The Legal News.

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PRESCRIPTION.

In our last issue we referred to the case of *Lamontagne & Dufresne*, in which apparently it was held by the Court of Queen's Bench that the short prescriptions must be pleaded.

We come now to the case of *Breakey* v. *Carter*.

This case came before Mr. Justice Casault in 1881 on demurrer and law issues, and the judgment is reported in 7 Q. L. R. 286. The final judgment was rendered by Mr. Justice Stuart on the 19th April, 1883, and was in the following terms:—

"The Court etc.....

"Considering that the plaintiff (Wm. Breakey) hath proved the material allegations of his declaration, and more particularly that he is the lawful owner of the lands described in his declaration, and that the defendant John Breakey, and Henry King were merchants and co-partners in the business of sawing lumber at a mill on the Chaudière River, in the parish of St. Jean Chrysostôme, in this district, called and known as the Breakey mill; that, being so engaged in manufacturing lumber, the said Henry King and John Breakey did, in the year 1873, construct a dam in and across the said river Chaudière, by means of which the waters of that river, during the spring and autumn of each year, were directed on and upon the said lands of the plaintiff, and submerged about twenty acres of the same, and that the said twenty acres became by this means and have continued to be, and still are adapted for a pond or place fitting in a high degree to hold saw logs in quantities, from 30,000 to 60,000, from all danger of being carried down into the river St. Lawrence, during the high waters of that river;

"Considering that the said firm of Henry King & Co., composed as aforesaid, having thus made a safe shelter for the saw logs floated down the said river, used and occupied the same for the safe keeping of their saw logs, from the making of the said dam, in 1873, to the end of the year 1877, when the said property called Breakey Mills was duly sold by licitation;

"Considering that the said Henry King departed this life at the end of the year 1874, leaving his wife, the defendant Louisa Salmon Carter, and the several children, issue of his marriage with her, of which she is tutrix, representing his succession;

"Considering that the defendants continued after the decease of the said Henry King, in the occupation of the said Breakey Mills up to the time when the said mills were so sold by licitation as aforesaid, and were engaged in liquidating and winding up the affairs of the said partnership of Henry King & Co., which had existed between the said Henry King and John Breakey, and that during all the time of such liquidation, they, the said defendants, used and occupied the said property of the plaintiff, for the safe keeping of their saw logs in the same manner and extent as the said Henry King & Co. had used the same;

"Considering that the plaintiff by proceeding against the defendants, for the said use and occupation of the same, have waived any right of action for damages, if any was caused to him, the plaintiff, by the construction of the said dam, by thereby submerging the said lands;

"Considering that the plaintiff hath proved, by persons having experience in the trade and in the floating of saw logs down the Chaudière river, the value of the use and occupation of plaintiff's said property for the safe keeping of saw logs, to be $400 a year, and that said Henry King & Co. and defendants, have together so used the said lands for four years, the Court doth adjudge and condemn the defendants jointly and severally, to pay for the causes aforesaid, to the said plaintiff, the sum of $1600, with interest from the 11th Oct. 1880, the whole with costs, *distraits*, etc."

The defendant appealed from this judgment, Messrs. Bossé & Languedoc for appellant. On the question of prescription, appellant's counsel submitted the following argument:—

"Qu'on tourne et qu'on retourne la demande de l'intimé sur tous les sens, elle se

réduira toujours à ceci: vous avez submergé mon immeuble, et vous m'avez privé de la jouissance que j'avais droit d'en avoir, pendant un certain temps: indemnisez-moi. Qu'est ce que la jouissance d'une chose, sinon la faculté d'en retirer et de s'en approprier les fruits naturels ou civils? Cette demande n'est donc qu'une demande d'une somme d'argent, représentant les fruits naturels du terrain du demandeur qu'il aurait pu produire, si le fait imputé à Henry King & Co. ne s'y fût opposé. Il s'en suit que l'art. 2250, C.C., s'y applique, et que la demande est prescrite par cinq années. Or il est constant par la preuve que ce n'est qu'en 1874 que Henry King & Co. se sont servi de la chaussée, que la société a été dissoute le 24 décembre de la même année, et il n'y a pas au dossier un mot de preuve pour rendre l'appelante responsable de ce qui a pu avoir lieu après la mort de son mari. De 1874 à 1880 il y a un espace de temps plus que suffisant pour que l'article 2250 prenne effet, et pour enlever à l'intimé tout recours pour ce qui a pu précéder le 8 oct. 1875. N'oublions pas que l'article 2267 statue que, dans ce cas, la créance est absolument éteinte et que nulle action ne peut être reçue."

Messrs. Langlois & Joly, for respondent, do not refer in their factum to the prescription of five years, which was not pleaded, but only to the prescription of two years as for a *quasi délit*, which was pleaded. This plea was overruled by the Supreme Court, and need not be further noticed at present.

In a "Supplementary case," however, Messrs. Langlois & Joly submitted the following argument:—

"By her factum in this Court the appellant has laid great stress upon a point not raised by the pleadings, nor even mooted in the Court below, viz: a prescription of five years against the respondent's claim, as for a demand for annual rent under article 2250 of the Civil Code.

"The demand is two-fold: 1st, for damages which still continue, and 2nd, for use and occupation, not for any stipulated term, but extending over several years.

"Without at all admitting that the present claim can be considered as one for annual rent, or that the prescription under art. 2250 is applicable, respondent begs to refer to the arbitration bond entered into between the parties by notarial deed, 31st August, 1877, whereby, after reciting the present claim, they agreed to submit the settlement of it to *amiables compositeurs*, and in the most formal way bound themselves to abide by their decision. The parties, by that deed, certainly interrupted any prescription which might then have commenced to run, and it is only from that time that any new prescription could take its date of beginning.

"Renunciation of prescription is express or tacit. C.C. 2185.

"Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs. C.C. 2227; *Delisle* v. *McGinnis*, 4 L.C.J. 145; *Walker* v. *Sweet*, 21 L.C.J. 29."

The following opinion was delivered by Ramsay, J., one of the majority of the Court:—

RAMSAY, J.:—

"This is an appeal from a judgment condemning appellant, along with John Breakey, a brother of respondent, to pay jointly and severally to respondent a sum of $1600 for the use and occupation of a piece of land flooded by a dam built by defendants, and on which they boomed logs.

"The appellant's first point is that for a large part of the demand there is a prescription of five years which, though not pleaded, should be taken notice of, and applied by the Court. The argument is this. By Article 2188, C. C., it is declared that the Court cannot of its own motion supply the defence resulting from prescription, except in cases where 'the right of action is denied'. Therefore it is said that the Court must of its own motion supply the defence resulting from such prescription. Again, it is said that the present action is under Article 2250, C. C., and that Article 2250 is one of those cases in which after the lapse of five years the right of action is denied (2267, C. C.). On the part of the appellant the French version was cited. It differs a little from the English version as it says, 'nulle action ne peut être recue', while the

other version says, 'no action can be maintained'. The difference of these texts is important, but I think we are obliged to take the English version. In the first place the article is new law, and totally at variance with our common law, and therefore the innovation should be as restrained as possible. In the next place the idea of limitations comes from the English law, and there the action is not denied. It is not maintained if pleaded. This is the view which has always been taken here since the Code. It was so held by this Court in *Lamontagne & Dufresne et al.*, Sept. 1874. And a similar opinion was expressed by Aylwin and Badgley, JJ., in *Wilson & Demers*, 2 L. C. L. J. 251. And we have invariably refused to reject on demurrer an action taken after the prescription accomplished.

"We have held repeatedly that under the Chapter 51 C. S. L. C. the right to proceed by *expertise* does not divest the Courts of their jurisdiction. But at any rate the action does not fall within the Chapter of the C. S. L. C., as it has been dealt with by the Court below, and as appellant does not insist on the point, we need not follow it further. We may therefore turn to the evidence in support of the action.

"The demand of plaintiff is peculiar. He complains that defendants have damaged his property, and claims damages for this, and in the same breath he asks for rent far beyond the value of the property for ordinary purposes, owing to the use to which this objectionable dam allows the property to be turned. Very naturally the Court below rejected the damages. It is evident that the plaintiff could not be indemnified twice, once by way of rent and once by way of damages. Having reduced the indemnity to rent, it becomes a question as to what is a fair rent where none has been stipulated. Plaintiff seems to think the rent should be fixed on the special use it was to defendants. It strikes me that this is a totally false basis of indemnity, as false for indemnity for rent, as if it were attempted to be made the indemnity for damages. If that were the true measure of indemnity, then by parity of reasoning we should have to say that the value of services rendered was to be estimated by the gain of the party served, and an apothecary might reasonably ask any price he pleased for a drug which had saved a patient's life.

"If there had been no other measure of damages proved, we might perhaps have been obliged to take that established by plaintiff, based on the price charged in a cove for keeping logs; but we have other evidence. It is proved that this land was estimated at a much lower rate, and we have other evidence that its total value is about half what has been given as a substitute for the rent. It seems to me that to confirm this judgment would be to plunder the appellant, and I am therefore to reduce the amount to $50 a year or $200 for the four years.

"The cross appeal should be dismissed with costs."

The judgment in appeal as recorded is as follows:—

"Considering that the respondent has proved that he has suffered damages by reason of the obstructions complained of in the declaration in this cause, and by the overflowing in consequence thereof of a portion of his property mentioned in the declaration in this cause, to the extent of $50 a year, and that when he brought his action, he was entitled to claim damages for a period of four years amounting in all to the sum of $200;

"And considering that there is error in the judgment rendered by the Superior Court on the 19th of April, 1883, by which the appellant has been condemned to pay to the respondent the sum of $1600 for damages claimed by the present action, instead of that of $200;

"This Court doth reverse the said judgment of the 19th of April, 1883;

"And proceeding to render the judgment which the Superior Court should have rendered;

"Doth condemn the appellant *ès nom et qualité* to pay to the respondent the said sum of $200, with interest from the 11th of October, 1880, and the costs incurred in the Court below, and doth condemn the re-

spondent to pay to the appellant the costs incurred on the present appeal."

Tessier and Cross, JJ., dissented from this judgment, but the judgment does not state whether the dissent applied only to the modification of amount, or whether it referred to any of the questions raised by the appeal.

In the Supreme Court, May 12, 1885, the judgment was again modified by increasing the amount of the annual value, and the Court also applied the five years' prescription, which had the effect of reducing the amount of the claim. The holding in Cassels' digest is given as follows:—

"4. Under art. 1608 of the C. C., the respondents were to be considered lessees and subject to all the rules respecting leases, and the annual value of their occupation should be considered the rent, none having been fixed by the parties. Therefore the appellant was subject to the prescription of five years under Art. 2250 C. C., and this prescription in virtue of Art. 2188 C. C., is one which the tribunals are bound to give effect to although not pleaded, and only set up for the first time in the respondent's factum in the Court of Queen's Bench."

The case has never been reported at length, but the principal opinion was delivered by Mr. Justice Fournier, and was as follows:—

FOURNIER, J.:—

"L'appelant réclame des intimés la somme de $3,500 pour l'usage et occupation d'une partie de sa terre, située le long de la rivière Chaudière, près du moulin à scie des intimés, sur laquelle ceux-ci ont, par la construction d'une chaussée, fait refluer l'eau de manière à faire de ce terrain une sorte d'étang qui leur est de la plus grande utilité pour y mettre leurs billots en sûreté contre les dangers des crues subites et considérables auxquelles est particulièrement sujette la rivière Chaudière.

"En outre de la dénégation générale les intimés ont invoqué contre cette action la prescription de deux ans établie par l'art. 2261, C. C., contre la réclamation pour dommages résultant des délits ou quasi-délits. Il ont prétendu aussi que l'appelant ne pouvai faire valoir sa réclamation que par le mode indiqué par le ch. 51 des Stats. Ref. B.-C.

"La Cour Supérieure et la Cour du Banc de la Reine ont été d'accord à rejeter ces deux moyens de défense. La première, fondée sur la prescription, a été renvoyée sur le principe que le ch. 51, reconnaissant à un propriétaire le droit dans l'exploitation des cours d'eau de faire des travaux qui peuvent avoir l'effet de faire refluer l'eau sur une propriété voisine, la construction d'une chaussée ayant cet effet ne peut être considéré comme un *quasi-délit*, mais plutôt comme l'exercice d'un droit de servitude qui donne à celui qui en souffre un recours en indemnité contre l'auteur du dommage. Pour cette raison l'art. 2261, C. C., ne peut être opposé au droit d'action de l'appelant. Quant au deuxième moyen, que ce n'était pas par une action ordinaire mais par les procédés d'expertise indiqués par le ch. 51 que l'appelant devait exercer son recours, la réponse à cette objection est que la jurisprudence établie depuis longtemps a reconnu que ce mode est facultatif et n'exclut pas le recours à l'action ordinaire.

"Sur la question d'estimation de la valeur de l'usage et occupation, les deux cours qui ont déjà prononcé sur cette cause ont différé d'opinion—la Cour Supérieure a porté cette estimation à la somme de $400 par année et la Cour du Banc de la Reine à $50.

"L'appelant a fait preuve par un nombre de témoins d'une haute respectabilité et d'une grande compétence. Ils ont varié depuis $300 à $500 dans les chiffres qu'ils ont donnés. Leur estimation est basée sur le fait que la propriété de l'appelant, située comme elle l'est à proximité des moulins des intimés et offrant à ceux-ci un réservoir où ils peuvent avec la plus grande facilité mettre des quantités considérables de billots à l'abri des dangers des crues subites de la rivière Chaudière, a, pour cette considération une très grande valeur. Les témoins de la défense ont basé leur estimation sur l'évaluation municipale et sur le revenu que pourrait donner ce terrain s'il était mis en apport comme propriété agricole, sans aucunement tenir compte de l'usage qui en est actuellement fait, et ils en ont porté le revenu à $50 par année. Ces témoins pour la plupart, évalua-

teurs de la municipalité ou cultivateurs, n'étaient pas en état d'estimer cette propriété autrement que comme propriété agricole. Ils ne prétendent pas non plus en donner la valeur comme faisant une partie indispensable d'un grand établissement industriel; tandis que c'est à ce dernier point de vue que les témoins de l'appelant ont principalement donné leur attention dans l'estimation qu'ils en ont faite. Ce sont presque tous de grands propriétaires de moulins et de manufacturiers de bois, en état de donner la juste valeur d'une propriété comme celle dont il s'agit. Quelques-uns d'entre eux paient même pour l'usage de propriété du même genre des prix aussi considérables que ceux qu'ils ont fixés pour la valeur de l'usage et occupation de celle de l'appelant. Ils ont, avec raison, pris comme base de cette estimation l'usage qui était actuellement fait de la propriété tandis que les autres se sont uniquement basés sur l'exploitation agricole qui pourrait en être faite. Si la propriété de l'appelant est susceptible d'être employée à des usages différents et plus ou moins lucratifs les uns que les autres, serait-il raisonnable de le forcer d'adopter le mode d'exploitation qui lui rapporterait le moins? Il a incontestablement le droit d'en tirer le meilleur parti possible. Si la propriété de l'appelant était en culture et qu'il s'agirait de l'exproprier, ne faudrait-il pas pour déterminer le montant de l'indemnité, prendre en considération les divers usages auxquels il serait possible de la mettre? La proximité du moulin des intimés et les grands avantages qu'elle offre comme réceptacle pour leurs billots, ne seraient-ils pas d'excellentes raisons pour faire voir qu'indépendamment de sa valeur agricole, cette propriété par suite de ces diverses circonstances se trouve avoir une valeur encore beaucoup plus considérable? D'après le principe énoncé par le Conseil Privé dans la cause de la *Cité de Montréal* v. *Brown et Springle*, 2 App. Cas. 184: "That the prospective capabilities of land may form, and very often is, a very important element in the calculation of its value," les circonstances mentionnées plus haut doivent être prises en considération dans l'estimation de sa valeur. Mais dans le cas actuel l'appelant n'en est pas réduit aux conjectures sur l'emploi de sa propriété; l'usage qu'en font les intimés comme réceptacle pour leurs billots n'est pas seulement un des emplois possibles de cette propriété, mais c'est l'usage qui en est actuellement. Si cet emploi, comme il n'y a pas à en douter d'après les témoignages, est plus profitable que la mise en culture; c'est sans doute à l'appelant comme propriétaire que les profits doivent en revenir.

"A part de l'estimation faite par les témoins il y en a une autre qui ne me paraît pas avoir reçue l'attention qu'elle mérite. C'est celle qui en a été faite par les intimés eux-mêmes par une entrée dans leurs livres de compte de la somme de $200, dont ils se reconnaissaient débiteurs de l'appelant pour une année d'usage et occupation de sa propriété. C'est une admission de leur part que la jouissance de cette propriété leur valait au moins cette somme. Il est en preuve que cette entrée a été faite pendant que l'appelant était en Angleterre, et que lorsqu'il en a eu connaissance il a déclaré que ce montant était tout-à-fait insuffisant. Cette entrée qui ne pouvait lier l'appelant liait au moins les intimés, et il me semble que la Cour du Banc de la Reine ne pouvait après la preuve de cette entrée accorder moins que les intimés avaient eux-mêmes reconnu. J'ai été sur le point de m'arrêter à ce montant, mais après un nouvel examen de la preuve de l'appelant j'ai cru qu'il ne serait pas juste de le limiter à l'admission faite par sa partie adverse tandis que la moyenne du montant établi par une preuve très satisfaisante lui donnait droit au double de ce montant.

"Maintenant pour combien doit-on accorder la valeur de l'usage et occupation des terrains en question en question? L'appelant a prétendu dans sa déclaration que les intimés en ont pris possession dans l'été de 1871 et les ont occupés jusque dans le mois de mars 1878, ce qui ferait d'après lui six ans et quelques jours, mais la preuve de la durée de cette occupation ne justifie pas cette prétention. La Cour Supérieure a considéré que le témoignage de Colston, teneur de livres des intimés, qui a fixé d'après les livres le commencement de l'occupation à l'année 1873, devait être suivi, et se fondant sur ce témoignage elle a décidé que cette occupation avait duré quatre années, de 1873 jus-

qu'à la fin de l'année 1877, et elle a accordé $1,600 comme la valeur de l'usage et occupation à raison de $400 par année.

"Nous sommes sur ce point du même avis que la Cour Supérieure, mais l'action de l'appelant n'ayant été intentée qu'en octobre 1880, il s'était donc écoulé 6 ans, 4 mois et 11 jours depuis l'époque reconnue par la Cour comme le commencement de l'usage et occupation. La Cour peut-elle accorder comme l'ont fait les Cours Supérieure et du Banc de la Reine, quatre années de la valeur d'usage et occupation, une partie de cette demande n'est-elle pas éteinte par la prescription de cinq ans? Les intimés ont invoqué la prescription de deux ans qui évidemment n'avait pas d'application dans ce cas, mais n'y a-t-il pas lieu à la prescription de cinq ans qu'ils n'ont point plaidé, et la Cour, malgré cette omission de leur part, n'est-elle pas obligée d'y suppléer? L'action en cette cause est fondée sur l'usage et occupation du terrain de l'appelant. En vertu de l'art. 1608, C. C., les intimés sont réputés locataires et sujets à toutes les règles concernant les baux, et la valeur annuelle de cette occupation est censée être le loyer dont les parties n'ont pas fixé le montant. La réclamation de l'appelant est en conséquence sujette à la prescriptien de cinq ans en vertu de l'art. 2250, C. C.

"Cette prescription en vertu de l'art. 2188, C. C., et l'art. 2267, C. C., est une de celles que les tribunaux sont tenus de suppléer d'office.

"Pour cette raison, la Cour est obligée de faire la réduction de cette partie de la demande contre laquelle la prescription de cinq ans aurait dû être plaidée, et de n'allouer que la somme de $862 (déduction pour un an, neuf mois et onze jours) pour laquelle il doit y avoir jugement.

"En conséquence, l'appel est alloué, et le jugement réformé de la manière qu'il vient d'être dit."

TASCHEREAU, J. :—

"I concur in the reasons given by my brother Fournier, that the judgment for the appellant should be $862."

In a subsequent case of *Dorion* v. *Crowley* May 17, 1886, the Supreme Court again applied the same principle to the two years' prescription, the holding given in Cassels, 420, being as follows:—

"Held:—That although the objection that the right of action has been prescribed is taken for the first time on the argument in appeal, the Court is bound to entertain it and give effect to it if properly raised."

In the case of *Dorion* v. *Crowley*, we are informed, Mr. Justice Taschereau announced the conclusion at which the Court had arrived, and merely observed that the point had doubtless been overlooked in the Court below.

In the cases of *Lamontagne & Dufresne* and *Carter & Breakey*, it will be observed that the question of prescription affected only a fraction of the demand, and does not appear to have been discussed at any length in the Supreme Court.

The question does not appear to have come yet before the Judicial Committee of the Privy Council.

We have taken some time to set these cases fully before the profession. In conclusion, it may be asked whether the old rule was not the better and the safer one—the rule stated by Pothier: "Les fins de non recevoir doivent être opposées par le débiteur; le juge ne les supplée pas"; and whether the reversal of this rule does not rest upon a slender basis? If so, it seems to be a proper occasion for the legislature to intervene, and remove the difficulty created by the wording of Arts. 2188 and 2267, by a declaration of the law.

THE ELECTORAL FRANCHISE.

By an Act passed during the present session, to amend 52 Vict. (Q.), ch. 4, it is enacted as follows:—

1. Paragraph 16 of Art. 167 of the Revised Statutes of the Province of Quebec, as amended by section 1 of chapter 4 of the Act 52 Victoria, is replaced by the following:

"16. The word "student" means the son who, being within the above prescribed conditions, and within those of the 9th paragraph of article 173, is absent from his father's or mother's house, with their consent, with a view of studying some profession."

2. The last three clauses of article 173 of

the said Revised Statutes, as replaced by section 3 of chapter 4 of the said Act, 52 Victoria, are replaced by the two following paragraphs:

"8th. Farmers' sons exercise the above rights, even if the father or mother be tenants or occupants only of the farm;

They exercise them in the same manner as if they were the sons of owners of real property, with this difference, that it is the annual value of the farm which is the basis of the electoral franchise, as in the case *mutatis mutandis* of the 1st and 2nd paragraphs of this article.

"9th. Temporary absence from the farm or establishment of his father or mother, during six months of the year in all, or absence as a 'student', shall not deprive the son of the exercise of the electoral franchise above conferred."

3. The Act passed during the present session intituled: "An Act to provide for the immediate operation of the Act of this Province, 52 Vict., chap. 4, intituled: 'An Act to amend the Quebec Election Act, by extending the franchise, and to amend the Municipal Code respecting the preparation of the valuation roll,'" shall be carried out according to the intention thereof, the doubts which may have existed owing to the citation of certain paragraphs of article 173 of the said Revised Statutes being removed by this Act.

4. This Act shall come into force on the day of its sanction.

NEW PUBLICATION.

INSOLVENCY MANUAL: by Mr. R. S Weir, B.C.L., Advocate, Montreal: A. Periard, publisher. This is a little work of 84 pages, in which the editor collates the decisions rendered under the Quebec Statute, 48 Vict. ch. 22, which made important changes in the law of insolvency. The cases relating to *capias*, as well as those applicable to revendication of goods and conservatory attachments, have also been incorporated. The work will doubtless be found useful and convenient to the practitioner.

CROWN CASES RESERVED.

LONDON, Feb. 1, 1890.

REGINA v. WHITCHURCH ET AL.

Criminal Law—Conspiracy to Procure Abortion—Instruments used on Woman with her Consent—Mistaken Belief of Pregnancy—Conviction of Woman for Conspiracy.

Case reserved by WILLS, J.

In this case Thomas Whitchurch, John Howe, and Elizabeth Cross had been convicted at the Northampton Assizes for conspiring and agreeing together feloniously to procure the miscarriage of Elizabeth Cross by the administration of drugs and the use of instruments. The drugs and instruments were used with the consent of Elizabeth Cross and with the mistaken impression that she was pregnant. The learned judge was of opinion, and so directed the jury, that whether or not it was no offence for a woman not pregnant to do acts to herself intending thereby to procure an abortion, which was actually impossible, it was none the less criminal in her to conspire to commit a felony, because the commission of the felony was rendered impossible by circumstances unknown to her; also, that for the woman to conspire with the men to have certain things done to her, the doing of which constituted a felony on the part of the men, was criminal, although the object to be attained, if effected by herself alone, might not have been criminal, 24 & 25 Vict. c. 100, s. 58. The question argued was whether the conviction of Elizabeth Cross could be sustained.

The COURT (LORD COLERIDGE, C.J., POLLOCK, B., HAWKINS, J., CHARLES, J., and GRANTHAM, J.) were of opinion that the conviction was right.

Conviction affirmed.

LONDON, Feb. 1, 8, 1890.

REGINA v. MILES.

Criminal Law—Assault—Indictment after Summary Conviction—Plea of Autrefois Convict.

This was a case stated for the consideration of the Court for Crown Cases Reserved.

The defendant had been convicted at the Central Criminal Court upon an indictment

which charged him (in the first count) with unlawfully and maliciously wounding the prosecutor; (in the second count) with unlawfully and maliciously inflicting grievous bodily harm; (in the third count) with causing actually bodily harm to the prosecutor; and (in the fourth count) with common assault. The defendant pleaded and pointed out at the trial the following conviction in respect of this same assault before a Court of Summary Jurisdiction: 'G. J. Miles, hereinafter called the defendant, is this day convicted for that he . . . did unlawfully assault and beat one Chubs Living, and the Court being of opinion that the said offence was of so trifling a nature that it is inexpedient to inflict any other than a nominal punishment, and the defendant having given security to the satisfaction of the Court to be of good behaviour, is discharged.'

The question for the opinion of the Court was whether the above summary conviction was a bar to the proceedings against him at the Central Criminal Court for the same offence.

Poland, Q.C., and *Warburton*, for the defendant: Express power is given by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 16, subs. 2, to justices, upon convicting a person of assault, to discharge him conditionally on his giving security to be of good behaviour; and the provisions in 24 & 25 Vict. c. 100, s. 45, must now be read with the section above referred to. Moreover, apart from statutes, the summary conviction formed a bar at common law to the present indictment.

Lockwood, Q.C., and *Besley*, for the prosecution: 24 & 25 Vict. c. 100, s. 45, only operates as a bar where a defendant 'shall have paid the whole amount adjudged or shall have suffered the imprisonment awarded;' but the Court neither fined nor imprisoned the defendant. The proceedings under the Summary Jurisdiction Act, 1889, did not bring the case within section 45 of the earlier statute.

Cur. adv. vult.

THE COURT (LORD COLERIDGE, C.J., POLLOCK, B., HAWKINS, J., CHARLES, J., and GRANTHAM, J.), upon the above facts, held that the summary conviction was a good answer at common law to the indictment, apart altogether from the question whether the defendant was entitled to the protection afforded by 24 & 25 Vict. c. 100, s. 45.

Conviction quashed.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, March 1.

Judicial Abandonments.

Theo. Alain, card board manufacturer, Montreal, Feb. 25.

Ephrem Bolduc, district of Joliette, Feb. 25.

Cyrille Quintal Boucher, Montreal, Feb. 27.

Frs. Côté, Quebec, Feb. 26.

Joseph Léopold Gravel, jeweller, Montreal, Feb. 15.

E. A. Panet & Co, traders, St. Raymond, Feb. 24.

William Patrick Price, grocer, Montreal, Feb. 15.

Curators appointed.

Re Abraham Barré, l'Ange Gardien.—J. Morin, St. Hyacinthe, curator, Feb. 22.

Re Archibald Blacklock, contractor, Montreal.—N. P. Martin, Montreal, curator, Feb. 24.

Re Blumenthal, Rosenthal & Co.—J. Morin, St. Hyacinthe, curator, Feb. 22.

Re Paul Chevalier, trader, Berthier.—A. Demers, advocate, Berthier, curator, Feb. 19.

Re A. E. Désautels, St. Pie.—J. C. Désautels, N.P., St. Hyacinthe, curator, Feb. 22.

Re Dame Célanire Roy, doing business under the name of Aimé Béliveau & Co.—P. E. E. de Lorimier, Montreal, curator, Feb. 20.

Re J. L. Gravel.—C. Desmarteau, Montreal, curator, Feb. 24.

Re M. Guillet, Three Rivers.—Kent & Turcotte, Montreal, joint curator, Feb. 20.

Re C. O. Lamontagne.—Kent & Turcotte, Montreal, joint curator, Feb. 20.

Re Landon Dry Plate Co., Montreal.—H. A. Jackson, Montreal, curator, Feb. 3.

Re Corinne Larivière, Three Rivers.—Bilodeau & Renaud, Montreal, joint curator, Feb. 20.

Re Rémi Maillet.—C. Desmarteau, Montreal, curator, Feb. 21.

Re Edouard Pleau.—F. Valentine, Three Rivers, curator, Feb. 24.

Re Wm. P. Price.—C. Desmarteau, Montreal, curator, Feb. 25.

Re F. X. Sarrazin, Three Rivers.—Kent & Turcotte, Montreal, joint curator, Feb. 24.

Re S. Thérien, Montreal.—Kent & Turcotte, Montreal, joint curator, Feb. 20.

Dividends.

Re André Beauregard, trader, St. Hyacinthe.—Dividend, payable March 18, J. Morin, St. Hyacinthe, curator.

Re L. A. Bergevin, Quebec.—First dividend, payable March 17, H. A. Bedard, Quebec, curator.

Re Pierre Blais, trader, St. Flore.—First and final dividend, payable March 17, H. A. Bedard, Quebec, curator.

Re Th. Brodeur, hotel-keeper, St. Liboire.—First and final dividend, payable March 18, J. Morin, St. Hyacinthe, curator.

Re L. E. Gélinas, Ste. Brigitte des Saults.—First and final dividend, payable March 18, J. E. Girouard, Drummondville, curator.

Re L. E. Guimond, township of Dundee.—First and final dividend, payable March 18, C. Desmarteau, Montreal, curator.

Separation as to Property.

Emma Baigley vs. Joseph Napoléon Landry, Joliette, Feb. 20.

Marie Agnès Béland vs. Evariste Rivard, Yamachiche, Feb. 24.

Marie Anne Therrien vs. Félix *alias* Philéas Désormiers, wood dealer, Montreal, Jan. 16.