The Legal News.

Vol. X. OCTOBER 15, 1887. No. 42.

The English law with reference to the guardianship of infants, which is depicted in so unfavorable an aspect by William Black in one of his recent romances (*Sabina Zembra*), was amended in 1886, 49 & 50 Vict., c. 27. An interesting case, *In re Witten*, has occurred, illustrating the benefit of the increased power which the Court now possesses to deprive the father of the custody of an infant child, and to deliver the child to its mother. The father, a man of 53 years of age, was accused of having formed an improper connection with a young lady of six-and-twenty, who was under his tuition in medicine. He denied any impropriety, pretending that he had adopted the young lady in question, and that he never acted towards her in any other way than a father ought to act towards his daughter. The lady, however, admitted in an affidavit that her character had been destroyed by the association, and it also appeared that the defendant had lost a position of trust in consequence of being unable to meet the charge of impropriety. The wife, moreover, for the same reason had commenced proceedings for a judicial separation, and she had been informed that her husband intended soon to go to Morocco with the young lady and the child (a boy of ten years of age), and to live there permanently. In these circumstances, Mr. Justice Kay said he had no hesitation in granting the mother's application for the custody of the child. His lordship hoped that the father's relations with the young lady were innocent, though it was rather difficult to believe it. But if the relations were as innocent as possible, such conduct on the part of a married man was inexcusable. The order was made that the boy be delivered into the custody of the mother, and the only concession made was that he might reside with his father for a fortnight in the summer and a week in the winter holidays, in any house in which the lady was not, and to which she did not come. If she attempted to associate with the boy in any shape or way, his lordship would at once interfere. The *Law Times* doubts whether the application would have been successful without the legislation of 1886.

Another case relating to the custody of the father, *In re Coram*, has occurred in New Brunswick. A father, being in poor circumstances, left his infant daughter, then aged seven years, with her uncle and aunt upon the understanding that she should be considered as their child, and that they should support and educate her as such. She remained with her uncle and aunt until she was nearly fifteen years of age, and was educated by them, the father contributing nothing toward her support. During this time she became much attached to them, and was unwilling to leave them. The Supreme Court were divided on the right of the father to obtain the custody of his child. The majority of the Court (Allen, C.J., Wetmore, King and Tuck, JJ.,) held that the father had the legal right to resume the custody of the minor, notwithstanding his agreement, even though his object was that she should assist in the work of his house, and thereby her duties would be more laborious, and her mode of living less easy and comfortable than she had been accustomed to in her uncle's house—there being no imputation against her father's character, or that she would not be properly cared for in his house. It was also held that the fact of her having been brought up by her uncle as a Presbyterian, and that her father was a Methodist, was no ground for refusing the father's application. The dissentient judges (Palmer and Fraser, JJ.) were of opinion that in applications of this kind, the principal thing to be looked at was the welfare of the child; that it would not be for the interest of the child that the father should exercise his right of custody and force her into a different position in life from that which her education and the habits she had acquired had led her to believe she would occupy; and that, so far as he could, her father had emancipated her from her duty to submit to his control, and therefore his application ought not to be granted.

In Ohio, the subject of chewing-gum has engaged the attention of the courts, and it has been decided (*Adams* v. *Heisel*, U.S. C.C., 31 Fed. Rep. 279) that a trade-mark cannot be obtained for the form of the sticks in which this article is made, nor for the peculiar shape and decorations of the boxes in which it is put up for the market, nor for the manner in which the gum is arranged in the boxes.

NEW PUBLICATION.

APPEAL CASES, with Notes and Definitions of the Civil and Criminal Law of the Province of Quebec. By the late THOMAS KENNEDY RAMSAY, Justice of the Court of Queen's Bench. Edited by C. H. Stephens, Advocate. — Montreal, A. Periard, Publisher.

The profession have reason to be thankful that Mr. Justice Ramsay lived to complete this important work, to which so many hours that might fairly have been given to much needed rest were laboriously devoted. Having had the privilege of spending a few vacation days with the author, about the time the digest was commenced, we are able to speak from personal observation of the unquenchable ardor with which the formidable task was planned, and undertaken, and we had numerous opportunities afterwards to observe the conscientiousness, the thoroughness, and the untiring industry with which it was prosecuted. It is now placed before the profession, and will stand as no inconsiderable monument of a notable figure in our judicial annals. The volumes of factums, over one hundred in number, many of them of colossal proportions, from which it was compiled, now form part of the collection of the editor of this journal, and we may take this opportunity to say that we shall be happy to give communication to members of the profession who desire to consult them. It should be remembered, to prevent disappointment, that Mr. Justice Ramsay undertook only to digest the cases in which he took part. There are several hundred cases omitted,—more particularly cases of recent years—which were decided while he was engaged in holding the criminal terms of the Court, or otherwise absent. It would be superfluous to commend this work to the profession; the learning, ability, and experience of the lamented author are too well known to all our readers. It may be mentioned, however, that the editor has included a table of cases carried to the Supreme Court and Privy Council, and also the text of opinions of the Judicial Committee in cases which were appealed to England. The work is handsomely printed and bound, and will naturally find a welcome in the office of every lawyer, and the library of every member of the bench.

SUPREME COURT OF CANADA.

QUEBEC.]

THE CENTRAL VERMONT RAILWAY CO. v. TOWN OF ST. JOHNS.

Railway bridge and railway track—Assessment of, Illegal—40 *Vic. ch.* 29, *secs.* 326 & 327—*Injunction—Proper remedy—Extension of town limits to middle of a navigable river—Intra vires of local legislature*—43 & 44 *Vic. ch.* 62 (*P. Q.*)

HELD, (reversing the judgment of the Court of Queen's Bench, Montreal,) Fournier and Taschereau, JJ., dissenting, that the portion of the railway bridge built over the Richelieu river, and the railway track belonging to appellant's company within the limits of the town of St. Johns, are exempt from taxation under sections 326 & 327 of 40 Vic. ch. 29 (P. Q.)

2. That a warrant to levy rates upon such property for the years 1880-83 is illegal and void, and that writ of injunction is a proper remedy to enjoin the corporation to desist from all proceedings to enforce the same.

As to whether the clause in the Act of incorporation of the town of St. Johns, P. Q., extending the limits of said town to the middle of the Richelieu river, a navigable river, is *intra vires* of the legislature of the Province of Quebec, the Supreme Court of Canada affirmed the holding of the Court below that it was *intra vires*.

Appeal allowed with costs.

Church, Q.C., for appellant.

Robidoux, Q.C., for respondent.

ONTARIO.]

BURGESS v. CONWAY.

Sale of land—Consideration in deed—Evidence—Sale of land, or of equity of redemption.

B. sold to C. a lot of land mortgaged to a loan society, claiming that it was a sale of the land for $1,400. C. claimed that it was merely a sale of the equity of redemption for $104.50 which B. had accepted as the amount due him, according to the representation of C. who had figured it out, B. being incapable of figuring it himself. In the deed executed by B. the consideration was declared to be $1400. C. paid off the mortgage for $1081. In an action to recover the difference:

HELD, Taschereau and Gwynne, JJ., dissenting, that the deed itself would be sufficient evidence of a sale of the land for $1400, in the absence of proof of fraud or mistake, and B. was entitled to recover the difference between that sum and the amount paid on the mortgage less the sum already paid.

Moss, Q.C., for appellants.

Robinson, Q.C., for respondents.

QUEBEC.]

THE MAGOG TEXTILE & PRINTING COMPANY v. DOBELL.

Joint stock company—31 *Vict. ch.* 25 (*P. Q.*)—*Action for calls—Subscriber before incorporation—Allotment—Non-liability.*

D. signed a subscription list, undertaking to take shares in the capital stock of a company to be incorporated by Letters Patent under 31 Vic. ch. 25 (P.Q.), but his name did not appear in the notice applying for Letters Patent incorporating the Company. The Directors never allotted shares to D. as required by 31 Vic. ch. 25, sec. 25, and he never subsequently acknowledged any liability to the company.

In an action brought by the company against D. for calls due on the company's stock:

HELD, affirming the judgment of the Court of Queen's Bench, Quebec (9 Leg. News, 348), that D. could not be held liable for calls on stock.

Appeal dismissed with costs.

Bossé, Q.C., and *Béique, Q.C.*, for appellants.

Irvine, Q.C., and *Stuart*, for respondents.

ONTARIO.]

MCLEAN v. WILKINS.

Mortgagor and mortgagee — Assignment of mortgage—Purchase of equity of redemption by sub-mortgagee—Sale of same—Liability to account.

M., executor of a mortgagee, assigned the mortgage to C, who brought suit for foreclosure, but settled such suit by assigning the mortgage to H., one of the defendants. Prior to this the mortgage had been deposited with H. as collateral security for a loan to M. H. then purchased the equity of redemption, which he sold for a sum considerably in excess of the claim of C. and his own claim. In a suit by H. to foreclose M's interest:

HELD, reversing the judgment of the Court of Appeal (13 Ont. App. R. 467), and restoring that of the Common Pleas Division (10 O. R. 58), that H., as sub-mortgagee, was bound to account to M. for the proceeds of the sale of the equity of redemption.

Blake, Q.C., and *Cassels, Q.C.*, for appellants.

Moss, Q.C., for the respondents.

COUR DE CIRCUIT.

FRASERVILLE, 22 septembre 1887.

Coram CIMON, J.

BLAIS v. JULIEN.

Exécution—Portraits de famille—Insaisissabilité.

JUGÉ:—*Que les portraits de famille sont insaisissables.*

CIMON, J.—Parmi les objets que le demandeur a fait saisir chez le défendeur se trouvent des portraits de famille. Le défendeur-opposant prétend qu'ils sont insaisissables. Le code de procédure ne les exempte pas nommément de saisie. Mais il est certain qu'en outre des objets que le code spécialement soustrait à la saisie, il y en a encore, bien qu'il n'en parle pas du tout, qui, cependant, à cause de leur nature, sont considérés insaisissables. Ainsi, on lit dans Dalloz, répert., vbs. saisie-exécution, No. 160, ce qui suit: "Indépendamment des choses déclarées insaisissables par les dispositions formelles de la loi, il y a des choses tellement saintes et en dehors du commerce des hommes, que la loi n'a pas

même eu besoin, pour qu'elles soient insaisissables, de les déclarer telles." Les portraits de famille sont considérés pour ainsi dire choses sacrées de la famille, hors du commerce ordinaire ; *ils ne doivent point sortir de la famille.* Ferrière, dictionnaire de pratique, vbo. portrait : " Portraits ou tableaux de famille, " avec les bordures, appartiennent à l'ainé des " enfants du défunt, hors part et sans confu- " sion. *Ils ne tombent jamais dans le legs uni-* " *versel qu'un testateur aurait fait, mais ils doi-* " *vent être rendus aux héritiers ab intestat,* " comme il a été jugé par arrêt du parlement " de Paris rendu en la grande chambre le 11 " mai 1719." Et Pothier, communauté, No. 682, dit : " *Les portraits de famille ne sont pas* " *non plus des choses qui soient censés faire par-* " *tie d'une communauté de biens, ni même d'une* " *succession ; et, en conséquence, ils ne doivent* " *pas être inventoriés. Chacune des parties doit* " *prendre les portraits de sa famille. Le portrait* " *du conjoint prédécédé doit être laissé à l'autre* " *conjoint pendant sa vie, à la charge de le* " *rendre, après sa mort, à l'ainé de la famille du* " *prédécédé.*" J'ai entendu, quand j'étais étudiant, le 25 février 1869, l'honorable juge Jean Thomas Taschereau, à Québec, dans une cause à la Cour de Circuit, où un nommé Brassard était défendeur, juger que les portraits de famille étaient insaisissables. J'adopte ce précédent sans hésiter.

Les portraits de l'épouse et des proches parents du défendeur seraient saisis, achetés par n'importe qui, pour être ensuite, peut-être, attachés aux murs d'une taverne, ou de lieux pires encore ! Certes, toute conscience se révolte à l'idée d'une pareille profanation ! Ces portraits sont tellement hors du commerce ordinaire qu'ils n'ont, pour ainsi dire, aucune valeur réelle en dehors de la famille.

La Cour a annulé la saisie des portraits de deux des proches parents du défendeur.

Lebel, pour le demandeur.

Dessaint, pour le défendeur-opposant.

NOTE.—Vide *Michaux*, des liquid. et partages, No. 1840 : " On ne comprend pas dans " la masse..... les objets d'affection, *comme* " *les portraits de famille*, etc." No. 2308 : " *Les* " *portraits de famille* ne sont pas non plus " compris dans la masse active de la succes- " sion." Nos. 2824 à 2835.—No. 2831 : " Mais " jamais ces objets ne seront assimilés au " mobilier de la succession pour en suivre le " sort, comme l'ont prétendu MM. Dutruc " (466) et Mollot (346). Comment ! l'étoile " de l'honneur qui brillait sur la poitrine du " père, *la toile qui conserve les traits chéris d'une* " *mère*, seraient vendus à l'enchère publique, " sans plus d'égard que le stère de bois du " bûcher ! Cela n'est pas admissible. Mieux " vaudrait, au besoin, tirer ces objets au sort, " entre les héritiers, comme l'a décidé le tri- " bunal de Caën, le 12 mai 1830." No. 2834 : " Jugé, cependant, que les portraits de fa- " mille laissés par le défunt doivent être com- " pris dans le partage de la succession sans " qu'ils puissent être attribués à l'ainé des " enfants. Et si ces portraits ne peuvent " être partagés en nature, ils doivent être " licités entre les héritiers, *sans concours d'é-* " *trangers ;* sauf à ceux de ces héritiers qui " ne se rendraient pas adjudicataires, le droit " d'en faire prendre copie à leurs frais dans " un délai déterminé (Lyon, 20 décembre " 1861, P. 63, 275)." 15 Demolombe, Nos. 700 et 701 ; 10 Laurent, No. 339 ; Dalloz, répert. contrat de mariage, No. 666 et 667.

COUR SUPÉRIEURE.

SHERBROOKE, 31 mars 1887.

Coram BROOKS, J.

GRAHAM v. WEBB.

Exception à la forme—Description—Certificat de service.

JUGÉ : —1o. Que la description du requérant dans un bref de *mandamus* faite de la manière suivante : " *John Henry Gra-* " *ham, of the town of Richmond, in the* " *District of St. Francis, doctor of laws,* " *esquire*," est suffisante quoique le requérant ait reçu son titre d'une université étrangère, aux Etats-Unis, et qu'il ait toujours été un professeur dans un collège au Canada.

2o. Que le retour de l'huissier mentionnant que la signification a été faite au défendeur sans mentionner son nom, est suffisant, même dans le cas où il n'y a pas de défendeur de décrit au bref, les parties y étant nommées comme requérant

et intimé, le mot "*défendeur*" étant un terme employé pour toute personne défendant à une action.

Sur le premier point: *Bradley* v. *Logan*, 3 L. N. 200, S. C. 1880.

Sur le second point: 7 L. C. J. 291: *Beaudry* v. *Desjardins* et *Thomas*, 4 R. L. 555.

Exception à la forme renvoyée.

J. H. Richard, avocat du requérant.

Jos. L. Terrill, avocat de l'intimé.

(J. J. B.)

CIRCUIT COURT.

MONTREAL, Sept. 21, 1887.

Before GILL, J,

HENEY et al. v. SMITH.

Lessor and Lessee—Repairs ordered by municipal authority—Notice.

The plaintiffs' action was for $58.05, cost of a safety valve placed by them upon a boiler in premises leased by them and for certain other repairs, the allegation being that when they leased from defendant the premises were in urgent want of repairs which defendant had failed to make though notified so to do, and that the plaintiffs had had to make them themselves.

The defendant pleaded that plaintiffs had no right to make the repairs without a judgment of Court or at least without having put him in default, which they had not done, and further that plaintiffs had taken over the lease of one Lajeunesse under which the tenant was chargeable with repairs. A plea of compensation was also filed.

Dorion, for plaintiffs: The repairs claimed for were urgently required, the plaintiffs being exposed to the possibility of having their engine stopped by the boiler inspector. *Mise en demeure* is not always *de rigueur*: Sirey & Gilbert (Edition Belge) Art. 1730-1732 p. 531. Vol. II, No. 13. Moreover the defendant benefited by the repairs as they were left at the expiry of the lease.

Cross, for defendant: The lessor should have been put in default, but knew nothing of the alleged repairs until sued. The claim might as well be for $500 as for $58.05. No case can be cited where a lessee has recovered without having put the lessor in default to make the repairs by a suit or at least by a notice. The decisions are all the other way.

The judgment is as follows:—

"La Cour....

"Attendu que les grosses réparations que les demandeurs ont faites aux machineries louées du défendeur, étaient absolument urgentes et ordonnées par l'inspecteur officiel des bouilloires à peine d'arrêter toutes opérations dans l'établissement loué; qu'il est prouvé que les prix chargés pour ces réparations sont les prix courants et que le défendeur n'a pas prouvé qu'il eût pu les faire exécuter plus avantageusement, ou mieux qu'elles ne le furent, ou à meilleur marché;

"Attendu qu'il a été prouvé que les réparations réputées locatives que les demandeurs ont faites étaient devenues nécessaires par suite de vétusté;

"Considérant que les demandeurs ont droit de recouvrer le coût des dites réparations grosses et menues du défendeur, s'élevant selon les comptes produits et prouvés à la somme de $58.05;

"Considérant que les demandeurs ne sont pas les continuateurs du bail fait à Lajeunesse, rien ne prouvant qu'ils aient assumé les obligations de Lajeunesse ou pris le bail aux mêmes conditions que lui, au contraire la condition principale du bail, savoir le montant du loyer étant changée, en sorte qu'il n'y a pas lieu d'admettre en compensation ce que le défendeur aurait payé pour primes d'assurance;

"Considérant cependant qu'il y a lieu d'admettre en compensation la valeur des appareils à gaz enlevés par les demandeurs, de bonne foi et avec les leurs, mais appartenant au défendeur, laquelle valeur peut être fixée au maximum de $18, ce qui étant déduit de la somme susdite de $58.05, laisse une balance due aux demandeurs de $40.05 que le défendeur est condamné à leur payer avec dépens distraits ainsi que demandé."

Geoffrion, Dorion, Lafleur & Rinfret, for the plaintiffs.

Laflamme, Laflamme, Madore & Cross, for the defendant.

(A. G. C.)

*SUPERIOR COURT—MONTREAL.**

Acte des chemins de fer, Québec—Paiement de la sentence arbitrale sur dépôt—Prolongation de délai.

JUGÉ:—1o. Que d'après l'Acte des chemins de fer de Québec, un propriétaire exproprié de son terrain a droit, après que la sentence arbitrale a été signifiée, de s'en faire payer le montant à même le dépôt fait par la compagnie, quand même cette dernière aurait exercé quelque recours contre la sentence arbitrale, et notamment qu'elle aurait intenté une action pour la faire annuler.

2o. Que lorsque le délai dans lequel devait se rendre la sentence arbitrale, sous l'acte susdit, a été prolongé du consentement des arbitres et des parties, aucune des parties ne peut se plaindre que la sentence a été rendue après le délai originairement fixé. *La Compagnie de Chemin de Fer de Québec et Ontario* v. *Les Curé, etc.* de *Ste. Anne de Bellevue*, Taschereau, J., 16 juillet 1887.

Election municipale—Mandamus—Serment d'office—Entrée dans les minutes.

JUGÉ: — 1o. Que lorsqu'une corporation municipale déclare illégalement que le siége d'un conseiller est vacant, le remède de ce dernier est un *mandamus* contre la corporation.

2o. Que la prestation du serment d'office par un conseiller municipal est une chose essentielle, mais que la disposition du Code municipal qui veut qu'une entrée de la prestation du serment soit faite dans le livre des délibérations du conseil n'est que directoire et n'est pas à peine de nullité. *Savaria* v. *La Corporation de la Paroisse de Varennes*, Würtele, J., 5 août 1887.

DOMICIL AND MARRIAGE CONTRACTS.

The case of *In Re Cooke's Trusts*, 56 Law J. Rep. Chanc. 637, reported in the August number of the *Law Journal Reports*, illustrates the working of the law of domicil in an interesting way, and marks a stage in the controversy on the question whether the domicil of parties is the test of their capacity to contract or whether it depends on the law of the place of the contract. It will be remembered that in *Sottomayor* v. *De Barros*, 47 Law J. Rep. P. D. & A. 23, the Court of Appeal, consisting of Lords Justices James. Baggallay, and Cotton, held that the capacity to contract a marriage depended on the law of the domicil of the parties when they both had the same, and not on the law of the place. This decision, it appeared, was based on a mistake in fact, for on the case coming before Sir James Hannen on a second occasion (49 Law J. Rep. P. D. & A. 1) he found that the parties had different domicils, and that the law of the place applied in such a case, at the same time taking the opportunity of showing that the previous decision did not commend itself to his private judgment, especially as it went so far as to include contracts of all kinds. Besides this decision there is *Brook* v. *Brook*, 9 H. L. Cas. 227, the well-known case in the House of Lords, which holds that domiciled British subjects in the relation of deceased wife's sister and deceased sister's husband to one another cannot construct a valid marriage in a country in which it is legal. Of this case Lord Justice Cotton said: "The judgment in that case only decided that the English Courts must hold invalid a marriage between two English subjects domiciled in this country who were prohibited from intermarrying by an English statute, even though the marriage was solemnised during a temporary sojourn in a foreign country." Thus domicil, citizenship, and place of contract combine to complete the complication of this subject.

The facts of the present case were of a somewhat romantic kind. It arose out of a petition presented by Mr. W. Briggs for payment to him as residuary legatee of a lady whose maiden name was Nicholson of a moiety of a residuary estate left to her by the will of Mr. H. P. Cooke. Miss Nicholson was born in England of English parents. In 1839, being a minor, she married a French viscount at Boulogne, and previously to the marriage a notarial contract was entered into between them, by which a separation of goods took place, and the intended wife was to have free enjoyment and disposition of

* To appear in Montreal Law Reports, M. L. R., 3 S. C.

her property. There were children of the marriage, but in 1845 or thereabouts the lady separated from her husband, went with her children to live with her father in Jersey, and did not return to France. In 1846 the testator died. Eight years afterwards news reached the viscountess that the viscount was dead, and next year she married Mr. Briggs, the present claimant of her money, with whom she and her children went to New South Wales, and lived with until her death in 1879. It appeared that the news of the viscount's death was untrue, and he did not in fact die till 1877. The viscountess made her will in 1878. The money was claimed by Mr. Briggs under the viscountess's will, and by the viscount's children under the French law that their mother could not disinherit them. The first question Mr. Justice Stirling proposed to himself was, What was the lady's domicil? It was by origin English, and French by marriage down to her husband's death. At her husband's death she had been for more than thirty years separated from him and out of France, and for twenty years at the other side of the globe. The intention to give up her French domicil which these acts evidenced was frustrated of its effect so long as her husband lived, but after his death they could not be put out of sight in considering her intention in remaining where she was. Mr. Justice Stirling comes to the conclusion that she had elected a new domicil in New South Wales, or at all events she had abandoned her French domicil, and according to *Udny* v. *Udny*, L.R. 1 Sc. App. 441, her domicil of origin revived without making a fresh choice. These inferences appear to have been justified by the facts, but more difficulty arose in applying them to the case in question. It was argued on behalf of the viscount's children that the effect of the prenuptial contract into which the lady had entered was that the children were entitled to their share according to the law of France, as the husband must have assumed that this would be so when he assented to the contract. This point was little argued; but it seems far from clear whether the law of France on this subject is not positive law, and not a result arising by implication from a contract in which there is a separation of goods. In the former case it would be necessary to show that the lady was a domiciled Frenchwoman when she died; in the latter, that she was bound by the laws of France when she made the prenuptial contract. With regard to her status when she made the prenuptial contract, it seems to have been contended that whatever her status after marriage she had an English domicil before it, and when she entered into the antenuptial contract. But that she was an infant there could be no foundation for that contention; for, after all, the question what law binds is a question of intention, and no one could suppose that the parties could have meant the law of England to apply. The fact of the lady's infancy, therefore, made it necessary, in disposing of the question of any contractual obligation under French law that there might be, to face the question whether in regard to the capacity to contract the law of the domicil governs or the law of the place. Mr. Justice Stirling was asked to discuss *Sottomayor* v. *De Barros*, but he declined to do so. He found it there laid down that the question of personal capacity, whether in the marriage contract or other contracts, depends on the laws of the domicil. It was possible to distinguish *Sottomayor* v. *De Barros* on the ground that the decision applied to a contract of marriage only; but such a distinction would have been merely mechanical, and Mr. Justice Stirling did not make it. He accordingly decided that the law of England, whether in virtue of a domicil by election in New South Wales or by reversion in England, applied, and that the prenuptial contrart, assuming it to have the effect of controlling her power of disposition according to French law, was invalid, having been made when she was a minor.

It might turn out in this case, as in the other, that the facts necessary to be investigated before a domicil can be fixed with precision had not been exhausted. It is possible that the lady's father may have elected a French domicil for her, although we suppose that no such presumption would arise from the fact of an English family living in Boulogne, especially in the year 1839. The important question whether the law of domi-

cil governs in regard to incapacity will, perhaps hardly be settled until the House of Lords has pronounced upon it; but it would be the natural and reasonable law. Questions of incapacity depend, so far as years of discretion are concerned, upon views taken of maturity, which largely depend on climate, and so far as coverture is concerned, on the habits of domestic life, while so far as mental decay or natural weakness is concerned, there is not likely to be much divergence between the laws of different countries. It is reasonable enough that as a man goes from country to country he should conform in each to the laws of contract of each, but it seems somewhat absurd that as he crosses a border, he should come of age, only to sink into minority as he crosses another. Sir James Hannen's judgment in the second case of *Sottomayor* v. *De Barros* was full of references to numerous authorities, and we agree with him that the ground on which Lord Justice Cotton's judgment distinguishes *Simonin* v. *Mallac*, 2 Sw. & Tr. 6, a decision of Sir C. Cresswell, Baron Channell, and Mr. Justice Keating—namely, that the consent of parents must be considered part of the ceremony of marriage—is not satisfactory. As to the distinction which Sir James Hannen considered himself justified in drawing, that both parties must be of the same domicil, it was disregarded by Mr. Justice Stirling because it was not so in the case before him. We confess that, when the question is one of incapacity, we cannot see how the situation of the other party to the contract can affect the matter. It can only do so on the ground of intention, and that is to beg the question *Law Journal* (London).

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Oct. 8.

Judicial Abandonments.

Zoël Bessette, Granby, Sept. 23.

Achille Gagnon, Arthabaskaville, Sept. 28.

Hugh O'Hara, Chambly, Oct. 4.

Curators appointed.

Re Louis Bonville.—C. Desmarteau, Montreal, curator, Oct. 4.

Re La Compagnie de Moulins à Bardeau Chanfreigné.—Kent & Turcotte, Montreal, liquidators, Sept. 21.

Re Joseph Descoteau, fils.—C. Millier and J. J. Griffith, Sherbrooke, curator, Sept. 21.

Re Joseph Perreault.—C. Desmarteau, Montreal, curator, Oct. 4.

Re William Skinner Thomson (W. S. Thomson & Co).—J. M. M. Duff, Montreal, curator, Sept. 29.

Dividends.

Re Guillaume *alias* William Gariépy.—Dividend, payable Oct. 22, H. A. A. Brault and O. Dufresne, Montreal, curators.

Separation as to property.

Rosalie Brosseau vs. Dalphis Cusson, trader, Iberville, Oct. 5.

Elisabeth Camirand vs. Calixte Bernard, miller, Farnham, Sept. 23.

Edesse Forand vs. Abraham Fournier, farmer, St. Hyacinthe, Oct. 6.

Delphine Guévremont vs. Norman Guilbault, baker, Sorel, Oct. 5.

Célina Rhéaume vs. Narcisse Roch, farmer, Iberville, Aug. 19.

Marie Louise Adélaide Odille Turcotte vs. J. Bte. Gailloux, high constable, Three Rivers, Sept. 27.

Terms of Court altered.

Superior Court, Saguenay, for this year only, to be held from 17th to 20th of October. Circuit Court, Saguenay, for this year only, from 21st to 23rd October.

Cadastre deposited.

Parish of St. Hippolyte. Provisions of C. C. 2168 to apply from Nov. 3.

Appointments.

Joseph Geoffrion, to be Registrar for county of Verchères, in the place of Aimé Geoffrion, resigned.

Aimé Geoffrion, N.P, to be Inspector of Registry Offices, in the place of J. A. Hervieux, deceased.

GENERAL NOTES.

M. Sélin, maire de Viliot, près Sarlat, ayant perdu sa femme, proposa sa main à la sœur de la défunte, qui l'accepta.

M. Sélin arrivait donc, il y a deux mois, à la mairie, en compagnie de sa fiancée et belle-sœur et pénétrait dans la salle des mariages.

Quel animal que ce Collard ! s'écria M. Sélin. Il ne peut jamais arriver à l'heure !

—Qui est-ce Collard ? dit la jeune fiancée.

—C'est l'adjoint qui doit nous marier.

—Oh ! comme c'est embêtant ! fit la jeune fiancée.

On attendit quinze minutes. On s'impatienta.

—Dis donc, Georges ! murmura la jeune fiancée.

—Quoi ?

—Dis donc, si tu nous mariais ?

—C'est une idée !

Le maire tira son écharpe de sa poche, courut aux régistres, se jura à lui-même de prêter aide et protection à son épouse, signa, fit signer sa femme, s'en fut, et le soir consomma le mariage.

Dans sa précipitation amoureuse, le maire avait cependant négligé quelques formalités.

Le parquet de Sarlat, à la suite d'une enquête, demanda au Tribunal de cette ville de prononcer la nullité du mariage ; ce qu'elle obtint.

M. Sélin néanmoins se remariera ; et Collard, cette fois, remplira à l'heure exacte ses fonctions.—*G. Pal.*