The Legal News.

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DECISIONS IN APPEAL, 1881.

The following is a statement of business before the Court of Queen's Bench sitting in appeal during the year 1881, in the same manner as given for 1880 at pp. 41 and 66 of Volume 4. The total number of judgments rendered in civil cases in 1881 at Montreal was 131, against 116 in 1880, of which 89 were confirmations and 42 reversals. We have arranged the cases alphabetically as follows :—

Confirmed.

Auldjo & Prentice, S. C. M.
Auldjo & Prentice, S. C. M.
Bank of Toronto & Fair, S. C. M.
Bank of Toronto & Perkins, S. C. M.
Beaudry & Barbeau, S. C. M.
Beaudry & Lupien, S. C. M.
Beautronc Major & Lalonde, S. C. M.
Bell & Burland, S. C. M.
Bell & Hartford, S. C. M.
Bennett & The Pharmaceutical Association, S. C. M.
Black & Canadian Bank of Commerce, S. C. M.
Black & Stoddart, S. C. M.
Brossard & Lepine, S. C. M.
Bruneau & Bertrand, S. C. M.
Canada Guarantee Co. & La Banque d'Hochelaga, S. C. M.
Chauveau & Dupras, S. C. M.
Commissaires d'Ecole & Duquette, S. C. Iberville.
Corporation d'Hochelaga & Smart, S. C. M.
Corporation of L'Assomption & Baker, S. C. Joliette.
Corporation of St. Louis & Smart, S. C. M.
Corporation of Verdun & Les Sœurs, etc., S. C. M.
Cossitt & Lemieux, S. C. M.
Court Mount Royal & Boulton, S. C. M.
Davidson & Lajoie, S. C. M.
Dawson & Trestler, S. C. M.
Demers & Lynch, S. C. M.
Demers & Williamson, S. C. M.
De Montigny & Insurance Co., S. C. M.
Devlin & Berger, S. C. M.
Devlin & Seaton Hall College, S. C. M.
Dorion & Dupuis, S. C. Terrebonne.
Dorion & Loranger, S. C. M.
Dudevoir & Bruce, S. C. M.
Evans & Chauveau, S. C. M.
Evans & Perkins, S. C. M.
Faucher & Brown, S. C. M.
Forté & The City of Montreal, S. C. M.
Foster & Field, S. C. St. Francis.
Foster & Stanton, S. C. M.
Frechette & Cie. Manufacturière, S. C. St. Hyacinthe.
Gault & Bertrand, S. C. M.
Gault & Bousquet, S. C. M.
Grant & Beaudry, S. C. M.
Harvey & Hochelaga M. Fire Ins. Co., S. C. M.
Henderson & Murphy, S. C. M.
Kelley & Beaufort, S. C. M.
Lalonde & Tunstall, S. C. M.
Lapierre & McDonald, S. C. M.
Lareau & La Société de Construction, S. C. M.
Lesage & Dupuy, S. C. M.
Lesser & Bernier, S. C. M.
Lynch & Henshaw, S. C. M.
Mack & Welch, S. C. St. Francis.
McCormick & Drake, S. C. M.
McDonald & Mackay, S. C. M.
McPherson & Drumm, S. C. Iberville.
Mason & Delaware, L. & W. Co., S. C. M.
Masson & Rosaire, S. C. M.
Merrifield & Towsey, S. C. Ottawa.
Molson & Carter, S. C. M.
Morkill & Griffith, S. C. St. Francis.
Mounsey & Bernard, S. C. M.
Mutual Fire Insurance Co. & Gadouette, S. C. M.
Nadeau & Theriault, S. C. Richelieu.
Noel & Corporation of Richmond, S. C. St. Francis.
Normandin & Normandin, S. C. M.
Northern Assurance Co. & Prevost, S. C. M.
O'Brien & Beaufort, S. C. M.
O'Brien & Beaufort, S. C. M.
O'Brien & McGinnis, S. C. M.
O'Brien & McLynn, S. C. M.
O'Brien & Tassé, S. C. M.
Paige & Evans, S. C. M.
Paradis & Lemire, S. C. M.
Poulin & Thibaudeau, S. C. M.
Robert & The City of Montreal, S. C. M.
Rodgers & Consolidated Bank, S. C. M.
Roy & Arpin, S. C. Iberville.
Russell & Hamelin, S. C. Ottawa.
Semelhaack v. Canada Fire & Marine Ins. Co., S. C. M.
Smith & Cassils, S. C. M.
Société de Construction Montarville & Robitaille, S. C. M.
Stewart & Brewis, S. C. M.
Stewart & The Metropolitan Building Society, S. C. M.
Thibaudeau & Deguire, S. C. M.
White & Huntington, S. C. M.
Whitman & Corporation of Stanbridge, C. C. Bedford.
Willey & The Mutual Fire Ins. Co., S. C. St. Francis.
Wright & Heritable Securities Ass.'n, S. C. M.

Reversed.

Bachand & Bachand, S. C. M.
Bain & White, S. C. M.
Banque Jacques Cartier & Beausoleil, S. C. M.
Berger & Metivier, S. C. M.
Boisclair & Lalancette, C. C. Richelieu.
Bourque & Bissonnette, S. C. Bedford.
Caffrey & Lighthall, S. C. M.
Canada Paper Co. & Bannatyne, S. C. M.
Clement & Francis, S. C. M.
Compagnie (La) de Pret & St. Germain, S. C. M.
Consolidated Bank & Leslie, S. C. M.
Cultivateurs (Assurance des) & Barthe, S. C. M.
Daley & Chevrier, S. C. M.
Dorion & Champagne, S. C. Terrebonne.
Evans & McLea, S. C. M.
Fair & Desilets, S. C. St. Hyacinthe.

Fletcher & Mutual Fire Ins. Co., S. C. St. Francis.
Fuller & Fletcher, S. C. St. Francis.
Gault & Dussault, S. C. M.
Guilbault & Vadenais, S. C. Richelieu.
Hart & Rascony, S. C. St. Hyacinthe.
Law & Frothingham, S. C. M.
Leduc & Western Ass. Co., S. C. M.
Loiselle & Paradis, S. C. Iberville.
Merchants Bank & Leslie, S. C. M.
Merchants Bank & Whitfield, S. C. Iberville.
Miller & Coleman, S. C. M.
Molsons Bank & Lanaud, S. C. M.
Molsons Bank & Lionais, S. C. M.
Montpetit & Montpetit, S. C. M.
Municipality of Cleveland & Melbourne, C.C. St. Francis.
Nicholson & Metras, S. C. M.
Normandin & Fauteux, S. C. M.
Pierce & Butters, S. C. St. Francis.
Réel & McEnven, S. C. M.
Sénecal & Crawford, S. C. M.
Société de Construction & Desautels, S. C. M.
Terrien & Labonté, S. C. Iberville.
Terrien & Labonté, S. C. Iberville.
Whitfield & McDonald, S. C. Iberville.
Wilson & Grand Trunk R. Co., S. C. M.
Windsor Hotel Co. & Lewis, S. C. M.

Under the head of judgments confirmed are included all cases where the judgment is reformed without the respondent being condemned to pay costs. This is the system followed in the official returns to Government; but in some cases it is calculated to mislead: *e.g.*, in *Bain & White* the judgment was to all intents a reversal, (and we have so placed it,) although the respondent was not condemned to pay the costs of the appeal.

It is worthy of notice that in 1880, the number of reversals was 29 out of 116 decisions, or exactly 25 per cent. In 1881 the number of reversals in 101 appeals from the District of Montreal was 27, a little over 25 per cent. So that the chances of clients appealing are just one in four on the average of the two years! Including the country districts, the total number of confirmed judgments was 89, and 42 reversed. It will be noticed that the appeals to the Court of Queen's Bench from country districts are very few in number, the usual recourse being an inscription in Review. The statement for 1881 is as follows:—

	C.	R.	Total.
Ottawa	2	0	2
Terrebonne	1	1	2
Joliette	1	0	1
Richelieu	1	2	3
St. Francis	5	4	9
Bedford	1	1	2
St. Hyacinthe	1	2	3
Iberville	3	6	9
Beauharnois	0	0	0
	15	16	31

There were also six criminal cases in the Montreal Division, including two writs of error. In 2 cases the judgment was affirmed, and in 4 the judgment was reversed or set aside.

In the Quebec Division there were 64 judgments in civil cases, in 43 of which the judgment was confirmed, and in 21 the judgment was reversed. There were also 3 Reserved Cases at Quebec. In 1 case the conviction was affirmed, and in 2 cases the verdict was set aside.

EXAMINATION OF THE PRISONER.

The London *Times* of December 3, referring to the trial of Guiteau, says:—

"On the whole we may safely come to a conclusion as to the expediency of admitting prisoners to testify without attaching much consequence to the incidents of this extraordinary trial (Guiteau's). We cannot help seeing that the tendency is in favor of permitting this course. In more than one recent Act—for instance, the Merchants' Shipping Act of 1876, the Mines Regulation Act, and the Conspiracy and Protection of Property Act of 1875—the Legislature has broken in upon the common law, and has allowed the defendant to give evidence as an ordinary witness. People are more sceptical than they were as to the advantages of the present system. It is not so clear as it seemed to be that justice should have so heavy odds against it in its contest with the murderer or thief. The rational rule seems to be that everything should come out; and in the end this is likely to obtain acceptance. It is almost a daily occurrence that men get verdicts of acquittal when if one or two questions had been put to them the hollowness of their defences would have been revealed. A jury acquits a prisoner under the belief that he has never been convicted. They are then informed that he has been in prison half-a-dozen of times for the same offence. They feel that they have been duped. Their verdict would have been otherwise had they been trusted, and the whole facts been laid before them. With our traditions it might not be expedient to allow the Judge, as in France, to question the accused; that would depose the former from his position of impartiality. But it is probable that we should, on the

whole, gain were the accused free to go into the box. In many instances guilty persons would be deprived of a false, artificial advantage. Even in controversies as to sanity, it would be, as a rule, better that the defendant should be examined in presence of the jury. A few answers from him would tell more than the conflicting testimony of crowds of experts, all sworn to some theory; more than citations, torn from their contexts, of medical writers, or loose anecdotes about the imbecility of the prisoner's ancestors. At any rate, the incidents of Guiteau's trial ought not to prejudice our decision in regard to an important question. His boisterous vanity would have insured scenes at his trial under any system."

JUDICIAL CHANGES IN ENGLAND.

Sir John Holker, Attorney-General under the last Conservative Government, has been raised to the bench by Mr. Gladstone, and placed in the high office of Lord Justice of Appeal, rendered vacant by the recent death of Lord Justice Lush. Sir John is acknowledged to be a very able lawyer, and in his appointment Mr. Gladstone has shown a disregard of political distinctions which might sometimes be followed with advantage in Canada.

Ex-Lord Justice Bramwell has been raised to the peerage, under the title of Lord Edenbridge.

Sir Montague Smith, who has been for several years one of the paid members of the Judicial Committee of the Privy Council, has retired from the bench.

MAKING A QUORUM.

The English *Law Times* notices the recent exercise in Paris of a curious privilege of the French bar. The *Cinquième Chambre* of the *Cour d'Appel* of Paris, is made up of ten judges, of whom seven form a quorum. On a recent occasion four of the judges were prevented from sitting, thus leaving only six for the business of the court. This being so, the President called up to the bench the senior barrister present, after having administered the judge's oath to him—an unnecessary ceremony, in fact; the oath taken by the barrister on his call being sufficient for such a purpose. The authority for the proceeding is the 49th article of the decree of the 30th March, 1808. If no barrister is available, a solicitor (*avoué*) is called. Sometimes the action of the President has given rise to a lively political controversy, and has been impeached on the ground of favoritism. A barrister so called up must have attained the age of twenty-five, and the number of barristers called up must not exceed the number of judges sitting. The judgment of the court, composed of judges and a barrister or barristers, must state that there was not a quorum of judges, and that a barrister was called upon, otherwise the judgment will be null and void.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Dec. 24, 1881.

Before JETTÉ, J.

LARAMÉE et al. v. EVANS.

Marriage of Roman Catholics—Jurisdiction—Authority of the R. C. Bishop.

The only "competent officer recognized by law" for the solemnization of marriage between two Roman Catholics is the curé of the parties, and therefore the marriage of two Catholics by a Protestant minister is invalid, notwithstanding that the parties had a license issued by the civil authority.

The Civil Courts have power to refer to the decision of the Roman Catholic Bishop of the Diocese the question of the validity or nullity of the marriage of two Roman Catholics by a Protestant minister, and the decision of the Bishop will be followed by the Courts in pronouncing as to the civil effects of the marriage.

This case has already been before the Court on demurrer;—see 3 Legal News, p. 342, for the judgment of Mr. Justice Papineau.

The question was as to the validity of the marriage of Marie Joseph Laramée to the defendant by a Protestant minister. It was admitted that Marie Joseph Laramée was a Roman Catholic, and the Court found that it was proved that the woman, Miss Evans, was also a Roman Catholic at the time of her marriage. Art. 128, of the Civil Code of Lower Canada, says "marriage must be solemnized openly, *by a competent officer recognized by law*;" and Art. 129 says, "all priests, rectors, ministers and other officers "authorized by law to keep registers of acts of "civil status, are competent to solemnize mar-

" riage. But none of the officers thus authorized, " can be compelled to solemnize a marriage to " which any impediment exists according to the " doctrine and belief of his religion, and the " discipline of the church to which he belongs." The principal question, therefore, was whether, in the case of two Roman Catholics, a Protestant minister (who is authorized by law to keep registers of acts of civil status) ceases to be a *competent officer recognized by law.*

JETTÉ, J., in rendering judgment, said the questions which arose were as follows :—

" 1. Marie Joseph Laramée, était-il, à l'époque de son mariage, privé de l'intelligence et de la volonté nécessaires pour donner un consentement valable ?

" 2. Les deux parties sont-elles catholiques ; et par suite soumises à l'observation des prescriptions spéciales que la loi reconnaît relativement au mariage des catholiques ?

" 3. Le mariage de deux catholiques peut-il être valablement célébré par un ministre protestant ?

" 4. L'autorité ecclésiastique catholique a-t-elle jurisdiction pour prononcer sur la validité d'un tel mariage ?"

As to the first question, his Honor held that Marie Joseph Laramée was not incapable of giving a valid consent.

As to the second, his Honor held it to be proved that both parties were Roman Catholics.

In dealing with the third question his Honor reviewed at considerable length the history of the law of marriage from the earliest epoch of Christendom to the date of the Civil Code. His Honor, after quoting the remarks of the Codification commissioners on page 174 of the first volume of their Reports, continued :—

C'est donc à la lumière de ces observations, et en nous pénétrant de l'esprit de notre législation antérieure au Code, qu'il nous faut maintenant examiner les articles qui se rapportent à cette matière.

Et d'abord comme les rédacteurs du Code le constatent, il n'a pas été question d'établir ici le *mariage civil*, et suivant l'expression de mon savant collègue, M. le juge Papineau : " notre " loi se contente de donner des effets civils et sa " sanction au *mariage religieux.*" C'est en effet ce qui résulte, on ne peut plus clairement, de chacune des lois que nous avons examinées. Car quelles sont les personnes et les seules personnes à qui la loi a toujours reconnu le pouvoir de célébrer les mariages ? Les prêtres, les curés, les ministres ; c'est-à-dire ceux-là seulement qui sont revêtus d'un caractère religieux.

Notre Code Civil n'a donc pas établi de système nouveau, mais il s'est contenté de reproduire l'ancienne législation, en la renfermant dans des règles assez larges et assez élastiques pour " conserver à chaque croyance la jouissance de ses usages et de ses pratiques."

Or nous avons vu quelles étaient les règles de l'ancien droit au sujet du mariage des catholiques ; nous avons vu que Louis XIII dans sa Déclaration du 26 novembre 1639, ordonne que les publications des bans soient faites par le *curé de chacune des parties contractantes*, et que quant à la célébration du mariage, il fait *défense expresse* à tous prêtres tant séculiers que réguliers *de célébrer aucun mariage* qu'entre *leurs vrais* et *ordinaires paroissiens*, sans la permission écrite du curé des parties ou de l'Evêque ; nous avons vu de plus que cette loi, loin d'être incompatible avec l'ensemble de la législation anglaise lors de la cession du pays, était au contraire en complet accord avec ce qui prévalait en Angleterre à cette époque ; nous avons vu enfin que cette loi n'avait pas été affectée par la législation subséquente. Et maintenant lorsque nous examinons les dispositions du Code Civil, nous trouvons que les rédacteurs du Code n'ont pas voulu apporter de changement à cette loi, mais que tout ce qu'ils ont voulu faire ça été de nous donner une règle assez large pour ne pas en gêner l'application.

Il serait donc impossible d'interpréter sainement cet article 129 du Code Civil qui dit, que tous prêtres, curés, ministres et autres fonctionnaires autorisés à tenir et garder les régistres de l'Etat Civil, sont compétents à célébrer les mariages, sans recourir à cette législation antérieure que les commissaires ont voulu reproduire sans modification. Or, d'après cette législation antérieure, le fonctionnaire compétent à célébrer le mariage des catholiques, c'est le prêtre, le curé ; et celui compétent à célébrer le mariage des protestants, c'est le ministre, et celui compétent à célébrer le mariage des juifs, c'est le rabbin, etc. Mais il est impossible de dire que tous ces fonctionnaires ont une juridiction semblable, et que le rabbin juif, par exemple, serait compétent à célébrer le mariage de deux catholiques !

Mais il y a plus, le Code lui-même nous donne dans l'article 130, la règle d'interprétation à suivre pour l'application de l'article 129. En effet la loi défend, dans l'article 57, à tout fonctionnaire autorisé, de célébrer aucun mariage, sans se faire représenter un certificat de publications de bans, à moins que ce fonctionnaire n'ait fait ces publications lui-même ou qu'on ne lui en produise la dispense. Et l'article 130 ajoute, que ces publications sont faites par le prêtre, ministre ou autre fonctionnaire, *dans l'église à laquelle appartiennent les parties!* Et si les parties appartiennent à différentes églises, ces publications ont lieu *dans l'église de chacune des parties.* Or n'est-il pas évident que cela veut dire, que ces publications doivent être faites par le prêtre ayant juridiction spirituelle sur les parties? Et si ces publications doivent être ainsi faites par le fonctionnaire ayant juridiction spirituelle, dans l'église des parties, à plus forte raison doit-on dire que le mariage doit être célébré *dans cette église des parties et par le fonctionnaire y ayant juridiction.*

Or, dans l'espèce soumise, je trouve deux catholiques, dont l'un paroissien de St. Jacques et l'autre de Notre-Dame, se présentant, sans publications préalables et sans dispense, chez un ministre protestant n'ayant sur eux aucune juridiction spirituelle. Ce ministre est-il pour ces deux parties le fonctionnaire compétent reconnu par la loi? Assurément non.

Il n'avait aucune autorité, pour célébrer le mariage en question et son acte ne peut être considéré que comme abusif et fait en violation de la loi.

Mais on soutient que les parties ayant fourni à ce ministre une *licence* de mariage, octroyée par un des officiers auxquels le Gouvernement confie cette charge, cette *licence* l'autorisait à célébrer valablement ce mariage, sans s'inquiéter de la religion des parties. Cette prétention n'est pas soutenable. La *licence* n'est pas autre chose que l'équivalent pour les protestants de la dispense pour les catholiques, c'est-à-dire une permission de l'autorité qui a droit de dispenser de cette formalité de la publication des bans. Or cette autorité pour les catholiques c'est l'Evêque diocésain, ou son grand vicaire, et pour les protestants c'est le Gouverneur Civil de la Province (C. C. art. 134). La licence du Lieutenant-Gouverneur donnée à deux catholiques n'a donc aucune autorité et ne peut produire aucun effet; et la loi de 1871, n'ajoute rien à la loi antérieure, ni au Code Civil, mais déclare simplement par quel département du pouvoir exécutif ces licences seront accordées.

Concluons donc, sur cette troisième question que le seul fonctionnaire compétent à célébrer le mariage de deux catholiques est le propre curé des parties, que la *licence* accordée par le représentant du Gouvernement Civil, n'est d'aucune valeur pour dispenser des publications de bans requises pour les catholiques et qu'en conséquence le mariage célébré dans l'espèce, par un ministre protestant, et en vertu d'une simple licence, est, aux yeux de la loi civile, un mariage nul et abusivement contracté.

4. La quatrième et dernière question en cette cause est de savoir:

Si l'autorité ecclésiastique catholique a juridiction pour prononcer sur la validité d'un tel mariage?

Le mariage, chez tous les peuples, a toujours été distingué des contrats ordinaires et a toujours été regardé comme quelque chose de *divin.* Aussi la célébration du mariage a-t-elle partout et toujours été accompagnée de quelque bénédiction ou cérémonie religieuse.

Par la loi nouvelle le mariage est devenu plus encore; il a été élevé à la dignité de *sacrement.*

Pour les catholiques donc, le mariage est non seulement un contrat, mais un sacrement.

Or, contrat de droit divin et sacrement, le mariage est évidemment du ressort exclusif de l'autorité ecclésiastique.

Mais comme le mariage touche aussi aux plus graves intérêts de la société, il est pareillement évident que l'Etat y est intéressé et qu'il lui appartient d'en régler les effets civils. Considéré donc dans ses rapports avec la société le mariage est, à ce point de vue, soumis à l'autorité civile: "*Matrimonium in quantum ordinatur* "*ad bonum politicum, subjacet ordinationi legis* "*civilis,*" dit St. Thomas.

La demande faite à ce tribunal, dans l'espèce soumise, n'a donc attribué, avec raison, au juge civil, que la connaissance des effets civils de ce mariage. La juridiction de cette Cour est en effet parfaitement déterminée et exclusivement limitée aux matières civiles, et tout le monde admet aujourd'hui que grâce à la liberté religieuse dont jouit notre pays, les matières ecclésiastiques ne sont plus réclamées comme étant de la compétence des tribunaux civils.

C'est pourquoi quant à la validité même du mariage, quant au lien, les demandeurs requirèrent le renvoi de la cause à l'autorité ecclésiastique, savoir à l'Evêque du Diocèse, afin qu'il prononce d'abord sur ce qui est de son ressort, sauf au tribunal civil à donner ensuite à sa sentence la sanction et l'autorité du pouvoir civil.

S'il n'y avait aucun précédent pour guider ce tribunal en pareille matière, les principes que nous venons d'exposer suffiraient seuls pour nous indiquer clairement la route à suivre, mais la jurisprudence des divers tribunaux qui composent notre hiérarchie judiciaire, vient encore faciliter notre tâche.

Ainsi en 1848, dans la cause de *Lussier & Archambault* (11 Jurist p. 53) la Cour du Banc de la Reine, présidée par les Juges Rolland, Day et Smith, a reconnu que la nullité du mariage de deux catholiques ne pouvait être prononcé avant qu'un décret de l'autorité ecclésiastique eût préalablement adjugé sur le sacrement.

En 1866, dans la cause de *Vaillancourt & Lafontaine* (11 Jurist p. 305) la Cour Supérieure siégeant à Trois Rivières (Polette, J.,) a pareillement déclaré que la nullité du mariage de deux catholiques ne peut être prononcée qu'après que le lien religieux ou sacramentel a été déclaré nul par l'autorité ecclésiastique.

En 1872, dans la cause de *Bergevin & Barrette* (4 Revue Légale p. 160,) la Cour Supérieure à Montréal (Berthelot, J.,) a décidé dans le même sens.

Enfin en 1874, dans l'affaire *Guibord*, rapportée au 20e Jurist p. 228, sous le titre de *Brown & la Fabrique de Montréal*, les Lords du Conseil privé ont reconnu qu'en matière ecclésiastique l'Evêque a toujours autorité pour prononcer judiciairement et qu'il peut être du devoir des tribunaux civils en tel cas de respecter ces sentences et même de leur donner effet. Cette opinion est d'un si grand poids qu'il importe de citer ici en entier le passage qui la contient. Le Conseil Privé appréciant les motifs invoqués pour justifier le refus de la sépulture ecclésiastique à *Guibord*, d'après les règles du Rituel, s'exprime comme suit: (page 243 du Jurist.)

" To bring him (Guibord) within the 3rd " Rule, it would be necessary to show that he " was excommunicated by name. *That such a* " *sentence of excommunication might be passed* " *against a Roman Catholic in Canada, and that it* " *might be the duty of the Civil Courts to respect* " *and give effect to it*, their Lordships *do not deny*. " It is no doubt true, as has already been ob- " served, that there are now in Canada no " regular Ecclesiastical Courts such as existed " and were recognized by the State when the " province formed part of the dominions of " France. *It must, however, be remembered that a* " *bishop is always a* judex ordinarius, *according* " *to the canon law;* and, according to the general " canon law, may hold a Court and deliver " judgment, if he has not appointed an official " to act for him. And it must further be remem- " bered that, unless such sentences were recog- " nized, there would exist no means of deter- " mining amongst the Roman Catholics of " Canada the many questions touching faith " and discipline which, upon the admitted " canons of their Church, may arise among " them."

Il me semble clair que cette déclaration couvre entièrement le cas actuel et reconnait d'une manière complète la juridiction de l'évêque dans l'espèce soumise.

En présence de ces décisions de nos tribunaux, que je viens de citer, et de cette opinion du tribunal le plus élevé de notre hiérarchie judiciaire, je ne saurais hésiter à suivre la jurisprudence que je trouve ainsi établie, contrairement à la décision isolée de la Cour Supérieure dans la cause de *Burn & Fontaine* (4 Revue Légale p. 163), qui d'ailleurs ne va pas aussi loin que le *jugé* l'indique.

En conséquence avant de prononcer sur la validité de ce mariage je refère la présente cause à l'ordinaire du Diocèse pour qu'il prononce préalablement la nullité de ce mariage et sa dissolution s'il y a lieu, sauf à adjuger ensuite par cette cour, quant aux effets civils de ce mariage.

Dépens réservés.

Bonin & Archambault for the plaintiffs.

Maclaren & Leet for the defendant.

COURT OF REVIEW.

MONTREAL, January 31, 1882.

TORRANCE, RAINVILLE, JETTÉ, JJ.

[From S.C., Sherbrooke.

FLETCHER v. THE MUTUAL FIRE INSURANCE CO. OF THE COUNTIES OF STANSTEAD AND SHERBROOKE.

Fire Insurance—Title of Insured—Mortgagee effecting insurance as proprietor—Motion for judgment on the verdict.

The defendants, after a jury trial had taken place, moved at different times (1) *for a new trial,* (2) *in arrest of judgment, and* (3) *for judgment non obstante veredicto. These motions severally failed. The plaintiff then moved for judgment on the verdict. Held, that this motion will not, under such circumstances, be granted as of course, but the court will reject such motion where the verdict appears to be unsustained by the evidence.*

This case was before the Court on the merits of a motion granted by the Court at Sherbrooke for judgment on the verdict of a jury in favour of the plaintiff for $600 and costs. No fewer than 29 questions were put to the jury, and answered by them with more or less precision. The action was to recover the amount of an insurance against loss by fire. The defendants were incorporated by C. S. L. C., cap. 68, and section 25 required the plaintiff to have the title or estate described by him at the time of effecting the insurance to the land on which any property damaged by fire is situate, in order that the insurance might be valid and binding, "but if the insured has a less title or "estate in such property, or if the same is "incumbered otherwise than described as afore-"said, the policy shall be void." The pretension of the Company was that the plaintiff, in effecting the insuranee, represented himself to be proprietor, whereas he was only mortgage creditor for $250. After the verdict, the Company had at different times made a motion for a new trial, a motion in arrest of judgment, and a motion for judgment *non obstante veredicto*, and these motions had severally failed.

TORRANCE, J. As I read the evidence and the answers of the jury, the defendants have proved their plea that the plaintiff was not proprietor when he insured as proprietor, and the motion for a new trial should have been granted if made in time, which it was not. The Court below has regarded the motion for judgment as of course, and therefore granted it, condemning the defendant as debtor of plaintiff for $600. Looking at the evidence of record, I do not agree to condemn the defendants, but hold that on the evidence of record the defendants should not be condemned. I would, therefore, set aside the judgment of date 18th May, 1881, and simply say that the plaintiff, on the facts of record, should take nothing by his motion, leaving him to such other recourse as he may be advised.

Ives, Brown & Merry for plaintiff.

Brooks, Camirand & Hurd for defendants.

Erratum.—On page 23, *Ross* v. *Canada Agricultural Ins. Co.* should read *Ross* v. *Franchère.*

RECENT DECISIONS AT QUEBEC.

Simulated Title—Contestation.—In the contestation of a simulated title absolutely null, it is not necessary to ask that it be annulled. Therefore, where the defendant's daughter claimed certain effects as belonging to her under a judicial sale, and the plaintiff contested the opposition, alleging that the sale in question was simulated and fraudulent, it was held to be unnecessary to take conclusions for the cancellation of the sale, the Court being of opinion that the sale was a sham, and absolutely null. Casault, J., observed: "Des conclusions demandant l'annulation du titre invoqué par l'opposant sont nécessaires quand ce titre a une existence légale, et quand, sans être absolument nul, il peut être annulé; mais elles ne le sont pas lorsque le titre est frappé d'une nullité absolue ou qu'il n'est que simulé, c'est-à-dire sans existence réele. On n'annule pas ce qui n'existe pas."—*Hingston* v. *Larue*, (Court of Review, Quebec), 7 Q. L. R. 301.

Opposition by unregistered proprietor.—An opposant claiming real estate by opposition *à fin de distraire*, under title not registered at the time of the seizure, cannot get costs of opposition against the plaintiff seizing.—*Dorval* v. *Bourassa*, (Superior Court, Quebec; opinion by Meredith, C. J.), 7 Q. L. R. 303.

Review—Deposit.—Si le huitième jour qui suit le jugement est férié, le dépôt pour révision peut être fait le neuvième jour, et dans ce cas, l'inscription pour révision produite au greffe le dixième jour est valable.—*Hingston* v. *Larue.*—(Court of Review, Quebec; opinion by Meredith, C. J.), 7 Q. L. R. 306.

Prescription of Thirty Years—Possession.—A defendant who has pleaded the prescription of 30 years, cannot avail himself of the possession of the previous possessor, unless he shows that there was some legal connecting link between

them.—*Butler* v. *Legaré*,(Superior Court, Quebec; opinion by Meredith, C. J.), 7 Q. L. R., 307.

Damages—Settlement by one of two or more persons jointly liable.—Il y a solidarité entre deux ou plusieurs personnes pour les dommages résultant d'un délit commis conjointement, et le réglement fait par l'un libère les autres.—*Giroux* v. *Blais*, (Circuit Court, Quebec, opinion by Stuart, J.), 7 Q. L. R. 307.

RECENT U. S. DECISIONS.

Master and Servant—Negligence—Servant using dangerous animal after knowledge of danger.—In an action against a street railway company to recover damages for injury from the kick of a mare owned by the company it appeared that plaintiff was a porter in the employ of the defendant, and had charge of the mare in question. He had full knowledge of her habit of kicking. *Held*, that he could not recover. A master does not warrant his servant's safety. He however is under an implied contract with those whom he employs to adopt and maintain suitable instruments and means with which to carry on the business in which they are employed. This includes an obligation to provide a suitable place in which the servant, being himself in the exercise of due care, can perform his duties safely, or without exposure to dangers that do not come within the reasonable scope of his employment. Cazger v. Taylor, 10 Gray, 274; Seavor v. Boston & Maine R. Co., 14 id. 466; Gilman v. Eastern R. Co., 10 Allen, 233; Coombs v. New Bedford Cord Co., 102 Mass. 572. A servant however assumes the risk naturally and reasonably incident to his employment. He is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself. Hayden v. Smithville Manuf. Co., 29 Conn. 548; Whart. on Neg., § 217. Inasmuch as the relation of master and servant cannot imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to take of himself, he cannot complain if he is injured by exposure after having the opportunity of becoming acquainted with the risks of his employment and accepts them. Whart. on Neg., §§ 214 and 217; 1 Addison on Torts, § 255. No duty was imposed on the company to inform him what he so well knew, nor to forbid his grooming the mare. He voluntarily assumed the risk, and continued to expose himself to a well-known danger. He cannot now cast on his employer a liability for the injury which he thereby suffered. It matters not that the master did know the vicious habits of the mare. It is the knowledge of the servant which withholds from him a right of action. Harkins v. N. Y. Cent. R. Co., 65 Barb. 129; Frazier v. Pennsylvania R. Co., 2 Wright, 104. *Green and Coates Street Passenger Railway Co.* v. *Bresmer* (Pennsylvania Supreme Court, May 2, 1881.)

GENERAL NOTES.

AMATEUR LEGISLATION.—We were lately favored with a sight of a proof copy of Mr. Curror's proposed "Agricultural Holdings (Scotland) Bill," and were much amused thereat. The errors and eccentricities of Parliamentary draughtsmen have often been adverted to, but we conceive that nothing similar to the following has ever been unearthed from the stores of forgotten or abortive pieces of legislation. This is what is given in the clause containing the definition of the term used in the bill as the definition of *trespassers*:

"'Trespassers' means the *fauna* of the country, whether wild or domesticated, and includes mankind."

The picture of the sporting farmer, fired with indignation against trespassers, going out to shoot "the *fauna* of the country," is irresistibly ludicrous: "*which includes mankind*," is a touch of genius quite unapproachable.—Edinburgh *Law Journal*.

A boarder in a New York hotel invited a friend to dine with him. While at dinner the visitor's coat was stolen. An attempt was made to hold the hotel proprietors responsible. The decision of the Court was that the rule that makes the landlord of an inn responsible for the goods of his guests is a severe one, and can only be applied when the conventional relation of innkeeper and guest exists. It cannot be extended so as to protect one who is not a guest, but a mere caller on a guest, or a transient visitor upon the invitation of a guest.

A young lawyer of the city of Providence tells a story about himself which is good enough to go on record. He was trying a "rum case" at Bristol not long ago, when a witness was put on the stand to testify to the reputation of the place in question. This witness, a stage driver, in answer to a query as to the reputation of the place replied: "A rum shop." The lawyer inquired, "You say it has the reputation of being a rum shop?" "Yes, sir." "Whom did you ever hear say it was a rum shop?" The witness didn't recollect any one he had heard say so. "What," said the lawyer, "you have sworn this place has the reputation of being a rum shop, and yet you can't tell of any one you ever heard say so?" The witness was staggered for a moment—in the words of the lawyer, "I had him"—and the lawyer was feeling triumphant, when the witness gathered himself together and quietly remarked, addressing the lawyer: "Well, you have the reputation of being a very smart lawyer, but I never heard any one say so.—*Providence Journal*.