THE LEGAL NEWS.

Vol. IX. MONTREAL, DECEMBER 18, 1886. No. 51.

Editor.—JAMES KIRBY, D.C.L., LL.D., Advocate.

1709 Notre Dame Street, (Royal Insurance Chambers, opposite the Seminary.)

CONTENTS OF VOL. IX., No. 51.

Montreal:

GAZETTE PRINTING COMPANY.

1886.

The Legal News.

Vol. IX. DECEMBER 18, 1886. No. 51.

Sir Foster Stawell, it is stated, has been appointed Lieutenant-Governor of Victoria, in recognition of his distinguished services as Chief Justice of the colony. It might be desired that such positions should be more frequently filled by the appointment of distinguished members of the bench.

Mr. Justice Day, a judge of the English Queen's Bench Division, has been doing a little in the viewing and interviewing business. Having had before him, at the Liverpool Assizes, four cases in which members of a gang of desperadoes, called the "High Rip" gang had been charged with assaulting, stabbing, and molesting various people, he expressed incredulity at the system of terror alleged to exist, and, apparently with the object of satisfying himself, on Saturday night, the 13th November, made a tour of the lowest parts of the city. Accompanied by his son, he visited some of the vilest haunts known to the police. He was the witness of many uproarious scenes, but fortunately passed through them unmolested. Among other places visited was a lodging-house in Ben Jonson Street, known as the "Loose Box," where a lively *fracas* was, at the time of the judge's visit, being indulged in.

The successor to Sir James Bacon, Mr. Arthur Kekewich, Q. C., according to the *Law Journal*, "is a member of an old and much-respected Devonshire family, and he has contested constituencies in the Conservative interest. He was at Eton and Balliol, and was a fellow of Exeter College on the Devon foundation. As a junior counsel he had a lucrative practice, especially in company cases and the administrative business of the Court. On becoming Queen's Counsel, he took his seat in the Court of Mr. Justice Kay, with rare appearances in the Court of Appeal. He will make a courteous and upright judge, but he will happily disappoint the expectations of the profession if he adequately fill the post occupied by Sir James Bacon and his distinguished predecessors."

The assessment of damages in actions for personal injuries frequently gives rise to considerable difficulty. In a recent case of *Corner & Byrd*, M.L.R., 2 Q. B. 262, the amount awarded by the first Court to a wife for the loss of her husband was cut down to less than one half by the Court of Appeal. The Supreme Court of the United States, in the case of *Vicksburg & M. R. Co.* v. *Putnam* (Oct. 26, 1886) had occasion to consider this subject. The Court held that while standard life and annuity tables, showing, at any age, the probable duration of life and present value of a life annuity, are competent evidence, the rules derived therefrom are not the absolute guides of the judgment and conscience of the jury; and an instruction directing the jury to ascertain the loss of income by the use of such rules, the charge nowhere suggesting that the jury are at liberty to ascertain such loss according to their own judgment, is erroneous. In *Phillips* v. *London & S. W. Ry.*, the judges strongly approved the usual practice of instructing the jury in general terms to award a fair and reasonable compensation, taking into consideration what the plaintiff's income would probably have been, how long it would have lasted, and all the contingencies to which it was liable; and as strongly deprecated undertaking to bind them by precise mathematical rules in deciding a question involving so many contingencies incapable of exact estimate or proof. See especially the opinions of Lord Justice Brett and Lord Justice Cotton as reported in 49 Law J. (Q. B.) 237, 238, and less fully in 5 C. P. Div. 291, 293. The natural, if not the necessary, effect of the peremptory instructions at the beginning and end of dealing with this matter would be to lead the jury to understand that they must accept the tables as affording the rule for the principal elements of their computation, and to create an impression on their minds, which would not be removed by the incidental observation of the judge, when speaking of the possibility of the plaintiff's getting well, "This is only

one mode of arriving at it;" especially, as it was nowhere, throughout the charge, suggested to the jury that they would be at liberty, if they found difficulty in following the mathematical rules prescribed to them, to estimate the loss of income according to their own judgment. Life and annuity tables are framed upon the basis of the average duration of the lives of a great number of persons. But what the jury in this case had to consider was the probable duration of this plaintiff's life, and of the injury to his capacity to earn his livelihood. Upon the evidence before them, it was a controverted question whether that injury would be temporary or permanent. The instruction excepted to, either taken by itself or in connection with the whole charge, tended to mislead the jury, by obliging them to ascertain the average injury to the plaintiff's capacity by the year, whether the extent of that injury would be constant or varying, and by giving them to understand that the tables were not merely competent evidence of the average duration of human life, and of the present value of life annuities, but furnished absolute rules which the law required them to apply in estimating the probable duration of the plaintiff's life, and the extent of the injury which he had suffered.

COUR SUPERIEURE.

JOLIETTE, 17 novembre 1886.

Coram PAPINEAU, J.

GEOFFRAY v. BEAUSOLEIL et al.

Action en démolition de nouvel œuvre.

JUGÉ:—1o *qu'un propriétaire n'a pas le droit sous les dispositions de l'acte* 19-20 *Vict., chap.* 104 (*S.R.B.C. chap.* 51) *d'ériger sur une rivière une chaussée aboutissant sur la terre du propriétaire riverain du côté opposé de la rivère.*

2o *que le propriétaire de la terre sur laquelle vient aboutir une telle chaussée a le droit d'en obtenir la démolition depuis sa rive inclusivement jusqu'au fil de l'eau, c'est-à-dire jusqu'au milieu de la rivière, telle rivière étant ni navigable ni flottable autrement qu'à bûches perdues.*

Le demandeur allègue dans son action qu'il est en possession à titre de propriétaire, depuis plus d'un an et un jour d'une terre longeant la rivière Noire sur une longueur d'environ cinq arpents dans la paroisse de St. Jean de Matha, dans le district de Joliette;

Qu'il y a moins d'un an et un jour, les défendeurs l'ont troublé dans la paisible possession et jouissance de sa dite terre en construisant en travers du lit de la dite rivière Noire une chaussée qui vient s'appuyer par un bout sur son terrain;

Que la dite rivière Noire à l'endroit où la dite chaussée la traverse est non navigable et non flottable, et qu'en conséquence la moitié du lit d'icelle depuis le fil de l'eau lui appartient;

Que la dite chaussée est encore en voie de construction; qu'elle lui cause des dommages et qu'il a protesté les défendeurs par ministère de notaire de cesser leur empiètement.

Puis il conclut aux dommages et à la démolition de la dite chaussée depuis sa rive inclusivement jusqu'au fil de l'eau.

Les défendeurs plaident d'abord au moyen d'une défense générale en fait.

Par une seconde défense ils allèguent qu'ils sont eux-mêmes propriétaires d'un terrain longeant la dite rivière Noire, du côté opposé du terrain du demandeur; que comme propriétaires riverains, ils ont le droit, en vertu du 19-20 Victoria, chap. 104, d'utiliser la dite rivière Noire à leur profit, en y construisant une chaussée;

Que le seul recours possible du demandeur était en dommages suivant le statut cité;

Qu'ils sont prêts comme ils l'ont toujours été à payer les dommages du demandeur pourvu qu'ils soient constatés suivant la loi au moyen d'une expertise.

Les défendeurs à l'enquête ont signé une admission des faits suivants: que leur chaussée était en voie de construction lors de la signification de cette action; que la construction était commencée depuis moins d'un an et un jour; que telle chaussée s'appuie sur le terrain du demandeur décrit dans sa déclaration; que la rivière Noire à l'endroit où telle chaussée la traverse, est ni navigable ni flottable autrement qu'à bûches perdues; et que la construction de telle chaussée a

causé au demandeur des dommages au montant de dix piastres.

A la plaidoirie orale, les avocats du demandeur ont prétendu : 1o que la rivière Noire étant flottable seulement *à bûches perdues*, est exclue du domaine public et tombe dans la propriété privée des riverains ; 2o que l'acte 19-20 Victoria, ch. 104, ne s'applique pas au cas actuel, ce statut n'autorisant pas l'expropriation des terrains, mais ayant pour seul but de créer une exception à la règle de l'article 501 C. C.,qui défend aux propriétaires des fonds inférieurs d'élever aucune digue qui empêche l'écoulement naturel des eaux des fonds supérieurs. *Vide Joly* v. *Gagnon*, 9 L. C. R. page 166, et *Bureau* v. *Vachon*, 3 Déc., Cour d'Appel, page 338 ; *Regina* v. *Robertson*, 6 Rapp. Cour Suprême.

Les avocats des défendeurs se retranchèrent comme dans leur défense écrite derrière le statut 19-20 Vict., chap. 104. Ils objectèrent de plus que l'action du demandeur ne précisait pas l'endroit fixe du fil de l'eau ou en d'autres termes, la longueur de la chaussée dont on demandait la démolition.

La Cour rendit jugement conformément aux conclusions de la demande. Elle condamna les défendeurs à $10 de dommages et de plus à démolir, sous quinze jours de la signification du jugement, sans autre délai et nonobstant appel, toute la partie de la dite chaussée qui se trouve ou qui s'appuie sur le dit terrain du demandeur depuis la rive inclusivement jusqu'au milieu de la dite rivière, ou en d'autres termes, jusqu'au fil de l'eau ; et à défaut par les défendeurs de faire telle démolition dans le dit délai, le demandeur est autorisé à la faire ou faire faire aux dépens des défendeurs, le tout avec dépens contre les défendeurs.

Charland & Tellier, avocats du demandeur.
Godin & Dugas, avocats des défendeurs.

(C. & T.)

CIRCUIT COURT.

HULL, (Dist. of Ottawa), Nov. 8, 1886.

Before WURTELE, J.

Ex parte FLAVIEN MOFFET, Petitioner for writ of *certiorari*.

Summary Convictions—32-33 *Vict. ch.* 31.

A Justice of the Peace, after examination of witnesses on an information charging an indictable offence, has no authority to change the nature of the proceedings, and to convict as if the matter before him were one which came within his summary jurisdiction. The information must contain a complete statement of the offence as defined by the Act conferring the summary jurisdiction.

PER CURIAM.—This is an application for a writ of Certiorari.

An information was laid against the petitioner by Napoléon Pagé, by which he was accused of having, on the 1st Oct., 1886, at the city of Hull, unlawfully and maliciously and unjustly, and without cause or reason, committed damage, injury and spoil to certain personal property belonging to the informant, to wit: of having undone, broken and destroyed three galleys of a newspaper called "Alliance" belonging to and published by the informant in the city of Hull, the said damage, injury and spoil being to an amount exceeding twenty dollars, the whole contrary to the form of the statute in such case made and provided.

The offence in question is defined by section 59 of the Act respecting malicious injuries to property (32-33 Vict. chap. 22), and is declared to be a misdemeanor punishable by imprisonment in the penitentiary or in a common gaol, with or without hard labor.

A warrant was issued, and the petitioner was apprehended and brought before the justice of the peace, to answer unto the charge and to be dealt with according to law.

The inquiry took place, and the justice, instead of either committing the petitioner for trial or discharging him, convicted him, under section 60 of the Act above mentioned, of having committed damage, injury, and spoil to the property in question to the extent of fifteen dollars, condemning him to pay a penalty of ten dollars and the sum of fifteen dollars as compensation for the damage, injury, and spoil committed.

The charge made against the petitioner was of having committed an indictable offence, while the conviction was for an offence cognizable before a justice of the peace in the exercise of his summary jurisdiction.

For the exercise of such summary jurisdiction it is necessary that there should be an information as the basis of all subsequent proceedings and the ground-work of the conviction. The principle or rule is established in clear and positive terms in the first section of the Act relating to summary convictions (32-32 Vict. chap. 31). The information being the substratum of the magistrate's jurisdiction, must contain a complete statement of the offence as described and defined by the Act of Parliament conferring the summary jurisdiction; it must expressly allege all the facts necessary to support the proceedings, and leave nothing to be gathered by inference or intendment. The testimony adduced by the prosecution is intended to support the charge which is made; but it cannot formulate or supply the charge.

The magistrate should find that which is charged in the information, and must not convict of another offence. Where the charge is that the defendant has committed an indictable misdemeanor or offence, and the duty of the magistrate is to hold a preliminary inquiry and either commit or discharge the defendant, the magistrate cannot change the nature of the proceedings after the examination of the witnesses and convict for an offence punishable upon summary conviction.

In this case the information charges an indictable offence; but the magistrate, after the examination of the witnesses, convicted as if the matter brought before him was one which came within his summary jurisdiction. If the information had been laid for the offence defined by section 60 of the Act relating to malicious injuries to property, which is an offence cognizable by a justice of the peace in the exercise of summary jurisdiction, it would have been necessary to prosecute in the manner directed by the Act relating to summary convictions, and this Act specially enacts that the proceedings must be initiated by laying an information, stating the offence for which the defendant upon a summary conviction is liable to be punished. There was therefore not only gross irregularity and illegality in the proceedings, but there appears also *primâ facie* to have been a want of jurisdiction.

Such being the case, I am of opinion that a writ of Certiorari should be granted, and I order that one do issue, returnable on the 29th Nov. instant.

The ground I have mentioned being sufficient for the granting of a writ of Certiorari, it is not necessary to consider the other grounds mentioned in the affidavit of facts and circumstances.

COUR DES SESSIONS.

MONTRÉAL, 21 juin 1886.

Coram C. A. DUGAS, Juge des Sessions.

LAMBE *es qual.* v. CIZOL.

Vente de boissons le dimanche— Hôtellier — Voyageur.

JUGÉ:—1o *Que celui qui se présente dans un hôtel pour y manger le dimanche, est pour le moment un voyageur au bout de sa marche qui a droit d'exiger de l'hôtellier d'être servi.*

2o *Que l'hôtellier n'est pas obligé de s'enquérir d'où vient celui qui se présente ainsi dans son hôtel, ni de ce qu'il est.*

3o *Que l'hôtellier ne viole pas la loi en donnant à boire à ce voyageur, pourvu que ce soit à table alors que ce dernier s'est fait servir à manger.*

PER CURIAM.—Le défendeur est porteur d'une licence pour tenir un hôtel, rue St. Laurent, Montréal. Baylis, officier du Revenu, se rend là le dimanche et demande à manger. Il est introduit dans la salle à diner où il se contente d'une *sandwich* et d'un verre de bière. Il est prouvé par deux témoins du défendeur qu'on n'y sert jamais de liqueurs au comptoir ou dans aucune autre chambre le dimanche à moins qu'on ne mange en même temps, et alors cette liqueur est toujours servie dans la salle à dîner.

La poursuite prétend qu'en vertu du chap. 4 du statut de Québec (1879), l'hôtellier n'a le droit de livrer des liqueurs qu'au pensionnaire *bona fide* et au voyageur, et que le témoin Baylis ne peut être considéré comme un voyageur puisqu'il est de la ville, ni comme un pensionnaire.

Je maintiens que celui qui se présente dans un hôtel pour y manger est pour le moment un voyageur au bout de sa marche qui a droit d'exiger de l'hôtellier d'être servi.

Celui-ci n'est pas tenu de s'enquérir d'où il vient, ni de ce qu'il est. S'il plaît au voyageur de ne se faire servir qu'une *sandwich* ou quelque chose de semblable quand il aurait pu avoir tout autre mets qui se sert ordinairement dans un hôtel, l'hôtellier ne peut être pour cela déclaré coupable d'avoir enfreint la loi. Autre chose serait s'il était prouvé que la livraison de la *sandwich* n'a été faite que pour couvrir la livraison de la liqueur et qu'il y aurait une espèce de connivence entre le vendeur et l'acheteur pour éluder la loi.

Comme dans l'espèce il n'y a rien de tel, le poursuivant doit être débouté de son action.

N. H. Bourgoin, avocat du poursuivant.

Arthur Globensky, avocat du défendeur.

(J. J. B.)

*COURT OF QUEEN'S BENCH—MONTREAL.**

Action—Damages—Unauthorized sale of shares—Demurrer.

HELD:—That an action of damages setting forth, in effect, that a bank, to which plaintiff had transferred certain shares as collateral security for an advance, had, without right and against the will of plaintiff, sold the said shares at a third of their value, on purpose to injure plaintiff, is not demurrable because the plaintiff has not offered defendants the alternative to substitute other shares. — *Gilman*, appellant, and *Campbell* et al., respondents, Dec. 30, 1885.

Execution—Sheriff's Sale—Usufruct.

A sheriff having seized on one defendant the usufruct of an immoveable, and on the other defendants, the *nue propriété*, and advertized the sale in the form quoted in the report:

HELD:—1. That under the advertisement, the sheriff was bound to sell the property as a whole,—*i. e.*, usufruct and *nue propriété* combined; and that a sale of these rights separately made by the sheriff having resulted in surprise and prejudice to the defendants, it would be set aside on petition *en nullité de décret* by defendants.

2. That usufruct is incorporeal right, (*droit incorporel*) which, under the C. P. C. 638, should have been set forth in the *procès verbal* of seizure, and also in the advertisement (C. P. C. 648) by mention of the title under which it is due.—*Cheney et al.*, appellants, and *Brunet*, respondent, March 27, 1886.

Execution—Sale of Shares—C. C. P. 595.

Where a number of shares of railway stock were seized and advertized to be sold in one lot, and neither the defendants nor any one interested in the sale requested the sheriff to sell the shares separately, and it did not appear that there was any intention to defraud, or that any loss had been sustained in consequence of the shares being sold in one lot, but, on the contrary, that such mode of sale was advantageous to the creditors, the sale was held good and valid, although the amount realized thereby was far in excess of the judgment debt for which the property was taken in execution. — *Morris & Connecticut & Passumpsic Rivers R. R. Co.*, Sept. 25, 1886.

Location Ticket—Default to perform settlement duties—Cancellation of License—23 Vict. c. 2, s. 29—32 Vict. (Q.) c. 11—36 Vict. (Q.) c. 8.

A location ticket of certain lots was granted to G. C. H. in 1863. In 1874, the Commissioner of Crown Lands registered a transfer of the location ticket from G. C. H. to respondent. In 1878, the Commissioner cancelled the location ticket for default to perform settlement duties.

HELD:—That the registration by the Commissioner in 1874, of the transfer to respondent, was not a waiver of the right of the Crown to cancel the location ticket for default to perform settlement duties. *Ross et al. & Holland*, Sept. 21, 1886. ~ 19 L.N. 366

Employer—Accident to workman—Responsibility of Employer.

A gang of men engaged by a railway company were proceeding on a construction train to the place where they were about to be employed. Platform cars were provided by the company, but the men (of whom plaintiff was one) mounted upon a car laden with lumber, and the lumber giving way, the plaintiff and others were injured.

* To appear in Montreal Law Reports, 2 Q.B.

HELD:—That it was the duty of the Company's officials to have prevented the workmen from riding in such a position, or to have given them an emphatic warning of the danger, and the Company were held responsible for the damages suffered by the men. *Canadian Pacific Ry. Co. & Goyette*, June 30, 1886.

Life Insurance—"Declarations and Statements" of Application—Increase of risk—Intemperate habits.

The application, after the usual answers and declarations, contained an agreement that should the applicant become as to habits so far different from the condition in which he was then represented to be as to increase the risk on the life insured, the policy should become null and void.

The policy stated by its terms that if any of the "declarations and statements" made in the application should be found in any respect untrue, the policy should be null and void. The applicant stated himself to be of temperate and sober habits. It was proved that he became intemperate during the year preceding his death.

Held, 1. That the applicant's agreement as to change of habits was included among the "declarations or statements" of the application, and as such became an express warranty.

2. That the contract thus formed was valid, and became binding on the assured and his assignee.

3. That in order to void this contract it was sufficient to prove that the change of habits of assured was such as to increase the risk on his life, even though death were not proved to have resulted therefrom.

4. That in the present case, a change of habits was proved which in its nature increased the risk on the life insured. *Boyce*, Appellant, and *The Phœnix Insurance Co.*, respondent, Sept. 21, 1886. Ramsay, J., diss.

Principal and Agent—Authority of Agent.

The purchaser of a car load of barley paid the price thereof to the vendor's agent from whom he received the grain, and who was moreover named in the bill of lading as the consignee.

HELD:—That the bill of lading constituted a written authority to the consignee to control the consignment, and having delivered it, to receive the price; and his receipt was a valid discharge to the purchaser. *Lambert*, Appellant, and *Scott et al.*, respondents, June 30, 1886.

Sale without delivery—Possession—Rights of Creditors.

B., who was the principal proprietor of a railway company, was in the habit of mingling the moneys of the company with his own. He bought locomotives essential to the business of the railway company, and for several years allowed the company to have possession of the locomotives openly and publicly as though their own property.

HELD:—1. That the locomotives must be presumed to be the property of the company, —especially as regards creditors who had trusted the company on the faith of their possession of such property.

2. That the appellants, who claimed the locomotives under a sale from B. not accompanied by delivery, were not entitled to the property as against a *bona fide* creditor of the company.—*Fairbanks et al.*, appellants, and *The South Eastern Railway Co.*, and *O'Halloran*, respondents, June 30, 1886.

Capias—Special bail under C. C. P. 824—Statement and declaration under C. C. P. 766—Contempt—Commitment.

HELD:—1. (Approving *Poulet* v. *Launière*, 6 Q. L. R. 314.) That a defendant who has given special bail under C. C. P. 824, is not bound to file a statement and make the declaration mentioned in articles 764-766, C. C. P.

2. The defendant in this case, not being bound by law to file such statement, could not be in contempt for failing to do so.

3. A commitment for contempt until otherwise ordered by the Court is irregular: it should be for a specified time or until the person conforms to the order which he disobeyed.—*Vineberg*, appellant, and *Ransom et al.*, respondents, June 30, 1886.

Quo Warranto—Usurpation of Corporate Office—C. C. P. 1016.

HELD:—That the proceedings authorized by article 1016 C. C. P. and subsequent articles of the same section apply to cases of usurpation of an office in any corporation w atever, without any distinction.—*Gilmour*, appellant, and *Hall et al.*, respondents, Nov. 22, 1886.

COUR DE CASSATION (CH. CIVILE).

9 août 1886.

Présidence de M. MERVILLE.

ROMAN *et* DAUPHIN.

Testament—Interprétation—Clause claire et précise—Prétendue erreur—Documents extrinsèques—Rectification—Excès de pouvoir.

Le devoir qu'ont les juges du fait de rechercher, avant tout, dans un testament, la volonté du testateur pour en assurer l'exécution, et le pouvoir qu'ils ont de recourir, à cet effet, à l'interprétation des clauses du testament prises dans leur ensemble, ne sauraient les autoriser à créer une disposition non écrite dans le testament, ni par suite à supprimer une clause écrite, claire et précise, pour la remplacer par une autre clause produisant des effets différents.

Une clause du testament, qui ne présente aucune ambiguité, ne peut donc être modifiée par les juges, sous le prétexte d'une prétendue erreur du testateur, dont ils feraient résulter la preuve, non du testament lui-même, mai d'arguments et de présomptions étrangers à cet acte.

"LA COUR,

"Vu l'art. 895 C. civ.;

"Attendu que si le juge du fait doit, avant tout, rechercher la volonté du testateur pour en assurer l'exécution, et s'il lui est permis de recourir à l'interprétation des clauses du testament prises dans leur ensemble, son pouvoir ne va pas jusqu'à lui permettre de créer une disposition non écrite dans le testament, ni par suite de supprimer une clause écrite, claire et précise, pour la remplacer par une autre clause produisant des effets différents;

"Attendu que la Cour d'appel d'Aix a déclaré qu'aux termes mêmes du testament de la Vve Jauffret, le passage attribué par cet acte à Jean-Baptiste-Césaire Dauphin, devait avoir à son point de départ, c'est-à-dire au coin de la maison de Jacques Dauphin, une largeur de 3 mètres 50 et n'avoir plus à 20 mètres de là que 2 mètres 50 et enfin, à son extrémité, que 1 mètre 50 de largeur;

"Attendu qu'après une telle déclaration, l'arrêt ne pouvait décider que le mur séparatif à établir entre le dit héritage, légué à Jean-Baptiste Césaire Dauphin, et l'héritage légué par le même testament à Marius Dauphin, serait construit de manière à laisser au dit passage, à son extrémité, une largeur plus grande que celle ci-dessus déterminée;

"Attendu que, pour statuer ainsi, la Cour d'appel ne s'est pas, en effet, fondée sur une interprétation des dispositions testamentaires prises dans leur ensemble, ni même sur une erreur de la testatrice dans la désignation de la chose léguée, erreur dont elle aurait fait résulter la preuve des termes mêmes des dispositions testamentaires; mais que la dite Cour s'est fondée sur une erreur dans laquelle la testatrice aurait été induite par l'aspect des lieux, et dont la preuve a été trouvée par les juges du fait, non dans le testament, mais dans des arguments et des présomptions déduits d'éléments étrangers à cet acte, notamment d'une expertise faite dans le cours d'une procédure en bornage; en quoi l'arrêt attaqué a violé l'art. 895 C. civ ci-dess us visé;

"Casse."

CHANGEMENT DE SEXE.

Une affaire d'une espèce assez rare, vient d'être soumise à la chambre des vacations du Tribunal civil de Marseille.

Il y a dix-huit ans, on inscrivait sur les régistres de la mairie la naissance d'un enfant nommé Edouard Z.... auquel l'employé, par étourderie, donna le sexe féminin, bien que ses prénoms lui attribuassent un autre sexe. Récemment, l'intéressé, ayant eu besoin de son extrait de naissance pour contracter un engagement volontaire, constata la singulière erreur commise à son préjudice.

Il se rendit à la mairie, et là s'engagea entre lui et l'employé le colloque suivant:

— Je viens, dit M. Z.... faire rectifier mon acte de naissance. Je suis porté comme étant une fille, et vous pouvez vous rendre compte immédiatement que c'est une erreur.

— Cela ne me regarde pas, répond l'employé. Pour moi, vous n'êtes pas un homme, du moment que les livres disent que vous êtes du sexe féminin.

— Mais, sapristi, la mention est inexacte; je vous affirme qu'elle est inexacte.

— Adressez-vous aux tribunaux; la justice décidera.

— C'est ce que je vais faire. Au revoir, monsieur.

— Au revoir... *mademoiselle.*

M. Z... dut, en effet, présenter une requête devant le tribunal pour faire rectifier son état civil, et il l'a soutenue lui-même à la barre.

Après un court délibéré, le tribunal a ordonné la mesure sollicitée.—*Gazette du Palais.*

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Dec. 4.

Judicial Abandonments.

Henriette Dubeau, *marchande publique*, Montreal, Nov. 24.

Charles Arthur St. Pierre, St. Germain de Rimouski, Nov. 24.

Curators appointed.

Re Butchart Bros. & Co., Rimouski.—H. A. Bedard, Quebec, curator, Dec. 1.

Re Elzéar Chouinard, Quebec.—M. Joseph, Quebec, curator, Nov. 27.

Re Painchaud & Vincent, Montreal.—James Shearer, Montreal, curator, Dec. 2.

Re Joshua D. Westgate, Lachine.—J. McD. Hains, Montreal, curator, Nov. 29.

Dividends.

Re J. S. Beaudette, Tingwick.—Second dividend, payable Dec. 29. Kent & Turcotte, Montreal, curator.

Re A. E. Desilets, Three Rivers.—Dividend, payable Dec. 29. Kent & Turcotte, Montreal, curator.

Re Frechette & Cie., Ste Marie Magdeleine.—Dividend, G. Daveluy, curator, Montreal.

Re D. E. Morin, Kamouraska.—Final dividend, payable Dec. 23. E. Begin, Quebec, curator.

Re Louis Rouillard, Pierreville.—Dividend, payable Dec. 29. Kent & Turcotte, Montreal, curator.

Re W. A. J. Whiteford, Montreal.—Final dividend, payable Dec. 29. Kent & Turcotte, Montreal, curator.

Separation as to property.

Clotilde Braseau vs. Alfred Meunier, farmer, Masham, Ottawa district, Nov. 26.

Mary Ann Emilie Caldwell vs. Télesphore Samoisette, St. John's, Iberville, Sept. 28.

Louise Huard vs. Pierre Boucher, Iberville, Nov. 8.

GENERAL NOTES.

Some ten years ago a young lawyer made his *début* at the Troy bar, in the defense of a criminal, at a session presided over by the late Judge H—. The writer said to the judge: "I understand young So-and-So produced a very good impression." "Why, y-e-s," drawled the judge, who was a great stickler for forensic etiquette, "but he had one habit that annoyed me very much. He had a lemon, and was continually sucking it. I didn't like the looks of it, but I didn't want to hurt the young man's feelings by a public reprimand, and so I addressed him a little note, intimating that unless the lemon was essential to his health, it would be more in accordance with the received etiquette of courts to desist from the exercise, or postpone it until recess. The lemon disappeared; but they told me afterwards," continued the judge with a grin and an indescribable squeal, "that it contained w-h-i-s-k-e-y."—*Albany Law Journal.*

The judges of the land are certainly a many-sided body. On Lord Mayor's Day in the morning the Chief Justice delivered a speech of the highest literary finish, while in the evening the Master of the Rolls responded for the judges with a breadth and easiness of style which must have been fully appreciated by the aldermen. On the other hand, to turn from manner to matter, Lord Esher kept clear of politics, while Lord Coleridge's speech was not altogether free from the taint introduced into the occasion by the last of the chief barons.—*Law Journal, (London).*

As a rule, people who bet and game act towards each other with far more honesty than they do in ordinary business transactions in life. To be a defaulter in bets, or to have been found endeavouring by any means to avoid a debt of honour incurred in gaming, inflicts on a man a far worse stigma than to be a bankrupt or up to the eyes in debt. Hence the law as to the relations of principal and agent in betting transactions, despite the decision in *Read* v. *Anderson*, is by no means clearly established, and the law with regard to gaming at cards is neither definite nor intelligible. *Perry* v. *Barnett* and *Seymour* v. *Bridge* will most likely leave the speculator in bank shares, who would naturally think that they are reconcilable and conclusive, in a more hopeless muddle than before the two cases were decided. The fact is that the law as to betting, gaming, and Stock-Exchange bargains is in a most unsatisfactory and kaleidoscopic condition. Bookmakers are shrewd enough as a rule, but they certainly are not lawyers enough to see their way through the law of betting and gaming as it now stands.—*Ib.*

THE PRINCE OF WALES AND HIS INN OF COURT.—On November 19, Sir Thomas Chambers, Q.C., announced in the Middle Temple Hall that the Prince of Wales had been elected treasurer of the Honourable Society of the Middle Temple for the ensuing year, and that his Royal Highness had graciously consented to assume that office. He thereupon proposed the Prince's health, and congratulated the members of the Inn upon the fact that they would, during Her Majesty's jubilee year, be presided over by the Heir Apparent to the Throne.—*Ib.*

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