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Mr. Hughes, the author of the well known Tom Brown's School days, became lately a county judge, and has already given a singular indication of his old love of athletics. A case came before him as to who was the winner of a pedestrian match; the judge suggested and the parties consented that the point should be determined by running it over again in his presence. The *Law Journal* comments on this as follows: "The course taken by Judge Hughes in the case of the walking match recently before him shows how difficult it is even for the judge to subdue the instincts of the natural man. As an old hunter put to hack works pricks up his ears, and perhaps jumps over the hedge at the sound of the voice of a pack of hounds, so the author of 'Tom Brown,' at the mention of a foot-race, throws off his wig, and is ready to hurry to the ash-path. When the evidence on the question who won the race is not clear, to order it to be run over again is the newest form of new trial. It is not an effective form, because the man who wins the race to-day is not necessarily the man who would have won it three months ago, and we fear it is not contemplated by the practice of any court of law, whether county court or other. For the judge of law to turn himself into the judge of the course, besides being a little undignified, might lead to an action being brought against himself in his own court. These methods are less suitable for this prosaic time than for the mythical days of Sancho Panza or Haroun Alraschid."

In the case of the *L. I. M. & S. Ry.* v. *Lea*, Supreme Court of Arkansas, where a passenger refused to deliver up his ticket because he could find no seat, and was ejected, the Court held that the contract was that he should have a seat. Neither party can sever the contract. The road cannot simply carry him without a seat. The passenger may refuse to give up the ticket, but cannot accept the carriage without seat and not pay. No recovery could be had because of the ejection. He could sue for non-compliance with the contract.

A curious ground for a new trial came up in the case of *House* v. *State*, 5 Tex. Law Rev. 675, where the district attorney in his address to the jury said that "the State of Texas might be raked over with a fine tooth-comb, and a more notorious character than the defendant John House could nowhere be found." The Court held that this remark was ground for a new trial, and characterised it as 'an impassioned expression highly exaggerated, it may be, but inadvertently springing from the heat of debate.'

A personage clearly and distinctly outlined even in a community not lacking in definite and positive individuality has passed away from us. Mr. Joseph Doutre, who died on Wednesday after a severe and tedious illness, was not a great lawyer in any but a mere local sense, still less was he a great advocate; but he was certainly a very competent lawyer, quick to grasp the essentials of his case, patient and constant in urging its merits, and carrying it through with a courage and self-possession rarely disturbed. Add to these qualities a certain simplicity and directness of purpose, a large capacity for labour, long experience, indefatigable industry, and conscientious devotion to his client's interests, and you have the picture of a very safe counsel to be entrusted with important issues, and this Mr. Doutre undeniably was. He had a large measure of independence of character, without being the least bit of a crank; frank and courteous in his professional bearing; generous and whole-souled in his family and social relations. It was Mr. Doutre's fortune to be connected with a number of cases of special note, chief among which may be mentioned the celebrated *Guibord* case, which he fought with the utmost constancy and courage, finally securing a triumph before the Privy Council. The successful issue of this remarkable suit brought Mr. Doutre immense reputation, and a large and lucrative practice which subsisted without abatement until his appointment as counsel for the Canadian Govern-

ment before the Fisheries Commission compelled him to withdraw himself for a lengthened period from his ordinary professional engagements. The difficulty which subsequently arose as to the settlement of his fees for services before the Commission is much to be regretted, for it is certain that Mr. Doutre made great sacrifices in order to devote himself to the public business. Before this date Mr. Doutre had well deserved a place on the bench, and would undoubtedly have made an excellent judge. This is not the place to speculate upon the motives which induced his friends, when they had the opportunity to recognize his ability and services by giving him a judicial position, to pass him over in favor of younger men; but it is difficult to imagine that the motives, whatever they may have been, were creditable to the party in power. Mr. Doutre, who was the author of a romance at nineteen, always retained a fondness for literary work. He contributed frequently to the daily press, and his work upon the Constitution of Canada is well known to the profession. We may add that he has been an occasional contributor to the columns of the *Legal News* since it was established. His death is felt as a personal bereavement by very many of his *confrères*, and is sincerely regretted by a much wider circle of friends. This feeling has been evinced by the overflowing attendance at the usual bar meeting, and the immense procession that followed his remains at the funeral ceremonies this afternoon.

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*COUR SUPÉRIEURE—MONTRÉAL.**

"Acte refondu des chemins de fer de 1879"—*Expropriation—Possession—Vente—Intérêts—Offres réelles.*

JUGÉ:—1o. Que tout acheteur doit au vendeur les intérêts du prix de vente, lorsque la chose vendue est de nature à produire des fruits ou autres revenus, à compter de la prise de possession.

2o. Qu'une compagnie de chemin de fer qui prend possession d'un terrain durant les procédés de l'expropriation, doit au propriétaire les intérêts sur le prix qui lui sera adjugé par l'arbitrage à dater du moment qu'il aura été dépossédé de son terrain.

3o. Que les offres réelles du prix adjugé, sans interêt, faites par la compagnie sous ces circonstances, sont insuffisantes.—*The Atlantic & North West Ry. Co. & Prudhomme.* Mathieu, J., 17 nov. 1885.

Substitution—Son étendue sous l'ancien droit—Statut impérial (1774) 14 *Geo. IV—Statut provincial de* 1801—*Liberté de tester—Dégrés de substitution—Accroissement.*

JUGÉ:—1o. Que sous l'ancien droit, la loi et la jurisprudence constante limitaient les substitutions par testament à deux dégrés, outre l'institué.

2o. Que le statut impérial de 1774 et l'acte provincial de 1801 accordant la liberté illimitée de tester, n'ont pas eu l'effet d'abroger ces dispositions de l'ancien droit, et que les substitutions sont restées limitées depuis comme elles l'étaient avant ces statuts.

3o. Que les dégrés de substitutions doivent être comptés par têtes et non par souches; que lorsque plusieurs personnes reçoivent ensemble et par des droits égaux leur échéant en même temps, tous ne font qu'un dégré, mais chacune de ces personnes fait aussi un dégré pour la part qu'il recueille, de telle façon, que si à son décès ses co-héritiers reçoivent sa part, ils se trouveront à former un dégré subséquent.—*Cuthbert* v. *Jones*, Mathieu, J., 3 janvier 1885.

C. C. Art. 2127—*Défaut d'enregistrement d'une cession volontaire de créance—Effet de la saisie-arrêt après jugement—Cession judiciaire—C. P. C. Arts.* 616, 625.

D. transporte par acte authentique à B. un prix de vente d'immeuble non enregistré dû par C. à qui le transport est signifié, mais lequel n'était pas enregistré. Plus tard le prix de vente est enregistré, sans mention du transport. Subséquemment à tout cela, G. qui a un jugement contre D., fait signifier une saisie-arrêt à C. qui déclare ne rien devoir à D. Alors G. fait enregistrer une copie du bref de saisie-arrêt et du procès verbal de la signification, et en donne avis à C. en lui faisant signifier des certificats d'enregistrement. Postérieurement, le transport de D. à

* To appear in Montreal Reports, 2 S.C.

B. est enregistré et il est de nouveau signifié avec certificat d'enregistrement à C. Vient maintenant une contestation par G. de la déclaration du tiers saisi.

JUGÉ:—1o. Que l'enregistrement du bref de saisie-arrêt ne vaut rien, et qu'il n'a pas fait voir au bureau d'enregistrement quelle créance il saisissait.

2o. Que la signification du bref de saisie-arrêt n'a pas opéré une cession judiciaire, et que le jugement seul ordonnant au tiers saisi de payer, opère cette cession.

3o. Que D. n'étant pas un cessionnaire ne peut se prévaloir du défaut d'enregistrement du transport.

4o. Que ce transport, même non enregistré, signifié avant la saisie-arrêt, l'emportera sur cette dernière.—*Goyette* v. *Dupré*, et *Couture*, T. S. En Révision, Torrance, Loranger & Cimon, JJ., 30 juin 1885.

COUR DE CIRCUIT.

CHICOUTIMI, 1885.

Coram ROUTHIER, J.

LEFEBVRE *et al.* v. GINGRAS.

Saisie—Gardien—Contrainte par Corps.

JUGÉ:—1o. *Que sur requête pour contrainte par corps, la preuve ne peut se faire autrement que par le rapport de l'huissier et par affidavits.*

2o. *Que l'affidavit de l'huissier ne peut être admis pour prouver un fait essentiel omis dans son rapport et pour corriger une erreur de date.*

3o. *Qu'il ne peut être permis à l'huissier de produire ou de substituer un nouveau rapport.*

4o. *Que la contrainte par corps pour rebellion à justice doit être assimilée à l'emprisonnement pour dettes en matière civile, et que les tribunaux doivent exiger l'accomplissement rigoureux des formalités nécessaires pour l'obtenir.*

Le 9 août 1884, un bref de *fieri facias de bonis* fut émané en cette cause, rapportable le 15 septembre suivant.

L'huissier porteur de ce bref alla, le 27 août, saisir les meubles du défendeur, et par un avis au bas du procès-verbal de saisie, fixa la vente au 9 septembre, au domicile du défendeur. Le procès-verbal est en date du 27 août, l'avis de vente en date du 28.

Le 9 septembre, l'huissier se présenta au domicile du défendeur pour faire la vente fixée à ce jour. Mais il ne put y procéder et fit rapport qu'il en avait été empêché parce que le gardien ne s'étant pas même rendu sur les lieux, a fait défaut de lui représenter les effets saisis et parce que le défendeur qui était dans son domicile—quoique l'huissier ne l'ait pas vu—avait barré toutes ses portes et refusait de les ouvrir.

Les demandeurs firent d'abord une requête pour contrainte par corps contre le gardien. Le gardien répondit qu'il n'avait pas eu avis des jour et lieu fixé pour la vente, qu'il n'avait été nullement requis par l'huissier de représenter les effets quand ce dernier était allé pour vendre, et que l'huissier n'avait pas vendu les effets parce que les portes du domicile du défendeur étaient fermées, ce dont le gardien n'était pas responsable. Cette réponse était accompagnée d'un affidavit que l'huissier exploitant n'avait nullement mis le gardien en demeure de représenter les effets saisis quoique le gardien soit voisin du défendeur.

La Cour a rendu le jugement suivant:

"Considérant que la vente des meubles et effets saisis en cette cause paraît avoir été empêchée par la résistance du défendeur qui aurait fermé ses portes, et non par l'absence du gardien au jour fixé pour la vente, rejette la requête pour contrainte par corps sans frais."

Les demandeurs présentèrent alors une requête pour contrainte par corps contre le défendeur lui-même, qui y répondit en alléguant de nouveau le défaut d'avis et de plus que le rapport de l'huissier n'établit pas que le défendeur ait réellement empêché par la violence la vente des effets saisis.

La requête et la réponse furent présentées le 28 mai 1885, et le même jour les demandeurs firent application pour fixer la cause à l'enquête afin d'entendre le défendeur comme témoin. Cette demande leur fut refusée, mais la Cour leur accorda un délai pour produire des affidavits.

Le 3 juin, les demandeurs produisirent un affidavit de l'huissier jurant qu'au bas du *triplicata* du procès-verbal de saisie délivré au défendeur, se trouve un avis du jour, de

l'heure et du lieu fixés pour la vente, tel que celui qui se trouve au bas du *triplicata* produit au bas du dossier, et jurant de nouveau et plus en détail la violence du défendeur pour empêcher la vente.

En même temps, les demandeurs firent motion pour produire un rapport de signification de l'avis de vente au défendeur et au gardien dans le délai voulu et pour substituer un autre rapport de *rébellion à justice* alléguant les mêmes faits que le premier, mais d'une manière plus détaillée et plus claire. Cette motion fut renvoyée.

Voici le jugement:

"La Cour, etc.

"Considérant que le procès-verbal de saisie et le rapport de l'huissier exploitant en cette cause, ne font pas voir que le défendeur ait été régulièrement averti du jour fixé pour la vente des effets saisis—l'avis qui se trouve au bas du dit procès-verbal, étant d'une date postérieure au procès-verbal lui-même — et que l'huissier exploitant ne peut remédier par un affidavit à cette irrégularité ni contredire son procès-verbal;

"Considérant que le dit rapport de l'huissier ne fait pas suffisamment apparaître la résistance personnelle du défendeur, le dit huissier déclarant n'avoir vu personne au domicile du défendeur;

"Rejette la requête pour contrainte par corps faite en cette cause par les demandeurs avec dépens."

F. X. Gosselin, procureur des requérants.

J. A. Gagné, procureur du défendeur et du gardien.

(F. X. G.)

TRIBUNAL CIVIL DE LA SEINE.

FRANCE, décembre 1885.

GUICHARD v. LEPROU.

Refus de prêter serment—Juré—Prison préventive—Dommages.

JUGÉ:—*Qu'une personne appelée à prêter serment en cour afin de servir comme juré dans une poursuite criminelle, et qui refuse sous prétexte qu'il ne croit pas en Dieu, est responsable civilement des dommages que peut souffrir l'accusé par suite de la remise du procès par la faute de ce refus de prêter le serment requis.*

Le 22 mars 1882, le sieur Leprou avait été désigné par le sort pour faire partie du jury qui était appelé à prononcer sur l'accusation portée contre le nommé Guichard devant la cour d'assises de la Seine.

Le président l'ayant invité à prêter le serment déterminé par l'article 312 du code d'instruction criminelle, il s'y refusa en déclarant qu'il ne croyait pas à l'existence de Dieu.

En présence de son refus, la Cour avait renvoyé l'affaire à une session ultérieure. Sur les réquisitions du ministère public, la Cour rendit un arrêt qui condamnait Leprou à payer à Guichard la somme de 300 fr. à titre de dommages intérêts et à supporter les frais occasionnés par le renvoi de l'affaire à une autre session.

Leprou s'étant pourvu contre cet arrêt, en obtint la cassation, sur le motif, qu'en prononçant contre le sieur Leprou une condamnation à des dommages-intérêts, la Cour avait formellement méconnu les règles de sa compétence et violé, pour les avoir faussement appliqués, les articles 51 du code pénal, 358, 359 et 366 du code d'instruction criminelle.

Guichard intenta alors une action devant le Tribunal civil de la Seine en invoquant l'article 1382 du Code civil.

Le Tribunal a rendu le jugement suivant:

"Attendu qu'en n'obéissant pas à une prescription de la loi qui doit être observée à peine de nullité, Leprou a commis une faute qui a eu pour résultat de prolonger la détention préventive de Guichard, et qui rentre dès lors dans les prévisions de l'article 1382 du Code civil;

"Attendu qu'il est vainement opposé par Leprou que l'affaire aurait pu être renvoyée à un autre jour de la même session, de telle sorte que la nouvelle détention préventive imposée à Guichard proviendrait de la décision de la Cour, et non de son propre fait;

"Qu'en pareille matière, la Cour d'assises apprécie souverainement la convenance du renvoi à une époque déterminée, et que les raisons d'ordre général qui ont dicté son arrêt échappent à tout contrôle et à toute recherche;

"Qu'il suffit, pour que la responsabilité du défendeur soit engagée, que la décision des magistrats ait été rendue nécessaire par un fait qui lui soit personnel;

" Par ces motifs,

" Condamne Leprou à payer à Guichard la somme de 300 fr. à titre de dommages-intérêts, et le condamne, en outre, aux dépens."

(Journal de Paris. Rapport de Mtre Albert).

COURT FOR CROWN CASES RESERVED.

LONDON, December 5, 1885.

REG. v. ASHWELL.

Criminal Law—Larceny.

The prisoner asked one K. to lend him a shilling, and K. gave him what he supposed to be a shilling, but which was in fact a sovereign. The prisoner changed the sovereign, kept the change, and when told by K. of the mistake, denied receipt of the sovereign, but afterward admitted that he had the sovereign and had spent half the money. Held, *larceny.*

This case had been twice argued, on the first occasion on the 20th of March, before five judges, who, being divided in opinion, directed it to be reargued before all the judges, which took place on the 13th of June last, when being still divided in opinion, they took time to consider their judgment. The case raised a highly technical point in the law of larceny. The point was shortly this, whether if a man hands another a sovereign for a shilling, and the other seeing it in a short time, though not at the moment, keeps it, he can be convicted of stealing it. The case, which was reserved by Denman, J., at the assizes at Leicester in January last, was stated shortly this, that the prisoner asked one Keogh to lend him a shilling, and Keogh put his hand in his pocket and pulled out what he believed to be a shilling, but what was in fact a sovereign, and handed it to the prisoner who went away, and in an hour afterward changed it and kept the change, and next day when Keogh told him of the mistake, denied the receipt of the sovereign, and gave contradictory accounts as to where he got the sovereign, but afterward admitted that he had the sovereign and had spent half the money. It was objected that there was no larceny, as there was no evidence that the prisoner when he received the coin knew it to be a sovereign. The jury found that the prisoner did not know it at the time, but that he discovered it "soon" afterward, and fraudulently appropriated it, knowing that the owner had not intended to part with it.

Several of the judges before whom the case had been argued were not able to be present, and their judgments were read by others. It will be seen that seven judges were for affirming the conviction, and seven were for reversing it, and the rule of this court being that the presumption is to be in favor of the conviction—*presumitur pro negante*—the conviction was affirmed.

SMITH, J., delivered his judgment to the effect that it was not a case of stealing, as stealing must be a taking against the will of the owner with a felonious intent at the time of the taking. For this he cited authorities. In the present case it seemed to him that there was no taking against the will of the owner, nor with a felonious intent, and the case he thought came within the law as laid down by the judges in *Reg.* v. *Middleton*, L. R., 2 C. C. R. 45, that the prisoner must have been aware of the mistake at the time of the taking in order to render him guilty of felony. It was not, he thought, a mere case of finding, for Keogh delivered the coin to the prisoner who took it honestly. It was a confusion of terms to suppose the finding out of the mistake some time after the taking made it like a case of finding, knowing the owner or knowing he might be found. He did not think the cases cited for the prosecution (*Carturight* v. *Green*, 8 Ves. 405; *Merry* v. *Green*, 7 M. & W. 623) were in point. In those cases there was no intention to deliver the thing, here there was, and the prisoner was not guilty of larceny at common law. And as to his liability as bailee it was necessary that the thing should have been delivered as a bailment, whereas here it was not, and there was no condition expressed or implied to return the coin delivered. The real obligation on the prisoner was to return 19s when he found the coin was a sovereign, but he was not bound to return the sovereign. He came, therefore, to the conclusion that the conviction ought to be quashed.

CAVE, J.'s judgment (which was read by the Lord Chief Justice, he being unable to attend) was to the contrary effect as to larceny at common law. It was impossible, he

thought, that the prisoner, who at the moment of taking the coin was under a mistake as to what it was, could be guilty of taking it feloniously. As there was a mistake as to the coin, no property passed; and the question was as to possession, as to which he thought the person taking the thing could not acquire possession of it until he found what it was. Here the prisoner, when he took the coin, was not aware what it was, and did not become aware of it until afterward. He was unable to reconcile the cases, and thought the law correctly laid down in *Merry* v. *Green*, 7 M. & W. 623. In his judgment a man could not be presumed to assent to the possession of a thing until he knew what it was, and here the prisoner did not assent to the possession of the coin until he knew it was a sovereign. He had consented to the responsibility of the possession only of a shilling. In this case the prisoner did not at the time of taking render himself responsible for the possession of a sovereign, and therefore could not set up a lawful possession of it, for at the moment he knew what it was he elected fraudulently to keep it, and therefore was guilty of larceny at common law.

MATHEW, J., declared that he was of the same opinion as Smith, J., that is that the prisoner was not guilty of larceny. There was no dishonest act in the taking, and it would not do, he thought, by a sort of fiction to refer the taking to the time of changing the sovereign. And certainly, even if that was a taking it was not a felonious taking, for he might honestly have changed the coin, and it would only be dishonest if he meant to keep the whole. In his view there was no evidence of a felonious taking at any time; and if this conviction could be supported, then any one guilty of any dishonesty could be convicted of larceny. That was a change in the law which could only be effected by statute. He thought, therefore, that the conviction should be quashed.

STEPHEN, J., read a lengthy and elaborate judgment, in which he said, Day and Wills, JJ., concurred, to the same effect. From the earliest time, in the history of our law, larceny had been defined to be a felonious taking against the will of the owner and with the *animus furandi*—that is the intention to steal—at the time. For this he cited Glanville, Bracton, and the Year-books, from Edward III. to Edward IV. He especially cited Bracton defining larceny as *contrectatio rei alieni fraudulenter, cum animo furandi*, and he dwelt upon the case in the 13 Edw. 4, the case of the carrier, in which all the judges held that a carrier was not liable for taking the whole bulk of a package, though he would be if he "broke bulk," as it was called, that is, opened the package and took out something. So that if he took a pint of wine out of a cask he was guilty, but not if he took the whole pipe. The rule of law he had stated was established, he said, by all the authorities, and he cited 3 Coke Inst., 1 Hale's Pleas of the Crown, Hawkins' Pleas of the Crown, and Foster's Crown Law. That being the rule of law, he said, here the prisoner took the coin innocently, and though he dealt with it dishonestly an hour afterward, that did not make him guilty of larceny at common law. In cases of finding it had been laid down that there was no larceny, though in modern cases it was held that there was if the finder knew the owner. *Re Thorburn*, 1 Den. Crown Cas. 387. The cases under this head, however, established the doctrine that a person to be guilty of larceny must have intended stealing at the time he took the thing; and if the present conviction was upheld it would be quite inconsistent with those cases and cause a curious anomaly in the law. It could not, he thought, be held that a mere alteration of intention after the taking made the original taking felonious. The case showed that the first taking—the actual physical taking—must have been felonious in order to make it a case of stealing. In the case of *Reg.* v. *Glyde*, L. R., 1 C. C. 139, in 1868, the prisoner had picked up a sovereign and intended to keep it, but did not know the owner, and was held not guilty of larceny. In the cases of finding, the guilty knowledge—the knowledge of the owner—was required to have been at the time of finding and taking up. But in this case Ashwell received the coin honestly, not knowing it was a sovereign. He was, therefore, not guilty of larceny at common law. As to the point as to bailment he agreed with Smith J.

HAWKINS, J., said he concurred in the udgment of his brother Cave.

MANISTY, J., agreed with his brother Stephen, after whose able and elaborate judgment he said, he need not add anything. He thought that the prisoner could not properly be convicted of larceny, either at common law or upon bailment, because at the time of the delivery of the coin neither party knew it to be a sovereign, so that there was neither a felonious taking nor a "bailment," *i.e.*, an intentional delivery of a sovereign. In his view, the law was well settled on the subject in the case of *Reg.* v. *Middleton* (the case of a man taking up money at a post-office put before him by mistake), and he thought it would be most mischievous if it were now unsettled. That case, in his opinion, covered this case completely, as the prisoner was held guilty, because at the moment he took it up he took it dishonestly; so that the judges put that as the decisive time—the time of the actual taking—not of a subsequent alteration of intention. The real remedy of the prosecutor was to sue the prisoner for 19s as money lent. That might be called "technical," but he was prepared to hold that that was the proper course, as the prisoner might honestly have changed the sovereign and was only liable to return the 19s. Here the taking was lawful, and so the prisoner was not guilty of larceny at common law, neither could he be convicted as a bailee, as there was no bailment of the sovereign.

FIELD, J., also concurred in the opinion that the prisoner was not guilty of larceny and could not be convicted of any crime by our law. He had had the advantage of reading the judgments of his brethren who had held the same view, and they had so abundantly and ably supported it that he did not think it necessary to add anything in support of it.

DENMAN, J., however, who had tried and reserved the case, said he had come to the same conclusion as his brother Cave and the Lord Chief Justice, whose judgment he had read. If he had thought the case covered by *Reg.* v. *Middleton* he should not of course have reserved it, but the opinion of some of the judges referred to by his brother Manisty as conclusive was only a dictum, and a dictum in which he himself had concurred, but did not consider it decisive of this case. The case was stated carefully and designedly in a neutral way; not therefore of course stating a felonious intention at the time of taking, and the very question reserved was whether the jury could rightly find that he was guilty of stealing the coin. On the whole, he thought, there was evidence on which the jury might find the prisoner guilty. There was no doubt as to the definition of larceny, that is fraudulently taking anything with felonious intention; and the question was whether there was a felonious taking. His brother Stephen put it as a case of fraudulent retention after an honest taking, but he denied that such was the case, for it could not be said that the prisoner believed he was taking a sovereign at the time of taking the coin. There was some ambiguity in the use of the word "taking," and there was no real "taking" of the sovereign by the prisoner until he knew it was a sovereign, and so the case fell within the cases as to finding, in which it was held that if a man found something, and afterward found out the owner and then resolved not to return it, he was then, and not before guilty of larceny; so that the question was not whether he stole it at the time he first took it. He came to the conclusion therefore, that the conviction ought to be upheld.

LORD COLERIDGE, C.J., then delivered his judgment to the same effect as Cave, J., that the prisoner was guilty of larceny at common law. He doubted whether it could be said that there was a "bailment" in the present case, as bailment meant a "contract," and here there was no contract as to the sovereign. As to the question of larceny at common law, he assumed that there must be a felonious taking, but delivery and taking must be acts into which intention entered. There must be an intentional intelligent taking, knowing what the thing was, and a man could not be said to take a thing when he did not know what it was. It could not be truly said that a man took what he did not know of, and he did not think that it was law. In this case, therefore, he thought that there was no delivery of the sovereign and no taking by

the prisoner until he knew what it was, so that here at the time of taking the sovereign as such he intended to steal it, and so took it feloniously, that is the sovereign was taken and stolen at the same moment. The conviction could not be disturbed without overruling the decisions of Lord Eldon in *Cartwright* v. *Green*, and of Parke, B., in *Merry* v. *Green*, and the decision of the judges in *Reg.* v. *Middleton*. The view he thus took was also in accordance with a case not cited in the argument, *Reg.* v. *Riley*, (Dearsley's Crown Cases Reserved, 149), which was a distinct authority for upholding the present conviction. In this judgment his lordship said his brothers Grove, Pollock, and Huddleston concurred. There were, therefore, seven judges for affirming and seven for reversing the conviction, and as the rule in this court was *presumitur pro negante*, the conviction would be affirmed.

THE LATE JOSEPH DOUTRE, Q.C.

Mr. Doutre was born at Beauharnois in 1825. He was educated at the College of Montreal, and studied law in the offices of the late Mr. W. Dumas, the Hon. Mr. Morin and Hon. Mr. (afterwards Judge) Drummond. He early identified himself with the Liberal party, and was a contributor to their organ *L'Avenir*. A contribution to this paper excited the ire of Sir George E. Cartier, who sent a challenge to Mr. Doutre. It was accepted, and on the slope of Mount Royal a duel took place, neither of the participants, however, sustaining injury. The ill-feeling thus produced did not last, for in after years the combatants were on sufficiently friendly terms. In 1844 Mr. Doutre published a romance entitled "Les Fiancés de 1812," and four years later gave to the world "Le Frère et la Sœur," and in 1852 "Le Sauvage du Canada." He is also author of a work on the Constitution of Canada, and of several minor literary productions. In the agitation that led to the abolition of the system of seigniorial tenure he was a prominent actor. He joined the Institut Canadien and soon became its president, a position to which he was only the other day re-elected. The dispute with the Church over the library of the Institute led to its members being ordered to abandon it under pain of excommunication. This many would not do, among them Samuel Guibord, whose death, and the refusal of the ecclesiastical authorities to allow his body to be interred in consecrated ground, led to the institution of a suit of which almost all the civilized world has heard. Mr. Doutre was chosen to uphold the rights of Guibord before the courts. How he discharged the duty is well known. After long litigation the decision of the Privy council was obtained and Guibord's body was finally laid at rest in the Cote des Neiges cemetery. Mr. Doutre was senior counsel for the Dominion Government before the Halifax Fishery Commission, and assisted in securing the considerable amount that was awarded this country as compensation for the fishing privileges accorded to the United States under the Washington treaty. He also acted on behalf of the Orangemen accused some years ago of illegal association in this province. The fame he obtained through the Guibord case brought him a large *clientèle*, and he was engaged in many important suits. Mr. Doutre was married twice, and leaves six children, the eldest a son, who has nearly completed his studies for the profession in which his father held so high a rank.

INSOLVENT NOTICES, ETC.

(*Quebec Official Gazette, Jan.* 30.)

Judicial Abandonments.

Joseph Perrier, trader, Montreal, Jan. 23.
Zéphirin Simard, Rimouski, Jan. 25.
Louis Flavien Timoléon Buisson, Three Rivers, Jan. 26.

Curators Appointed.

B. A. Benoit, St. Hyacinthe.—Jules St. Germain, St. Hyacinthe, curator, Jan. 20.

L. E. Morin, Jr., Montreal.—Kent & Turcotte, Montreal, joint curator, Jan. 23.

Jean B. Déry, St. Francis.—C. Millier, Sherbrooke, curator, Jan. 15.

Notice of Dividend Sheet.

Thomas J. Samson.—Louis Rainville, Arthabaskaville, curator. Open to objection until Feb. 15.

Actions en séparation de biens.

Dame Amanda St. Jean vs. Alfred Dasylva, District of Montreal. Jan. 12.

Dame Marie Georgiana Demeul vs. Cyprien Turcot, Village of St. Gabriel, District of Montreal. Jan. 19.

Dame Sarah Annie Baker vs. Louis Charles Leopold Goullioud, Montreal. Jan. 19.

Rules of Court.

The Camperdown Hotel Company, Georgeville, township of Stanstead. Meeting to appoint liquidator under Insolvent Companies Act of 1882, 10 a.m., Feb. 12, Superior Court, Sherbrooke.

A. J. Cleveland and W. H. Whyte, traders, Montreal. Creditors of Arthur J. Cleveland notified to file claims.

MORE LAWYERS THAN DOGS.—I fell across an amusing story the other day in Madame Adam's interesting book, *La Patrie Hongroise*. Hungary, says Madame Adam, swarms with barristers. It is the ambition of the Hungarian peasant to make one of his sons an advocate, as it is the ambition of the Breton and the Irish peasant to make one son a priest. The son of a small farmer in the neighborhood of Pesth was sent by his father to the law school of the town, but, either from want of parts or application, was plucked in the qualifying examination. Not daring to return home empty handed, after all the money that had been spent on his education, he forged a legal diploma. The father, however, was not so ignorant as not to be aware that such diplomas are always written on parchment, *Kutya-ber*—"dog-skin" in Hungarian. "Why is your certificate not made out on *Kutya-ber?*" asked the old man. "The fact is, father," answered the youth, "that there are more barristers than dogs in Hungary, and so there is not enough *Kutya-ber* to make diplomas for us all."—*London Life.*