The Legal News.

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TRIALS BY REFEREES.

Since the discussion by the Council of the Bar of the proposed amendments to the Code of Procedure in civil actions, other suggestions have been made that are worthy of careful consideration. A very important one is, to provide in particular cases, for the trial of actions by referees. It is proposed that any Judge of the Superior Court shall have power to refer the whole action, or any of the issues, for trial to a sole referee who must be an advocate.

This system of procedure has been in operation in the State of New York for many years, and it has commended itself alike to the Judiciary and to the Bar of that State, and has resulted in the formation of a class of referees who have made a specialty of referee trials, and to whom a multitude of cases of great importance have been referred by consent of parties, as well as by the Court of its own motion, which have been adjudicated upon, and the issues fairly and fully tried to the satisfaction of the Bar and suitors.

It would seem to have been designed to introduce this system into England as one of the legal reforms to be enacted by the Judicature Act of 1873, (copied also into the Ontario Judicature Act of 1881), but it appears by the judicial construction given to that Act in *Longman* v. *East* (3 Common Pleas Div. 155) that it had very serious defects, one of which was, that it so restricted the powers of the referee, that a reference, even by consent of parties, to try all the issues, was not authorized by the Act. It is not proposed to disturb existing references to arbitrators, experts and others; but in addition to powers already exercised, to allow any Judge of the Superior Court to confer temporary judicial functions upon a referee, who when selected by the Judge, must have some definite years' experience as an advocate; but who, when selected by the parties, must in any event be a member of the Bar, in order that some guaranty may be afforded that the referee selected is familiar with the rules of evidence and principles of law applicable in the trial of cases.

This mode of procedure is adapted to secure in the first instance, a more thorough and accurate trial of an action, where a number of items of account, or of damage or of other issues, have to be passed upon, the trial of which one by one, would, owing to the multitude of issues, consume more time than the Court could reasonably be expected to give with the pressure of a large calendar of causes before it. It also affords suitors a more expeditious and informal trial of their cases by enabling them to proceed at once, (even during vacation) without having to wait till the cause is reached upon the calendar. And in cases where the opinion of the Appellate Court would alone satisfy all parties, this system of procedure aims to have the cases presented by the referee in a proper condition for revision by the appeal court direct. If the referee should disregard the specific directions given him, he can be compelled, before judgment is entered upon his report, to amend it by stating his decision upon the issues and questions referred to him with such particularity and precision, that the Appellate Court would readily be able to review his decision as to the facts, and ascertain if his rulings and conclusions of law were correct.

In a late case in the Supreme Court of Canada, the Chief Justice took occasion to remark "that the Judge who tried the cause had left the Appeal Court in ignorance as to what facts he had found, that in England where causes are tried by a Judge without a jury, the Judge states his findings upon the facts and the Appellate Court can tell whether his conclusions of law were right or not." Also, in another recent case of an appeal from a decision in the matter of a contested account, judges of both Appellate Courts remarked, and some of them in very strong terms, on the confused and defective condition in which the case was presented to them owing to a mistrial of the case in the first instance.

The proposed amendment is calculated to protect suitors against the danger of such mistrials and to enable advocates to arrive at a clear and accurate trial of an action in the first instance, and in case of an appeal, it is designed to secure the Appellate Court an opportunity of getting an explicit presentation of the facts and questions for review.

In another issue we will give the rules suggested. D.

BUSINESS IN APPEAL.

The January Term commenced with 111 inscriptions, an increase of four on the September and November lists, the Christmas holidays not interfering with the advance of fresh cases. Twenty appeals were heard on the merits, besides one case submitted on the factums. There were also two Crown Cases reserved. Twenty-two judgments were rendered, of which four were in cases of the January Term. One of the reserved cases was also decided, and the other sent back for amendment.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, January 20, 1883.

DORION, C. J., RAMSAY, CROSS & BABY, JJ.

THE GRAND TRUNK RAILWAY CO. OF CANADA (deft. below), Appellant, and BREWSTER (plff. below), Respondent.

Sale of Immoveable—Hypothec not disclosed—Remedy of purchaser.

The purchaser of real estate who is not evicted nor disturbed in his possession, has no right to obtain the resiliation of the sale by reason of certain undischarged hypothecs registered against the property (far exceeding in amount the whole capital of the purchase) and which were not declared to him in the deed, unless the vendor sold with a stipulation of franc et quitte.

The appeal was from a judgment of the Superior Court at Montreal, setting aside a sale made by the railway company to the respondent of certain lots of land situate in the village and parish of Longueuil. The judgment also condemned the Company to repay to the respondent the sum of $6,667.50, as comprising the amount paid by the respondent on account of his purchase of the lots in question, and the value of improvements made by him on the property since the date of the purchase.

The ground on which the cancellation of the sale was demanded was that encumbrances for large amounts had been found to exist on the property. The respondent purchased the lots in question in 1872 for the sum of $2,430, of which $607.50 was paid in cash at the passing of the deed, and the balance of $1,822.50 was to be paid in four equal annual instalments of $455.13 each. The sale was made with promise of warranty against all mortgages and encumbrances. The respondent after taking possession of the property so acquired by him built on a portion of it, and made various improvements, and sold portions of it. Since these expenditures and sales were made he had discovered that there existed two encumbrances on the whole property, of which these lots formed a part, namely, one in favor of the Seminary of St. Sulpice for $100,000, and another in favor of the British American Land Company for a like sum of $100,000.

The Company, by demurrer, pleaded that there was no allegation of eviction, nor did it appear that there had been any attempt to evict the present respondent from the property, and he was not entitled to ask for the resiliation of the deed. This plea was overruled, as well as a second demurrer, setting out that the only conclusions which Brewster ought to have taken were that, in consequence of his being troubled, or fearing trouble from the hypothecs, he be authorized to delay payment of the balance until the vendors should cause the trouble to cease, or give him security against the same. The other pleas were also overruled, and the action maintained.

Macrae, Q. C., for appellant:—There is no clause of *franc et quitte* in the deed, and the respondent is only entitled to delay the payment of the balance until security against trouble is given him. Even if the action were held to be well founded, the amount awarded by the judgment is excessive.

L. H. Davidson for respondent:—Although it is true the respondent had the right to delay the payment of the balance of the purchase money, yet he has also the right to have the sale annulled and to recover damages. The former remedy would be of no benefit to him under the circumstances of this case, because it would not protect his improvements, and would not enable him to give a good title to others. The property would be left dead on his hands. The judgment annulling the sale was the only remedy which afforded the respondent redress.

DORION, C. J. The question in this case is whether the purchaser of real estate can demand the resiliation of his deed of purchase, on the ground that the property is subject to hypothecs

which have not been declared by the vendor. The respondent, in 1872, purchased from the Grand Trunk Company certain lots of land situate in the village and parish of Longueuil. The price was $2,430, of which $607.80 was paid in cash at the passing of the deed, and the balance, $1,822.50, was to be paid in four equal annual instalments of $455.12 each. The deed contained a warranty against all mortgages and encumbrances. The respondent took possession and made improvements, and sold portions of the land. Some years after his purchase he brought the present action to resiliate the deed, on the ground that he had discovered the existence of two hypothecs for a large amount which affected the property so acquired by him as well as a larger extent of land. The action was maintained by the Court below, and the sale to respondent was annulled. The appellant complained of this judgment, on the ground that the respondent was only entitled to withhold payment of the balance of the purchase money until he was secured against trouble on account of these mortgages. The Code has made some changes in the law on this subject. The vendor now cannot sell property which does not belong to him, and the purchaser is entitled to have such sale annulled. It follows that any defect in the title, even before the purchaser is troubled, is a good ground for the resiliation of the sale. Where, however, the purchaser is merely exposed to be troubled by a hypothec on the property, he is only entitled to retain in his hands the price of sale, or balance of the price, until the vendor removes the hypothec or gives security, Art. 1535 is in point. Here there is no stipulation that the property is sold free and clear, but only the ordinary warranty against trouble. (His Honor then referred to the authors writing upon the provisions of the French Code, who all make the distinction between fear of trouble from hypothecs and defect of title.) It is a hardship perhaps to the purchaser of $2,000 worth of property to find that it is affected by hypothecs to an enormous amount. But the purchaser in such case is not without remedy: he may obtain a ratification of title. If the mortgagees intervene, he can call upon the Grand Trunk to guarantee him against trouble, or to remove the hypothecs. The purchaser here did not adopt this course: he made improvements, and then asked to have the sale set aside and to be paid for all his improvements. The law does not give him this right, and the judgment must therefore be reversed.

RAMSAY, J. This case is an action by the respondent to set aside the deed of sale of certain lots of land sold by appellants to respondent, for the sum of $2,430, because the said lots were subject to an hypothec of $200,000. The point submitted is very important owing to the voluminous commentaries on the alterations of the law in France under the Code, and I may add, by the able opinion of the learned judge in the Court below.

There can be no doubt that under our law before the Code an hypothec was not a *trouble de droit*, and no action would lie to set aside a deed of sale, because the property was hypothecated, unless there was the clause of special warranty, commonly called the stipulation of *franc et quitte*. But it is contended that this was a mere subtlety of the old lawyers, and that fundamental changes have been introduced by the Code which have necessarily abrogated the old law in this respect, or at all events warranted the introduction of what is contended to be a sounder doctrine, and that these changes are operated particularly by Articles 1065, 1492 and 1535 C. C.

As to the subtlety, it seems to me that the reproach may very fairly be retorted on the innovators. The old rule of law was laid down to check subtlety. Of course it is very easy to imagine cases of hardship under the old law, but they are not diminished or decreased by the rule now sought to be introduced. A title without any encumbrance is very rare, and a purchaser in bad faith might, in almost any case, stir up a very tangible defect in a title which really presented no practical danger. Therefore it was the old jurists said that the deed of sale, unless there were other words than the ordinary clause to *garantir contre tous dons, douaires, &c.*, only warranted the possession and enjoyment of the thing sold.

Troplong, with his usual facility, has undertaken to establish that the Code Napoleon has changed the old law. After invoking the forty years of social regeneration which had elapsed between the time Pothier wrote and the Code became law, the re-tempering of the law by the revolution, the necessity of contemporary interpreters, and the originality of the Code, he

proceeds to define the structure he proposes to demolish.

The least danger that seems to menace the world is the want of contemporary interpreters of the law. A more striking one is the deluge of words which envelope and obscure the simplest propositions. I trust we have not to make a profession of faith in the French revolution before we arrive at a conclusion as to the meaning of a text of Canadian law. The object of our investigation is to determine whether our Code by its terms altered the old law of France, and not whether Mr. Troplong and the writers who have followed him, have given a particular significance to similar terms in the French Code under the influence of revolutionary excitement.

The first part of his argument to which I must take exception is his assumed account of Pothier's doctrine. He says: "Une des premières règles que je trouve exposées dans le *Contrat de Vente* de Pothier, c'est que le vendeur n'est pas obligé de rendre l'acheteur propriétaire." This is a totally disingenuous mode of stating Pothier's doctrine, which happens to be precisely that of the Roman law. What he explains in the amplest manner is, that this failure to make the purchaser proprietor is not that the vendor is to reserve the property of the thing sold, but that in case of attack he is only to defend the purchaser's title—in fact, to make it good. This principle is so manifestly reasonable that it has been impossible to eradicate it from the code, and where the most radical change is made, as in Art. 1487, it is immediately followed by an article declaring that the sale by the non-proprietor becomes valid by his becoming proprietor.

Mr. Troplong next finds the root of the change in the terms of Art. 1583 C. N. (See 1472 C. C.) It is not easy to find the cogency of this argument. Art. 1583 abolishes the necessity of tradition as between the parties. Our article, copied from it to some extent, goes a little further seemingly, but it evidently has the same meaning. He then goes on to say that Art. 1604 C. N., has changed the law, because it declares that, "La délivrance est le transport de la chose vendue en la puissance et possession de l'acheteur." (1 Vente, p. 358.) Now, this, he says, is "*faux*." It is certainly not a new mode of expressing what the law is, for Troplong admits that the article is borrowed textually from Domat. We therefore come down to this, what is meant by having the thing in your *puissance et possession?* It is quite evident that the *Cour de Cassation n'en déplaise* à M. Troplong, to adopt his own sarcastic form, was quite justified in saying that the legislature having used the words of the old law, it was for the Court to attach to them the meaning the old law attached. This becomes more evident by referring to Art. 1603, C. N. "Il (le vendeur) a deux obligations principales, celle de délivrer et celle de garantir la chose qu'il vend."

So far, then, there is no text of new law in France, but it is contended that Article 1653, C. N., shows that Troplong's mode of dealing with the other articles adverted to is alone admissible. It is said the law specially allows the purchaser to refuse payment of the price if there is *juste sujet de craindre d'être troublé, &c.* therefore there is the right to sue to set aside the sale, because the vendor has failed to perform an essential part of his bargain. Troplong does not go so far. (No. 614). Bolleux does (5, p. 728), and if Troplong's argument is to be adopted as to the change of law, it seems hardly possible to stop where he does. But the general rule of interpretation is to restrict the exception to the case provided, so that if the argument of Troplong is bad without Article 1653, it is bad with it.

Whatever may be the view prevailing in France, here the jurisprudence is pretty fairly established by the case of *Talbot* v. *Beliveau* decided at Quebec in Review in 1876: of *Hogan* v. *Bernier*, in May, 1877; and of *Parker* v. *Felton*, in June of the same year.

The enormity of the amount of the hypothecs affecting this property is insisted on in the judgment. It is evident that if the principle relied on be true, the right to have the deed set aside must exist the instant the hypothecs exceed the unpaid price.

I am to reverse.

The judgment in appeal is as follows:—

"Considérant que par l'acte de vente du 20 décembre 1872, consenti par la compagnie appelante à l'intimé, devant maître Théodore Doucet, notaire, l'appelante a vendu à l'intimé les lots de terre désignés au dit acte et en la déclaration en cette cause, avec promesse de le

garantir de tous dons, douaires, substitutions, aliénations, hypothèques et autres empêchements quelconques, mais sans déclarer que les dits lots de terre fussent francs et quittes de toutes charges et hypothèques ;

"Et considérant que lors de la dite vente il existait sur les dits lots de terre deux hypothèques qui avaient été enregistrées au bureau d'enregistrement du comté dans lequel sont situés les dits immeubles, dont l'une en faveur du Séminaire de St. Sulpice de Montréal, et l'autre en faveur de la compagnie connue sous le nom de British North America Land Company ;

"Et considérant que lorsque l'intimé a porté cette action, il n'avait pas été troublé pour le paiement des dits hypothèques ;

"Et considérant qu'en vertu de l'article 1535 du Code Civil, l'intimé, à raison du trouble auquel il est exposé par suite de l'existence des dites hypothèques, ne peut demander à différer le paiement de son prix d'acquisition jusqu'à ce que l'appelante ait fait disparaître ces hypothèques ou lui ait fourni caution ;

"Et considérant que la clause de garantie contenue au dit acte de vente ne contient aucune stipulation contraire aux dispositions de l'article 1535 du Code Civil ; et que l'intimé n'a pas le droit de demander la résolution du dit acte de vente à raison des dites hypothèques tant qu'il ne sera ni troublé dans sa possession ni évincé des dits lots de terre ;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour de première instance le 28 février 1880 ;

"Cette Cour casse et annule le dit jugement du 28 février 1880, et procédant à rendre le jugement que la dite Cour de première instance aurait dû prononcer, renvoie l'action de l'intimé avec dépens tant en Cour de première instance que sur cet appel."

Judgment reversed.

G. Macrae, Q.C., for the Appellant.
L. H. Davidson, for the Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, January 27, 1883.

DORION, C.J., MONK, TESSIER & BABY, JJ.

DOUTRE (deft. below), Appellant, and SHARPLEY et al. (plffs. below), Respondents.

Exemptions from seizure—Ball dress.

Held, confirming the judgment of the Superior Court (4 L.N. 185), *that a ball dress is not exempt from seizure as coming within the designation of "ordinary and necessary wearing apparel." C. C. P.* 556.

The appeal was from the judgment rendered by Mr. Justice Mackay in the Superior Court, May 28, 1881, a report of which will be found at page 185 of 4 L. N.

The case was submitted on the factums.

The appellant by her factum submitted the following argument :—

La cour inférieure a jugé *a priori*, qu'une robe de bal n'était pas un vêtement nécessaire ou ordinaire.

Est-ce là l'intention de la loi ? N'est-il pas plus prudent, plus sage et plus rationel d'examiner les circonstances qui entourent chaque cas particulier et de décider d'après l'examen des faits ? Il va sans dire qu'une robe de bal, un habit de riche fourrure, etc., seraient des objets de luxe pour la classe ouvrière ; ils ne seraient pas des vêtements *ordinaires* à cette classe ; mais lorsqu'il s'agit de personnes occupant un certain rang dans la société, ces vêtements sont *ordinairement* en usage. Dans l'espèce, la véritable question est de savoir si une robe de bal est un article de toilette nécessaire à une personne du sexe qui vit dans un milieu social l'obligeant à porter une semblable toilette. Or c'est le cas ici, et cette distinction aurait dû apporter un tempérament au principe énoncé dans le jugement. Il est prouvé en fait par deux témoins (preuve qui n'a pas été contredite) que la robe en question était *nécessaire* à l'appelante, que c'est un article de toilette *ordinairement* porté par les dames de la position sociale de l'appelante.

The Court unanimously confirmed the judgment.

Lareau & Lebeuf, for Appellant.
Butler & Cooke, for Respondents.

COURT OF REVIEW.

MONTREAL, January 31, 1883.

RAINVILLE, JETTÉ, BUCHANAN, JJ.

ROSS v. DAME ANTOINETTE PRUDHOMME et vir.

Marchande Publique—Registration under C. C. P. 981—*Penalty.*

Held, that the penalty enacted by C. C. P. 981, *with respect to married women carrying on trade*

without delivering to the prothonotary and registrar the declaration therein mentioned, is not intended to apply to cases where a married woman is carrying on a petty business, with a stock of the value of a few dollars only.

The judgment inscribed in Review was rendered by the Superior Court (Loranger, J.), Sept. 30, 1882.

The action was brought under Article 981, C. C. P., against Dame Antoinette Prudhomme, of Longueuil, wife of Oscar Marion, cook, for the penalty of $200, for failure to make the declaration as *marchande publique* required by the article above mentioned.

The defence was that the defendant was a poor woman endeavouring to support herself and four children, and merely kept a small fruit store, with a stock worth not more than $5 or $6; and that the present action was instituted maliciously by the plaintiff, and for the purpose of revenging himself for the loss of a suit.

The Court below dismissed the action, the reasons being as follows:—

"Considérant que la défenderesse faisait le commerce seul et pour son propre compte sous le nom de "O. Marion," et qu'elle n'était pas obligée de faire enregistrer la déclaration exigée pour le cas de sociétés;

"Considérant que le commerce tenu par la défenderesse n'est pas contemplé par les dispositions de la loi qui exige la production et l'enregistrement d'une déclaration;

"Considérant que l'action du demandeur est mal fondée;

"La Cour déboute la dite action avec dépens, &c."

RAINVILLE, J., said this appeared to be one of the cases where the maxim *de minimis non curat lex* might be applied. The defendant had a small fruit and candy shop, the value of the stock being only $10 or $12. It was not the intention that the law which made registration compulsory on the part of married women trading, under a penalty of $200, should apply to such cases.

Judgment confirmed without costs.

J. P. Cooke, for plaintiff.

Pelletier & Jodoin, for defendant.

CHANGES IN ENGLISH LAW.

The London *Standard* of Jan. 3, notices as follows two important changes in English law:—

Among the many legal reforms which became law on the 1st. inst., that of which the working effect will be most anxiously watched is the Married Women's Property Act, 1882. No piece of domestic legislation in modern times has ever effected such a sweeping change as this statute. It is not too much to say that it affects the whole community, since it alters the relationship between husband and wife, and does away with many of those old maxims of the Common Law which have hitherto been regarded as sacred. At Common Law a married woman had formerly no existence apart from her husband. She was incapable of acquiring, holding, or disposing, by will or otherwise, of any real or personal property whatever. She could neither sue nor be sued upon contracts entered into by her, for they were absolutely void; and it was her husband only who was liable for torts committed by her during marriage, or who could claim damages for torts committed against her. According to the doctrine of the common law, indeed, a woman's individuality became absolutely effaced by marriage, and she possessed, practically, no rights, and no liabilities. The courts of Equity, however, in order to protect the wife, invented the doctrine of separate estate, and from time to time various Acts were passed by which it was provided that any property could be settled upon a woman for her sole and separate use, and in such a manner that it should be absolutely protected from any interference on the part of her husband, whether with or without her connivance. Similarly, she was entitled, in certain cases, to dispose of her property by deed or will; her wages or earnings in any employment or trade in which she was engaged apart from her husband were declared to be her own property. She could effect an insurance upon her own life or the life of her husband for her separate use; she could maintain action in her own name for the recovery of her separate estate. Such, amongst others, were the rights of married women until Monday last, when the new statute came into operation. By this Act a wife acquires an absolute and uncontrolled power of acquiring, holding, disposing, or dealing with

real and personal property without any limitations whatever. She is, indeed, in exactly the same position, with regard to property as if she had no husband. In the same way she can enter into contracts and be sued upon them to the extent of her separate property, and, generally, legal proceedings may be taken against her alone, in all respects as if she were a *feme sole*. Again, if a married woman enters into any contract, in the absence of evidence to the contrary, she will by so doing bind her separate property, and not only that which she may then be possessed of, but also all that she may subsequently acquire. Further, if she carries on a trade apart from her husband she may be made a bankrupt—a provision which is of importance in defining her new *status*, although it is not entirely new. Thus, according to the custom of the city of London, which also obtained in a few other cities, a *feme covert* could trade on her own account, and be made a bankrupt. Again, if she were judicially separated from her husband, or if he were *civiliter mortuus*, or undergoing a sentence of penal servitude, a wife might have been subject to the bankruptcy laws, since she in these cases possessed certain powers of contracting. But with these exceptions the rule is new. It remains to be seen whether a married woman will be held liable to be committed to prison in default under the Debtors' Act—a contingency which seems to follow, as a matter of course, upon the change in her position. All women who marry subsequently to yesterday will be entitled to hold all property then belonging to or afterwards acquired by them as their sole and separate property, and, similarly, all property in future acquired by women already married will belong to them as if they were still single. An important provision of the Act is that relating to the deposits of married women in Post-office or other savings banks, its general effect being that, apart from all questions as to the date of the marriage, the fact of any deposit in any bank or any stocks or shares standing in the name of a *feme covert* is *prima facie* evidence that she is beneficially entitled thereto, and that she is empowered to give a good discharge for the same. The position of a husband and wife living apart is materially altered by this Act. They are placed in much the same situation as if they were strangers, and can take criminal proceedings against each other for the protection of their separate property, and give evidence against each other. Many of the new provisions need to be judicially construed before their effects can be rightly gauged, but enough has been said to indicate that the law relating to the property of married women has undergone a most drastic reform, and, beneficial as may be many of the privileges which wives now possess, it is to be feared that the Act will be found to cut both ways.

Scarcely less sweeping are the general effects of the Settled Land Act. Briefly put, its object seems to be to give every limited owner in possession of land full power to deal with that land in every way, just as if he were a prudent and well-intentioned absolute owner in possession. At the same time, facilities have been given for making outlays upon the land, and the rights of persons interested in remainder, or otherwise, are by no means lost sight of. Many of the provisions of the Act have, it is true, long been customarily and voluntarily inserted in settlements, and the same powers which have frequently been exercised by trustees will in future belong to the limited owner in possession. Thus, a tenant for life may now sell a settled estate, or any part of it, or "any easement, right, or privilege of any kind over or in relation to it." He cannot, however, sell the mansion-house and its demesne without the consent of the trustees of the settlement, or an order of the court. Considerable difficulties exist in predicting the effect of a great part of the Act, since it is so worded that until judicial decisions have been given it will be impossible to say what limits there may or may not be to the rights and liabilities it confers and imposes. Again, the tenant for life may exchange the settled land, or any part of it, for other land, or he may concur in making a partition where it is held in undivided shares. He may also lease the land for any purpose—on a building lease for any term not exceeding ninety-nine years, on a mining lease for no longer than sixty years, and on any other lease for any term not exceeding twenty-one years. Further, a tenant for life impeachable with waste may, on obtaining the leave of the trustees of the settlement, or an order of the court, cut and sell "timber ripe and fit for cutting:" but it does not appear who is to decide upon what trees are to be

included under that term. Upon these lines are framed the powers which may be exercised under the Act, and the protection which is afforded to all persons entitled in remainder is, perhaps, scarcely commensurate with them. Thus the tenant for life must, before taking any such steps as those to which we have already referred, give a month's notice to each of the trustees of the settlement, and to the solicitor for the trustees—a provision which it has already been suggested will render it "a prudent precaution for trustees who wish to exercise with strictness their powers of supervision expressly to appoint from time to time a solicitor to be their agent to receive such notices." Again, the trustees may, if they differ with the tenant for life as to his mode of exercising his powers under the Act—a contingency which is certainly far from being improbable—apply to the court for directions. "Capital money" arising under the Act is to be handed over to the trustees or paid into court, according to the choice of the tenant for life, and stringent rules are laid down for its investment. The general purport of the Act is to defeat unreasonable settlements, and to take away the power which is often wantonly exercised of so tying up property that it becomes almost impossible to manage it advantageously. That there was urgent necessity for legislation in this direction is certainly true; but it is as yet too soon to predict that the complicated powers and restrictions which this Statute creates will work smoothly, and in any event it cannot fail to prove a fruitful source for litigation for some time to come.

LE MORT VIVANT.

A singular trial took place at St. Louis recently. It appears that a Mrs. Wackerle has been making claims upon insurance companies, pretending that her husband had been killed at Shreveport, La., by being run over by a train of cars. The Ætna Life Company after being sued on a policy and losing the case, discovered Wackerle, in life, in California, and obtained a new trial, at which his identity was proved and the jury gave their verdict for the company. The judge observed: "This testimony conclusively establishes that Wackerle, the identical person whose life was insured, is still living, and unmasks one of the boldest and most scandalous schemes of fraud upon the defendant, the court and her own counsel ever conceived and carried to the verge of success." But more recently Mrs. Wackerle sued the Mutual Life Company in St. Louis, and obtained a verdict. Mr. Wackerle was present in Court, and was identified by his brother and by scores of neighbours, but the jury, astute gentlemen that they were, evidently thought that they knew better. Wackerle might seem to be alive, but they determined that he was dead, and so the Company was condemned to pay Mrs. Wackerle upwards of six thousand dollars.

FLOWERY JUDGMENTS.

We propose to go to Georgia when the sober reason of our northern courts ceases to content us. Georgia is (or was) the home of Judge Bleckley, whose poetic effusion "*In the Matter of Rest*" is to be found on page 185 of our third volume. And Georgia, too, is the favored abode of another Justice—a Justice of the Supreme Court—who clothes an opinion, on a question of taking private property by the exercise of the delegated right of eminent domain, in the following glowing colors:

"Here is the home of a man venerable in age, in which he has resided with his family for thirty-eight years, planted by the side of the limpid stream, whose waters he utilizes as they flow. He has gathered around him by industry and toil the fruits and flowers of the season, the comforts and conveniences of a well-arranged and much-loved homestead. Around it cluster the memories of a life-time, treasured in common with those who have grown under his care from infancy to manhood and womanhood under its broad and protecting shadows. In it he was gently descending to old age, loving that quiet and seclusion to which the heart of the old so strongly cling. But the spirit of the age demands this homestead for its iron track upon which its iron steeds may travel to meet the alleged necessities of trade and travel, or to extend their corporate power and dominion. If the beauty of this homestead is to be invaded and marred, its comforts to be imperiled and its sweet quiet and seclusion to be broken upon with ringing bells, shrieking whistles and thundering trains—let the corporation, in the language of the Constitution, 'first pay adequate compensation to the owner thereof."

That a judge should have a turn for poetry is not surprising. Better judges than Sir William Jones have been devoted to it. But, in Georgia, apparently, some of the judges carry their poetic mood to the Bench. They cannot con the accustomed task, but like the urchin in "The Schoolmistress," their eyes stray from the prosaic brief to "the work so gay that on their back is seen." However, if judges give us poetry from the judgment seat they should not put us off with false coin. It is too excruciatingly charming to have the "iron steed" trotted out in a judgment. If these be the deliverances from the Bench what must the harangues at the bar be like?