The Legal News.

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ARREARS IN THE COURT OF QUEEN'S BENCH.

If we were only to consult the statistical returns in judicial matters, published annually in the Quebec *Gazette*, we should feel that it was almost impossible to hope that anything short of a revolution could bring any adequate relief to weary suitors, sighing for justice. These returns show that from the beginning of 1860 up to the end of 1876 there were 2,573 appeals taken out, and that only 2,113 were heard and decided on the merits. This shows a balance of cases unheard of no less than 460; but as many cases are settled or abandoned, or are sent to the shades below without a hearing, the judicial statistics only recognise 398 appeals as actually subsisting on the 31st December, 1876, namely 30 at Quebec and 368 at Montreal. Fortunately this presents an exaggerated statement of the difficulty, which, however, even when reduced to its real limits, is sufficiently embarrassing. The true test of the arrears before any Court is the number of cases ready for hearing, and which remain unheard from want of time for the argument. Now in Quebec there are no cases at all in this position. In Montreal the condition of matters is very different, as the following table, for which we are indebted to the learned Clerk of Appeals, Mr. Marchand, amply testifies:

Inscriptions for December Term, 1874		112
Heard and taken *en délibéré*	29	
Adjudged	8	
Dismissed	1	
Struck from the roll	1	
	—	39
Undisposed of		73
Inscribed for December Term, 1875		78
Heard and taken *en délibéré*	18	
Adjudged	5	
	—	23
Undisposed of		55
Inscribed for December Term, 1876		74
Heard and taken *en délibéré*	29	
Adjudged	2	
	—	31
Undisposed of		43
Inscribed for December Term, 1877		89
Heard and taken *en délibéré*	19	
Adjudged	2	
	—	21
Undisposed of		68

It therefore appears that the result of three years' work has been to reduce the arrears from 73 to 68, that is 5 cases, or less than 2 a year. This almost insignificant gain has only been secured by the Court hearing and deciding 626 cases in the three years, which is 190 cases more than were heard and decided in the highest three of the previous fifteen years. Nor are the arrears in Montreal due to the prolixity of the arguments. In 1877, judgments were rendered in Montreal in 135 cases, and in Quebec in 67, there being only four terms of twelve days each at Montreal, while at Quebec there are four terms of eight days each for less than half the hearings.

In addition to this it may be remarked that the appeal business in this District is greatly on the increase. In 1873 there were 199 new appeals, in 1874 there were 198, in 1875 there were 210, in 1876 there were 252; or in all, for the four years, 859. The highest four years during the fourteen years preceding 1874, give the following results:

1860	142
1862	146
1866	145
1869	169

making a total of 602, or a difference of 257 equal to 64 cases a year.

We think, then, we have shown enough to establish that some change is required in the sittings of the Court of Appeals in this District, and it only remains to decide what that change shall be. For the present we are content to place the figures before our readers. We shall only add that we are not in favour of a further extension of the system of terms. They are already too long, and their multiplication is not without inconvenience. Again, their effect is to overwhelm the judges with cases, the argument of which they cannot possibly remember, and to deprive them of the opportunity of deliberating. In fact the whole work of hearing new cases, and deliberating on the old, is huddled into the contracted limits of the terms. Of course, we understand that the judges read the cases during the vacation, but the collective deliberation ought to be a

serious matter, occupying a great deal more time than the fragments of days after the adjournment of the Court allow.

THE CASE OF MR. O'FARRELL.

We print in this issue a communication signed "Quebec," criticizing the judgment of the Court of Queen's Bench in the case of *O'Farrell & Brassard*. As our correspondent does not appear to have concluded his remarks, and others may have something to say on the subject, we will only observe at present that we do not by any means assent to the proposition that by-laws could not be framed in general terms which would meet Mr. Justice Cross' objection. The difficulty in Mr. O'Farrell's case was that there was no by-law, and no notice to the accused that he was incurring the penalty of suspension. Now, let us take an example of a general by-law. Suppose the Council enacted in general terms that engaging in trade would be punished by suspension, could an advocate who opened a grocery store plead want of notice? Or if a by-law stated that engaging in any mechanical occupation for hire would be considered derogatory to the honor of the profession, could an advocate who eked out his subsistence by mending tinware or repairing boots and shoes, plead that he had no intimation that he was laying himself open to prosecution? We see no serious difficulty in covering by a few clauses every case that is likely to arise.

REPORTS.

COURT OF QUEEN'S BENCH—APPEAL SIDE.

Montreal, December 22, 1877.

Present:—Chief Justice DORION, and Justices MONK, RAMSAY, TESSIER, and CROSS.

McDONNELL, (deft. below) Appellant; and GOUNDRY (plff. below) Respondent.

Trouble—Right of Way—Deficiency in Quantity of Land Sold.

In a deed of sale it was stipulated that the purchaser should have the right at any time to keep in his hands the whole or any part of the balance payable to the vendor, until such time as the vendor should have furnished a registrar's certificate showing the property sold to be "free and clear of all mortgages, dowers or other encumbrances whatsoever." It appeared that part of a small island, which was included in the property sold, did not belong to the vendor, and there also existed a right of passage over the rest of this island. The island was of small value. *Held*, that the purchaser was not entitled, under the above cited clause of the deed, to retain an instalment of the purchase money sued for, there remaining unpaid another instalment which was much more than sufficient to cover the proved value of the the island and the right of passage.

The respondent brought action, under a notarial deed of sale, for $400, being an instalment due on the price of a certain mill property sold to appellant. The latter set up the following clause in the deed: "The purchaser shall have the right at any time to keep in his hands the whole or any part of the balance payable to the said vendor as above stated, until such time as the said vendor has furnished at his cost and expense, to said purchaser, a certificate of the registry office showing that the property, buildings and premises hereby sold are free and clear of all mortgages, dowers and other encumbrances whatsoever." The defendant alleged that a portion of an island, comprised in the property sold, did not belong to the vendor but to one McArthur. Moreover, there was a right of way in favor of McArthur over the island to communicate with this piece of land.

The Superior Court, Belanger, J., held that defendant had good reason to fear *trouble* by reason of McArthur's right of property and right of passage, but considered that he was not entitled to retain the instalment sued for, because there was still another instalment to become due, and this would more than suffice to indemnify defendant in case he was troubled.

CROSS, J., for the majority of the Court, considered that the judgment must be confirmed. The defendant did not by his pleas ask that he should have security; he concluded for the dismissal of the action. If he had asked for security the answer would have been that he had enough in his hands, besides the instalment sued for, to indemnify himself. The plaintiff did produce the certificate and fulfil the condition. It was for the defendant to show that there were incumbrances. He had not done that. He had merely shown that there was a right of way and a small deficiency in quantity. This did not come within the stipulation in the contract.

DORION, C. J., and MONK, J., dissenting, thought the stipulation had not been complied with, and the defendant was not obliged to ask for security merely, but could plead the clause in the deed as a defence to the action.

Judgment confirmed.

Archibald & McCormick for appellant.

A. & W. Robertson for respondent.

MIDDLEMISS (proprietor respondent in the Court below), Appellant; and NUNS OF L'HOTEL DIEU OF MONTREAL (petitioners below), Respondents.

Seigniorial Rights—Property acquired by Crown.

This was a case of some peculiarity, not likely to occur again. The respondents, the *seigneuresses* of the Fief St. Augustin, claimed certain seigniorial dues on an immoveable in the Fief, which the appellant had acquired from the Provincial Government in 1874 by exchange for other property. The respondents petitioned in the usual form for the nomination of experts, in order to establish the amount of indemnity or commutation due the petitioners by reason of the exchange, in place of the seigniorial rights on the land, and the amount to be paid for the redemption of the constituted rent representing the *cens et rentes* to which the property was alleged to be subject.

The appellant pleaded that the property had been acquired by the Crown for a purpose of public utility and the tenure had been changed; that the respondents had been indemnified for this change of tenure; that while the land was the property of the Crown the seigniorial rights in the Fief were abolished, and the land passed into the possession of the appellant free from all seigniorial rights, and consequently there was no occasion to commute rights which did not exist.

The Superior Court having named experts to establish the amount of indemnity to be paid in lieu of seigniorial rights, and also the amount to be paid for redemption of the constituted rent, and having homologated the report of the experts thereon, the proprietor Middlemiss appealed.

The Court of Appeal, Monk and Tessier, JJ., dissenting, reversed the judgment. The grounds for the judgment in appeal were in substance as follows:—

The immoveable had been acquired by the Crown in 1839 as the site of a lunatic asylum, an object of public utility. By this acquisition the land was re-united to the Crown domain and free forever from all seigniorial rights of the fief St. Augustin, with the exception of the right to indemnity for loss of the *mouvance*. On the 20th April, 1860, the Crown paid respondents the sum of £192. 0. 10, for right of indemnity claimed by reason of such acquisition. After the abolition of the seigniorial tenure in the fief St. Augustin in 1860, the respondents could only claim a right of commutation on such alienations as before the abolition would have given rise to a right of *lods et ventes*, and the exchange made by the Provincial government of this lot for another owned by the appellant did not revive the seigniorial rights which had been abolished by its reunion with the crown domain. The exchange, even before the abolition of seigniorial tenure in the fief, would not have given rise to *lods et ventes*, and therefore respondents could not claim commutation right by reason of the exchange.

Judgment reversed.

Geoffrion, Rinfret & Archambault for Appellant.

Pagnuelo & Major for Respondents.

HALL (plff. below), Appellant; and ATKINSON (deft. below), Respondent.

Revendication—Lien.

This was a case heard at Quebec. The appellant claimed by a *saisie-revendication* a quantity of logs which the respondent held and refused to deliver to him.

The respondent pleaded that these logs had been wintered on his property and formed part of a larger quantity which had passed through his mill pond, for which he was entitled to be paid, and he claimed a *droit de rétention*.

The appellant answered that owing to respondent's boom and mill dam, which obstructed the River Etchemin at a point where the same was navigable and where he had no right to obstruct it, he had been forced to pass his logs through respondent's property to take them to the River St. Lawrence.

Respondent replied that he had constructed his boom and mill dam on private property which he held from the Crown.

Held, confirming the judgment of the Court below, that there was sufficient evidence to show an undertaking, on the part of the appellant, to pay for the use of defendant's property, and that the latter was entitled to a *quantum meruit* and to a *droit de rétention* until paid, the Court abstaining from deciding the question raised as to the extent of the right each party had to the use of the River Etchemin.

Judgment confirmed.

NOTE.—The following appeals, also decided during the December term, do not require special mention:—

GUY et al., Appellants; and GUY et al., Respondents.—The appeal was from a judgment of the Superior Court, declaring two lots of land *grevés de substitution* and subject to the usufruct of plaintiffs (respondents). The judgment was confirmed as to the first lot and reformed as to the second; Monk, J., concurring, but being disposed to go a little further, and to deal with both lots in the same way.

PAYTON, Appellant; and CORNELLIER GRANDCHAMPS, Respondent.—A question of evidence as to verbal sale. Judgment reversed, Ramsay and Tessier, JJ., dissenting on the ground that the sale was not proved.

LACROIX et al., Appellants; and THE CITY OF MONTREAL, Respondents.—An action by contractors for the new City Hall, from whom a contract had been taken away. A question of evidence. The judgment of the Court below, which dismissed the action, was reversed, and $400 allowed the appellants.

HUS, Appellant; and MILLETTE et al., and BRUNET et al., Respondents.—A question as to the ownership of some land. Judgment confirmed.

DESMARTEAU, Appellant; and SENECAL, Respondent.—Action on a note. A question of evidence. The judgment of the Court below in favor of the respondent (plaintiff) was confirmed, Ramsay, J., dissenting.

Dec. 22.

HOLDEN, Appellant; and MANN, Respondent.—An action of damages. Judgment confirmed, Monk, J., dissenting.

Erratum.—In the case of *Lavigne & Villars*, mentioned on p. 31, read "reversed" for "confirmed."

PRIVY COUNCIL.

Dec. 12th, 1877.

LAMBKIN v. SOUTH EASTERN R. R. Co.

Appeal to Privy Council—Interlocutory Judgment.

The verdict of a special jury awarded the plaintiff $7,000 damages for injuries sustained in a railway accident, and judgment was rendered against the defendants by the Superior Court, Montreal, in accordance with the verdict. This judgment being reversed and a new trial ordered by the Queen's Bench in appeal, the plaintiff moved for leave to appeal to the Judicial Committee of the Privy Council. The Q. B. rejected the application on the ground that the judgment being interlocutory was not susceptible of appeal.

The Judicial Committee of the Privy Council considered that though this was an interlocutory judgment, it was of such a nature that an appeal should be allowed, and, in the exercise of their discretion, granted leave to appeal.

Leave to appeal granted.

Doutre, Doutre, Robidoux, Hutchinson & Walker for the Petitioner Lambkin.

SUPERIOR COURT.

Montreal, Dec. 7th, 1877.

TASCHEREAU, H. E., J.

TATE v. TORRANCE et al.

Action for debt due to dissolved Partnership—Signification—1571 C. C.

The plaintiff brought action for a debt due to a firm of Tate & Co., of which he had been a partner. By the deed of dissolution it was agreed that the business of the firm should be carried on by plaintiff and Charles Tate, to whom the retiring partner, Grant, transferred his rights. Charles Tate died and his rights were represented by the plaintiff.

Held, that it was not necessary that the deed of dissolution by which Grant transferred his rights to the other partners, should be signified to defendants before suit, such deed of dissolution of partnership and transfer not falling within the category of transfers or sales of debts or rights of action, which must be signified before action brought against third parties.

Demurrer dismissed.

Abbott, Tait, Wotherspoon & Abbott for plaintiff.

G. B. Cramp for defendants.

Montreal, Dec. 19, 1877.

PAPINEAU, J.

HOTTE v. CURRIE; MCDONALD, T.S.; and GORDON et al., intervening.

Capias—Charge of Secretion—Name of Informant—Loss of Affidavit.

Held, that in an affidavit for *capias* under Art. 798 C.C.P., declaring that the defendant has secreted, or is about immediately to secrete his property and effects, it is not necessary that the deponent should give the name of the person who informed him of the facts alleged in the affidavit, nor the special reasons which lead him to believe that the facts are true.

2. Where the affidavit on which a *capias* issued has disappeared from the record, the *capias* cannot be held good, though the contestation by defendant is manifestly unfounded.

Ouimet & Co. for plaintiff.

Trenholme & Maclaren for defendant.

Stephens for intervening parties.

Montreal, Jan. 25, 1878.

DORION, J.

GLOBE MUTUAL INSURANCE CO. OF N. Y. v. SUN MUTUAL INS. CO.

Security for Costs—Foreign Company.

Held, that a foreign Insurance Company which has a place of business in the Province of Quebec is not bound to give security for costs. [But see 21 Jurist, p. 224.—Ed. L. N.]

COURT OF QUEEN'S BENCH.

[In Chambers.]

Montreal, Jan. 22, 1878.

RAMSAY, J.

Ex parte GAUVREAU, Petr.

Habeas Corpus in Civil Matters.

The petitioner was imprisoned for failing as *gardien* to produce goods seized, and he asked for *habeas corpus* in order to be liberated as he was a minor.

The Judge refused the application, as there was no notice to the party interested in maintaining the *contrainte*; and as the affidavit, which only contained a general reference to the allegations of the petition, was insufficient, inasmuch as it did not disclose any reasonable or probable ground for the issue of the writ. The petitioner was allowed to withdraw his application, and it was intimated that if it were to be renewed, which perhaps might not be necessary in the interests of the petitioner in view of Art. 792, C. C. P.; the applicant should be prepared to meet the difficulty arising from section 25 of our Habeas Corpus Act, C. S. L. C., cap. 95.

CIRCUIT COURT.

Sherbrooke, Jan. 12, 1878.

DOHERTY, J.

CLEMENT v. HEATH, and BACON, petitioner.

Jurisdiction—Insolvent Act—Compulsory Liquidation.

Held, that the Circuit Court has no jurisdiction to interfere with a seizure under a writ of attachment in insolvency, though it appeared that the writ issued against a non-trader, and the same goods were under seizure in a suit in the Circuit Court.

The action was commenced by *arrêt simple*, and judgment went in favor of plaintiff for $60. A *vend. ex.* having issued, proceedings thereunder were stopped by an order of the Judge on the petition of Bacon, assignee, who alleged that previous to the issuing of the *vend. ex.* a writ of attachment in compulsory liquidation had been issued, and the property of the defendant had thereby been vested in him.

The plaintiff contested the petition and order on the ground that the defendant was not a trader.

DOHERTY, J., said the defendant was not a trader, and manifestly not entitled to the benefit of the Insolvent Act. But the Circuit Court could not decide this question. The writ of attachment divested the defendant of all his property and vested it in the assignee, and the Circuit Court had no power to set aside the writ. The plaintiff must intervene, and contest the point in the Insolvent Court.

Contestation dismissed.

Brooks, Camirand & Hurd for plaintiffs.

W. White, counsel for plaintiff.

Ives, Brown & Merry for assignee.

—The Judge of the Sheffield (England) County Court has no confidence in the veracity of woman. On a recent occasion he stated from the Bench that there is ten times more perjury committed by women in his court than by men, and he added that women do not seem to care in the least what they swear to.

COMMUNICATIONS.

THE CASE OF MR. O'FARRELL.

To the Editor of THE LEGAL NEWS:

SIR,—In the case of *O'Farrell & Brassard* a motion was made immediately after the rendering of the judgment of the Court of Queen's Bench, referred to in your leading article of the 19th instant, for leave to appeal to Her Majesty in her Privy Council from that judgment. Under such circumstances a simple report of the case or the publication of Mr. Justice Cross' notes could have required no comment, but the prominence given to the decision and the approving remarks made in reference to it in a publication devoted no doubt to the interests and welfare of the profession, cannot be allowed to pass unnoticed. If, on the one hand, as you remark, "punishments are not to be awarded for indefinite offences, and, especially, at the pleasure of the majority of a fluctuating and almost irresponsible tribunal," it seems, on the other, that the exercise of some disciplinary power is essential to the existence of such a body as the Bar. You add further on, that "a majority of a "council might be found in particular circum-"stances voting in a very whimsical manner, "and it is wise to place some restraint upon "their action by compelling them to define the "acts which they intend to punish as crimes."

The latter portion of this sentence resumes all the reasoning of Mr. Cross' judgment.

At first sight it seems difficult to conceive how even so learned a body as the Bar of this Province could frame a set of by-laws containing a complete enumeration of actions derogatory to the honour of the body or constituting a breach of its discipline. A permanent board might have been constituted when the charter was granted, it might have defined ever since and go on defining for another century before its labours would be half complete, and then the ever varying sense of honour would, in course of time, make that wrong which was right at the beginning, and *vice versa*. That the law can never have intended anything so absurd is quite manifest. But we may be told the Bar might adopt by-laws in general terms, founded on the incompatibility of certain callings with the profession, on well known and generally received rules of social intercourse and moral deportment, &c. Well, and suppose they had, would not Mr. Justice Cross' argument still hold good, and might not the party accused, in almost every particular case, complain that the act charged did not fall within the by-law as well as the statute?

We are thus left to two necessary conclusions.

1st. The charter cannot have intended to impose upon the Bar the task of defining all acts derogatory to its honour and constituting breaches of its discipline, for such would be simply impossible.

2nd. Nor could it have intended that there should be a set of rules in general terms, for such could have added nothing to the Act of Incorporation itself.

If from these considerations we turn to the statute, we find, with no little surprise, that the terms of section 3, relied upon in the judgment, are simply permissive, "the Corporation *may* make all such by-laws, &c," and nowhere in the law is to be found the *obligation* imposed upon the Bar of adopting by-laws at all. It is quite different with regard to the powers conferred upon Councils of sections, and at section 10 of the Act the expressions are declaratory and absolute. The words are as follows:—

"The council of each section *shall*, in and "with regard to such section, have power,—

"First. For the maintenance of the discipline "and honour of the body, and, as the importance "of the case requires, to pronounce, through the "Bâtonnier, a censure or reprimand against any "member guilty of any breach of discipline, or "of any action derogatory to the honour of the "Bar," &c.

It is well to remark that in this section no mention is made of by-laws. The law itself defines that which the powers it confers are intended to repress, and without any reference whatever to any further definition by by-law or otherwise. There is nothing obscure in the words used, they could not be more plain. A discretionary power is vested by law in a body deemed worthy of exercising it, and it is painful to see those who have risen from its ranks to places of honour and emolument go out of their way to interfere with such a privilege. For it seems quite clear that in dealing with

members under section 10 the councils only exercise a corporate franchise and how prohibition can be used as a means of preventing a corporation from performing corporate acts it is indeed difficult to conceive. Such however is one of the "singular features" of this judgment of the Court of Queen's Bench. There are one or two others very well worth considering, but it would be scarcely fair to trespass any further, for the present, upon your valuable space, and hoping for the same indulgence on another occasion,

I beg to remain,
Respectfully yours,
Quebec, Jan. 22nd, 1878. QUEBEC.

EN DELIBÉRE.

To the Editor of THE LEGAL NEWS:

SIR,—One of the evils of our present system is the long *délibéré* which takes place in all cases, whether important or not. In the Queen's Bench (appeal side) this is always the case. After argument a case must go *en délibéré* for three months, perhaps for six months. This has become a practice (chronic). It operates injustice in many respects to suitors and to the profession. If cases were judged rapidly the roll would not be so encumbered with cases, often taken to appeal merely to obtain delay—to defeat the ends of justice in fact. These delays only encourage appeals. The men on the bench should be ready men. I presume they are so. Deliberations among them should be when the points are fresh, if any point has been raised worthy of discussion. After each term the members of the bench scatter, and the records are expected to be ubiquitous, or to go travelling in a tin box about the country. This is *en délibéré!*

Speedy justice is expected from a tribunal sitting in appeal. The bar might make the duty of the bench easier. Laboured factums should be abolished: cases made to assume more the form of a mathematical proposition. Cases should be threshed out and reduced in bulk. Long-winded arguments (beating the air) should be given up. The duty of the bar is as ministers of justice to assist the courts in the administration of justice, not to embarrass by creating difficulties which do not exist.

Let us have in the Court of Appeals speedy justice. Let bench and bar work together to promote this end, and there would be fewer appeals, and less work and more play. After each term the Court should adjourn to a near day to render judgments in cases—as a *rule*, not as a variety.

DESPATCH.

CURRENT EVENTS

CANADA.

SUPREME COURT.—The Supreme Court was occupied from January 21st, the day of opening, to the 24th inclusive in hearing the appeal in the case of *James Somerville et al.*, Appellants, and *The Hon. R. Laflamme*, Minister of Justice, Respondent. The judgment appealed from, rendered by Dorion, J., July 7th, 1877, dismissed the election petition filed by Somerville and others, contesting the return of the Hon. Mr. Laflamme to the House of Commons for the County of Jacques Cartier. The case presented little of interest in a legal point of view, with the exception of some rulings at the trial on questions of the admissibility of testimony. The evidence is excessively voluminous, being directed both to the unseating and the disqualification of the sitting member, but the petitioners were unsuccessful on both points in the Court below. As long as elections are fought and contested with the extreme pertinacity which at present distinguishes them in Canada, the time of the Supreme Court is likely to be monopolized to a considerable extent by the hearing of election appeals.

On the 28th January judgment was given in the case of *The Queen* v. *Severn*. The question was as to the jurisdiction of the Legislature of Ontario to impose a license fee on brewers doing a wholesale business and licensed under the Revenue Acts of Canada. The Supreme Court has reversed the judgment of the Court below, and holds that the local legislature has no power to impose a license fee on brewers, such taxation not falling within sub-section 9 of section 92, B. N. A. Act.

ONTARIO.

FUSION OF LAW AND EQUITY.—A discussion of considerable interest is in progress in Ontario on the subject of the fusion of law and equity.

A writer in the *Canada Law Journal*, over the signature "Q. C.," says :—

"No matter whether it would or would not have been originally better to have left common law and chancery entirely separate, we have now gone too far with the fusion of them to get back to that position. We must therefore go on, and *thoroughly* fuse them by making all our Superior Courts which are not Courts of Appeal, both Courts of Law and Courts of Equity, to all intents and purposes. The sooner we do so the better for ourselves. Until we do, it is impossible to have any settled intelligible system of practice or pleading in any court; whereas, as soon as we shall do so, all will immediately be settled and become certain and intelligible, and we will not be compelled, as we now are, without any remuneration, to learn and keep ourselves up in two dissimilar antagonistic systems of practice, pleading and procedure, instead of only one system. Secondly, because, if effected upon proper principles, it will not only greatly improve the usefulness, practice and procedure of all the courts, but will also, in the only way possible without abolishing the Court of Chancery, get its practice and procedure sufficiently in harmony with modern ideas to make it work satisfactorily, and do away with unnecessary delays, complications, technical obstructions of justice, and a host of petty expenses impossible to be got rid of while its present system is retained. I think, however, in carrying out what 'A City Solicitor' has recommended, it would be well, in order to get rid of the injurious effects of the inveterate prejudices which usually cling to old names, when all the courts are fused, to abolish all their old names and re-name them. This would fix in the minds of their judges that their respective courts no longer differ from one another in any respect. It would also be well to make the act come into force upon a future day to be named, which day should be far enough off to enable all concerned to be able to study the new practice and procedure the act would necessitate before it should come into effect. The act should also provide that a sufficient time before that day, the judges, or chief judges at all events, of all those courts, or a majority of them, should devise a new practice and procedure to be embodied in rules of court, which should apply always until changed, and equally to all the courts, and that no court should have any rule at any time which did not equally regulate every other Superior Court not being a Court of Appeal."

The carrying out of this reform will make the Ontario system resemble more closely that which prevails in the Province of Quebec. Many of the benefits hoped to be obtained in Ontario by the change, have long been enjoyed in the sister province.

QUEBEC.

WRITS OF INJUNCTION. — A constitutional point was raised in the Quebec Legislative Assembly, January 25th, on the second reading of Mr. Angers' Bill providing for the issue of writs of injunction in certain cases. Among the cases in which the injunction may issue is the following :—To prevent and hinder any bank or other corporation or joint stock company from registering the transfer of shares in such corporation or company, when such shares belong to minors, interdicted persons, married women not separated as to property, or unauthorized, or persons legally incapacitated, until the Superior Court shall have adjudicated on the right of property in such shares or stock, or before such Court shall have granted permission for the transfer of such shares. The question was raised by Mr. Bachand whether it was competent for the local Legislature to legislate as here proposed, inasmuch as banking is one of the subjects exclusively pertaining to the jurisdiction of the federal Parliament. Mr. Angers met this point by remarking that the incorporation of banks and their right to issue paper money are derived from the Federal authority, but questions of administration under the incorporation, such as those in relation to which this writ of injunction is to apply, are matters of civil rights and property, and clearly belong to the local authorities. All questions relating to property belong to the Provincial Legislature.

UNITED STATES.

AUTHORITY OF REVENUE OFFICIALS.—In the case of the *United States* v. *Mann*, it has just been decided by the Supreme Court of the United States that a bank officer was justified

in refusing to permit a revenue collector to come into the bank and look over the checks which had been paid in, to see if he could find any which had no stamps on.

THE BANKRUPTCY LAW.—There is the same dissatisfaction in the United States with respect to the bankruptcy law that exists in Canada. The *Albany Law Journal* remarks: "There is no disagreement in regard to the proposition that it is in many features not what it ought to be, and that its operation is not productive of as much good as could be wished; but as to the remedy for these things there is a want of harmony. We believe, however, that outside of a small body of interested persons, there are very few, either lawyers or business men, who would mourn over the absolute repeal of the law."

FEES OF PHYSICIANS CALLED TO TESTIFY AS EXPERTS.—The Supreme Court of Alabama has decided in the case of *Ex parte Dement*, 6 Cent. L. J. 11, that a physician, like any other person, may be called upon to testify as an expert in a judicial investigation, whether it be of a civil or criminal nature, without being paid for his testimony as for a professional opinion, and upon refusal to testify may be punished as for a contempt. This seems hard upon professional men, but the *Albany Law Journal* remarks that "the conclusion is supported by authority. In *Collins* v. *Godefroy*, 1 B. & Ad. 590, plaintiff, an attorney, who had attended six days on subpœna as a witness for defendant, to testify in respect to the negligence and unskilfulness of another attorney, sued for a fee of six guineas, which there was evidence that defendant had agreed to pay him. The Court of King's Bench said: 'If it be a duty imposed by law upon a party regularly subpœnaed to attend from time to time and give his evidence, then a promise to give him any remuneration for loss of time incurred in such attendance, is a promise without consideration. We think such a duty is imposed by law, and that a party cannot maintain an action for compensation for loss of time in attending trial as a witness.' But see *Webb* v. *Page*, 1 Carr. & Kirw. 23, where it is said: 'There is a distinction between the case of a man who sees a fact and is called to prove it in a court of justice, and that of a man who is selected by a party to give his opinion about a matter with which he is peculiarly conversant from the nature of his employment in life. The former is bound as a matter of public duty to speak to the fact which happens to fall within his knowledge. Without such testimony the course of justice must be stopped. The latter is under no such obligation. There is no necessity for his evidence, and the party who selects him must pay him. And in *Matter of Roelker*, Sprague's Decis. 276, the Court says: When a person has knowledge of any fact, pertinent to an issue to be tried, he may be compelled to attend as a witness. In this all stand upon equal ground. But to compel a person to attend merely because he is accomplished in a particular science, art or profession, would subject the same individual to be called upon in every cause in which any question in his department of knowledge is to be solved.' See, also, *Lonergon* v. *Royal Exch. Ins. Co.*, 7 Bing. 731; Elwell Med. Juris. 592; Ordronaux Juris. of Med. § 113; *Lyon* v. *Wilkes*, 1 Cow. 591. In a paper on the 'Testimony of Experts,' read before the Academy of Arts and Sciences, the late Professor Washburn said: 'Nor do I understand that a party has a right to call upon a man of skill or science to exercise these in the trial of an ordinary question involving the right to property, or damages of a personal character, by simply summoning him, and tendering him the ordinary fees of a witness in court.'"

EXECUTIONS IN THE UNITED STATES.—During the past year 83 men were hanged in the United States. One woman, Louisa Lawson, of Virginia, was sentenced to death, but the sentence was commuted by the Governor. Of the whole number of men who suffered the extreme penalty of the law, 47 were whites, 34 were blacks or mulattoes, one was an Indian and one a Chinaman. Several persons were lynched, generally for crimes which would have ensured their legal execution, but of such cases no statistics are kept. The executions were thus distributed among the several States and Territories: Pennsylvania, 16; South Carolina, 12; North Carolina and California, 5 each; Missouri, Maryland, Georgia and Virginia, 4 each; New York, Louisiana, Arkansas, Nebraska and Tennessee, 3 each; Mississippi and Ohio, 2 each; New Jersey, New Hampshire, Delaware, Alabama, Kentucky, Texas, Utah, Dekotah, Oregon and Wyoming, 1 each.

NEW PUBLICATIONS.

THE PRETENSIONS EXPOSED of Messrs. Lang, Burnett & Co. to be "The Presbyterian Church of Canada in connection with the Church of Scotland," by Rev. Robert Campbell, M.A.: Montreal, W. Drysdale & Co.

This is an ably written pamphlet, intended to refute the pretensions of those members of the Presbyterian Church of Canada in connection with the Church of Scotland who remained out of the Union, to be considered the representatives of the old body, and entitled to bear the old name. We have no doubt of the correctness of Mr. Campbell's position, though we do not assent to all his reasons, and some of the points relied on appear to be somewhat narrow and technical to properly enter into a controversy of this character. We may add that the pamphlet contains some very strong expressions which we have no doubt the author considered himself fully justified in using, but which grate somewhat upon the ear of the dispassionate reader. It is true that equal or greater warmth has been exhibited on the other side, but the case of Mr. Campbell is strong enough to dispense with any aid of that kind.

RECENT ENGLISH DECISIONS.

Insurance.—1. Under a policy on "commission and profit" on "ship and ships, steamer and steamers," occurred the clause: "Warranted free from all average, and without benefit of salvage, but to pay loss on such part as shall not arrive." The commission and profit referred to was that on goods shipped on a British ship. By 19 Geo. II. c. 27, § 1, it is provided that no assurance shall be made on any ship belonging to His Majesty or any of his subjects, or on any goods on such ship, interest or no interest, or without benefit of salvage to the assurer; and every such assurance shall be null and void. *Held*, that under this Statute the assured on the above policy could recover neither for the loss nor the premium paid.—*Allkins et al.* v. *Jupe*, 2 C. P. D. 375.

2. B. & Co., wharfingers, effected insurance with the plaintiff and the defendant company, by "floating" policies, on grain and seed belonging to R. & Co. and stored with B. & Co. R. & Co. also effected insurance on the same property with the plaintiff company. All the policies contained this condition: "If at the time of any loss or damage by fire there be any other subsisting insurance or insurances, whether effected by the insured or by any other person, this company shall not be liable to pay or contribute more than its rateable proportion of such loss or damage." There were also the usual conditions of average in all the policies. B. & Co., by the custom of London, were responsible to the owners for the goods as though common carriers. By a fire on their wharf, grain belonging to R. & Co., among other grain, was destroyed. B. & Co. were paid in full on their policies, and this suit was brought to fix the liabilities of the companies among themselves. *Held*, that the underwriters on the policies procured by B. & Co. were alone liable; those on the policies procured by R. & Co. were not liable to contribute.—*North British Mercantile Insurance Co.* v. *London, Liverpool & Globe Insurance Co.*, 5 Ch. D. 569.

3. The defendant was underwriter for £1200 on plaintiff's ship, valued in the policy at £2,600. The cost of repairing certain damage by sea was, after deducting one third new for old and some particular average charges, £3,178 11s. 7d., and the salvage and general average charges paid by plaintiff were £519. The agreed value of the ship when insured was £3,000, when damaged, £998, after repairs, £7,000, which last sum was, even after deducting the cost of certain new work not charged against the underwriter, much more than the original value of the ship. *Held*, that the liability of the underwriter was to be measured by the cost of repairs, even though thereby he might be liable for more than a total loss with benefit of salvage. *Lohre* v. *Aitchison*, 2 Q. B. D. 501.

Jurisdiction.—The Admiralty Jurisdiction Act (24 Vict. c. 10, § 7) enacts that "the High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship." The action was brought by the widow of a mariner killed in the collision between the steamer *Strathclyde* and the German ship *Franconia* in the Straits of Dover, and for which the ship was to blame. *Held*, on appeal, that the Admiralty Court had jurisdiction in a case of

damage for loss of life, under the Act.—*The Franconia*, 2 P. D. 163.

Landlord and Tenant.—1. The plaintiffs let a house to the defendant for seven years from Lady Day, 1868. Defendant entered and occupied till the autumn of 1868, when he left for America, leaving the key with an agent with orders to dispose of the premises, if possible, or to make the best terms he could with the plaintiffs for a surrender. The agent gave up the keys to the plaintiffs in December, 1868. At the beginning of 1869, notices that the house was to let appeared in the windows, by plaintiffs' authority, and they attempted to let the house; and, during 1870, some of the plaintiffs' workmen, in their business, occupied the house a part of the time. In March, 1872, the house was let, and plaintiffs brought action for the rent up to that time. *Held*, that there was no evidence of a surrender of the defendant's lease by operation of law.—*Oastler* v. *Henderson*, 2 Q. B. D. 575.

2. The defendant let F. a house under a lease by which F. was to do all the repairs, with certain exceptions. The house was, at the time of the lease, in good repair, and the lease contained no stipulation that defendant should do any repairs. During the tenancy, owing to a portion of the house included in the exceptions being out of repair, a chimney-pot fell on the head of the plaintiff, who was a servant of F., and injured him. *Held*, that he could not recover of the defendant.—*Nelson* v. *The Liverpool Brewery Co.*, 2 C. P. D. 311.

Legacy.—1. A testator left a fund in trust to keep in repair a certain tomb, and when the surplus income reached £25, to pay the balance above £20, from time to time, for the relief of three poor persons in each of the parishes of C. and S. *Held*, that, as the provision about the tomb was void, the whole income should be applied to the second object.—*In re Williams*, 5 Ch. D. 735.

2. A testator, after certain specific bequests, proceeded: "I direct that my debts, including a debt of £300 owing from me to my daughter Jane, be paid." He owed his daughter Jane only £150. *Held*, that an intention to make Jane a bequest could not be understood, and that she was not entitled to the other £150.—*Wilson* v. *Morley*, 5 Ch. D. 776.

RECENT UNITED STATES DECISIONS.

Bills and Notes.—A written promise was given, to pay a sum in six months, "or before, if made out of the sale of" a certain article. *Held*, that this was a good promissory note, payable absolutely in six months.—*Walker* v. *Woollen*, 54 Ind. 164.

Burial.—The by-laws of a cemetery corporation required a written permit from the secretary for interments. The officers of the corporation resolved to refuse permits for the burial of colored persons. *Held*, that such refusal was unreasonable, and void as against persons who were already owners of lots in the cemetery.—*Mount Moriah Cemetery Association* v. *Commonwealth*, 81 Penn. St. 235.

Carrier.—The owners of a sleeping car, who receive payment for particular berths on each trip from passengers who have paid their fare on the railroad, no part of which fare goes to such owners, are not liable, either as carriers or inn-keepers, for money stolen from passengers on their car.—*Pullman Palace Car Co.* v. *Smith*, 73 Ill. 360.

2. A railroad is not liable as carrier for a passenger's baggage after it has arrived at its destination, and he has had a reasonable time to take it away; and such time is not extended by the fact that he is delayed on the way by illness.—*Chicago, Rock Island, & Pacific R.R. Co.* v. *Boyce*, 73 Ill. 510.

3. Carriers received goods for transportation, knowing them to be the property of the consignor; but without his knowledge, and without transporting them, delivered them at the place where they received them, on the consignee's order, to a third person. *Held*, that they were liable to the consignor.—*Southern Express Co.* v. *Dickson*, 94 U. S. 549.

Conflict of Laws.—1. A chattel mortgage, duly recorded as required by the law of the State where it is made, gives the mortgagee a good title as against a *bona fide* purchaser from the mortgagor in another State, whither the mortgagor has removed the chattels, and where the mortgage is not recorded.—*Hall* v. *Pillow*, 31 Ark. 32.

2. An anti-nuptial contract was made in Switzerland, where the parties lived and in-

tended to remain. Afterwards they came to Illinois, where the husband acquired property, and the wife died. *Held*, that her heirs could claim nothing under the contract.—*Besse* v. *Pellochoux*, 73 Ill. 285.

3. By the law of New Brunswick, usurious contracts are utterly void, and the lender forfeits principal and interest. A promissory note, bearing lawful interest, was made in that Province, and secured by mortgage of land in Maine. After the money was due, illegal interest was exacted for forbearance to require payment. In a suit to foreclose, *held*, that the mortgagor could not avoid the mortgage, nor reduce the amount due on it by setting off the extra interest paid.—*Lindsay* v. *Hill*, 66 Me. 212.

Consideration.—A gratuitous subscription, to promote the objects for which a corporation is established, cannot be enforced unless the promisee has, in reliance on the promise sued on, done something, or incurred some liability; and it is not sufficient that others were led to subscribe by the subscription sought to be enforced.—*Cottage Street Church* v. *Kendall*, 121 Mass. 528. See *Low* v. *Foss*, ib. 531.

Corporation.—1. Where a new corporation is formed by consolidating several existing corporations, "with all the powers, privileges, and immunities of each," it has only such powers, privileges, and immunities as were common to all, and not such as some had and others had not.—*State* v. *Maine Central R. R. Co.*, 66 Me. 488.

2. A company was incorporated to protect property from fire. *Held*, that the property of the company was held to charitable uses.—*Bethlehem* v. *Perseverance Fire Co.*, 81 Penn. St. 445.

3. The new Constitution of Pennsylvania provides that at corporation elections of directors or managers, each member may cast all his votes for one candidate or distribute them among several candidates, as he may prefer; which is construed by the Courts to mean that any stockholder may cast all the votes which his stock represents, multiplied by the number of directors to be chosen, for a single candidate, if he will. *Held*, that this provision did not apply to a corporation whose charter, granted before the constitution, provided that each share should entitle the holder to one vote.—*Hays* v. *Commonwealth*, 82 Penn. St. 518.

4. An act of the legislature of South Carolina passed during the war, incorporating a company for the purpose of running the blockade, *held*, to be wholly unlawful and void, and to confer no power on the company to sue for any cause of action.—*Chicora Co.* v. *Crews*, 6 S. C. 243.

Damages.—1. Where one is bound in a certain sum not to carry on a trade within certain limits of time and place, the sum named is, as a rule, liquated damages and not a penalty.—*Holbrook* v. *Tobey*, 66 Me. 410.

2. Action against a carrier for breach of his contract to carry salt by water to a market. *Held*, that the measure of damages was the excess of the value of the salt at the market at the time when it should have arrived, beyond its value at the point of departure and the expense of transportation as agreed; and that the extra expense of transporting it by land was not recoverable.—*Ward's Central & Pacific Lake Co.* v. *Elkins*, 34 Mich. 439.

3. Exemplary damages cannot be recovered against a railroad corporation for the tort of its agent, unless the corporation ratified the wrongful act, or was negligent in having such an agent.—*Hays* v. *Houston & Gt. Northern R.R. Co.*, 46 Tex. 272.

Deed.—A mortgage of a married woman's land named her alone as grantor, and purported to be executed by her alone; but was in fact signed, sealed, and acknowledged by her husband also. *Held*, that it was his deed as well as hers, and so valid.—*Thompson* v. *Lovrein*, 82 Penn. St. 432.

Demurrer.—Defects in a writ or its return cannot be taken advantage of on demurrer.—*Smith* v. *Dexter*, 121 Mass. 597.

GENERAL NOTES.

—The London *Standard* thus speaks of the bar in Russia:—"The bar is far behind in its standard of professional honor and dignity. A system obtains of bargaining with the client for payment by results. Indeed, the bar in Russia is mercenary and rapacious. The barrister regulates his fee in much the same way as an advertising quack doctor would do, and carries on his work in the lowest commercial spirit."