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THE APPEAL TERM.

During the December Term of the Court of Queen's Bench at Montreal, twenty-eight cases argued during the previous term were decided, and about the same number of new cases were heard. Two reserved cases with some other criminal business were also disposed of. The twenty-eight cases determined involved an unusual number of questions of importance. We begin to give notes of some of them in this issue, and in the opening numbers of our third volume we hope to complete our notes of the points decided.

On the twenty-eight appeals, the judgment of the Court below was affirmed in 16 cases, and reversed in 12 cases. Of the confirmations 12 were unanimous, and of the reversals 8 were also unanimous—an unusual proportion,—but it must be added that in several of these cases "considerable difficulty" was felt by one or more Judges in concurring in the judgment of the Court. From two of the confirmations one Judge dissented, and from two others, two Judges dissented. From two of the reversals, also, one Judge dissented, and from two others, two Judges dissented. In both reserved cases the conviction was set aside—unanimously in one case, and with one dissent in the other.

SEIZURE OF RAILWAYS.

The judgment of Mr. Justice Dunkin in the case of *The Corporation of County of Drummond* v. *South Eastern Railway Co.*, noted at p. 137 of the 1st volume of the *Legal News*, and to be found at length in 22 L. C. J., p. 25, has been set aside by the Court of Appeal, Mr. Justice Tessier dissenting. The case has been kept some time *en délibéré* at the request of the parties, who were negotiating for a settlement, and during the interval the question involved has been thoroughly examined. The majority of the Court have arrived at the conclusion that a railway, whether belonging to individuals or to an incorporated company, may be seized and sold, in whole, or in part, at the suit of bond holders to whom a hypothec on the property is, by statute, expressly given. This decision is of immense importance, and the attention thus directed to the state of the law will no doubt lead to legislation with a view to making better provision for the protection of the various interests concerned.

REGISTRATION.

An important question under the law of registration was submitted to the Court of Appeal in *Adam & Flanders*, decided on the 22nd instant. The principle is laid down that a judgment may be registered against an immoveable, and a hypothec thereby acquired, after the immoveable has been sold by the debtor and has passed into the possession of a third party who has not registered his deed of purchase until after the registration of the judgment. In other words, the unregistered title of the purchaser—even if he be in open possession—may be defeated by the registration of a judicial hypothec subsequent to the sale; and apparently the result would be the same if an ordinary hypothec were given by the vendor, and registered before the deed of sale. Precisely the same question appears to have been submitted to the Court of Review at Montreal, in April last, in the case of *Tellier* v. *Pagé* (No. 19 of this volume), and the unanimous conclusion of the Court (Johnson, Mackay, Papineau, JJ.) was the same as that of the Court of Appeal. The rule is one which may give rise to cases of extreme hardship; but the policy of the law seems to be that there shall be no title as regards third parties without registration, and though the penalty for default is a heavy one, the Courts have no option.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 17, 1879.

MONK, RAMSAY, TESSIER and CROSS, JJ.

McCORD et al. (defts. below), Appellants, and LES RELIGIEUSES SŒURS DE L'HOTEL DIEU DE MONTREAL (plffs. below), Respondents.

Fief Nazareth—Registration of Seigniorial rights.

The judgment appealed from was rendered

by the Superior Court, Montreal, Johnson, J., 30th May, 1877, as follows :—

"The Court, etc.

"Considering that the registration of the real rights, privileges and hypothecs of the plaintiffs in and upon all lots of land sold or alienated by the defendants or their *auteurs* as mentioned in the plaintiffs' declaration, was required by law, and was in fact made before 1866, and further that the renewal of the registration thereof, under the law in that behalf, at the costs and charges of the defendants, became and was necessary for the preservation of the said rights, as in the said declaration alleged;

"Considering that it appears by the evidence of record and by the written admissions of the defendants, that the latter failed to conform to the notice and requirement by the plaintiffs of the 4th April, 1871, and that therefore the plaintiffs have been obliged to make and register at their own cost the said notices of renewal of registration of their rights aforesaid, and that the cost of the same is $1,238.80, which defendants are bound and liable to pay and refund them;

"Considering that the first plea filed by the defendants is unfounded in fact and in law, doth dismiss the said plea, and doth adjudge and condemn the defendants to pay and satisfy to the plaintiffs the said sum of $1,238.80 currency, with interest thereon, from the 5th August, 1876, day of service of process in this cause, until actual payment, and costs of suit."

In rendering judgment, Mr. Justice Johnson made the following observations :—

"There was another case before me not very long ago similar to the present, as far as the nature of the plaintiffs' action is concerned, but in which the defendant did not raise the point that is raised here. I allude to the case of the same plaintiffs against Day, in which the question was whether the defendant was bound to pay the plaintiffs the cost of *titres nouvelles* and re-enregistration under the cadastral system, which the plaintiffs had been obliged to pay in consequence of Day's default. The question now is whether such registration is required by law; it was not suggested in Day's case that it was not necessary, but only that the emphyteotic lessee was not bound to pay for it. The ground taken by the defendants now is that by the principles of the registration ordinance, reproduced in art. 2084 C.C., the original titles by which lands were granted *en fief, en censive, en franc alleu*, or in free and common soccage, are excepted from the necessity of registration. I still think, as I said at the hearing, that the present point was virtually included in the other case, for Day could not have been held to pay for the renewals of registration unless they were necessary. But I admit that that particular question received no attention in that case, not having been suggested, nor in all probability thought of. Therefore I look at the point on its merits; and the first thing seems to be to ascertain precisely what it is that the plaintiffs ask, because if they are asking that their title as *seigneuresses* of the fief Nazareth should be enregistered anew at the expense of the defendants, they would have no case. But they are asking nothing of that sort; they are asking that their hypothecs on hundreds of lots charged with *rentes foncières* created by the *concessionaires* should be preserved—hypothecs for £3 on each lot, of which one-sixth belongs to them now, and the whole will belong to them at the expiration of 99 years. It is not therefore the title of the Hotel Dieu nor the title of the first lessee that requires to be registered anew. The admission of the parties shows that the action refers to 'deeds for lots of land in St. Ann's Ward of the city of Montreal, granted by defendants' auteurs.'

"A very able and ingenious argument was made by Mr. Wurtele for the defendants, to show that in whatever form it may appear, the plaintiff's right is in reality a *charge seigneuriale*; but the reason of the thing seems to be that *cens* are not prescriptible, and *rentes foncières* are. The public could know nothing of these hypothecs created by the parties without enregistration. Judgment for plaintiff."

MONK and TESSIER, JJ., dissenting, were of opinion that the judgment was correct, and should be confirmed.

RAMSAY, J. The defence in this case has been represented as being a great injustice to the respondents; that McCord had previously registered, and that he now refused to indemnify the respondents for the expense they had incurred. There is no hardship in the matter at all. McCord registered at his own costs to

protect himself, and if he did that unnecessarily it is not a reason that he should repeat the error. It is not an expense the respondents incurred without knowing what difficulty they had to encounter, for they summoned McCord to register. This he declined to do. They then registered and now sue him for the amount they thus expended. Again, the question is not that a *rente foncière* is not necessarily a *rente seigneuriale*. The case really turns on the interpretation of certain Statutes.

The appellants hold from the respondents, under an emphyteotic lease for 99 years, passed on the 23rd July, 1792, in favor of one Thomas McCord, the *arrière* fief Nazareth. In 1804, Mrs. Griffin, who had acquired the rights of the original lessee, passed a deed with the appellants, by which she acquired the right to concede two-thirds of the said fief in lots of 4,050 superficial feet, subject to six *deniers* of *cens* and other seigniorial dues, and to an annual and perpetual ground rent, *rente foncière et perpétuelle*, of not less than £3 payable to her and her representatives, less one-tenth which was to be given to the appellants until the termination of the emphyteotic lease, and afterwards the whole rent was to belong to the respondents.

A great many lots were conceded under this arrangement, and the principal question that now arises is whether these deeds of concession require to be enregistered. The respondents contend that such registration is necessary, and that the appellants are bound to incur the expense, and that they having failed to comply with the requisition of respondents to enregister, the respondents were entitled to enregister at appellants' cost, and they now sue for the amount expended by them in so doing.

The fourth section of the Ordinance, after enumerating the deeds that should be enregistered, provides "that nothing herein contained shall be construed to require the registration of the original grant, letters patent, conveyance or title by which lands have been granted and conveyed and are now held, *en fief, à titre de cens, en franc aleu* or in free and common soccage, or of any rent, sum of money, due, duty or service, therein or thereby stipulated or reserved by the seignior, original grantor or lord of the fee."

There can be no doubt that the object of this proviso was mainly to cover all those stipulations and reserves of a conventional character which were to be found in the old seigniorial concessions. It was not thought necessary to subject the holders of this sort of property to the expense of enregistration, because the rule that existed, "*Nulle terre sans seigneur*," gave all the publicity required. One dealing with a land held *à titre de censive* could not fail to know that there was a deed of concession in which he found set forth all the seigniorial burthens. In all the legislative changes since the 4th Vict., this idea has always been maintained, although the words in which it is expressed have undergone some modification. So under the Seigniorial Act of 1854, Sect. 30, the *décret* was declared not to have the effect of liberating any immoveable property then held *à titre de cens*, and so sold, "from any of the rights, charges, conditions or reservations established in respect of such immoveable property in favor of the Seignior, before the making of the schedule, or from any *rente constituée* payable thereon under such schedule," but the sale was considered to be made subject to such rights, conditions, charges or reservations. When we come to the Civil Code we find that among the rights exempt from registration are the original titles by which lands were granted *en fief, en censive*, &c., and "Seigniorial rights and the rents constituted in their stead." If it be said that "Seigniorial rights" is a loose expression, I agree; but it is one well understood in this country to mean all those rights which are stipulated and reserved in a deed between a seignior and a *censitaire*, as well as those rights which are of a feudal character, as, for instance, the *lods et ventes* springing from the *cens*. And this is the legislative interpretation of the expression "seigniorial rights," *e.g.* see Seigniorial Act of 1854, Sect. 6.

We have, therefore, only to determine whether these deeds from appellants to their tenants are all *titles by which lands have been granted à titre de cens*, or of any rent, *sum of money* therein stipulated by the seignior.

Was the emphyteotic lessee a seignior? McCord's rights were evidently those of the nuns. If the *communauté*, respondent, was seignior, then McCord was; for the emphyteotic lease was an alienation of so much of their subfief Nazareth. But the respondents have printed in italics the clause of the lease by which it is stipulated that the lease is *fait à la charge par*

le dit Sr. preneur, ses hoirs et ayants cause de payer les cens et rentes, &c., dont le dit terrein est chargé envers la domaine de la seigneurie de Montréal. If it is contended that the nuns held *à cens*, and consequently that McCord in their rights could not grant *à cens*, the pretention goes further than either party probably would desire. Indeed, there is an express admission by respondents that they held the land en fief. For the purposes of this suit this admission would relieve the court from the examination of a question perhaps trenching on one of the most difficult subjects of seigniorial law: but in addition to this we have the position of this property legislatively established by the 23 Vict. cap. 60. By that Act we find that in 1860, eleven years before the re-inscription required by the appellants was obligatory, that the seigniorial rights, the *cens et rentes*, were abolished, and a constituted *rente* was created in their stead. Now we have seen by Art. 2084 C. C., 4thly, that among the rights exempt from the formality of registration are "Seigniorial rights, and the rents constituted in their stead."

The respondents draw attention to the expressions "original grants," "original grantor," which occur in the registration ordinance but this seems to me to be rather a superficial criticism of the text. There are different categories of grants that do not require registration. This does not affect the seigniorial grant *à titre de censive* which never requires registration, nor any *rente* stipulated in its stead.

CROSS, J., concurred; and ROUTHIER, J., who was not present at the rendering of the judgment, also concurred.

Judgment reversed, MONK and TESSIER, JJ., dissenting.

Judah, Wurtele & Branchaud, for Appellants.
Duhamel, Pagnuelo & Rainville, for Respondents.

SIR A. A. DORION, C. J., MONK, RAMSAY, TESSIER AND CROSS, JJ.

KENNEDY (plff. below), Appellant, and COWELL (intervening below), Respondent.

Endorser for credit—Lien for bona fide expenses incurred in connection therewith.

The appeal was from a judgment of the Superior Court, Montreal, (Torrance, J.) 31 May, 1878, maintaining the intervention of respondent. The appellant urged that Avey, being only the travelling agent of appellant, had no authority to pledge the goods in question, and that the respondent was well aware of this. The judgment in appeal explains the facts sufficiently.

RAMSAY, J. The appellant, a merchant clothier of Montreal, employed one Avey, to travel in the district west of Toronto. He was engaged for three months at a salary of $200 for the three months, and he was to have $5 a day for expenses. On starting, the appellant gave Avey $60, and told him that when the twelve days were over, he might draw on him for more money. Avey was at St. Catherines when the 12 days expired, and he drew for $60 more. Being a stranger, a Mr. Bissonnette backed his draft, which Mr. Kennedy paid. Twelve days later, being at Brantford, Avey again drew on appellant, and the respondent for credit backed the bill. On its presentation, appellant declined to accept it. On what principle he undertook to refuse acceptance of the bill, the Court had been totally unable to discover, for he fully admitted his liability to pay the draft, in a subsequent letter written to Cowell some little time after, and even now he offered no excuse for allowing the bill to go to protest, and so putting the respondent,—who had simply performed an act of kindness,—to inconvenience and trouble. But, to resume, by the time the protested draft returned to Brantford, Avey had continued his journey, and had reached London whither Mr. Cowell followed him. By this time Avey had almost spent the money, and in order to secure Cowell and relieve himself from any imputation, he gave Cowell samples the property of Kennedy, to secure his being repaid. Avey at once wrote and telegraphed to Kennedy what he had done, and gave a list of the samples. Of these communications Kennedy took no notice. Subsequently Kennedy and Avey met, and some words passed between them. It seems, however, that Cowell wrote to Kennedy offering to give up the goods on repayment of the amount of the draft, and some trifling expenses in looking after Avey, when the protested draft was returned. Kennedy, in answer, wrote to Cowell offering to pay the draft and protest, but refusing to pay the sum of $11 travelling expenses incurred by Cowell in going from Brantford to London. Cowell then sent the goods down by the Ex-

press Company, with orders not to give them up until the draft and expenses were paid, whereupon the goods were seized by the appellant in the hands of the company. On this Cowell intervened, and pleaded the facts already related. The Court below, by its judgment, declared that Cowell had a lien on the goods for the amount of the draft, costs of protest and travelling expenses, in all amounting to $74.15. Mr. Kennedy now complains that he should not have been charged the $11 for travelling expenses, and that, therefore, he has a right to have the judgment reversed with costs. We do not agree with Mr. Kennedy in his pretention, and without laying down any abstract principle of what expenses a man placed in Mr. Cowell's position by the misconduct of another may incur, we think the Court below has exercised a wise discretion in condemning Mr. Kennedy to pay this moderate charge before he can recover his goods, and we, therefore, confirm the judgment appealed from with costs.

E. Carter, Q. C., for Appellant.

Trenholme & Maclaren, for Respondent.

MONTREAL, Dec. 20, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

THE QUEEN v. SIR FRANCIS HINCKS.

Banking Act, 34 *Vic. cap.* 5 *and* 36 *Vic. cap.* 43—*False and deceptive return—Classification of loans made to Bank—Demand Notes—When new trial will be ordered.*

This was a case reserved by Mr. Justice Monk, in the Court of Queen's Bench, Crown side, after the conviction of the defendant (see p. 357 of this volume).

RAMSAY, J. The defendant was indicted under the Banking Act (34 Vic., cap. 5, and 36 Vic., cap. 43), for making a wilfully false and deceptive return, and convicted.

Section 13 of the 34 Vic. enacts that "monthly returns shall be made by the Bank to the Government in the following form, and shall be made up within the first ten days of each month, and shall exhibit the condition of the Bank on the last juridical day of the month preceding, and such monthly returns shall be signed by the President or Vice-President, or the Director (or, if the Bank be *en commandite*, the principal partner), then acting as President, and by the Manager, Cashier or other principal officer of the Bank, at its chief seat of business. Then follows a form of return which is amended by the 36 Vic. The form in this last Act prescribes 11 headings under which the liabilities should be classified, and 18 headings under which the assets should be classified. Section 62 of the 34 Vic. proceeds to enact that "the making of any wilfully false or deceptive statement in any account, statement, return, report, or other document respecting the affairs of the Bank, shall, unless it amounts to a higher offence, be a misdemeanor, and any and every president, vice-president, director, principal partner *en commandite*, auditor, manager, cashier or other officer of the Bank preparing, signing, approving or concurring in such statement, return, report or document, or using the same with intent to deceive or mislead any party, shall be held to have wilfully made such false statement, and shall further be responsible for all damages sustained by such party in consequence thereof."

It will be at once observed that the gist of the offence consists in making a wilfully false or deceptive return. It is not, however, less clear that no return can be wilfully false or deceptive within the meaning of the Act if it gives all the information required by the statutory form. I would go a step further and say that if the officers of the Bank introduced a classification which, going beyond the statute, created distrust and panic likely to depreciate the value of the stock, they would be over-stepping the line of their duty, and it would not be difficult to suppose circumstances in which they might expose themselves to indictment for a false return, as being injurious to the standing of the Bank. In a word, the object of the law appears to me to be to oblige Banks not to give a statement to show their weakness, as has been said, but to give certain details of information as to their affairs. In the present case it is not pretended that there is any mis-statement as to the aggregate assets or liabilities of the Bank. The charge is that the statement is false in this, that there is an improper classification of the items. It must be apparent that such a charge must give rise to questions of extreme niccty, unless the statutory form be constructed with logical precision, to which, I fear, it has no claim. These difficulties at once presented themselves

in the presentation of this case, and induced the learned Judge who presided at the trial to reserve four questions for the consideration of this Court. It may not be out of place for me to say here that the reserved case is so ample and clear that it has rendered our duty comparatively easy, and that it offers no reasonable ground for the defendant to complain of hardship.

Three of these questions are directed to enquire whether certain entries were misclassed, or not, and the last to enquire whether wilful intent can be gathered from the circumstances of the case without direct testimony. The first of these questions refers to certain loans by other banks which are represented in the return under item 8, as being "other deposits payable after notice, or on a fixed day." In the reserved case the learned Judge says :— "I ruled and directed the jury, as a matter of "law, that the fact of the Consolidated Bank "having in most instances granted deposit "receipts payable on time, did not alter the "character of the transactions, or make of these "amounts deposits of sums which were in "reality loans ; and I further ruled and directed "that these loans, notwithstanding these "deposit receipts, were not legally or justly "included, as they were, under the head No. 7 "of the Bank's liabilities, 'other deposits pay-"'able after notice or on a fixed day,' but should "have been represented under No. 8, 'amounts "'due to other Banks in Canada,' or under No. "11, 'other liabilities not included under the "'foregoing heads,' both the latter headings "being left in blank in the said statement and "return."

I fully concur with the learned Judge in this ruling, in so far that it decides that the nature of the receipt granted "did not alter the nature of the transactions." If the transaction was a loan, and not a deposit, assuming that these transactions are distinguishable, the mere name given to it is wholly immaterial. But I must dissent from the ruling, inasmuch as I think it is matter of fact, and not of law, under what heading these amounts should be placed. It was argued that the form is part of the Statute, and consequently that its interpretation becomes matter of law. This is an ingenious contention, but I am not aware that the technical words, or words used with a special meaning, are more within the knowledge of the Court when used in a Statute than when used in a deed, and no authority has been produced to support such a distinction. If we were to treat the entry as matter of law, I am inclined to think I should be induced to arrive at a different conclusion from that of the ruling, and to say that the entry was strictly correct, and that within the meaning of the form, all loans to banks are deposits. So Government loans are styled deposits, and through the eleven items of liabilities we don't find an allusion to any "loan" save deposits. It certainly could not have been placed under heading 8, using "due" in its legal signification.

To some extent the same objection existed as to the ruling set forth 2ndly in the reserved case, viz :—"I ruled and directed the jury, as "a matter of law, that these demand notes, not "having been discounted and current on the "31st January, 1879, should have been, in or-"der to comply with the law, placed under "No. 18, viz. : 'other assets not included in "the foregoing.'" I think it should have been left to the jury to decide whether these notes were discounted or not; and from the statement of fact in the case, it appears to me that these notes were discounted when passed to the credit of the owners, and when the owners had drawn the proceeds. One very good test is this—Who was the owner of the note, after the customer drew the proceeds? Was it the customer, or the Bank? If it was not discounted, it was clearly the property of the customer, and it is only on this supposition that the asset, which would then have been the personal indebtedness of the customer on an overdrawn account, could have appeared under heading 18, "other assets not included under the foregoing heads." There are many cases to be found of conflicting claims of the banker and his customer, but they all turn on bills remitted to the banker, and where there is some ambiguity as to the use to which the bill was to be applied, or the object for which it was placed in the banker's hands. I don't believe any case can be found in which it was ever doubted that the property of a bill sent in for discount and passed to the credit of the person paying it in, and the proceeds of which were drawn by him, did not pass to the banker. The taking of a banker's acceptance in exchange

for another bill endorsed to the banker, is equivalent to a discounting of the bill, and though the banker's bill be dishonored the property of the bill will be passed to the assignee (Walker, on Banking Law, page 140). In the case of *Hornblower & Proud*, 2 B. & Ald., page 327, Abbott, C. J., said:—"I am of opinion that in this case the non-suit was right. The case on the facts admitted, appears to be that Gibbons & Co., on the 2nd of March, exchanged a bill on Esdaile & Co. for the three bills in question, and I think that the property in the latter actually passed to them *by this exchange of securities.*" Bailey, Holroyd and Best, JJ., emphatically expressed the opinion that the property was absolutely exchanged by the exchange of securities. The case was one of considerable hardship, for Esdaile & Co. actually got the three bills of plaintiff which were paid, and they refused even to accept the bill Gibbons & Co. drew on them and had given in exchange.

On the third ruling I agree with the learned Judge. As matter of law an over-draft is not "current."

I also agree with him on the fourth ruling. I think the jury may infer the unlawful intent "from all the circumstances of the case proved to their satisfaction," and that mis-classification is a fact from which such wilful intent may be inferred. This is substantially the opinion of the whole Court.

In conclusion, his Honor said it now came to be a question what should be done—what order could the Court give in the matter? The statutory changes in the law since Confederation had led to a good deal of embarrassment, and it was difficult to say what should be done. In the case of Bain, the Court quashed the verdict and ordered a new trial. But in this case there was no application for a new trial. There was no reserved question for a new trial, and the Court was not sure that under the circumstances it could give an order that a new trial should take place. Therefore, the judgment would simply go to quash the verdict, leaving the parties to any remedy they may think proper to adopt.

Sir A. A. Dorion, C. J., on the merits, said the questions which had been submitted to this Court were not free from difficulty; but he believed the decision of the Court—that the questions as to the classification of the loans, and of the demand notes, should have been left to the jury to decide—was correct. As to the order to be given, it was a rule that the Court sitting *in banco* on a reserved case, can only take cognizance of the questions reserved at the trial. The question of a new trial did not come up here. In the Bain case, the Court said that a new trial should be ordered, because it had been applied for at the trial by the defendant.

Tessier and Cross, JJ., concurred. The latter remarked that the matter came up on an indictment, and this indictment did not contain an averment of what the statement impugned was, but merely averred that in a certain statement there were certain material facts not true. In a case which turned on classification as this did, the defendant was placed at a disadvantage; because if it were averred that other deposits payable on demand amounted to so much, the defendant would be warned of what he had to meet. In the present case it was not disputed that all the assets of the bank were in the statement, and all the liabilities were also there. The different classification of liabilities suggested at the trial would not make any difference as to the total. It was only a question of classification, and being such, it came up for investigation as a matter of fact how far the classification was true. It was very doubtful, under the schedule, whether a classification that went considerably astray could be made a subject of indictment when the statement itself, as to the totals of liabilities and assets, was true. The classification made little difference, because the real grievance (one not brought out at the trial) was that it was not disclosed that the bank was in such a state of embarrassment that it was necessary to borrow money; that they were not telling the public or the Government what had been done. Now, was the bank bound to tell the Government? It seemed to him to be doubtful whether it was the intention to have a schedule framed that would tell that the Bank was borrowing money. Therefore the prosecution missed in spirit the real grievance. He looked upon loans and deposits as convertible terms, and he thought the loans in question were put under the proper head as deposits. It would not have made any difference as to the spirit of

the statement if these loans had been put under the head of "due to other banks," because that would mean the balances on the transactions —what was called in England the clearing house balances. However in this case he went no further than this, that the Judge who presided at the trial ventured to give a ruling to which after consideration by the full Court, it was not thought well to adhere strictly.

MONK, J., said it was not necessary for him to state that he did not intend or desire to dissent from the judgment which had just been rendered. With regard to the indictment the objection was taken on a demurrer, but it was overruled, and the defendant's counsel did not think it desirable to have that point reserved. With regard to the questions reserved, no doubt the points involved were of some difficulty. As to the first point, he had felt doubts, but he did not think proper to communicate them to the jury. He had told them it was a matter of law, but entertaining doubts as he did, he had reserved his ruling for the opinion of the full Court, and the Court had held that this ruling in law was wrong: that it was not a pure question of law but one of fact, or, at all events, a mixed question of law and fact, whether the classification was right or wrong. On the second point, he had also had doubts, and he had communicated his doubts to this Court, and this Court was of opinion that it was a matter of fact. It was proper, as he had no opportunity of consulting his colleagues at the time, that he should reserve these points, and he was satisfied that the ruling of this Court on them was one that would command respect. Out of deference to his colleagues he would not enter a dissent, and though he would not go the length of saying that his opinion was entirely altered, yet he appeared as concurring in the judgment of the Court.

Verdict quashed and set aside.

T. W. Ritchie, Q.C., for the prosecution.

W. H. Kerr, Q.C., for the defendant.

CURRENT EVENTS.

FAUTEUX v. MONTREAL LOAN & MORTGAGE CO. —In this case the judgment of the Court of Queen's Bench at Montreal, 21st December, 1878, (See 2 Legal News, p. 15; 22 L. C. J. p. 282), has been affirmed by the Supreme Court. The point decided was that a sale by the Sheriff of Montreal, at his own office, of land situate in the Parish of l'Enfant Jésus, a duly erected parish for all civil purposes formed out of the Parish of Montreal, was void, and that such sale could be legally effected only at the Church door of the Parish of l'Enfant Jésus. These sales at the Sheriff's office, with the exception of those attacked in pending suits, have been made valid by the statute passed last session: see p. 328 of this volume.

GENERAL NOTES.

WIGS.—A Scotch advocate writes to a New York journal concerning the peculiarities and traditions of his profession. "I find," he said, "that nothing interests an American so much as my wig. I only wish the person who thus derives amusement from the fashion had to experience its inconvenience. To begin with, they are by no means cheap. A horsehair wig costs about $50, and an ordinary one—they are now all made out of whalebone shavings—about $30. They very soon get dirty, and to powder them, as some men used to do, only makes one's coat perpetually greasy. Then in summer they are hot and tight on the head. Yet we all wear them. We are not compelled to do so. We must wear a gown; that is our mandate. The abolition of the gown I should regret. Its several parts involve not a little curious history. For instance we carry at the back of the gown a little pocket which, though still worn, is now sown up. That appendage takes you back more than 300 years, to the days before the Reformation, when the advocates were churchmen. No churchman was allowed to accept a regular payment for his services. But, if he was prohibited from handling the money, that was no reason why you, if you wanted your case particularly well attended to, should not put a couple of gold pieces in the bag which he carried at his back. So you see we have still some relics of the past surviving in this reforming age. Many of our names, even, strike an American as peculiar. The official head of the bar is called 'The Dean of Faculty.' 'Ah,' said Sydney Smith, when he heard the title for the first time, 'that's very odd now; with us in England our deans have no faculties!' Absurd as these old customs and names may be, it cannot be denied that the country has reason to be proud of her judicial arrangements, not merely in the Supreme Court, but down to the humblest judicatory."

GENERAL INDEX TO SUBJECTS.

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