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BY

JAMES KIRBY, D.C.L., LL.D.,

Advocate.

VOL. IX.

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TABLE OF CASES

REPORTED, NOTED, AND DIGESTED

In Vol. IX.

Errata.—P. 25, for "sale by action" read "sale by auction." P. 210, read "Le *donateur* qui redevient propriétaire, etc."

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Editor.—JAMES KIRBY, D.C.L., LL.D., Advocate.
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It will be noticed by the report elsewhere that, on special application, leave to appeal from the judgment of the Supreme Court, in *Sweeney* v. *Bank of Montreal*, has been granted by the Judicial Committee of the Privy Council. This is a very different sort of case from that of *Montreal City Passenger Railway Co. & Parker*, referred to in Vol. 8, pp. 393, 396. An important question of law is presented, and, as was remarked (Vol. 8, p. 403), the judgment of the Supreme Court, which was not unanimous, reversed the unanimous judgment of the Queen's Bench confirming that of the Superior Court. Four judges overruled seven. Mr. Jeune, on the part of the Bank, appears to have conceded that the judgment of the majority of the Supreme Court is in accord with the law of England, but he contended that the jurisprudence has been otherwise in the Province of Quebec. It is a little singular that both of the representatives of our bar on the Supreme bench sustained the majority decision. However, it is satisfactory to know that the case will be re-examined with care by the Judicial Committee, and a ruling of the greatest importance obtained upon the law of agency and trusts.

A question of some interest was decided by Mr. Justice Brooks at Sherbrooke in *Ontario Car Co.* v. *Quebec Central Ry. Co.* The learned Judge held, as to funds temporarily in the hands of an employee, that the employee's possession is really the possession of the employer, and therefore, the proper mode of seizing such money is by ordinary execution, and not by garnishment. There was another point in the case. The employee had deposited the money in his own name "in trust" in a bank. Did this disposition of the money give him a possession so distinct as to change the aspect of the case, and make the employee a "third party," within 612 C.C.P.? The Court decided that it did not.

A correspondent has forwarded to us a circular received by his firm from a "Co-operative Collection Association," having its headquarters in Cincinnati, O. The document is a curiosity in its way, and shows the length to which these trespassers upon the professional field are prepared to go. The circular states that "the association secures its business by the employment of competent business men, who are *constantly soliciting merchants, manufacturers and dealers, throughout the United States, for their claims*, which are distributed for collection to various members of the association." Correspondents are asked to report failures in their place promptly, naming the creditors. "*We then solicit the business from those creditors*, and notify our branch offices where the failure affects them." One attorney is to have the entire business in each place, and this honorable position is offered him on payment of the annual sum of five dollars. The circular states with a flourish, that "in business circles throughout the country everything is moving *with new life and activity*, and doubtless the scheme disclosed above is a sample of the new life and activity which the ingenious projectors desire to infuse into the legal profession. The gentleman who favored us with a view of this document, states that it is a sample of circulars with which his firm are almost daily flooded, though this goes further than most of them. Doubtless such schemes are encouraged by the remissness of bar associations throughout the country. This is the age of "disestablishment," and if no check be placed upon such practices, the time may come when the bar will be disestablished as well as the church, and the profession be thrown open to all comers.

We regret to see an announcement that our Western contemporary, the *Manitoba Law Journal*, has discontinued publication. The reason given is that the support is inadequate, the bar of Manitoba being too small to sustain a law journal. The reports are to be continued by the Law Society. Another change in the legal press is that the *Criminal Law Magazine* is to be issued monthly instead of every two months. The *Law Magazine* is ably conducted, and we are glad to record this evidence of success.

Theatre-goers may be interested in a decision by Judge Bayley, of the Westminster County Court, in *Vandenberg* v. *Harris* (Dec. 2), that a pit ticket entitles the purchaser to admission only, and if there is standing room he has no right to complain.

INSANITY AS A DEFENCE.

To the Editor of The Legal News:

The Archbishop of St. Boniface has published a lengthy manifesto on the affairs of the North-West, in connection with the recent rebellion and its consequences. The greater part of the paper is taken up with a defence of Riel and his followers, scarcely obscured by the thinnest veil of blame of those who took part in the insurrection. Frankly put, there is no offence to any one in maintaining that the revolt was justified or palliated by the wrongs of the Indians and half-breeds; but to weave into the argument, whether by innuendo or inflammatory speeches, questions of race and religion, is more than a misfortune. Whether the grievance-mongers will be able to induce the representatives of the people of Canada to believe that opening the North-West to colonization, restraining the possession of a nomadic race to extensive reserves, instead of leaving thirty thousand of them to retain, as hunting grounds, the quarter of a continent, putting comfortable clothes within their reach instead of picturesque *drapery of semi-nudity*, and building a railway, destined to be one of the great highways of the world, are such wrongs as, according to the ideas of civilized men all over the world, can be pleaded, even in extenuation of an insurrection such as that we have seen, is a problem which the next session will solve.

Interesting as it may be to speculate on the relative advantages of savage and civilized life, it is beyond the scope of this journal. There is, however, one passage of the Archbishop's dissertation which belongs to the particular domain of practical law, and with it we propose to deal. He says: "I had too many reasons to study the dispositions of my unfortunate *protégé*, in their minutest details, not to see what he was, and what could have led him to the deplorable path he followed. For many years, I am convinced, beyond the possibility of a doubt, that while endowed with brilliant qualities of mind and heart, the unfortunate leader of the Metis was a prey to what may be termed 'megalomania,' and 'theomania,' which can alone explain his way of acting until the last moment. . . . The natural consequences of my convictions on the sad subject were rejected, and the hope I had entertained to the end vanished."

If these words have any meaning, it is to convey the idea, that under the view of Riel's acts, least favourable to him, he was insane, and ought not to have been punished. To the materialist the question of moral or intellectual insanity is not altogether new; but one is startled to find it professed by a Prince of the Church. At the present moment the error is particularly dangerous. To great numbers of quick-witted but superficial people, who have not the least notion of the value of distinctions, a sort of metaphysical notion of insanity has become a belief, whose evil influence has more than once been felt in the administration of justice. To a considerable portion of the medical profession, especially, the doctrine of moral insanity is very alluring. They conceive that it extends the limits of their art, and perhaps, they hope to substitute for the evidence of their experience, their verdict as a jury on all questions of insanity. In this expectation they will probably be disappointed.

As placed by the Archbishop, the doctrine does not appear at first sight in its most alarming form. It must, not, however, be forgotten that the mind readily becomes reconciled to error which is familiar to the ear, and that "*l'espèce horrible de demi-savants*," as Louis Veuillot calls them, have, among the ravings of their doubts, a kind of logic. They are easily deceived by false premises, but they show no lack of discernment in going to the remotest conclusions. Now, if it be once admitted that there is a moral or intellectual insanity, relieving the patient from responsibility, we cannot reject the sequence that crime is a disease, and we are then only so many atoms rattling about, impelled by some essential energy or force, which, although totally unproved, seems to have received the *imprimatur* of modern science.

The law of civilized states has adopted no uncertain rule upon this matter. Like theology it recognizes free-will as the normal condition. It deals not with sanity in the abstract, but with responsibility. This is a material fact to be proved as all others, and it has to be decided by the tribunal charged with the case.

It is not at all likely we shall advance, in the smallest degree, toward establishing a philosophic delimitation of sanity. It is possible we may gain empirically further knowledge of the manifestations of insanity. For instance, it may be established sufficiently for practical purposes, that the temperature of the body gives indication of some peculiar habit of the body. We may, perhaps, find out that fat men, with good circulation, "sleek-headed men, who sleep abed o' nights," are more responsible than the *lean and hungry-looking* Cassios; but as yet the experiments are somewhat inconclusive.

In the case of Riel, the plea of insanity was urged at the trial and disposed of. He was held not to be insane, and no fact has since been adduced to give any colour to the proposition that he was not responsible for his acts.

R.

SUPERIOR COURT.

SHERBROOKE [ST. FRANCIS], Nov. 30, 1885.

Before BROOKS, J.

THE ONTARIO CAR CO. v. THE QUEBEC CENTRAL RAILWAY CO. & ANDERSEN, T. S., and PLAINTIFF, Contesting.

Execution—Saisie-arrêt—Moneys in possession of employee—Deposit in bank—C.C.P. 612 *—Third person.*

HELD:—*That a clerk or employee is not a "third party" within the meaning of Art.* 612, *C.C.P., and defendant's moneys in the hands of his clerk cannot be seized by garnishment. The fact that the employee has deposited such moneys in a bank in his own name "in trust" does not affect the case.*

PER CURIAM. There is only one point in this case: Is a clerk or servant a third person to the extent that a *Saisie-Arrêt* will hold good under the circumstances disclosed by the evidence?

The plaintiff took a *Saisie-Arrêt* in the hands of Andersen, who declared that he had, as clerk or employee, or assistant cashier of defendants, a certain sum of money ($867.25) which, for purposes of safe-keeping, he placed in the Eastern Townships Bank in his own name in trust, not knowing what else to do with it, as he had been instructed by defendants' manager, who was absent, not to deposit anything in their name. The *Saisie-Arrêt* was served, the garnishee declared that personally he owed nothing, and the plaintiffs contested, claiming in addition to the $867.25 the larger sum of $10,000 which, as they said, had passed through Andersen's hands between the service and return of the *Saisie-Arrêt*. C. C. P., 553 and 612 were cited. Is Andersen a third party within the meaning of Art. 612? Is the clerk's or servant's possession his own, distinct from his master's? The *Tiers-Saisi* has complicated the matter by the deposit in bank, but the question to be decided is, were the defendant and the *Tiers-Saisi* in law one and the same person, so as to make the *Tiers-Saisi's* possession the defendants', or was the *Tiers-Saisi* a third person *quoad* defendants?

At the argument I was inclined to think that the *Tiers-Saisi* had *assumed* possession by the disposition he made of the money, for the principle that you cannot arrest money merely passing through the hands of an employee was virtually admitted by the giving up of the pretension that plaintiffs could hold the $10,000.

I think some light is thrown on this question by our own Code, Art. 619. The *Tiers-Saisi* was not *indebted*. He was bound to declare by what *title* he held movables (in this case monies). He held them as servant of defendants. See also Pothier, Proc. Civ. (edition 1861), p. 231. See also Roger, Traité de la Saisie-Arrêt (1860), p. 13, Secs. 16, 17, 18 and 19, who says:—"Il résulte de cette règle que, "si l'individu, détenteur des objets d'un dé- "biteur, n'est pas un véritable *tiers* par rap- "port à celui-ci, on pourra les appréhender "par voie de saisie-exécution; mais que, si "c'est un *tiers* il faudra prendre la voie de "saisie-arrêt.

"Mais comment reconnaitre si le déten-

" teur des effets d'un débiteur est une *tierce* " personne ?

" Ce ne peut être qu'aux rapports existant " entre eux. Lorsque ces rapports sont de telle " nature qu'on doive les considérer l'un et " l'autre comme un seul et même individu, " le détenteur ne saurait alors être un tiers.

" Ainsi les sommes appartenant à un négo- " ciant se trouvent souvent gardées par un " caissier. Elles ne sont pas pour cela en " *mains tierces*, mais bien entre les *mains* du " négociant même. Le caissier n'est pas un " tiers débiteur, mais un préposé qui détient " pour le maître. Une caisse n'est pas moins " sous la main du patron que sous celle du " caissier. Il serait absurde qu'on la saisît " arrêtât. On devra prendre la voie de saisie- " exécution. C'est donc avec raison qu'il a été " jugé que le créancier d'un société ou d'une " compagnie ne peut pratiquer une saisie- " arrêt entre les mains de son caissier.

" De même encore, le préposé d'une per- " sonne peut avoir été placé dans une maison " non-habitée, mais louée, par le préposant " ou pour compte de celui-ci. Les sommes " que ce préposé détiendra ne seront pas en " mains tierces, quoiqu'il ne soit pas sous le " même toit que le préposant; on devra les " appréhender par voie de saisie-exécution. " Ainsi, un débiteur a pris à loyer divers ap- " partements ou magasins et dans diverses " villes, tant pour y placer que pour y vendre " de nombreuses marchandises, qui ne pou- " vaient être contenues dans ceux qu'il ha- " bite. Il en a confié la garde à un portier, à " un commis ou à un domestique. Il n'occu- " pera pas lui-même un seul des lieux loués. " Ses créanciers y pratiqueraient valable- " ment sur lui des saisies-exécutions, parce- " que, si les objets saisis sont hors de son " domicile, ils n'en sont pas moins en sa " possession légale."

I cannot arrive at any other conclusion than that the possession of the *Tiers-Saisi* was the possession of the defendants, and that he is not a third person or third party within the meaning of the law. This money might have been arrested in the hands of the Bank on proof of ownership.

Contestation dismissed with costs.

Ives, Brown & French for plaintiff contesting.
Lawrence & Morris for defendant and *Tiers-Saisi.*

SUPERIOR COURT.

ST. FRANCIS, Dec. 19, 1885.

Before BROOKS, J.

PICHER v. TALBOT.

Procedure—Return of writ of saisie-arrêt before judgment—Disregard of order of Court.

HELD:—*Where a writ of seizure before judgment, notwithstanding an order granted by the Court on application of defendant for its immediate return, was returned only on the original return day, and the defendant had not made any further application up to that time, that the Court will not then reject the writ as filed too late.*

A seizure before judgment, issued on the 26th November, 1885, and returnable on the 15th of December, was served on the 28th of November.

A motion was made by defendant for the immediate return of the writ, and granted on the 4th of December.

Notwithstanding the order, the writ was returned only on the 15th December.

On the 18th, a motion was made by defendant to reject the writ as filed too late and in contempt of Court.

Panneton, for defendant, contended that the return day of the writ was changed by order of Court from the 15th to the 4th of December,—that a couple of days' delay after the 4th would not have been objected to if needed to obtain the writ from the bailiff: that plaintiff's attorneys were present in Court when the order was given; that the return day mentioned in the writ was no more the return day of the same; that plaintiff had no more right to return the writ on the 15th, than he would have to return it ten days or a month afterwards; further, that it was a contempt of Court.

Bélanger, for plaintiff, stated that he had good reasons for not returning the writ, the bailiff having delayed some days before giving the writ, and the parties having had *pourparlers* about a settlement, and no order was served on plaintiff's attorneys to return the same.

PER CURIAM. If I had power to grant the motion I would certainly do it, as no valid reasons are given for the delay; but the defen-

dant should have moved before the return of the writ. Now that it is filed, though too late, I have no power to reject it.

Motion rejected without costs.

Bélanger & Genest for Plaintiff.

Panneton & Mulvena for Defendant.

COUR DE CIRCUIT.

JOLIETTE, 14 décembre 1885.

Coram CIMON, J.

LANDRY v. LA COMPAGNIE DE CHEMIN DE FER DU NORD.

Compagnie de chemin de fer—Clôture.

JUGÉ:—1o. *Que les compagnies de chemins de fer sont tenues de faire et entretenir à leurs frais des clôtures de chaque côté du chemin de fer, de la même hauteur et force que les clôtures de division ordinaires, à défaut de quoi elles sont responsables des dommages causés par leurs trains ou locomotives aux animaux sur leurs chemins de fer.*

2o. *Qu'une clôture composée seulement de quatre fils de fer bardé, et n'ayant en tout que 3½ pieds de hauteur, avec des piquets distants l'un de l'autre de* 12 *à* 14 *pieds, est insuffisante.*

CIMON, J. Le 19 juin dernier, la défenderesse était propriétaire et en possession du chemin de fer de Joliette à St. Félix de Valois et l'exploitait. Le demandeur réclame d'elle la somme de $99.99, qui aurait, par le défaut de la clôture de ce chemin de fer, passé sur cette voie ferrée, où il aurait été tué par une des locomotives de la défenderesse. Celle-ci, par divers statuts de Québec, se trouvait soumises aux dispositions de la section 16 du chap. 43 des statuts de Québec 43 & 44 Vict., qui se lit comme suit: "Dans le cours des "six mois qui suivront la prise de terrain "pour l'usage du chemin de fer, *la Compagnie* "*devra*, si elle en est requise par les propriétaires des terrains avoisinants, *faire faire et* "*entretenir à ses frais, des clôtures de chaque* "*côté du chemin de fer, de la même hauteur et* "*force que les clôtures de division ordinaires.* "Jusqu'à ce que ces clôtures aient été posées, "*la Compagnie sera responsable de tous les dom-* "*mages qui pourront être causés par ses trains* "*ou locomotives, aux bestiaux, chevaux*, et autres "animaux *sur le chemin de fer.* Après que "ces clôtures auront été posées, *et tant qu'elles* "*seront tenues en bon ordre*, la compagnie ne "sera pas responsable de semblables dom-"mages, à moins qu'ils ne soient causés par "quelque négligence ou de propos délibéré."

Or le demandeur est propriétaire d'un terrain traversé par ce chemin de fer de la défenderesse, et celle-ci, en conséquence, était tenu d'avoir là, de chaque côté de son chemin, *une clôture de la même hauteur et force que les clôtures de division ordinaires, et de l'entretenir en bon ordre;* à défaut de quoi elle est responsable du dommage causé au demandeur par la perte de son cheval. Il n'a pas été question que le propriétaire avoisinant n'a pas requis cette clôture. Au contraire, il y a là, depuis longtemps, une clôture de chaque côté du chemin de fer, et la défenderesse dit qu'elle est suffisante et en conformité avec la loi. Cette clôture est en fil de fer bardé; les piquets sont à une distance de 12 à 14 pieds l'un de l'autre; elle ne se compose que de quatre fils de fer doubles distant de 9 pouces l'un de l'autre, et n'a, en tout, que 3 pieds et 9 pouces de hauteur. Il n'y avait aucune planche ou autre chose sur le haut de la clôture ou ailleurs. Le demandeur avait le 19 juin au matin, mis son cheval dans son clos avoisinant le chemin de fer. Quelques instants après, le train No. 7 de la défenderesse, tiré par l'engin No. 8, passa à cet endroit, et, comme il approchait une traverse, l'ingénieur, comme la loi l'y obligeait, *siffla*. Cela parut effrayer le cheval qui était à courir à l'autre extrémité du clos; et longeant toute la clôture séparant le clos du chemin municipal, il s'en est venu, dans sa course, à la clôture du chemin de fer, où il s'est d'abord arrêté une seconde ou deux, puis il fit un saut vers le milieu d'une des pagées de la clôture de la défenderesse, et il s'est trouvé le ventre sur la clôture, et le fil de fer supérieur a été alors cassé; et, par un second bond, le cheval s'est trouvé complètement sur la voie de la défenderesse, et est venu sur la locomotive qui l'a tué. Le cheval n'était pas sauteur, car les témoins s'accordent tous à dire qu'il tenait bien à toutes les clôtures ordinaires. Il est vrai que le cheval était *peureux*, mais cela n'a rien à faire ici.

Toute la question est celle de savoir si la clôture du chemin de fer en était une *de*

même hauteur et force que les clôtures de division ordinaires. Ces dernières sont en perches et pleines, et ont quatre pieds de hauteur. On voit de suite que la clôture de la défenderesse n'était pas une clôture de division ordinaire. Il est vrai que les chemins de fer font généralement leurs clôtures ainsi en fils de fer, ce à quoi la loi ne s'oppose pas, pourvu qu'ils les confectionnent de manière qu'elles aient *la même hauteur et force que les clôtures de division ordinaires.* Il est donc certain que la clôture de la défenderesse n'avait pas cette hauteur, qui est de quatre pieds. Les témoins du demandeur affirment que cette clôture n'était ni assez haute, ni assez forte pour tenir les animaux, et que de fait elle ne les tient pas, et qu'elle ne serait certainement pas suffisante entre cultivateurs voisins. La clôture de la défenderesse est plus basse que celle qui sépare le clos du demandeur du chemin municipal, celle-ci étant une clôture de division ordinaire. Les témoins ajoutent que le cheval n'aurait pu sauté celle-ci, tandis qu'il a pu sauter celle du chemin de fer. On a dit que les témoins du demandeur sont des cultivateurs intéressés, vu que leurs terrains sont également traversés par ce chemin de fer. Mais cet intérêt ne les discrédite pas; au contraire, cela les a mis en position de mieux observer la clôture de la défenderesse et de l'apprécier à sa juste valeur: voilà tout. La défenderesse a fait entendre deux ou trois des employés du chemin de fer, qui ont dit que la clôture est bonne et suffisante, et qu'elle est semblable à toutes les clôtures généralement des chemins de fer. Mais il n'ont pas contredit la hauteur donnée par la demande, et n'ont en aucune façon contredit sur les autres points la preuve de la demande. Il est tout à fait évident que la clôture en fils de fer, de la défenderesse, telle qu'elle est décrite ci-dessus, n'est pas une clôture solide, ayant la force des clôtures pleines en perches ordinaires qui forment une barrière forte et en imposent aux animaux. Si les compagnies de chemins de fer veulent faire leurs clôtures en fils de fer, qu'elles les fassent de manière qu'elles soient l'équivalant en hauteur et en force des clôtures en perches pleines ordinaires.

Je suis d'avis que si la défenderesse eût eu à cet endroit une clôture de la hauteur et force de celle séparant le clos du chemin municipal, qui était une clôture de division ordinaire, elle aurait protégé le cheval du demandeur qui ne l'aurait pas sauté. Cela est tellement évident et le cheval était si peu sauteur, qu'il a eu une grande difficulté à sauter la clôture en fil de fer. Il est d'abord resté sur la clôture; puis le fil de fer d'en haut a cassé et la clôture n'avait plus que 2½ pieds de haut, ce qui a ensuite facilité le passage du cheval.

Ces grandes compagnies de chemin de fer rendent, sans doute, de grands services, et elles ont droit à toute la protection voulue. Mais il ne faut pas oublier que c'est l'argent de l'Etat qui a construit ces chemins de fer, et, en définitive, c'est le public qui a payé pour se donner les avantages qu'il en retire. Le public a droit d'être rigoureux vis-à-vis ces compagnies qui exploitent ces chemins, et d'exiger qu'elles se conforment à toutes les prescriptions de la loi pour sa protection. Le demandeur a prouvé qu'il avait droit de se plaindre de la clôture de la défenderesse et qu'il avait droit à un jugement tel qu'il le demande.

Charland & Tellier, avocats du demandeur.
Arthur Olivier, avocat de la défenderesse.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, Dec. 12, 1885.

Before LORD MONKSWELL, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR R. COUCH.

THE BANK OF MONTREAL, (deft.) v. SWEENEY, (plff.)

Appeal from the Supreme Court of Canada.

An application was made for leave to appeal from the judgment of the Supreme Court of Canada. (See 8 Leg. News, pp. 401, 403.)

Mr. *Jeune*, in applying for special leave to appeal, said the case was one of considerable difficulty. The questions of law involved were of great importance, and certainly it was not very easy to form a strong opinion upon the decision as given by the court below. The case, substantially, was this: Miss Sweeney, the present respondent, brought an action against the Bank of Montreal in respect of certain shares in a

joint stock company (the Montreal Rolling Mills company) pledged to the Bank of Montreal by one Rose. Miss Sweeney allowed certain shares to be placed in the name of Rose in the books of the joint stock company, and they had the words "in trust" attached to them, and the certificate was given to Rose of these shares which bore on the face of it "James Rose, in trust." Rose pledged these shares to the Bank of Montreal, and Miss Sweeney claimed them as being her property. It did not appear conclusively that the bank knew anything of the transactions between Rose and Miss Sweeney, except what appeared on the face of the document itself, "James Rose, in trust."

LORD MONKSWELL—Rose sold these shares to the Bank?

Mr. *Jeune*—Deposited them as security.

LORD MONKSWELL—But they had been entered in his name "in trust" before that, and the words, "in trust" stood?

Mr. *Jeune*—Yes.

SIR R. COUCH—Then he pledged those certificates to the Bank of Montreal?

Mr. *Jeune*—Yes. On the third of June, Rose transferred them to Buchanan (the manager of the Bank of Montreal) in trust, but he did not state anything as to the nature of the trust. Buchanan had no knowledge that Rose held the shares in trust for Miss Sweeney or any particular person. The transfers were given as collateral security for advances by the bank to Rose personally. Rose was largely indebted to the bank, and Miss Sweeney was unaware of the transfer to Buchanan until she was informed in January, 1880. The Court of first instance held that Miss Sweeney was not entitled to recover, and when the case came before the Court of Appeal of the province of Quebec, all the judges held that under French law the respondent was not entitled to recover. On the other hand, the majority of the judges of the Supreme Court held that the respondent was entitled to recover. The point he wished to put before their Lordships was that the decisions given in favor of the respondent were really based on the English law as to trusts, and that the French law was immaterial to it. He admitted that it was difficult for an English lawyer to take a different view, but what he submitted was that the judgments given by the French Courts and a very elaborate judgment given in the Supreme Court, show that there is considerable ground for saying, indeed the authorities referred to by the learned judges were conclusive that, according to French law the whole position of things was different. French law did not recognize trusts in our sense of the word at all; nor did it correspond to the doctrine of notice; they looked at the matter from quite a different point of view, and they thought that the respondent should not suffer. According to French decisions, the doctrine of trusts ought not to be brought in, and the bank were entitled to hold the shares.

SIR R. COUCH.—Shall we have to decide it on the French code?

Mr. Jeune.—Not so much on the code as upon principle. I agree that upon English law a person seeing shares "in trust" would be put upon notice, but that is not so according to the French law at all. There is one fact which shows that there is very strong *prima facie* ground for thinking so, and also as showing the importance of this case, viz., that this bank was constantly in the habit of taking deposits of this kind from persons who held shares of this sort in trust, and that they never thought of inquiring and never felt bound to say what the trust was. If this judgment were right then it upsets the ordinary opinion of commercial people on this subject. The learned counsel having reviewed some of the judgments of the court below,

LORD MONKSWELL delivered the judgment of the Court. He said in this case there was a question of great interest and importance, viz.; whether the English or the French law should prevail. As this was a matter of general public interest we think that the case should be heard.

Judgment accordingly.

RECENT U. S. DECISIONS.

Coupon Tickets over Several Lines—Liability of Companies—Ejection of Passenger.—Damages.—Through tickets in the form of coupons, sold to a passenger by one railroad company, entitling him to pass over successive connecting lines of road, in the absence of

an express agreement, create no contract with the company selling the same, to carry him beyond the line of its own road, but they are distinct tickets for each road, sold by the first company as agent for the others so far as the passenger is concerned. Where a coupon ticket has been sold, calling for for passage over several distinct lines of railroad, the rights of the passenger, and the duty and responsibility of the several companies over whose roads the passenger is entitled to a passage, are the same as if he had purchased a ticket at the office of each company constituting the through line. Where a conductor of a railway company, acting under instructions from his superior, refuses to accept a ticket issued by another company, as agent of the former, and demands full fare, the passenger, if his ticket was issued by authority, may pay the fare again, recover of the company requiring payment the sum paid, as for a breach of contract, or he may refuse to pay, and leave the train when so ordered by the conductor, and sue and recover of the company all damages sustained in consequence of his expulsion from the train; but if he refuses to leave, he cannot recover for the force used by the conductor in putting him off, when no more force is used than necessary, and the expulsion is not wanton or wilful.—*Pennsylvania R. R. Co.* v. *Connell*, 112 Ill.

Eminent Domain—Telephone Pole—Injunction.—The state and municipal authorities may, in the exercise of the rights of eminent domain, authorize the placing of telephone poles along a street, and abutting owners have no just cause for complaint unless some injury is inflicted upon them not common to all other persons. Supreme Court of Louisiana.—*Irwin* v. *Great Southern Telephone Co.*

ORIGIN OF TRIAL BY JURY.

1. Phillips and Probst maintain that it originated among the Welsh, from whom it was borrowed by the Anglo-Saxons.

2. Coke, Van Maurer, Phillips, Selden, Spelman and Turner regard it as having been original with the Anglo-Saxons.

3. Bacon, Blackstone, Montesquieu, Nicholson and Savigny hold that it was imported from primitive Germany.

4. Konrad Maurer thinks it is of North German origin.

5. Warmius and Warsaae agree that it was derived from the Norsemen, through the Danes.

6. Hicks and Reese think it came from the Norsemen, through the Norman conquest.

7. Daniels says the Normans found it existing in France, and adopted it.

8. Mohl thinks it derived from the usages of the Canon law.

9. Meyer thinks it came from Asia by way of the Crusades.

10. Maciejowski says it was derived from the Slavonic neighbors of the Angles and Saxons.

11. Brunner, Palgrave and Stubbs derive it from the Theodosian Code, through the Frank Capitularies.

12. Hume says that it is derived from the decennary judiciary, and is "an institution admirable in itself, and the best calculated for the preservation of liberty and the administration of justice, that was ever devised by the wit of man."—*Irish Law Times.*

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Dec. 26.

Judicial Abandonments.

Thomas Alexander Armstrong, of Bryson, Dist. of Ottawa, Dec. 23.

Courteau Frères, cigar manufacturers, Montreal, Dec. 17.

Michael Hayes, Sheenboro, Dist. of Ottawa, Dec. 21.

George Venner, Montreal, Dec. 16.

Curators Appointed.

Joseph T. Denis.—L. P. Bruneau, Montreal, curator. Dec. 23.

Eusèbe Martel.—Kent & Turcotte, Montreal, joint curator. Dec. 18.

Dame Rachel Rogers, manufacturer, Montreal.—M. E. Bernier, St. Hyacinthe, curator, Oct. 28. Notice dated Dec. 22.

A. Tenny, general merchant, South Stukely.—John McD. Hains, Montreal, curator. Dec. 18.

Final Dividend.

Charles Désy, Three Rivers. A. Turcotte, Montreal, curator. Open to objection till Jan. 11.

Sale in Insolvency.

J. Bte. Pharand dit Marcellin.—At church door Saint Clet, Co. Soulanges. Jan. 12.

A famous Scotch counsel named Hay, who became a judge, with the title of Lord Newton, was as remarkable for his devotion to the pleasure of his table as for his great legal abilities. It was of him that the famous story is told of a client, calling on him one day at four o'clock, and being surprised to find him at dinner, the visitor said he understood five to be Mr. Hay's dinner hour. "Oh, but, sir," said the man-servant, "it is his yesterday's dinner."—*Irish Law Times.*