THE

# LEGAL NEWS.

VOL. XV. JUNE 16, 1892. No. 12.

In *Jetté & Crevier* (Montreal, June 8) the Court of Appeal, by a unanimous decision, settled a question of considerable importance, which has been variously decided by judges of the lower Courts. The question was whether Art. 2250, C.C., which declares that, with the exception of what is due to the Crown, all arrears of interest are prescribed by five years, includes also interest on a judgment. The Court of Review, Montreal, Loranger, Wurtele, and Davidson, JJ., unanimously held in the affirmative (M. L. R., 6 S. C. 48), and this decision has been unanimously affirmed in appeal. The judgment in both Courts rested upon the terms of Art. 2250. Mr. Justice Bossé, who pronounced the judgment of the Court of Appeal, observed : "L'on ne saurait guère trouver de langage plus précis et plus complet pour exprimer l'idée que dès qu'il s'agit d'intérêts, quelqu'en soit la provenance ou l'origine, ils sont tous également frappés de la prescription uniforme de cinq années."

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Another question which has created a good deal of difficulty in the Superior Court for some years past, is the award of costs in actions where the plaintiff succeeds for only a portion of the amount demanded. The practice for many years was simply to award costs as of the amount of the judgment, unless the defendant had made

a tender of an amount held to be sufficient by the Court. This practice has been departed from to some extent within the last few years, and the defendant was sometimes put in as favorable a position while contesting the entire demand as if he had made a tender and deposit. The Court of Review in a series of decisions has endeavored to establish the old rule upon a firm basis. See among other cases, *Clermont* v. *McLeod*, M. L. R., 6 S. C. 36; *Daoust* v. *Dumouchel*, *ib.*, 40; *Couture* v. *C. P. R. Co.*, M. L. R., 7 S. C. 431; *Labelle* v. *Didier*, *ib.*, 439. One of these cases, *Couture* v. *C. P. R. Co.*, has been taken to appeal as a test case, and on June 8, the judgment of the Court of Review, which will be found reported at length in M. L. R., 7 S. C. 431, was affirmed.

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We have more than once referred to the promptitude with which vacancies on the bench are filled in England, contrasting with the long interval which is sometimes permitted to intervene in Canada. The last issue of the *London Law Journal* furnishes another example. The same issue announces the death of Sir Charles Butt, President of the Probate Division, the promotion of Mr Justice Jeune to the presidency, and the appointment of Mr. Gorell Barnes, Q.C., to the seat vacated by Mr. Justice Jeune. The men involved in these changes are young. Mr. Justice Butt was comparatively a young judge, born in 1830, and called to the bar in 1854. On the retirement of Sir R. Phillimore in 1883, he was elevated to the bench as a judge of the Admiralty Division, and on the promotion of Sir James Hannen to a lordship of appeal in ordinary at the beginning of last year, Sir Charles Butt was promoted to the Presidency of the Division, a position which he was destined to occupy only sixteen months. Sir Charles Butt, who has been in ill health for some time, died May 25, of paralysis of the heart. His successor, Mr. Justice Jeune, has been only sixteen months on the bench, and Mr. Barnes, who steps into Mr. Justice Jeune's place, has been only sixteen years at

the bar. He took silk in 1888, and has enjoyed a large practice in commercial and admiralty cases. No one so young has been elevated to the bench since the appointment of the late Lord Justice Thesiger at the age of thirty-nine.

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Recent issues of the new official law reports contain numerous typographical errors which detract from the confidence which should be reposed in a work of reference. This has arisen from the printer failing to submit proofs of reports to the contributors, he being embarrassed by deficiency of type and other plant, and being unable to keep matter standing. The same deficiency of material has also considerably retarded the appearance of the issues. It is expected that these and other difficulties incidental to the undertaking of a considerable work by a novice in the printing business will be overcome in time, and that the work will progress with the regularity which is naturally expected.

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## *THE LAW OF LOTTERIES—CONSTITUTIONALITY OF THE DOMINION ACT, R.S.C.* 159.

In *Reg.* v. *Harper*, Montreal, May 31, Mr. Dugas, police magistrate, delivered the following judgment, maintaining the constitutionality of Dominion legislation on the subject of lotteries :—

I have before me several complaints made against divers persons under chapter 159 of the Revised Statutes of Canada, prohibiting lotteries under a penalty of $20, summarily recoverable before a justice of the peace. There has been filed before me in each case an exception denying to the Federal Parliament the right to pass such a law and asking the Court to declare it unconstitutional. The actual law is nearly the reproduction of 19 & 20 Victoria drawn from chap. 47, George III, and afterwards incorporated in the old Consolidated Statutes of Canada, chap. 95. Three years later (chap. 36, 23 Vic.) that statute was amended so as to make no exception in favor of bazaars held for charitable purposes, etc. When Confederation was established it was the only amendment which had been made. Later again the local legislature, by chapter 36 of 32 Victoria, evidently considering

that the legislation concerning lotteries belonged to the local legislatures, re-amended said chapter 95, and took away in favor of the construction of chapels, churches, the establishment of colonization, etc., the restriction applicable to bazaars, which limited the value of lots to $50 each. The Federal Government on its side also thought fit to amend the same chapter by chapter 36 of 46 Victoria, extending the dispositions in favor of bazaars to societies established for the encouragement of objects of art, namely, paintings, drawings, etc., and when the revision of the Federal statutes took place in 1886, said chapter 95, as amended before Confederation, was incorporated therein leaving aside, consequently not recognizing, the local act of the province of Quebec, chapter 36 of 32 Victoria. The Federal-Act is under the chapter 159, under which the present actions are taken.

When the provincial statutes were consolidated in 1888 the Legislature of the province of Quebec inserted therein also the same chapter 95 under articles 2911 to 2923, leaving aside in its turn the amendment of the Federal Parliament in favor of the societies established for the encouragement of art, as above mentioned. Lastly, by chap. 36 of 53 Victoria, that provincial act was again amended so as to extend the grant of the lotteries authorized by article 2920, "to establishments of public interest, and to education, and by subordination to hold a permanent lottery, by the sanction of Governor-in-council, with the obligation to make reports if demanded or required." This is as nearly as possible the history of that legislation, as we have it to-day in the Statutes of the Federal and provincial governments.

Naturally enough the defendants, who are the organizers of lotteries or vendors of tickets, refuse to recognize the constitutionality of the federal law. Their efforts are directed to demonstrating that this law is but a police law or of simple infraction, because, first, the offence is not declared to be either a felony or a misdemeanor by the act which creates it; second, that lotteries, not being *mala in se* or an offence under the common law, cannot be considered as a criminal act properly speaking. Article 91 of the B. N. A. act is instanced as declaring amongst other things "that the exclusive legislative authority of Parliament of Canada extends to all matters falling under the category of subjects therein enumerated," and more particularly section 27, which reads "the criminal law, except the constitution of Courts of criminal jurisdiction, etc.," and from this it is argued that this category of this

class of offences, not being criminal properly speaking, cannot fall under that disposition.

There is no doubt that there are a number of offences under our criminal system which it is difficult to classify, because the law does not give a definition thereof. It is only after the creation of the justices of the peace that legislation first appears prohibiting certain deeds until then considered as inoffensive, and giving them power to punish those guilty thereof; one of those offences was the carrying of firearms. In time the number of those offences was multiplied and the jurisdiction of the justices of the peace augmented; later, magistrates of police were named and greater power entrusted to them, and to-day, in England as in Canada, those functionaries have a summary jurisdiction as well upon a number of common law and statutory crimes as upon offences of minor importance. Larcenies, false pretences, robbery, embezzlement, receiving stolen goods, are as many criminal acts which can be summarily adjudicated upon by the magistrate if the value of the property wrongly obtained does not exceed $10. As to the offences it is difficult to classify them and to say if, as a body, they belong to the category of misdemeanors in general, or a certain number thereof only, or if rather they do not by themselves form a class of offences for which the law gives no definition, but which it only creates and describes whenever the need arises, either to prevent the continuance of deeds in themselves often not greatly offensive, but the multiplication of which might become a danger to society, or to enforce the execution of administrative measures of public interest; the laws of customs, excise and revenue generally, which all contain penal clauses, are generally applicable by the magistrate in summary proceedings.

The authors themselves have some hesitation to lay down a standing rule, but Harris, in his Criminal Law, page 5, on Morality and Crime, says: — "The moral nature of an act is an element of no value in determining whether it is criminal or not. On the one hand an act may be grossly immoral, and yet it may not bring its agent within the pale of the criminal law, as in the case of adultery. Human laws are made not to punish sin, but to prevent crime and mischief." On the other hand, an act perfectly innocent, from a moral point of view, may render the doer amenable to punishment as a criminal. To take for an extreme example: W. was convicted on an indictment for a common nuisance, for erecting an embankment which, although it was in

some degree a hindrance to navigation, was advantageous in a greater degree to the users of the port. Here the motive, if not praiseworthy, was at least innocent. The fact that the motive of the defendant was positively pious and laudable has not prevented a conviction.

This forces upon our notice a division of crimes into *mala in se* and *mala quia prohibita*, a distinction which is of little practical importance in our English system, and which must necessarily vary the standard of good and bad. There will always be some crimes which naturally take their place in the one or the other. For example, no one will hesitate to say that murder is *malum in se*, or that the secret importation of articles liable to customs is merely *malum quia prohibitum;* but between these offences there are many acts which it is difficult to assign to their proper class. In his history of the criminal law of England Sir James F. Stephen says in chapter 1, pages 1, 2 and 3: "Before undertaking either of these tasks I must endeavor to define what I mean by the criminal law. The most obvious meaning of the expression is that part of the law which relates to crimes and their punishment—a crime being defined as an act or omission in respect of which legal punishment may be inflicted on the person who is in default either by acting or omitting to act..... The description of criminal law, which I have substituted for a definition in the stricter sense of the word, is intended to exclude two large and important classes of laws which might, perhaps, be included not only with theoretical propriety, but in accordance with popular language, under the phrase 'criminal law.' These are, first, laws which constitute summary or police offences, and, secondly, laws which impose upon certain offenders money penalties, which may be recovered by civil actions, brought in some cases by the person offended, in others by common informers. Summary offences have of late years multiplied to such an extent that the law relating to them may be regarded as forming a special head of the law of England. Such offences differ in many important particulars from those gross outrages against the public and against individuals which we commonly associate with the word crime. It would be an abuse of language to apply such a name to the conduct of a person who does not sweep the snow from before his doors, or in whose chimney a fire occurs. On the other hand, many common offences against person and property have of late years been rendered liable to punishment by courts of summary jurisdiction."

Stephen, in chapter xxxii, vol. 3, pages 263 to 265, says most of the offences over which the magistrates exercise a summary jurisdiction consist in the breach of regulations laid down by act of parliament, in order to prevent petty nuisances or to enforce the execution of administrative measures of public importance. Of these I will briefly enumerate a few. Some of them relate to matters of the utmost importance and the deepest historical interest, but which have so very faint and slight a connection with the criminal law that it would be out of place to enter upon that history at length in a work like the present. They are, however, on education, where a parent is liable to fine for not sending his children to school. Police offences, public health and safety, and revenue offences, vagrancy, and under the head of miscellaneous come fishery offences, cruelty to animals, unlawful gaming, etc.

Admitting, therefore, that lotteries, as prohibited by chapter 158 of the Consolidated Statutes, form part of that uncertain category of minor offences, and that they are neither felonies nor misdemeanors in the sense of the criminal law well understood, would the Parliament of Canada have acted *ultra vires* in prohibiting them? The pretensions of the defendants are that in these cases the local parliaments alone have the right to act. I have read and re-read the constitution and more particularly article 92, which establishes the exclusive power of provincial legislatures, and I find nothing which gives them that exclusive privilege. I admit that when they have to make laws within the bounds assigned to them by the constitution, their authority is as ample and sovereign as that of the Imperial Parliament. This is the principle which has been clearly established in the case of *Queen* v. *Hodge*, and this principle suffers no contradiction. Thus the local legislatures having the exclusive right to make laws according to article 92, section 7, concerning licenses of taverns, auctioneers, etc., and by section 15 to inflict penalties by fine or imprisonment, to enforce all laws over which they have jurisdiction, it is clear that they have the right also to create offences and to enforce those laws. I will add that the same power exists for the other laws which fall under the jurisdiction and contained in the other parts of the constitution, notwithstanding the fact that nothing is said about it.

And as by section 16 of the same article 92 exclusive power is besides given to the local legislatures to make laws, "generally upon matters of a purely local or private nature within the prov-

ince," I have no hesitation to admit that they have the right to prohibit anything of a purely local nature which might be against the interests of the province, even if they were offences or infractions of a minor nature and even to impose a fine or imprisonment; and still there is nothing in the constitution which formally declares it, and if those local parliaments have that right it is in virtue of the sovereign power which they possess to protect themselves within the bounds of their attributions, and by prohibiting what may be particularly obnoxious to them or by establishing what they have particular interest in establishing, provided that the general interests of the other provinces are not affected thereby, and that there is no infringement upon the rights attributed to the central power. But that sovereign power recognized in favor of local legislatures does not take away the same sovereign power which the Federal Parliament must essentially possess.

If both the Imperial Parliament and the provincial legislatures can prohibit anything which falls under their jurisdiction, it cannot be denied that the Federal Parliament, in which each province is represented, has the power to declare obnoxious, injurious or mischievous anything which it may believe to be so in the interest of the Dominion at large. If the local Legislature has the right to create an offence and to impose fine and imprisonment in the provincial interests, why should the Federal Parliament not have the same right in a federal interest? Nothing in the constitution is to the contrary, and whatever is said in section 92 does not go further. Nowhere can it be found that those infractions are exclusively in the jurisdiction of the local legislatures, whilst article 91 on the contrary firmly declares that the Senate and the House of Commons will have the right to pass laws for the maintenance of peace, of good order and good government on all classes of matters which are not exclusively attributed to local legislatures. It is not, therefore, absolutely necessary to revert to section 27 of article 91 in order to find the right of the Federal Parliament to pass laws upon such minor offences. The above citation is sufficient, for there cannot be found any such exclusive rights given to the provincial legislatures. In that article 92 nothing is said of the above offences, either explicitly or implicitly, and more particularly of lotteries, should they be considered to belong to that kind of offences. The municipal system under the authority of which by-laws and police regulations could be passed for local or municipal purposes, as also the re-

gulation of taverns, auctions, etc., no more than the rest of what is contained in that article 92, does not take away from the Federal Parliament the power which is expressly given to it to pass laws to maintain peace and good order in Canada, which, besides, is inherent to its constitution and its sovereign power.

The conclusion at which I have arrived renders it unnecessary for me to consider whether lotteries are in themselves misdemeanors under the common law, and whether they do not fall under the term criminal law mentioned in section 27 of article 91. In the same way having to decide whether chapter 159 is or is not constitutional, I cannot take into consideration any other point which might incidentally be raised in favor of a lottery, established in virtue of the provincial act above referred to, and I purely and simply declare that to my mind the Federal Parliament had implicitly the right to consider lotteries in general, contrary to good order and the interests of the public, to legislate against then, and therefore chapter 159 is constitutional.

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## *UNCONTROLLABLE CRIMINAL IMPULSE.*

The "uncontrollable criminal impulse" theory, which played such an amusing part in Lord Esher's judgment in *Hanbury* v. *Hanbury*, has had a curious history and stands at the present moment in a somewhat equivocal position in English law. Little more than a century ago Mr. Philippe Pinel, who held the office of chief physician to the Bicetre asylum in Paris, announced his discovery of a type of insanity in which the moral faculties of the victim were alone involved. He called it *manie sans délire*. After having acquired no inconsiderable reputation on the Continent, this disease began to figure in the writings of English and American medico-legal experts. Dr. Ray in particular, the author of the well-known American treatise on the "Medical Jurisprudence of Insanity," strenuously asserted its existence, and supported his assertion by a number of cases in which he alleged that not only was there marked disorder of the moral faculties without any lesion of the understanding, but the patient labored under an "irresistible" or "uncontrollable" impulse to commit acts of criminal violence. A few years after the publication of Dr. Ray's book Daniel Macnaghten was tried before Chief Justice Tindal and a jury for the murder of Mr. Drummond, private secretary to Sir Robert Peel. He was defended with consummate ability by the late Sir Alexander Cockburn, and was justly but

illegally acquitted. In the course of his address to the jury, Cockburn referred in very laudatory terms to Dr. Ray's treatise and the doctrines which it promulgated, and induced the judge and the jury unconsciously to set aside the criterion of responsibility in mental disease laid down by Lord Mansfield on the trial of Bellingham. Macnaghten's acquittal aroused a tempest of public indignation. One honorable member prepared a bill for the practical abolition of the plea of partial insanity in capital cases, and although this measure was fortunately defeated, a general desire was evinced that the rigor of the criminal law as to the test of lunacy should be increased. Accordingly the House of Lords, with the assistance of the common-law judges, declared *ex cathedrâ* that only that degree of insanity which prevented a prisoner from knowing the nature and quality of his act would suffice to exempt him from responsibility to the law. Now the victim of moral insanity or uncontrollable impulse does "know the nature and quality of his act," according to the superficial meaning of the phrase, and it seemed therefore as if the rules in *Macnaghten's Case* had definitely shut the gates of mercy against the victims of this disease. Nominally they have done so no doubt, but the heresy created by Pinel, and propagated by Dr. Ray, has made very decided progress in England notwithstanding. In the first place the brotherhood of "mad doctors" has made some concessions to common sense. It is not now contended that the intellect of the moral lunatic is perfectly sound. Nor is the ægis of moral insanity thrown with the same persistence as before in front of every scoundrel in whose defence ingenuity can devise or urge no other plea. In the second place the law no longer stands where it did. The old judicial pleasantries on the subject of "uncontrollable impulse" are now so rare that it is quite refreshing to hear them so happily revived by the master of the rolls. Many of the judges readily admit that the rules in *Macnaghten's Case* require "manipulation," and manipulate them at *nisi prius* with the full sympathy of juries of assize. The plea of irresistible impulse is tacitly allowed, constantly in cases of infanticide, and occasionally even in cases of theft, and there can be little doubt that, if the criminal law of England were codified, legislative sanction would be given to the glosses which Sir James Stephen has added to the words of Mr. Justice Maule (*cf.* Dig. Cr. L., art. 27).—*London Law Times.*

## *PROCEEDINGS IN APPEAL—MONTREAL.*

*Monday, June* 6.

*Auger et al. & Labonté et al.*—Motion for leave to appeal to Privy Council.—C.A.V.

*Stock & Gazette Printing Co.*—Motion for leave to appeal from interlocutory judgment.—C.A.V.

*Atlantic & North West Ry. Co. & Atty. Gen. & City of Montreal.*—Part heard on appeal from judgment of the Superior Court, Montreal, Mathieu, J., 16 May, 1891.

*Tuesday, June* 7.

*Auger et al. & Labonté et al.*—Motion for leave to appeal to the Privy Council rejected.

*Atlantic & North West Ry. Co. & Atty. Gen. & City of Montreal.*—Hearing concluded.—C.A.V.

*Great Eastern Ry. Co. & Lambe es qual.*—Heard.—C.A.V.

*Wednesday, June* 8.

Address of congratulation from the Bar presented to Hon. Sir Alexander Lacoste, on his receiving the honour of Knighthood.

*Stock & Gazette Printing Co.*—Motion for leave to appeal granted.

*Desorcy & Morin.*—Reversed.

*Corporation de St. Ours & Morin.*—Reversed.

*Lafontaine & Beauchemin.*—Confirmed.

*Dolan & Baker.*—Confirmed, Bossé, J. dissenting.

*Jetté & Crevier.*—Confirmed.

*Union des Abattoirs & Ville de St. Henri.*—Reformed, with costs against respondent.

*Goldie & Beauchemin & Rasconi.*—Confirmed.

*Canada Shipping Co. & Davison.*—Confirmed, Bossé and Blanchet, JJ., diss.

*Canadian Pacific Ry. Co. & Pellant.*—Confirmed, Bossé and Blanchet, JJ., dissenting.

*Malo & Gravel.*—Reversed.

*Dechene & City of Montreal.*—Confirmed.

*Great Eastern Ry. Co. & Lambe.*—Confirmed.

*Canadian Pacific Ry. Co. & Couture.*—Confirmed, Bossé, J., diss.

*Huot & Noiseux.*—Reversed as to costs of Court below; appeal dismissed as to the rest; with costs in favor of appellant; Bossé and Blanchet, JJ., dissenting as to costs in Superior Court.

*Noiseux & Huot.*—Confirmed.

*Canada Atlantic Ry. Co. & Trudeau.*—Judgment of the Court of Review reversed, and judgment of the first Court confirmed, Bossé and Blanchet, JJ., diss.

The Court adjourned to Thursday, Sept. 15.

*Délibérés after May Term.*

Lefebvre & Beaudin; Desjardins & Bruchesi; Ouimet & Benoit; Wood & Maloney; Burland & G. T. Ry. Co.; Chevalier & Banque du Peuple; McDonald & Ferdais; Fernet & Charron & Ducharme; Pearson & Spooner; Cie. Nav. R. & O. & Treganne; Tourville & McDonald; Hétu & Ménard; Atlantic & North West Ry. Co. & Atty. Gen. & City of Montreal.

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## *INSOLVENT NOTICES.*

*Quebec Official Gazette, May* 14 *&* 21.

*Dividends.*

GAUDETTE & Co., Farnham.—First and final dividend, payable June 2, E. Donahue, Farnham, curator.

GERMAIN & Co., D. N., Montreal.—First dividend, payable June 8, Kent & Turcotte, Montreal, joint curator.

GODBOUT *fils*, François.—*Interim* dividend, payable May 31, A. A. Taillon, Sorel, curator.

HAYES, Michael, Sheenboro.—First and final dividend, payable May 31, W. A. Caldwell, Montreal, curator.

JOHNSON, C. E., Warwick.—First dividend, payable June 7, Quesnel & Bedard, Quebec, curator.

LABERGE & Co., Aug., Ste. Luce.—First and final dividend, payable June 7, H. A. Bedard, Quebec, curator.

MERCIER, Joseph.—First and final dividend, payable May 25, J. M. Marcotte, Montreal, curator.

MONGENAIS, L. A., Rigaud.—First dividend, payable June 6, Lamarche & Olivier, Montreal, joint curator.

QUEVILLON, Jean B.—First and final dividend, payable May 31, Millier & Griffith, Sherbrooke, joint curator.

ROY, P. E., Coaticook.—First dividend, payable June 9, Royer & Burrage, Montreal, joint curator.

TURGEON, Darveau & Co., Quebec.—First and final dividend, payable June 6, N. Matte, Quebec, curator.

*Quebec Official Gazette, May* 28, *June* 4 *&* 11.

*Judicial Abandonments.*

BARRAS, Edouard, trader, Levis, May 28.

FRECHETTE, Amedée, hotel-keeper, St. Césaire, May 25.

GOLDBLOOM, Samuel, jeweller, Montreal, May 31.

GUILBAULT & fils, Ed., boot and shoe manufacturers, Terrebonne, May 31.

LAROCHELLE, Léon, trader, St. Henri, June 2.

*Curators Appointed.*

BIRON, Treffié.—F. Thibodeau, St. Maurice, curator, June 4.

DENIS, Alfred (Denis & Durocher).—J. Morin, St. Hyacinthe, curator, June 1.

FRÉCHETTE, Amédée, St. Césaire.—C. Pepin, St. Césaire, curator, June 6.

GIBEAU, Dame Dorcas (D. Parent & Co).—C. Desmarteau, curator, May 25.

GOLDBLOOM, Samuel.—W. A. Caldwell, Montreal, curator, June 11.

LATOUR, George, Joliette.—Lamarche & Olivier, Montreal, joint curator, June 4.

LEBRUN, Alexis.—M. Deschènes, Fraserville, curator, May 27.

MILETTE, François, Windsor Mills.—Royer & Burrage, Sherbrooke, joint curator, June 1.

MORIN, Joseph, Montreal.—Kent & Turcotte, Montreal, joint curator, May 20.

*Dividends.*

ARMSTRONG, Archibald.—First and final dividend, payable June 23, Millier & Griffith, Sherbrooke, joint curator.

BRISSON, Dame Zenaïde (D. Desjardins & Co.), Montreal.—First and final dividend, payable June 26, F. Bertrand, 261 St. Lawrence Street, Montreal, curator.

BROWN & Son, Jas., Montreal.—First and final dividend, payable June 21, A. W. Stevenson, Montreal, curator.

BUCKINGHAM Pulp Co., Montreal.—Second and final dividend, payable June 30, J. McD. Hains, Montreal, curator.

CARROLL & Co., Montreal.—First and final dividend, payable June 28, J. McD. Hains, Montreal, curator.

CHAMBLY Cotton Co.—First and final dividend, payable June 21, George Hyde, Montreal, liquidator.

CHOUINARD, A., leather dealer, Montreal.—Second and final dividend, payable June 21, C. Desmarteau, Montreal, curator.

CLÉMENT & Boivin, Quebec.—Second and final dividend, payable June 13, D. Arcand, Quebec, curator.

CLÉMENT, M., Quebec.—Second and final dividend, payable June 13, D. Arcand, Quebec, curator.

CREVIER, F. X.—First dividend, payable June 13, Bilodeau & Renaud, Montreal, curators.

DÉLISLE & Cie., Geo., Chicoutimi.—First and final dividend, payable June 28, H. A. Bédard, Quebec, curator.

DESAULNIERS, Frères & Cie., Montreal.—Second and final dividend, payable June 21, D. Seath, Montreal, curator.

FORTIER, Philadelphe.—First dividend, payable June 14, A. Lemieux, Levis, curator.

FOURNIER, Jos., printer, Montreal.—First and final dividend, payable June 14, C. Desmarteau, Montreal, curator.

GAGNÉ, O'Farell.—First and final dividend (16⅔ cents), payable to creditors privileged on movables, A. Gaumond, St. Jean Deschaillons, curator.

HUBERDEAULT, Dame Malvina (C. Lamoureux & Cie.)—First and final dividend, payable June 15, Millier & Griffith, Sherbrooke, joint curator.

HUNTER, S.—First and final dividend, payable June 13, L. J. Lefaivre, Montreal, curator.

MÉTHOT, Adolphe.—First and final dividend, payable June 28, H. A. Bedard, Quebec, curator.

MORIN & Co. (Dr. Ed.), Quebec.—First and final dividend, payable June 14, H. A. Bedard, Quebec, curator.

NAUD, F. H., St. Casimir.—First dividend, payable June 15, G. H. Burroughs, Quebec, curator.

PATERSON & Co., John A., Montreal.—First dividend, payable June 21, A. W. Stevenson, Montreal, curator.

PELLETIER & Co.—New dividend sheet prepared, payable June 21, Royer & Burrage, Sherbrooke, joint curator.

PELLETIER, J. A., Montreal.—First and final dividend, payable June 23, C. Desmarteau, Montreal, curator.

ROUSSEAU & Vézina.—First and final dividend, payable June 13, F. Valentine, Three Rivers, curator.

TOUCHETTE, Joseph *alias* Zozime, Abbotsford.—First and final dividend, payable June 28, J. O. Dion, St. Hyacinthe, curator.

VINCELETTE, Alfred, St. Léonard.—First and final dividend, payable June 21, Lamarche & Olivier, Montreal, joint curator.

VINEBERG, Harris, Montreal.—First dividend, payable June 27, Kent & Turcotte, Montreal, joint curator.

WILSON & McGinnis, Athelstan.—First and final dividend, payable June 21, J. McD. Hains and W. S. McLaren, joint curator.

## *GENERAL NOTES.*

WILLS.—The Supreme Court of Pennsylvania in a recent case, "Scott's Estate," held that a letter addressed to an attorney, directing him to draw a will in accordance with the terms of the letter—stating them—the paper being in the handwriting of the testator, signed by him and witnessed, contained every requisite of a valid will, and letters testamentary were ordered to be issued thereon.

EXERCISE OF THE FRANCHISE.—In the twenty-seven villages where women voted for school directors last Saturday, they were defeated in all excepting three. What is even more remarkable is the fact that in almost every case the women's defeat was due to the votes of women. Every woman who failed to get her name on the woman's ticket seems to have voted against it.—*Chicago Legal Adviser.*

TRADE-MARK.—It is well settled that no one can acquire by adoption such an interest in the name of another person as to prevent the latter from using his own name in a fair and honest manner in the ordinary course of business, and that to justify the use by a person of any man's name as against the man who bears the name, some contract relation or estoppel must be found to exist, operating to deprive the latter of what would otherwise be his right. (Rogers v. Rogers, Am. trade-mark cases, 999; Skinner v. Oaks, id., 459; Richmond v. Richmond Nervine Co., 52 O. G. 307; 2 G. W. D. 45).

NEGRO COLONIAL JUDGES.—Two negroes have attained to judgeships in British colonies. One, Joseph Renner Maxwell, is chief judicial officer at the Gambia, in Africa. Oddly enough he has written a work upon the negro question in which he speaks with apparent horror of the most striking outward peculiarities of his race, and urges as the only method of elevating the negro, future miscegenation with other races. The other negro judge is Sir W. C. Reeves, Chief Justice of Barbadoes, in the British West Indies. He presides over the Supreme Court, and there are on the island seven police magistrates of subordinate jurisdiction.—*Mail (Toronto).*

EFFECT OF A 'NOLLE PROSEQUI.'—It has been stated by the Attorney-General for Ireland in the House of Commons that it is at least possible that the convict Montagu may be again indicted for cruelty to her children, notwithstanding that in the recent trial a *nolle prosequi* was entered in respect of that part of

the charges against her. Strange as it may seem, it is nevertheless undoubted law that a *nolle prosequi* does not operate as an acquittal, but that the party remains liable to be re-indicted (see Archbold's 'Criminal Pleading,' 20th edit. at p. 120, citing amongst other cases *Regina* v. *Allen*, 31 Law J. Rep. M. C. 129, and *Regina* v. *Mitchell*, 3 Cox, 93. In a note to the report of *Regina* v. *Allen*, we find that in *Regina* v. *Ridpath*, Fortescue, 358, the Court is reported to have said; 'The *nolle prosequi* is no bar or discharge or leave of the Court to depart; for it is only that the Attorney-General will not further proceed on that information; the information is discharged but not the person. Judgment is not "quod eat inde sine die," but "non vult ulterius prosequi et ideo cessat processus super informationem omnino."' And in *Regina* v. *Mitchell* Sir Colman O'Loghlen, *arguendo*, cited three cases in which the entering of a *nolle prosequi* had been followed by a second information.—*Law Journal* (London).

Tobacco a Drink.—A singular case is reported from Vermont. There is a law in that State which allows a new trial if a party obtaining a verdict in his favor "shall, during the term of the court in which such verdict is obtained, give to any of the jurors in the court, knowing him to be such, any victuals or drink, or procure the same to be done, by way of treat, either before or after such verdict." A successful litigant, after a verdict had been obtained in his favor, "treated" the members of the jury to cigars, and a new trial was granted. The Supreme Court has decided that the order granting a new trial was correct. The main opinion was to the effect that "treating" with a cigar was as much against the spirit of the law as treating with victuals or with drink, and that this method of rewarding the jury was as harmful as that directly mentioned in the law. Judge Taft, however, did not reach the result by any such method of reasoning. He says boldly: "I concur in the result. Tobacco is both a victual and drink. It is taken as a nourishment, sustenance, food, etc.; therefore, a victual. It is not an obsolete use of the word to call it drink. Joaquin Miller says: 'I drink the winds as drinking wine.' If a man can drink wind, I think he can drink tobacco smoke, vile and disgusting as it is. A man is compelled to drink it, by having it puffed in his face on all occasions and in all places, from the cradle to the grave. It is a drink. Set aside the verdict." This opinion deserves preservation as a rare gem of judicial argument.—*New York Tribune.*