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MORTGAGE FOR FUTURE ADVANCES.

An interesting question was decided a few days ago by Mr. Justice Mackay in the case of *Quintal* v. *Lefebvre*. One Benoit had bought a property without registering his title. He granted a hypothec on this property to a Building Society for advances to be made. This hypothec was registered. Benoit then sold the property to the defendant Lefebvre, delegating part of the price to Trudeau. This deed was also registered. It was after all these transactions that Benoit's purchase deed was registered, and subsequently the Building Society made the advances.

The question was whether Trudeau was to be preferred to the Building Society on the proceeds of the immoveable hypothecated. The registration of these two claims took effect only when Benoit's acquisition deed was registered; for, under C.C. 2098, "so long as the right of the purchaser has not been registered, all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable are without effect." Then, when the registration was validated, the Building Society's hypothec, being the more ancient deed, would apparently have precedence. But the Building Society did not really become a creditor at all until after the registration of Trudeau's claim had obtained its effect. So the question resolved itself into this, from what time does a hypothec for a *crédit ouvert* work,—from the day of its date, or from the time the advances are made? The judgment of distribution assumed, apparently, that it had effect only from the date of the advances, but Mr. Justice Mackay has overruled this mode of ranking, and has given effect to the Building Society's deed from the day of its date. It is probable that the question will be examined by a higher Court.

UNREGISTERED HYPOTHECS.

The case of *In re Peloquin*, and the contestation arising upon the distribution of the proceeds of the insolvent's real estate, has directed attention to the fact that in certain localities there are privileged claims yet in existence not requiring registration or re-registration. The City of Three Rivers has such a privilege for securing repayment to it of money loaned to persons whose property was destroyed in the great fire of 1856, to enable them to rebuild.

PUNISHMENT FOR CONTEMPT.

The Supreme Court of Pennsylvania, *in re Steinman*, has recently had to review a decision of a Judge of Quarter Sessions, disbarring an attorney for publishing a libellous letter in a newspaper of which he was the editor or publisher. The Court has set aside the sentence and very properly so. It appears that Judge Patterson, who was the magistrate libelled, not only undertook to punish the contempt against himself, but because the offender happened to have a dual quality of newspaper publisher and attorney, he punished him in the latter capacity by suspension from practice, for an offence committed by him as a publisher. This was held to be clearly unjustifiable, although in Pennsylvania the Court has power to suspend or remove an attorney who "misbehaves himself in his office of attorney." His duty in his office of attorney, as embraced in the terms of his oath, is "to behave himself in the office of attorney according to the best of his learning and ability, and with all good fidelity, as well to the Court as to the client." The publication in question, although undoubtedly a libel, was not misconduct in the attorney's professional capacity and could not be punished by expulsion. But the Supreme Court seemed to approve the principle which had been laid down in another case, that such publication might be a breach of professional duty where the motive clearly was to acquire an influence over the judge in the exercise of his judicial functions, by the instrumentality of popular prejudice.

This case reminds us of one which made some stir in Nova Scotia a good many years ago. We refer to the case of Wallace, a barrister, who was punished by the Supreme Court of Nova Scotia with suspension for contempt. The contempt consisted in a letter addressed to the Chief Justice, reflecting on the judges and on the administration of justice in the Court. It appeared, however, that Wallace complained

chiefly in his private capacity as a suitor in causes before the Court, and the Privy Council expressed the opinion that the letter had no connection whatever with his professional character, or anything done by him professionally, and, therefore, it was not competent for the Nova Scotia Court to suspend him from practice—that being a punishment not attached to contempt. Both the Supreme Court of Pennsylvania and the Privy Council, however, state that if an advocate or attorney be guilty of an offence which shows that he is unfit to be intrusted with professional status, as, for instance, if he were convicted of theft, he may be removed by the Court.

LAW FACULTY, LENNOXVILLE UNIVERSITY.

A meeting of Convocation of Lennoxville University was held on the 5th instant. The Chancellor explained that the principal object of the meeting was to open the new Law Faculty. By the addition of this Faculty the teaching of the University comprised the great branches of learning. The degree of L.L.M. was conferred on Messrs. Belanger, Cabana and Brown, and the degree of L. L. B. on Mr. Panneton, advocates, of the Sherbrooke bar. Mr. Justice Ramsay then read an inaugural address to the Faculty. At the conclusion of the address the Dean of Faculty proposed a vote of thanks to the lecturer. He said that those who had undertaken to establish a law course in connection with the University were not sure what success was in store for them. They did not know whether they would have many students or few, but they were determined to carry on the work vigorously. The Chancellor expressed his own thanks personally, as well as those of Convocation, to Mr. Justice Ramsay for coming so far to give them countenance and support in opening their law school.

Mr. Justice Ramsay thanked the Chancellor and the learned Dean of Faculty for their kind remarks. If he might be permitted, he would say a few words more as to the work they were beginning. The Dean of Faculty had intimated that the number of students would probably not be large. This was to be expected, for they could only hope to draw students from a very limited population. But the training might be as complete for five students as for five hundred. High training of a small number is the object of university teaching. It is doubtless very agreeable to be a member of a great university, but there might be advantages in belonging to a select one like Lennoxville if a high standard of education were maintained. The basis of all law teaching was the Roman Law. In one form or another it had influenced the law of all western Europe, and particularly it was the foundation of the law of this Province. It is only by the historical method that one can become really a well-informed lawyer, and this implies for us the study of the Roman Law. Schools of law were of use for other purposes than merely educating practitioners. The Professor in his chair has a greater opportunity of checking unprincipled legislation, or diminishing its evil effects, than even the Courts. He does not require to wait for a case, but he may expose theoretically the vice of a measure the moment it is perceived, and even before it becomes law. If the law schools were acting vigorously, and they with one accord denounced a bill as being a violation of true principle, one can easily fancy with what rapidity the luckless ignoramus who had introduced it would let it drop. The number of laws open to this kind of criticism is not small. It may be a bold thing to say of the code, which was prepared with so much skill and care, that it is not free from the reproach of having reversed the true principles of jurisprudence. But so it is, and these errors give rise to great practical inconvenience. The learned gentlemen who have undertaken professional duties have, therefore, wide fields of usefulness before them.

The professorial staff of the new Law Faculty consists of six professors and three lecturers. Mr. Hall, the Dean of Faculty, takes Civil Law and Legal History; Mr. Morris, Civil Procedure; Mr. Brooks, M.P., Criminal Law; Mr. Belanger, Roman Law; Mr. Cabana gives a special course on "Obligations," and Mr. Brown, Commercial Law. The three lecturers are Messrs. Panneton, Hodge and Sanborn. The terms cover a little over six months of the year. Seventy-two lectures will be delivered during that time, besides occasional lectures on special subjects. There are already nine matriculants. This is more than was expected

to begin with. It is to be hoped that this auspicious commencement may be followed by a large measure of success, and that the Law school of Bishop's College may add to the reputation and usefulness of the University.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Oct. 8, 1880.

SIEGERT et al. v. HARTLANT et al.

Congé-défaut—Costs—C.C.P. 82.

The defendant, in order to obtain congé-défaut with costs, must make his application with diligence.

Motion by defendants for *congé-défaut*, the writ not having been returned.

TORRANCE, J., remarked that, under the new rule of the Code, costs may be allowed to defendant on *congé-défaut*. But in order to obtain costs, the application should be made promptly. Here the return day was Sept. 29, and the motion was not presented until Oct. 4, being the fifth day after the return day, though the Court was sitting in the interval. The motion is granted, but without costs.

McCord, for plaintiffs.

Robertson & Fleet, for defendants.

MONTREAL, Oct. 8, 1880.

THE WESTERN HOSPITAL v. GODFREY.

Subscription—Consideration.

An action by the corporation of a hospital for the amount of a subscription to the hospital, to be incorporated, and since incorporated, and alleging that defendant promised to pay the said snbscription, held, not demurrable.

Action by the Western Hospital of Montreal for a subscription to a hospital. The declaration alleged that the defendant subscribed the sum of $200 to a hospital to be incorporated, and that the incorporation had since been duly made by statute.

The defendant demurred on the ground that the action was based on a promise of future donation, and it was not alleged that it was made in authentic form, or that any acceptance thereof was made.

TORRANCE, J. The declaration sets out that a subscription was made by the defendant, and a promise to pay; a donation is not alleged, and the subscription may have been for valuable consideration. The demurrer is, therefore, dismissed.

Davidson, Monk & Cross, for plaintiff.

Kerr, Carter & McGibbon, for defendant.

MONTREAL, October 8, 1880.

LA BANQUE VILLE MARIE v. LAURIN, and O'BRIEN dit DUROCHER, intvg.

Intervention—Service—C.C.P. 157.

The demand in intervention was served upon the parties before allowance. Held, sufficient without a second service after allowance.

The plaintiff moved that the intervention be rejected, because it had not been served upon the plaintiff within three days after allowance, as required by C.C.P. 157.

TORRANCE, J. The intervenant did more than he was obliged to do. He commenced by giving notice that on a day named he would present a demand in intervention, copy of which was served upon the parties. He did present the intervention and it was allowed. Why should he give notice again that the intervention had been allowed? The motion is rejected.

Trudel, De Montigny, Charbonneau & Trudel, for plaintiff.

R. & L. Laflamme, for intervenant.

MONTREAL, October 21, 1880.

QUINTAL et al. v. LEFEBVRE, and TRUDEAU, collocated, and LA SOCIÉTÉ DE CONSTRUCTION MONTARVILLE, contesting.

Hypothec for a credit—From what time it takes effect.

Where a hypothec is given for a credit opened in favor of the mortgagor, the hypothec takes effect from the time the mortgage is granted, and not from the time the advance is actually made.

MACKAY, J. The land sold, the proceeds of sale of which are being distributed, belonged to Philias Racette until February, 1875, when he sold, by deed of 6th February, 1875, to Napoleon Benoit. This deed was not registered as usual. On the 15th April, 1875, Napoleon Benoit mortgaged the land to the "Société de Construction Montarville." The deed was re-

gistered, and on the 12th June, 1875, Napoleon Benoit sold to Martin Lefebvre and appointed Jules Trudeau to receive part of the *prix de vente*. Trudeau ought to have noticed the Society's hypothec registered seven weeks before. At this date the Society had not made actual payments of money. Only on the 28th August, 1875, was Benoit's acquisition deed registered, and then the Society made actual advances to defendant by authority of Benoit. The law of the time of Benoit's acquisition and of the mortgage to the Society, and of his sale to the defendant Lefebvre, was C.C. 2098. It read to make "without effect" his mortgage and sale so long as his (Benoit's) acquisition deed remained unregistered.

On the 28th August, after registration was made, what followed? That these deeds attained force and effect. Then we see the mortgage to the contestants first, and the sale to defendant, under which Trudeau has been collocated, second in date, the two equally well and simultaneously registered. Now the question is, who is to rank first, and the judgment of distribution has preferred Trudeau. The answer depends upon another question, viz: what is the nature of the Society's claim? Has it hypothec from the date of the obligation to it by Benoit, or only from the time it advanced money under the credit it opened to Benoit by the same obligation deed?

The obligation reads as for $2,600 had and received on a loan for ten years, repayable in monthly instalments. It is in the form of the obligations usually dictated by the Lower Canada Building Societies. The Society, it is proved, paid out no money until the 28th August, 1875. It is contended against it that its mortgage is to date from that day—the day of advance made—and not from the 15th April when the mortgage was granted. Pothier seems to favor Trudeau; but against him are Paul Pont, Priv. & Hyp., Vol. 2, p. 719; also, Massé, Dr. Com., Vol. 4, No. 2854 (2nd Ed.); and considering our system of hypothecs and registration, I side with these last; and so the collocation in favor of Trudeau is set aside as prayed, and the Society, it is held, shall *primer* Trudeau; costs against Trudeau.

A. Mathieu, for Trudeau.

Lacoste & Co., for La Société de Construction.

MONTREAL, Oct. 16, 1880.

In re PELOQUIN, insolvent, LA SOCIÉTÉ DE CONSTRUCTION ST. JACQUES et al., creditors collocated, and LA CORPORATION DE LA VILLE DE TROIS-RIVIÈRES, contesting.

Hypothec, Unregistered, under special enactment.

The hypothec of the Corporation of Three Rivers, for monies advanced under the authority of 20 Vict., c. 130, does not require registration in order to preserve its privilege.

The Corporation of the City of Three Rivers contested the collocation in favor of the Société de Construction St. Jacques, claiming that the City of Three Rivers had a privileged claim which took precedence of that of the Building Society. This claim was for money advanced to the insolvent, the proceeds of whose immoveables were distributed by the dividend sheet prepared by the assignee. The loan of the Building Society to the insolvent was made under the authority of 20 Vict., c. 130, for the purpose of enabling the borrower to rebuild premises destroyed by the great fire of 15th Nov. 1856, and the Statute gave for such advance a privilege over all others without the necessity of registration.

MACKAY, J., held that the contestation must be maintained, the judgment being as follows:—

"Considering that before the coming into force of the Civil Code, the claim of Three Rivers against the bankrupt's lands was perfect and with privilege, and without registration whatever being requisite to add or give force to it;

"Considering that Three Rivers had a vested right to such privileged claim against the bankrupt's lands, proceeds of sale of which are now before the Court in Insolvency;

"Considering that since the Civil Code as before, Three Rivers has such vested right, and must be held to *primer* the Société de Construction St. Jacques, as contended for in this case; that re-registration could not be asked against Three Rivers, to have to be performed by it under pain of losing its privilege or having to go after the Société de Construction St. Jacques; that the exception or saving clause of article 2613 C. C. saves Three Rivers; that 2173 C. C. has in view only real rights in respect of which registration was *in time before* required;

"Considering that by retroactivity the C. C. cannot be worked and must not be worked against Three Rivers, against its vested rights,—such now as ever they were;

"Contestation of Three Rivers maintained against the collocation of the Société de Construction; dividend sheet to be reformed accordingly, and Three Rivers to *primer* the Société."

Contestation maintained.

Béique & McGoun, for creditors collocated.

N. L. Denoncourt, for contestant.

MONTREAL, Sept. 30, 1880.

GAUDREAU et vir v. ARRES, and GRENIER, oppt., BESSETTE, collocated, and GRENIER, contesting.

Married woman—Hypothec on the wife's immoveable property for debt of community.

The personal obligation of the wife, with hypothec on an immoveable belonging to her, for a debt of her husband or even of the community, (for necessaries for the family) is prohibited by law, and is absolutely null as to such immoveable. The wife can bind herself for the payment of such debt only as commune en biens.

PAPINEAU, J., rendered the following judgment, which sufficiently explains the question decided:—

"La Cour... sur le mérite de la contestation par le dit Grenier de la collocation huitième du projet d'ordre de distribution accordée au dit Bessette;

"Considérant que l'immeuble vendu était le bien propre de la demanderesse, Adelaide Gaudreau, et que la dette qu'elle s'est obligée de payer le 3 juin 1878 devant Mtre. D. Tassé, notaire, avec le demandeur, son mari, au nommé Bessette, était une dette de la communauté de biens que la loi présume être existante entre le demandeur et la demanderesse;

"Considérant que la demanderesse ne pouvait pas par la dite obligation se lier autrement que comme commune en biens avec le demandeur au paiement de cette dette;

"Considérant que la demanderesse, en s'obligeant personnellement et en affectant hypothécairement son dit bien propre, à la sureté du paiement de cette dette, faisait une chose prohibée par la loi et absolument nulle quant à son bien propre;

"Considérant de plus que l'opposant Grenier est créancier de la demanderesse personnellement et pour une cause se rapportant au dit bien propre, et qu'il est créancier de la demanderesse au montant de $110.25;

"Considérant que le dit Grenier était bien fondé à contester la collocation du dit Bessette;

"La Cour, déclarant nulle la dite obligation, en autant qu'elle affecte l'immeuble de la demanderesse vendu en cette cause, déclare irrégulière la collocation du dit Bessette, et ordonne que l'ordre de distribution soit réformé, et que le dit opposant Grenier soit colloqué au lieu et place du dit Bessette, le tout avec dépens contre ce dernier.

A. W. Grenier, for opposant and contestant.

Loranger & Co., for creditor collocated.

MONTREAL, Oct. 27, 1080.

COURT es qual. v. CATY et vir.

Exception à la forme—Matter which may be pleaded by two defendants sued jointly.

Two persons sued in joint quality, such as joint tutor, may, by one exception to the form, plead matters applicable separately to one or the other defendant.

This case was before the Court on a motion to reject an exception *à la forme* filed by the defendants. These were sued as joint tutor to the children of the female defendant. The exception alleged, first, three reasons applicable to the female defendant, and secondly, three reasons applicable to the male defendant. The grounds of the motion were, in effect, that the exception contained the matter of two exceptions and yet was only accompanied by the deposit of the amount required on one exception; further, that the defendants could not in one exception urge separate grounds of exception.

TORRANCE, J. In the present case I do not think the motion should succeed. As a general rule a logical pleading requires that matters which concern only one defendant, should be separately pleaded from those which solely concern another defendant. But here, if the allegations concerning the one defendant prove true, the other will have the benefit of them,

from the joint quality in which the two defendants appear in Court. Motion rejected.

J. J. Maclaren, for plaintiff.

A. W. Grenier, for defendants.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 17, 1880.

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

CUSHING es qual. (plff. below), Appellant, and DUCONDU et al. (defts. below), Respondents.

Timber limits—Contract—Warranty.

A sale of timber limits contained a clause that it was made subject to the usual condition, that it was not to interfere with limits granted or to be renewed in virtue of regulations, which stipulation was well known to the purchaser. The limits did, in fact, interfere with anterior grants. Held, that this trouble did not come under a garantie de tous troubles, if such warranty existed in the present case.

The action was instituted by Cushing, complaining of eviction from certain timber limits sold to one Peck, now represented by appellants, by one Scallon, now represented by respondents. Damages to a considerable amount were claimed.

The Court below, Olivier, J., Jan. 15th, 1878, dismissed the action.

In appeal the judgment was confirmed, but on different grounds. The judgment in appeal is as follows :—

"Considérant que la promesse de vente sous seing privé faite par feu Edward Scallon à Benjamin D. Peck le 10 juillet 1858, d'un moulin à scie et dépendances, y compris quatre arpents de terre en superficie, et des droits et titres que le dit Edward Scallon avait obtenus de la Couronne à 256 milles de terre à bois désignées sous le nom de "timber limits," lesquels droits consistaient dans une permission obtenue de la Couronne de couper du bois sur ces limites aux conditions mentionnées dans les permis ou licenses octroyées à cet effet, ne comporte aucune stipulation de garantie, et qu'en vertu de cet acte le dit Edward Scallon n'était tenu qu'à la garantie de droit ;

"Et considérant que quoique par l'acte de vente du 16 mars 1865, fait en exécution de la dite promesse de vente, les représentants du dit feu Edward Scallon ont déclaré qu'ils vendaient à l'appelant comme représentant le dit Benjamin D. Peck *avec garantie de tous troubles* généralement quelconques, le moulin à scie et dépendances, y compris les quatre arpents de terre en superficie et les droits aux limites pour coupe de bois mentionnées dans la dite promesse de vente, cette garantie, en autant qu'elle se rapportait aux 256 milles de limites pour coupe de bois, ne pouvait s'appliquer qu'au fait que les intimés possédaient ces limites en vertu de permis ou licenses obtenues de la Couronne, puisqu'ils ne cédaient que les droits et titres qu'ils avaient obtenus de la Couronne pour ces limites ;

"Et considérant que par l'acte d'accord fait le 22 octobre 1866, entre P. E. McConville, comme agent et procureur des intimés et l'appelant, le dit appelant a déclaré accepter les cinquante milles en superficie de limites pour coupe de bois y mentionnées, ainsi que la somme de $500 en argent pour le déficit qu'il y avait dans les 256 milles de limites sur lesquels les intimés avaient cédé leurs droits par l'acte du 16 mars 1865, et que par cet acte il a déchargé les dits intimés de toute réclamation quelconque qu'il pouvait avoir contre eux à raison de tout déficit dans les dites limites, et de toute autre réclamation quelconque ;

"Et considérant que si le dit appelant peut avoir quelque réclamation à exercer contre les intimés pour et à raison des dites transactions, ce ne peut être qu'en vertu du dit acte du 22 octobre 1866 ;

"Et considérant que quoique la cession de cinquante milles de limites de coupe de bois ait été faite à l'appelant avec garantie de tous troubles, cette garantie a été stipulée sans cause et sans que les dits intimés fussent aucunement tenus à une telle garantie, et que cette garantie ne peut être étendue au-delà de l'intention des parties telle que constatée par les termes même de l'acte qui contient cette stipulation ;

"Et considérant que par le dit acte du 22 octobre 1866, le dit McConville n'a cédé les cinquante milles de limites y mentionnées, que sous la réserve qu'elles n'interviendraient pas avec des limites déjà octroyées ou avec des licenses à être renouvelées en vertu des réglements—"not to interfere with limits granted or to be renewed in virtue of regulations"—c'est-à-dire, que ces limites ont été cédées au dit

appelant à la condition expresse contenue dans les permis ou licenses et répétées dans l'acte du 22 octobre 1866, que ces permis ne pouvaient prévaloir sur d'autres permis ou licenses antérieures accordées par la Couronne, ou qui devraient être renouveles conformément aux réglements du bureau des terres de la Couronne concernant l'octroi de tels permis ;

"Et considérant que cette condition est conforme aux réglements d'après lesquels tels permis sont accordés, et que d'après les circonstances de cette cause le dit appelant qui était commerçant et avait possédé et obtenu un grand nombre de ces permis, devait connaitre et connaissait ces réglements ;

"Et considérant que l'appelant allègue dans sa déclaration qu'il a été dépossédé des dits cinquante milles de limites à lui cédées par le dit acte du 22 octobre 1866, parce que ces mêmes limites avaient été dès l'année 1853, octroyées à un nommé Hall, et que le trouble ainsi éprouvé rentre dans le cas prévu par la dite cession et n'est pas couvert par la stipulation de garantie contenue au dit acte, quelque soit la valeur de cette stipulation ;

"Et considérant en outre que le dit appelant n'a pas été privé de toute l'étendue des cinquante milles de limites à lui cédées par le dit acte du 22 octobre 1866, et que tout ce que les intimés lui ont cédé ce sont les droits qu'ils avaient en vertu des permis ou licenses qu'ils avaient obtenus de la Couronne, lesquels permis ou licenses pour l'année 1866-67 ont été remis au dit appelant qui s'est chargé de se conformer à toutes les conditions sous lesquelles elles avaient été octroyées, et entre autres qu'elles seraient nulles si elles intervenaient avec d'autres licenses précédemment octroyées pour ces mêmes limites ;

"Et considérant en outre que l'appelant n'a pas prouvé les allégués essentiels de sa déclaration, et qu'il n'y a pas d'erreur dans le jugement rendu par la Cour Supérieure siégeant à Joliette le 15 janvier 1878 ;

"Cette Cour confirme le dit jugement et condamne l'appelant à payer aux intimés les dépens encourus tant en Cour inférieure que sur l'appel."

Beique, Choquet & McGoun, for Appellant.

Baby, McConville & McConville, for Respondents.

RECENT U. S. DECISIONS.

Guarantee—Notice of Acceptance.—A written offer to guarantee the debt of another in consideration of forbearance to the principal debtor, is not a complete contract nor binding upon the writer until notice of acceptance is given to him, even though forbearance is afterwards granted. Notice of acceptance by the creditor, to the debtor who delivers the letter of guarantee, is not notice to the guarantor, there being no proof of agency.—*Duncan* v. *Heller,* (Supreme Court of South Carolina.)

Composition—Secret payment in excess of composition.—In a composition by a debtor with creditors, by which they agree to accept a portion of their debts in satisfaction of the whole, the debtor must exercise the utmost good faith, and if he secretly agrees to pay out more than the stipulated percentage, the composition is void. Where, however, notes of the debtor, with the endorsement of a third person, were given for a portion of the debt and accepted as satisfaction of the whole, and the party before accepting the same knew of the additional payment to another creditor, held, that he could not thereafter claim the settlement was invalid. —*Bower* v. *Mety,* (Supreme Court of Iowa.)

Grand Juror.—A grand juror is a competent witness for the purpose of showing that the testimony of a witness on the trial of an indictment differs from the testimony of the same witness when examined before the grand jury. —*Gordon* v. *Commonwealth,* (Pennsylvania Supreme Court.)

Assault.—An assault is an inchoate violence to the person of another, with the present means of carrying the intent into effect. Threats are not sufficient; there must be proof of violence actually offered, and this within such a distance as that harm might ensue if the party was not prevented.—*People* v. *Lilley,* (Michigan Supreme Court.)

GENERAL NOTES.

TRIAL BY JURY, that much-honored palladium of civil rights, differs materially in the two countries. A Scottish criminal trial is a model of fairness and deliberation. The accused is in good time served with a very precise indictment, along with a list of the witnesses to be used in evidence against him. At the trial

the jurors are chosen by ballot, and each is furnished with a printed copy of the indictment, with paper, pen and ink to write notes of evidence as it proceeds. The trial begins by the clerk of the court reading the indictment, by which means the exact nature of the accusation is openly and clearly defined, and there is no need for a lengthened prefatory harangue by counsel for the prosecution. The indictment being read the evidence is at once proceeded with. Any one can compare this precision with what occurs, and is occasionally complained of in England. A Scottish jury may give a verdict of guilty, not guilty, or not proven, this last alternative being adopted when the evidence appears to be incomplete. There is no such alternative in England. In English criminal procedure the jury consists of 12 men, who must be unanimous in their verdict of guilty or not guilty; when not able to agree, after hours of wrangling together, they are dismissed, thereby occasioning a new trial. In Scotland the thing is conducted more in accordance with human nature. The jury is composed of 15 men, who, if not unanimous, may decide by a majority, such as 8 to 7, or possibly 14 to 1; by which means a juror with twisted notions, resolved on being singular, as often happens, is unable to thwart the ends of justice. The decision by a majority is accepted without demur. In the trial of civil cases, a latitude is also allowed. The jury consists, as in England, of 12 men; but if they have been in consultation for three hours a majority of nine is sufficient for a verdict. If after nine hours there be not a majority of nine, the jury may be dismissed. These Scotch arrangements seem to be in all respects more rational than the practice prevalent in England and Ireland. No one ever heard of a miscarriage of justice, civil or criminal, in Scotland, owing to decisions by a majority. The accurate and impartial method of summoning Scotch jurors, special and common, in itself merits commendation. —*The Albany Law Journal.*

Advocate's Oath.—The following is the form of the advocate's oath prescribed by law, adopted by the representative council of Geneva, June 20, 1834: "I swear before God, to be faithful to the Republic and Canton of Geneva; never to swerve from the respect due to the tribunals and to the authorities; not to advise or maintain any cause which does not appear to me to be just or equitable, unless in the defence of an accused; not to employ knowingly, in order to maintain the causes which shall be confided to me, any means contrary to the truth, and not to attempt to deceive the judges by any artifice, or by any false exposition of facts or of law; to abstain from all offensive personality, and not to advance any fact against the honor and the reputation of the parties, unless it be indispensable to the cause, with which I shall be charged; not to encourage the commencement or the carrying on of any process, from any motive of passion or of interest; and not to refuse from any personal considerations, the cause of the feeble, the stranger, or the oppressed."

Singular Case of Disputed Identity.—A court-martial sitting in Paris has sentenced to five years' penal servitude a man named Charles Drouhin, who was convicted nine years ago of having given information to the Germans during the siege, and who, having escaped from prison during the Communist insurrection, was re-captured under very peculiar circumstances. When the insurrection was over, Drouhin had disappeared, and nothing more was heard of him until last year, when an old man with a long white beard came to the office of the registrar of the court, and asked to be allowed to consult some of the documents filed in connection with the case, alleging that he was the eldest brother of Drouhin, who had died in an hospital a short time before. The registrar let him have the documents, but it suddenly occurred to him that the visitor must be Drouhin himself. Inquiries were made, and Drouhin, who was found begging at the porch of a church in the Rue St. Honore, was arrested. He stoutly denied the accusation. When confronted with the warders of the prison in which he had been confined nine years ago, none of them recognized him, and everything pointed to an acquittal at the trial, when the officer presiding ordered that the prisoner be taken out and shaved. He protested energetically, declaring his occupation as a model would be gone if he were deprived of his flowing white beard; but the court was inexorable, and when he emerged from the barber's hand the warders recognized him at once. He still protested that he was the brother of the man they took him for, but the barber's razor removed all doubt, and Drouhin went back to prison to serve the remainder of his term.