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## *POWERS OF ASSIGNEE.*

A point which does not appear to have come up before, under Section 16 of the Insolvent Act of 1875, was decided by Judge Mackay in the case of *Evans* v. *Généreux*. A writ of compulsory liquidation having issued, the official assignee, in whose hands the estate of the insolvents had been placed, immediately instituted, *de plano*, an action for the recovery of monies due to the estate. Exception was taken to this proceeding, on the ground that the order of the Court or Judge, required by Section 16 of the Insolvent Act of 1875, had not been obtained. It was answered that this was a proceeding of a conservatory nature. But, even so, as the Court held, no action can be brought by the assignee *ad interim* without judicial authorization. The terms of section 16 seem to be sufficiently free from ambiguity. "The assignee "shall hold the same (the estate) in trust for "the benefit of the insolvent and his creditors, "and subject to the orders of the Court or Judge; "and he may *upon such order* and before any "meeting of the creditors, institute any conser- "vatory process or any proceeding that may be "necessary for the protection of the estate." In Clarke's commentary on the Insolvent Act, 25 pages are occupied with remarks and citations under this section, but no case similar to the above is referred to.

## *SHERIFF'S SALES.*

Article 712 of the Code of Civil Procedure states that a purchaser who cannot obtain the delivery of the property, which he has bought at Sheriff's sale, from the judgment debtor, must demand it of the Sheriff, and upon the Sheriff's return or certificate of the refusal to deliver, "the purchaser may apply to the "Court by petition, of which the debtor has "received notice, and obtain an order command- "ing the Sheriff to dispossess the debtor, and "to put the purchaser in possession." Can this article be applied to a case where, not the debtor, but a third party, not in the case at all, is found upon the land sold? In *Trust & Loan Co.* v. *Jones*, an attempt was made to obtain a writ of possession under such circumstances, but Mr. Justice Mackay refused the order prayed for, holding that the Article of the Code must be restricted to cases where the *saisi* continues in possession after the Sheriff's sale and cannot be invoked for the purpose of obtaining the ejection of a third party.

## *ELECTION PROMISES.*

The judgment in the Rouville election case is noticeable, because it is a case where a promise to do something for the advantage of the community generally proved fatal to the election. Sidewalks are an improvement much coveted in rural municipalities, and Mr. Bertrand appears to have pledged himself to construct some at his own expense in the event of his election. The Court held that this promise had been made with corrupt intent to influence votes in favor of the defendant, and the election was voided In the Jacques Cartier [Dominion] election case of 1867, there was a good deal of evidence put in with a view to establish promises of a similar nature, but the judgment of the Court did not find the proof sufficient.

## *PROCEEDINGS SUSPENDED BY APPEAL.*

The effect of an appeal is of course to suspend proceedings in the Court below upon the judgment appealed from. But where the plaintiff, before he is notified of the appeal, has taken proceedings in execution by attaching monies due the debtor by third parties, has the appeal the effect of relieving the garnishees from the obligation of retaining such moneys? The question is decided in the negative in *Desjardins* v. *Ouimet*. Everything must remain *in statu quo*. The debtor may be seriously inconvenienced by such lock-up of funds, but he suffers from his own neglect in not instituting his appeal within the delay allowed before proceedings in execution can be commenced.

## NOTES OF CASES.

### SUPERIOR COURT.

[Practice Division.]

MONTREAL, June 9, 1879.

MACKAY, J.

DESJARDINS v. OUIMET, and PERRAULT, T. S.

*Appeal— Saisie-Arrêt—Suspension of Proceedings.*

The defendant (June 6), petitioned that *main-levée* be granted of the *saisie-arrêt* attaching moneys due to him in the hands of Perrault the garnishee, and that the garnishee be not required to make any declaration. The plaintiff having obtained a judgment against the defendant on the 30th of April last, issued a *saisie-arrêt* in the hands of the garnishee on the 16th of May. The *saisie-arrêt* was returned on the 30th of May. Before the return, viz, on the 20th of May, the defendant had taken an appeal from the judgment, and security was duly given in the presence of plaintiff's attorney on the 23rd of May. Under these circumstances, the defendant claimed that he was entitled to have *main-levée* of the seizure.

MACKAY, J. The law says the appeal suspends proceedings upon the judgment, whether the proceedings be by execution or by *saisie-arrêt*. The defendant thinks that he ought to have *main-levée* of the *saisie-arrêt*, which, however, was well issued at the time the writ was taken out. Can I grant this petition, which asks a good deal? Can I say more than the law says, viz., that the proceedings are interrupted, that the plaintiff's rights of execution are suspended, and have been, by the security given, and notice of it? No. Matters must remain in the same condition until the appeal is decided.

Motion rejected: "the Court holding that the appeal referred to suspended and suspends the plaintiff's proceedings, leaving all in that condition in which it was at the time of the appeal commencing its suspensive effect, but no more."

*L. O. Taillon*, for plaintiff.

*B. A. T. de Montigny*, for defendant.

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EVANS es qual. v. GENEREUX.

*Insolvent Act*, 1875, *Sect.* 16—*Powers of Interim Assignee—Authorization to sue.*

The interim assignee, Evans, having, four days after the estate was placed in his hands under a writ of compulsory liquidation, instituted an action in his quality of assignee to the estate of Papineau & Archambault, to recover a sum of $3,000 due to the insolvents, the defendant filed an exception *à la forme*, alleging that inasmuch as the plaintiff came into Court only in his quality of assignee *ad interim* of the insolvents, he had no right, under section 16 of the Insolvent Act of 1875, to institute any proceeding without having obtained the order or authorization of the Court, and it did not appear by the writ of summons or by the declaration, that the plaintiff had obtained such order or authorization.

MACKAY, J. The allegations of fact in the exception stand admitted by the inscription for hearing thereon, without *enquête*. The case of the plaintiff therefore fails, the exception being fatal to it. Section 16 of the Insolvent Act of 1875, shows very clearly that the assignee *ad interim* does not possess the power exercised here, of bringing suit without permission of the Court or Judge. The exception is therefore maintained, and the action dismissed.

*Duhamel, Pagnuelo & Rainville*, for plaintiff.

*Geoffrion, Rinfret & Dorion*, for defendant.

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CADIEUX v. CADIEUX.

*Pleading—Producing an acquittance where general issue is pleaded.*

The plaintiff moved that a *quittance* produced by defendant as his exhibit No. 1, entitled a *quittance* by Esther Cadieux (the plaintiff), to Ferdinand Cadieux (the defendant), be rejected as irregular, inasmuch as the defendant had merely pleaded a *défense en fait*, and plaintiff further alleged that if the *quittance* remained in the record, he would be forced to take other proceedings apart from this suit, the notary Brunet, before whom the *quittance* was passed, having acted improperly in concert with defendant.

MACKAY, J. I do not think the general issue permitted the defendant to file such a *quittance* as this. It is an *acte* in notarial form, in the nature of *transaction* and final discharge. In

Louisiana it has been held that it cannot be done. In an ordinary action of *assumpsit* I would not be so strict in preventing a receipt from being put in. But in a case like this, where the plaintiff is a widow sueing for rights of succession, and for the balance of a *prix de vente*, I do not think the *quittance* can be produced under the general issue pleaded. Moreover, the *quittance* is merely certified by Ryland, Deputy Registrar, as a true copy of a discharge before Brunet, notary, deposited in the Registry office, 28th of June, 1878. It is not certified by the notary, Brunet. I observe, too, that the plaintiff in his motion makes a serious charge against Brunet. This discharge should have been pleaded in order to prevent surprise of the plaintiff, and at this stage the defendant cannot be allowed to file the *quittance* without amending his plea.

Motion granted, "considering that payment, if meant to be urged by defendant, ought, in such case as this, to have been pleaded in order to prevent surprise of plaintiff; that defendant, in the present case, without amending his plea of record, ought not to be allowed to file a receipt such as tendered."

*Thibault & McGoun*, for plaintiff.
*J. E. Robidoux*, for defendant.

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PRIVÉ v. DILLON, and BEARD, intervening.

*Payment into Court—Motion for Deposit—Art. 543, C. C. P.*

The plaintiff under Art. 543, C. C. P.. moved that the Prothonotary be ordered to pay over the money deposited in Court by the intervening party. The intervening party by his intervention prayed that twenty tons of coal be declared to be his property, and he stated that he had always been ready to pay the balance of freight due thereon. He, therefore, tendered said balance and paid it into Court, declaring his willingness that the amount should be paid over to defendant "upon the release of the said attachment, and upon his, the said intervening party, receiving the said coal."

MACKAY, J. It is plain that Art. 543 C. C. P. does not apply here, because the consent is conditional. The plaintiff will take nothing by motion; no costs.

*Longpré & David*, for plaintiff.
*H. Abbott*, for intervening party.

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EVANS et al. v. LIONAIS es qual., and J. D. E. LIONAIS et al., intervening.

*Intervention—Pleading.*

The action being brought on notes against the executor and administrator of the late Dame Henriette Moreau, and the defendant not having pleaded, an intervention was filed by three children of deceased, setting up that they are of age, that they are the universal legatees under her will, and that they have an interest in the conservation of the estate and a right to watch over its administration. They alleged that the estate had never received any value for the notes sued on.

The plaintiff having contested this intervention on grounds such as would be urged if the intervention had been a plea to the merits of the principal action, the intervening parties filed a *réponse en droit* to the contestation, among other grounds, "because the reasons invoked in the contestation could not be pleaded against the right of the intervening parties to intervene in the present cause."

The Court maintained the answer in law on the ground above stated, "seeing a *prima facie* right in the *intervenants* to file an intervention, and seeing that they have not yet pleaded to the *instance principale*, and are not by reason of any matter or thing cut off from right to urge yet what *moyens* they please against the said *instance principale*."

*J. O. Joseph* for intervening parties.
*Barnard, Monk & Beauchamp* for plaintiff contesting.

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TRUST & LOAN CO. v. C. G. JONES, and R. A. A. JONES, Petitioner.

*Sheriff's Sale—Petition to be put in possession—Art. 712 C. P.—Property in possession of a third party.*

The petitioner set up that he became purchaser at a Sheriff's sale of certain tracts of land in the District of Bedford, and that a deed of purchase of such land had been duly executed by the Sheriff to petitioner; but that one A. E. Goold, a farmer, was in possession of the land in question, and refused to deliver it up to petitioner. He, therefore, prayed that the Court do order the Sheriff of the District of Bedford to give the petitioner possession, and that the Sheriff "take whatever means he will deem

necessary to give said petitioner such possession, and even by force, and the expulsion of A. E. Goold, should he refuse to give up willingly the possession of the tracts of land purchased by the petitioner."

MACKAY, J., remarked that Art. 712 C. P. only contemplates the case where the refusal to deliver is by the *saisi* himself, and not by a third party.

Petition rejected, "because said Goold referred to is a third person, and has had no notice of this petition, but more because said defendant makes no resistance and is not ruled, and is the only person against whom, by possibility, such a petition could be worked, from what now appears."

*R. & L. Laflamme*, for petitioner.

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BEAUHARNOIS, May 26, 1879.

BELANGER, J.

BOULERISSE v. HEBERT.

*Lessor and Lessee—Delay for summons—One non-juridical day sufficient.*

A writ in ejectment, under the Lessor and Lessee Act, was served on Saturday and returnable on Monday. Defendant by *exception à la forme* pleaded that the day was insufficient, and cited *Metayer dit St. Onge* v. *Larichelière*, 21 L. C. J., page 27.

BELANGER, J., said that by Art. 75 of the Code of Civil Procedure the delay in these cases is "one day only." By Art. 890 C. C. P. it is "one intermediate day." Art. 24 C. C. P. says "that delays continue to run upon Sundays and holidays." He had found four decisions on the point, two each way. As the Code did not require the intermediate day to be juridical, he thought the decisions holding the delay to be sufficient should be followed.

*Exception à la forme* dismissed.

*L. A. Seers* for plaintiff.

*Thomas Brossoit* for defendant.

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BEAUHARNOIS, June 7, 1879.

AMIOT v. TREMBLAY et al., and REID, contesting.

*Privilege—Registration.*

BELANGER, J. This is a contestation of the items Nos. 8, 9, 10, 11 and 12 of a report of distribution prepared by the Prothonotary, of the proceeds of a sale made by the Sheriff of the defendant's property. By the items of said distribution one J. B. Damour and the plaintiff are collocated for a certain amount.

The facts of the case may be resumed as follows: On the 21st September, 1867, one Antoine Prud'homme, whom the contesting party pretends to represent in her quality of universal legatee and testamentary executrix, sold and transferred a certain piece of land to Antoine Reid, by a deed passed before J. Pelletier, Notary, for the price of $516 payable as follows: $66 cash and the balance by yearly instalments of $50, the first instalment becoming due on the 1st April, 1868. It was stipulated in a special manner in the deed that the land was to be mortgaged as security for the payment of the sum remaining due by privilege of *Bailleur de Fonds*. The 2nd August, 1869, Antoine Reid sold the same piece of land to Emerilde Tremblay, the defendant, then a minor child represented by his father Pierre Tremblay, by a notarial deed. The first deed, *i. e.* the sale from Antoine Prud'homme to Antoine Reid, was duly registered on the 7th August, 1876. The second deed was never registered. On the 26th November 1874, two years previous to the registration of the said first deed, the defendant, then an absentee acting and represented by his attorney Pierre Tremblay, acknowledged to owe and promised to pay to the plaintiff the sum of $148.72, and gave and made an obligation before notary bearing date 26th November, 1874, for said amount. The defendant, as security for the payment of said amount, gave a mortgage on the piece of land in question in favor of the plaintiff, which was registered on the 30th November 1874. On the same day, 26th November, 1874, the defendant acting by his attorney duly appointed, made another obligation in favor of J. B. Damour for the sum of $98.20 and interest, and mortgaged the same land. This last deed was registered on the 2nd December, 1874. The 22nd November 1875, Antoine Prud'homme, the vendor mentioned in the first deed of sale, made his last will wherein he institutes his wife, the contesting party in this cause, his universal legatee and testamentary executrix.

The 18th June 1876, Antoine Prud'homme died, and the 7th August following his last will was registered with a declaration of his death, according to law.

The piece of land was sold by the Sheriff in the present cause in virtue of a judgment rendered in favor of plaintiff against the defendant for the amount of plaintiff's obligation. The proceeds of the sale gave $333.96. The Prothonotary by his report of distribution collocated the plaintiff for $168.80, being the amount in full of his obligation, and the said J. B. Damour for $79.67 in deduction of the amount due to him in virtue of his obligation.

The contestant Marguerite Reid, widow of the late Antoine Prud'homme, contested these collocations in her quality of universal legatee and testamentary executrix. She maintains that she has a mortgage upon the said land for the balance remaining to be paid of the sale of 21 Sept., 1867, of Antoine Prud'homme to Antoine Reid, viz.: for the sum of $129.55, which deed of sale was registered on the 7th of August 1876 as aforesaid. She pretends that as hypothecary creditor and in virtue of said mortgage, she was entitled to be collocated before the plaintiff and J. B. Damour, and in preference to them—that the said plaintiff and J. B. Damour had no mortgage whatever upon the said land, because the registration of their respective obligations had no legal effect against the mortgage acquired by the contestant, on account of the title of acquisition of the said Emerilde Tremblay, the debtor of plaintiff and J. B. Damour, having never been registered.

I agree with the contestant upon this ground, and I am of opinion that in virtue of Art. 2098 C. C. the registration of said obligations, even made before the registration of the deed of sale bearing date 21 Sept. 1867, has no legal effect whatever, and cannot give effect to the mortgages granted by said obligations, on account of the right of the purchaser, the debtor of said obligations, not having been registered, although the said purchaser was then and had been for a long time previous in open and public possession of said piece of land.

The plaintiff, who is the only one of the two parties collocated who answered the contestation, also raises another question, which is that the contestant is entitled to only one half of the debt for which she claims to have a right to be collocated in preference to the plaintiff and J. B. Damour.

I think that the respondent is right. We find, on referring to the said deed of sale of Antoine Prud'homme to Antoine Reid, that Antoine Prud'homme had purchased that land in October 1859. He was evidently married at the time to contestant, for it appears that in 1875, when he made his last will, he had several children who were married themselves.

This land must have fallen into the community, which is presumed by law to have existed between them, and the price of sale of the land must also have become part and portion of said community, no proof to the contrary having been adduced in this cause.

So one half of the balance remaining due upon the price of sale, and claimed by Dame Marguerite Reid in her contestation belongs to her as *commune*, and the other half belongs to her in her capacity of legatee of her late husband.

She contests the report of distribution only in her quality of legatee and testamentary executrix, she cannot in consequence get more than the half of $129.55.

For these reasons the contestation is maintained for the sum of $64.77 with the costs of said contestation against the plaintiff, and it is ordered and adjudged that the said report of distribution be modified and altered so as to collocate the said Dame Marguerite Reid the contestant, upon the proceeds of the sale made by the sheriff, before and by preference to plaintiff and J. B. Damour, for the amount of $64.77, together with the costs of said contestation distraits to Mr. L. A. Prud'homme, contestant's attorney.

*L. A. Prud'homme*, for contestant.

*L. A. Seers*, for plaintiff, respondent.

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MONTREAL, June 7, 1879.

MACKAY, J.

THE ST. LAWRENCE GRAIN ELEVATING CO., Petitioners, v. THE HARBOUR COMMISSIONERS OF MONTREAL, Respondents, and THE MONTREAL ELEVATING CO., *mis en cause*.

*Injunction — Steam Elevator — Corporation — Action complaining of violation of powers to be in name of Crown—Art. 997 C. P.*

The petitioners asked for an injunction against the respondents to restrain them from commuting the dues collected on floating steam elevators. The petitioners alleged that the legal rate was 40 cents per day when the tonnage was under 50 tons, and 1½ cents per

ton per day when the tonnage was over 50 tons. The commutation was alleged to press with less severity upon the Montreal Elevating Company than upon petitioners, because while petitioners paid $75 for the season upon their one elevator under 50 tons, the Montreal Elevating Company paid only $900 upon their twelve elevators of over 50 tons, instead of about $3,000, which would be due if the 1½ cent rate on tonnage were collected.

The Harbour Commissioners objected that under Art. 997 C. P., the proceeding should have been taken in Her Majesty's name, because it complained that a public board was violating the provisions of the Act by which it is governed.

MACKAY, J., made the following order:—"Having examined the petition presented to me and filed by petitioners on the 31st of May last past, praying that a writ of injunction do issue against the Harbour Commissioners of Montreal, ordering among other things the respondents to refrain from collecting, enforcing and levying certain commuted rates, tolls, dues and duties; and to suspend the levying of the so-called commuted duty of $75 per season for each of the floating steam elevators used by the petitioners, or by the Montreal Elevating Company or others; seen the affidavits produced in support of the said petition, heard the parties by their counsel and deliberated;

I, the undersigned Judge, do refuse and reject the said petition with costs, for the following reasons, read at rendering of judgment, viz.:—For the Harbour dues, day by day charge is the rule of the statutes. From the oral argument of the petitioners before me (taken with their petition), it appears that their steam elevator is not a steamboat or vessel "plying between Montreal and any other place in the river St. Lawrence," and so commutation for the statutory harbor dues in respect of petitioners' said elevator is beyond the power of the defendants, and 40 cents a day (say the petitioners) was and is the only legal charge against petitioners for their elevator.

All that I see of action of the defendants is their letter of the 19th of May; they have not sued nor made the petitioners pay the $75, nor have they seized any of the petitioners' property. I see no damage done to petitioners yet. No commutation can be forced upon them. They do not allege tender of the day-by-day rate to defendants. If they fear trouble, they may day by day tender the respondents what they (petitioners) think right, and if more is insisted on, they may pay it under protest, and abundantly adequate remedy for getting back any amount of illegal charge exists by process ordinary, and there is no need for the special, extraordinary process of injunction, in such case. The petitioners' amount of interest is seen to be very small, if anything. If they remain during the season of trade in the Harbor this year, and have from the beginning of the season been in the harbour with their elevator, their legal dues would seem to be a sum, at 40 cents a day, which would exceed the $75 referred to, and this would show the commutation offered advantageous in such a case, rather than hurtful to the petitioners.

But a portion of petitioners' complaint is that defendants are granting commutations to others, that seem to be at more favorable rates to them than is that commutation offered to petitioners, and the defendants, it is said, are thereby acting to the detriment of the revenue of the Harbor of Montreal in general. Against such action of defendants, or misconduct (if it be so) the petitioners are not the proper persons to complain, but the Attorney General, the defendants' trust not being of a private but public nature, nor do I see appreciable damage to petitioners in particular from such alleged misconduct, so this injunction ought not to go."

Petition rejected.

*Coursol, Girouard, Wurtele & Sexton*, for petitioners.

*Abbott, Tait, Wotherspoon & Abbott*, for Harbor Commissioners.

## COURT OF REVIEW.

MONTREAL, May 21, 1879.

SICOTTE, MACKAY, JETTE, JJ.

ROBERT et al., petitioners, v. BERTRAND, respondent.

[Rouville Election Case.]

*Election—Promise by Candidate to lay sidewalks.*

In this case the election of Mr. Bertrand as representative for the County of Rouville, in the Legislative Assembly of Quebec, on the 1st of May, 1878, was sought to be set aside.

SICOTTE, J., referred especially to a promise made by the respondent that if elected he would lay sidewalks at his own expense. This promise, his honor considered, was a corrupt inducement to the electors, and had influenced votes in his favor For this reason the election must be set aside.

MACKAY, J. In the winter and autumn before the election these *trottoirs* were the subject of talk; some were for having them made at the expense of the Municipality, and there had been talk in the Council on the subject; though not upon a Petition.

Before the election there had been rumors that defendant if elected would make the *trottoirs à ses frais.* Albert Adam proves it, and *Bérard,* defendant's *fermier,* admits having heard it from different persons. The talk of defendant's agent S. Massé, fils, was peculiar; though not proving promise by defendant, it shows that the *trottoirs* question had been the subject of conversation before the polling day.

It is sought to connect the defendant with these rumors. So witnesses are brought up to prove his sayings; the petitioner charges defendant with having promised to make them at his own expense. Did defendant promise? Charles Bertrand says he did, speaking to him, on the *perron* of the church, "si j'ai la chance d'être élu je ferai faire les *trottoirs,*" were defendant's words to Bertrand. So does Albert Adam. Defendant speaking to him, (*à moi-même,*) said, "si je suis élu je ferai faire les trottoirs." Narcisse Hens says defendant *did* promise. Defendant said that "il les ferait faire."

Is the evidence of these three persons invalidated? C. Bertrand voted for defendant. It is said in defendant's factum that Gaspard Trouillet and Simon Massé "n'ont pas entendu les mots rapportés par ces deux témoins," (meaning Bertrand and Adam.) It happens that *Trouillet* is not asked, and does *not* say so; nor does *Massé.*

Are there proofs corroborative of those made by the three positive witnesses, or of the charge that defendant had made promise about the *trottoirs*? Yes, there are the proofs resulting from what Paul Adam and Marie Bertrand say, and Guillaume Cheval. Paul Adam and Marie Bertrand swear that defendant said to Paul, before the day for polling, that one Michel Bérard had come to him, and that he (defendant) had told him, "si je suis élu je donnerai le madrier," meaning the "madrier" for the *trottoirs. Cheval* swears that defendant, after the election, went to his place and said: "On veut me tracasser par rapport à une promesse que j'ai faite, &c., mais on ne peut pas me tracasser, parce que j'ai dit que je ferais faire les trottoirs qu'en autant que je serais élu par acclamation."

Michel Bérard is *fermier* of defendant. He denies that defendant told him that he would make the *trottoirs,* or give the *madriers.* If defendant never told him so, it was rash of defendant to speak as Paul Adam and Paul Bertrand swear he did, at Paul Adam's. That a conversation did take place at Paul Adam's during which the *trottoirs* were spoken of, and also Bérard's visit to defendant, is proved by defendant himself. But it is contended that Paul Adam and Marie Bertrand are not to be believed in reporting defendant to have said in that conversation, that he had promised to Bérard: "si je suis élu je donnerai le madrier." But we can't so hold in face of what defendant himself has said. In answer to the question: "Dans son témoignage, Paul Adam dit que vous lui avez déclaré chez lui: "que "Michel Bérard était venu vous trouver pour "vous faire faire une requête pour obtenir des "trottoirs, et que vous aviez répondu à Bérard: "laisse cela tranquille; si je suis élu, je donne- "rai les madriers pour faire les trottoirs; quand "il n'y aura plus que les lambourdes et la façon "cela ne coutera pas bien cher." Avez-vous déclaré cela à Paul Adam quand vous êtes allé chez lui? Defendant says: "Lorsque je suis allé chez Paul Adam, je m'en rappelle, il a été question des trottoirs: je lui ai dit que Michel Bérard était venu chez moi afin de dresser une requête s'adressant au conseil, pour avoir des trottoirs, et je lui ai répondu que j'avais dit à Bérard que c'était parfaitement inutile; que le conseil ne voudrait pas. Quant au reste, je ne m'en rappelle pas du tout; j'ai pu peut-être lui dire cela, mais je ne m'en rappelle pas du tout: cela ne m'est pas resté dans la mémoire."

As to defendant's speech to *Cheval,* as reported by *Cheval,* going to make out that defendant had only promised to make the *trottoirs* if elected by acclamation, such a speech if made would only be a little less damaging (if at all) to defendant than those proved by Ber-

trand, Adam and Hens. If promise by defendant was made that if elected by acclamation he would make the *trottoirs*, this must refer to a speech before nomination day, to influence unduly the electors, and which would have been fatal to defendant's election had he really been elected by acclamation. But the speech and promises of defendant are proved to have been without such condition of election by acclamation, and indeed at the time spoken of by Bertrand and Hens and Albert Adam, the time for election by acclamation had passed. Albert Adam at first says it was before nomination but proves it to have been after, viz.:—Thursday, which was the 25th of April, and the nomination was on the 24th. It calls for observation that the defendant, though denying having promised to make the *trottoirs*, is asked as to whether in conversation on the church *perron* with Charles Bertrand there was a question of the *trottoirs*, and he says: "je ne m'en rappelle pas du tout."

Asked whether he talked to Albert Adam, on the *perron* of the church, Bertrand present, he answers: "je ne me rappelle pas."

Asked in like way as to conversation with *Hens* rélativement *aux trottoirs*, defendant answers: "je ne me rappelle pas." He does not deny.

Defendant in his factum says that petitioners had to prove, upon this question of defendant's promise to make the *trottoirs*, three things: the promise; the premium; and thirdly the fraudulent intent. The court find all these things proved. Unless we proceed upon other principles than govern the Court ordinarily; unless we arbitrarily disregard the sworn testimonies of witnesses perfectly respectable, and whose character is not attacked, we have to find the promise proved. The premium is proved. The corrupt intent is proved. The promise had a tendency to influence unduly the electors—and that is enough. The speech proved the promise in it was made corruptly to induce voting for the speaker. See p. 64, O'Malley & Hardcastle; the Cheltenham Case. The smallness of value of what is promised is of little moment, and cannot save the candidate; 2 O'Malley & Hardcastle.

The judgment was in these terms: The Court, &c., considering that at an election held in the month of May, 1878, in the electoral district of Rouville, the said S. Bertrand (the respondent) was declared duly elected member for the electoral district of Rouville; considering that it was shown by the evidence that the said S. Bertrand was guilty of corrupt practices in making promises at the said election at different times, and to different electors, equivalent to a valuable consideration, in order to induce the electors to vote for him; doth declare and adjudge the said election to be null and void.

*H. Mercier*, for petitioners.

*Sicotte & Co.*, and *Lacoste & Co.*, for respondent.

## CURRENT EVENTS.

### *CANADA.*

JUDICIAL APPOINTMENT, May 28.—Acalus Lockwood Palmer, of the City of St. John, in the Province of New Brunswick, one of Her Majesty's Counsel learned in the law, to be the Judge in Equity of the Supreme Court of New Brunswick.

THE MONTREAL BAR AND THE ONTARIO LEGISLATURE.—In the general election in Ontario, June 5th, the Hon. Alex. Morris, formerly a practising member of the Montreal Bar, was elected for Toronto East, and Mr. D. Macmaster, of the same bar, was elected for his native county of Glengarry.

BOARD OF NOTARIES.—The triennial meeting of the Board of Notaries of the judicial district of Montreal was held June 4, at Montreal, in the room occupied by the Court of Appeals. Mr. Joseph Simard, N. P., occupied the chair, and Mr. H. A. Breault, N. P., acted as Secretary.

Mr. D. E. Papineau, the President of the Board, recommended that in the election of the Board five members should be chosen from the city and four from the country districts, viz.:—two from the north and two from the south side of the river. He proposed Messrs. Lecavalier, Durand and Beaudry, who were appointed scrutineers. The following gentlemen were reported duly elected:—D. E. Papineau, Montreal; F. J. Durand, Montreal; E. A. Beaudry, Varennes; J. R. Brillon, Belœil; F. A. Bastien, Vaudreuil; J. S. Hunter, Montreal; W. A. Phillips, Montreal; N. M. LeCavalier, St. Laurent; P. Brais, Longueuil.