith, Sherbrooke, joint curator, March 19.

Re A. Labelle & Co., Montreal.—W. A. Caldwell, Montreal, curator, March 31.

Re Raphaël Larocque, trader, Upton.—J. O. Dion, St. Hyacinthe, curator, April 2.

Re Joseph Lecompte, St. Monique.—Bilodeau & Renaud, Montreal, joint curator, March 26.

Re F. X. Letourneau & Co., Quebec.—D. Arcand, Quebec, curator, April 2.

Re Peltier & Guy, Montreal.—Kent & Turcotte, Montreal, joint curator, March 31.

Dividends.

Re Crépeau & Duval.—First and final dividend, payable April 20, at office of F. Valentine, Three Rivers.

Re Magloire Dansereau.—First and final dividend, payable April 21, C. Desmarteau, Montreal, curator.

Re Edward Montgomery.—First dividend, payable April 16, Bilodeau & Renaud, Montreal, joint curator.

Re Z. Vaudry, plumber, Quebec.—N. Matte, Quebec, curator, April 20.

Separation as to property.

Marie Célina Boucher vs. Joseph Horace Chabot, grocer, Montreal, March 28.

Mary Ann Masters vs. Frederick Richard Cole, trader, Montreal, April 1.

Alice Mayrand vs. Zephirin Champoux, trader, parish of Ste. Gertrude, March 26.

Marie Anne St. Michel vs. David Damphousse, St. Timothée, March 31.