The Legal News.

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THE JUDICIAL OATH IN DANGER.

In a recent article of the *Legal News* attention was drawn to two bills proposing to alter the law of evidence in criminal matters. At Quebec a bill of a similar nature has been introduced regarding civil matters. It is very short and its single disposition is as follows:

"1. In all cases in the Circuit Court, and in the Superior Court, the parties to the issue may be examined as witnesses on their own behalf, and shall be subject to cross-examination and amenable to all the rules which govern the examination of other witnesses, notwithstanding articles 1232 of the civil code, and 251 of the code of civil procedure to the contrary; provided that the said parties shall be so examined in the presence of a presiding judge."

This clause, should it become law, would allow a party to testify in his own favour. The experience of the whole world, in all ages, shows that people are not to be trusted in matters where they are interested, and particularly when they are engaged in a contest where their *amour propre* is engaged as well. Candid people will be convinced of the truth of this observation, by careful self-examination. But, say the innovators, "the judge need not believe the party." Then why expose him to the temptation of forswearing himself if he is not to be believed? But it is said again, "the judge may discriminate, he may take part and reject part." True, but only on the same ground that he may reject the evidence of any other witness, for the bill says, that parties are to be "amenable to all the rules which govern the examination of other witnesses."

It is a mere waste of time to show that the *aveu* of the party can never really be assimilated to the evidence of a witness, for this is the lesser evil of the proposed law. Its great evil is that it leads to Bradlaughism. The oath is based on religion; but its utility depends on *meurs*. We use the French word, for there is no English one which expresses the conventional, or rather the accepted rule of morality in a given community. The oath is not a protection from its sanctity alone, nor by the punishment for perjury, but by the infamy which attaches to the perjurer. If we accustom the mind to the contemplation of perjury, the horror of it decreases, and frequently disappears altogether. The evil effects of the admission of parties to testify for themselves have been already remarked in English Courts, and the extraordinary persistence of the majority of the electors of Northampton to re-elect a man, who had the indecency to declare one day that he did not believe in the sanctity of an oath, and the next gave proof of his disbelief, by saying that he was ready to take it, should make as yet undemoralized communities pause, ere they follow the example of countries, which have arrived at such fearful results.

R.

SPECTATORS AT PRIZE FIGHTS.

The English judges have had serious difficulty in determining whether a spectator at a prize fight is guilty of aiding and abetting. One Coney looked on at a prize fight, and was convicted as an aider and abetter. The case was first argued before five judges, who could not agree, and has been re-argued at great length before eleven judges, of whom eight have declared in favor of the innocence of the spectator The dissentients are Lord Coleridge, Baron Pollock and Mr. Justice Mathew. The first named puts the argument in favor of the conviction very forcibly: "When a person goes to a prize fight and stays there, with no other object than seeing one of these disgusting exhibitions, then he is equally guilty with the principals of an assault, for no two men, with no angry feelings against each other, would meet in perfect solitude to knock each other about for an hour or two, if there were no spectators." At the argument Mr. Justice Denham supposed the case of a philanthropist attending a prize fight for the purpose of writing a stinging article on the brutality of the exhibition. Mr. Justice Lopes put the case of a man who approached the throng, under the impression that some one was going to preach. Another learned judge wanted to know what would be the position of one too short to see over the heads of those who formed the inner ring. We suspect that a secret tolerance for the game of fisticuffs lingers in the minds of the learned

occupants of the English bench, and that Mr. Justice Mathew, who is in the minority, takes the more correct view when he says that the chief incentive to a prize fight, from which death or injury may result to one of the combatants, is the presence of a body of spectators.

CHIEF JUSTICE HOLT AND THE HOUSE OF LORDS.

The incident referred to by the Prime Minister in the House of Commons on Monday last forms one of the most notable instances in which the independence of the Bench has been vindicated by one of its own members in the face of Parliament, and is worthy of a fuller notice than it seems to have hitherto received from writers on constitutional law.

In 1694, an indictment for murder having been found against Charles Knowles, Esq., and removed by certiorari into the court of King's Bench, he pleaded in abatement that, being Earl of Banbury, he was a peer of the realm, and as such ought to be tried by his peers in Parliament. The replication stated that the prisoner had presented a petition to the Lords, praying that he might be tried by them, and that Parliament had thereupon resolved that he had no right to the Earldom of Banbury. After protracted argument, Lord Chief Justice Holt gave judgment that the plea was good and the replication bad, the Lords having no authority to decide a question of peerage, except on a reference from the Crown. Their resolution, therefore, was a nullity, and the prisoner was accordingly discharged.

Two or three years later, Knowles petitioned the Crown for a writ of summons as a peer, and the claim was regularly referred to the House of Lords. The House then found itself in an awkward position, for, although they now clearly had jurisdiction to examine the claim, they were unwilling to confess their former resolution invalid. They resolved, therefore, to wreak their vengeance on the Chief Justice, and ordered him to attend before the Committee of Privileges. Being then asked to assign the reasons for his judgment, he declined to do so. "I gave my judgment," he said, "according to my conscience. We are trusted with the law; we are to be protected and not arraigned, and are not to give reasons for our judgment." Being again summoned, he persisted in the same answer. The Committee then reported the proceedings to the House, and a resolution having been passed that the Chief Justice should be heard as to whether he did right in refusing to assign his reasons, he attended accordingly. "My Lords," he answered to the question put to him, "I have only respectfully to adhere to what I addressed to the Committee. * * * I never heard of any such thing demanded of a judge as that, where there is no writ of error depending, he should be required to give reasons for his judgment. I did think myself not bound by law to answer the questions put to me. What a judge does honestly in open court he is not to be arraigned for."

The debate was subsequently adjourned to the following Monday, and the House having prudently omitted to meet on that day, the matter was dropped, and never revived. It was from this case and the better known one of *Ashby* v. *White* that the popularity of Lord Chief Justice Holt principally arose.—*Law Times*, (London.)

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 16, 1881.

MONK, RAMSAY, TESSIER, CROSS, BABY, J J.

DAWSON et al. (defts. below), Appellants, and TRESTLER (plff. below), Respondent.

Damages caused by fall of snow from roof.

The appeal was from a judgment of the Court of Review, Montreal, (See 3 Legal News, p. 76,) reversing a judgment of the Superior Court, Montreal, (See 2 Legal News, p. 344.)

The facts were alleged to be that a mass of snow fell from the roof of St. Bartholomew's Church into the street; the respondent, Trestler, was in a carter's sleigh, proceeding up Radegonde street, when a horse and sleigh coming down the hill, (the horse being frightened by the fall of snow above mentioned), came violently against the sleigh in which Trestler was seated, and threw him out, causing serious injuries.

The question was whether there was negligence on the part of the appellants, the trustees of the church. Mr. Justice Torrance, in the

Superior Court, considered that the accident was one of the class of inevitable accidents for which no responsibility attached to the trustees. The case was then taken to the Court of Review, and there the judgment was reversed, on the ground that the injury was proved to have proceeded from a cause *prima facie* within the control of the appellants, and the latter had not proved inevitable accident to exonerate them. The sum of $150 damages was allowed.

The majority of the Judges were of opinion that the judgment should be confirmed, on the ground that there was clear and positive testimony by eye witnesses that the accident was caused by a fall of snow from the roof of the church of which the appellants are trustees.

Monk, J., and Ramsay, J., dissented. The observations of the latter were to the following effect:—This case gives rise to no difficulty in law. Our article is clear, that where there is *faute* there is responsibility. It seems to me that this is the logical limit of responsibility, and the question for the Court to decide in each case is what constitutes *faute*. On this point there has been much exaggeration, and many commentators of the Code Napoleon have written as if Art. 1832 was a discovery in jurisprudence. It is the old doctrine of responsibility which stood alongside of and not in contradiction to this other doctrine, that there was no injury where the party complained of was only exercising his right. I venture to recall these elementary rules because, at the argument, appellant seemed to maintain that if snow fell from the roof of a house slanting to the street there was necessarily *faute*, because if the proprietor had built no house there, or put no roof on it, there could have been no snow to fall, and consequently that the owner of the house was liable. This appears to me to be a good illustration of the exaggeration to which I have referred. The true doctrine is that there can be no *faute* where a person uses his property in the ordinary manner, although his use of it clashes with the rights of others. If there is no wrong-doing or negligence there is no fault. Of course it will be at once admitted that there are occurrences which, when proved, establish negligence in an unanswerable form, and one of these I admit would be the fall of an avalanche of snow from the roof of a building into the street. But it is in the proof of this fact that all the difficulty in this case arises.

On the part of the plaintiff we have evidence wonderfully formal and positive that on the 4th of January, 1878, an avalanche of snow fell from the roof of a building belonging to appellants, that it fell on a horse and sleigh passing on the street, that the driver lost control of his horse, which became unmanageable and started off down hill, and ran into the plaintiff's sleigh, doing him great personal injury. But when we come to examine the narrative thus told by the light of the facts proved by the defence, the first thing that strikes one is the improbability, if not the impossibility, of the story. I may at once say I do not doubt the perfect good faith of plaintiff's witnesses. The position of plaintiff's friends, whom he has called to testify in support of his demand, is a perfect guarantee of their truthfulness; and their testimony is supported by independent witnesses, to whom the result of the suit is a matter of perfect indifference. But it is proved in an equally satisfactory manner, 1st, that the building was nearly thirty feet from the nearest place where Mr. Robertson's sleigh could be to the church; 2nd, that the roof is very steep, and that no quantity of snow can lodge on it; and 3rd, there was no snow lying on the spot after the accident. On the last point, there is no evidence by plaintiff's witnesses of any quantity of heaped snow on the ground where the accident happened; and one of defendant's witnesses distinctly swears there was none. Mitchell says:—"No, I did not notice it (an avalanche of snow). If there had been I would have seen it, and I would have to shovel it off the sidewalk, and such was not the case." It is not difficult to understand how plaintiff's witnesses were deceived. The day was cold and blustering. There was no snow falling, but it had snowed on the two previous days, and doubtless there was at times a considerable quantity of snow blowing about, which is very readily mistaken for snow falling. This accounts for several of the witnesses saying it snowed that day; but Mr. King and Mr. McLeod, two scientific gentlemen, who, independently of one another, keep registers of the temperature and the weather, distinctly state that no appreciable snow fell on the 4th. Now, what evidently happened was that at this corner there was a great drift of snow from all directions and it

enveloped Mr. Johnson's sleigh and blinded Mr. Dore, who let his horse run off. It is impossible to account for the accident otherwise, and this proposition is supported very materially by one of plaintiff's witnesses, Mr. Larocque, who tells us that the avalanche was "*de la neige folle et ce produit une nuée terrible.*" Other witnesses speak of it as a cloud. This evidence is treated as if it were mere speculation, and it is argued that such evidence must yield to positive testimony, as one of plaintiff's witnesses adroitly said: "I don't know whether it could happen or not, it did happen." This is, of course, unless he were mistaken either in his impression or as to what he saw. As a general rule proof of a physical impossibility is the most satisfactory of all evidence.

Judgment confirmed, Monk & Ramsay, JJ., dissenting.

Kerr, Carter & McGibbon for appellant.

Geoffrion, Rinfret & Dorion for respondent.

COURT OF QUEEN'S BENCH.

Montreal, March 24, 1882.

Dorion, C. J., Monk, Tessier, Cross and Baby, JJ.

Hon. L. O. Loranger, Atty.-Gen. (petr. below), Appellant, and The Colonial Building & Investment Association (defts. below), Respondents.

*Powers of Dominion Parliament—Building and Investment Association—*37 *Vict.* (*Can.*) *Cap.* 103.

The Dominion Parliament has no power to incorporate an association for the purpose of buying, leasing and selling landed property and buildings, the operations of a society for such purpose affecting exclusively property and civil rights within the province where they are carried on; and therefore the Act 37 *Vict.* (*Can.*) *cap.* 103, *incorporating the Colonial Building and Investment Association for such objects, was ultra vires, though power was given by said Act to carry on operations throughout the Dominion.*

This was an appeal from a judgment rendered by the Superior Court at Montreal (Caron, J.), on the 9th July, 1881, dismissing the petition of the appellant. (See 4 Legal News, p. 374, for judgment by Torrance, J., on the same point.)

The question was whether the Federal Parliament exceeded its powers in granting a charter to the company respondent, whose operations and business, it was alleged, were limited to the Province of Quebec, and were of a purely local or private nature.

Girouard, Q. C., for the appellant, submitted that the Colonial Building and Investment Association, the respondents, acted as a corporation within the Province of Quebec exclusively, and that their business was building, buying, leasing and selling landed property and buildings, and lending money on the security of mortgage on real estate in the Province; that the operations of the Company had been limited to the Province of Quebec, and were of a local or private nature, affecting property and civil rights in the Province, and therefore the Association could not be legally incorporated except by the Legislature of the Province of Quebec. The incorporation, however, had been effected not by provincial Act, but by an Act of the Parliament of Canada, in 1874 (37 Vict. c. 103), which, it was submitted, was *ultra vires*, and null and void. The present petition had been presented at the solicitation of John Fletcher, of Rigaud, a holder of 47 shares in the capital stock of the Association, of $1,000 each, transferred to him by William Rodden, one of the promoters of the Association. The prayer of the appellant was that the Association be adjudged and declared to have been illegally incorporated, and that it be declared dissolved. The only witness examined was the Secretary of the Association, W. L Maltby, whose evidence showed that the operations of the Association had been confined to Montreal and its vicinity, and that, owing to the depression of business, no steps had been taken for the extension of the business in other parts of the Dominion. Mr. Girouard cited *Belisle & L'Union St. Jacques* (20 L. C. J. 29); *McClanaghan & St. Ann's Mutual Building Society*, (3 Legal News, 61; 24 L. C. J. 162); *Reg.* v. *Mohr*, (4 L. N. 328; 5 L. N. 43), and the recent decision of the Privy Council in *The Queen Insurance Company* v. *Parsons* (5 L. N. 25). He cited the following passage from the judgment in the last mentioned case:—"But, in the first place, it is not necessary to rest the authority of the Dominion Parliament to incorporate companies on this specific and enumerated power. The authority would belong to it by its general power over all matters not coming within the classes of subjects

assigned exclusively to the Legislatures of the Provinces, and the only subject on this head assigned to the Provincial legislature being 'the incorporation of companies with provincial objects,' it follows that the incorporation of companies for objects other than provincial falls within the general powers of the Parliament of Canada. But it by no means follows (unless indeed the view of the learned Judge is right as to the scope of the words 'the regulation of trade and commerce') that because the Dominion Parliament had alone the right to create a corporation to carry on business throughout the Dominion that it alone has the right to regulate its contracts in each of the Provinces. Suppose the Dominion Parliament were to incorporate a company, with power, among other things, to purchase and hold land throughout Canada in mortmain, it could scarcely be contended, if such a company were to carry on business in a Province where a law against holding land in mortmain prevailed (each province having exclusive legislative power over "property and civil rights in the Province"), that it could hold land in that Province in contravention of the provincial legislation; and, if a company were incorporated for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any part of it, by reason of all the Provinces having passed mortmain acts, though the Corporation would still exist and preserve its status as a corporate body."

Robertson, for the respondent, said the petition did not allege that the Dominion Parliament had not power to grant the charter, but merely set out that the business had so far been of a local nature, and that the Association should therefore be restrained and dissolved. The real question, however, was whether the Federal Parliament had power to grant the charter, for, if it had been legally chartered, the mere fact that it had not so far availed itself of all its powers would offer no ground for declaring it illegally incorporated. Now, it would be seen that the powers conferred by this charter were not such as could be asked from or granted by the local legislature. Power was given to deal in all kinds of securities, stocks, bonds or debentures, to act as an agency and trust company; to issue and negotiate bonds, &c.; and by section 11, the Association was authorized to establish offices or agencies in London, England, New York and any city or town in the Dominion. The Act authorized operations which would involve commercial relations with persons in all the Dominion, and gave the Association the right to carry on commercial business. The Judge in the Court below was therefore right in declaring that the Act in question referred to trade and commerce, and was within the jurisdiction of the Federal Parliament. Reference was made to two Acts passed recently by the Dominion Parliament after full discussion in Committee— one to enlarge and extend the powers of the "Crédit Foncier Franco-Canadien," a company incorporated by the Provincial Legislature, and the other an Act to incorporate the "Crédit Foncier of the Dominion of Canada," the objects of which were almost identical with those of the corporation respondents. It was also pointed out that this action was really in the private interest of a shareholder, Mr. Fletcher, who was endeavoring to evade payment for the stock subscribed by him.

MONK, J., (*diss.*) was of opinion that the judgment should be confirmed. The fact that the society had not yet used all its powers, was not a reason for its dissolution.

The judgment of the Court is as follows:—

"Considering that the operations which appear to have been carried on by the company, respondents, have been so carried on exclusively within the Province of Quebec, and have been of the nature and description following, to wit: the buying, leasing and selling of landed property, buildings and appurtenances thereof, the purchase of building materials to construct villas, homesteads, cottages and other buildings and premises, and the selling and letting the same, and the establishment of a building or subscription fund for investment or building purposes, and acting as agents, which operations have been confined to the city of Montreal and its vicinity, within the said Province of Quebec;

"Considering that said operations have been in their nature local and provincial, and for provincial objects, affecting exclusively property and civil rights within the said Province, therefore not within the control or jurisdiction of the Dominion Legislature, but such as the legislature of the Province of Quebec alone could, under sub-sections 11, 13 and 16 of section 92 of the B. N. A. Act of 1867, deal with, and such

legislature of the Province of Quebec only had the right to incorporate a company to carry said objects into effect, and that to the exclusion of the Dominion legislature;

"Considering that said company respondents, have not been incorporated by the legislature of the Province of Quebec, nor under or by virtue of any law in force in the said Province, but have assumed and carried on operations in the said Province under an Act of incorporation of the Dominion Parliament passed in the 37th year of Her Majesty's Reign, being cap. 103, the said Dominion Parliament having no right to incorporate a company with power to carry out such objects;

"Considering that by the laws in force in the Province of Quebec, corporations are not entitled to acquire or hold immovable property unless thereto authorized by some special law emanating from a legally constituted authority having power to make such law, and the respondents have not shown that any special law or authority sanctioned by law exists to entitle them to hold or possess real or immovable property within the Province of Quebec;

"And considering that there is error in the judgment rendered in this cause by the Superior Court sitting at Montreal on the 9th day of July, 1881, doth reverse, annul and set aside the said judgment, and proceeding to render the judgment which the said Superior Court ought to have rendered, doth adjudge and declare that the said company, respondents, had and have no right to act as a corporation for or in respect of any of the said operations of buying, leasing or selling of landed property, buildings and appurtenances thereof, or the purchase of building materials to construct villas, homesteads, cottages or other buildings and premises, or the selling or letting of the same, or the establishment of a building or subscription fund for investment or building purposes, or the acting as agents in connection with such operations as the aforesaid or any like affairs, or any matter of property or civil rights, or any objects of a purely local or provincial nature, in any manner or way within the said Province of Quebec, and doth prohibit the said company respondents from acting as a corporation within the said Province of Quebec for any of the ends and purposes aforesaid, and this Court doth further condemn the said company to pay the appellant the costs as well of the Court below as of the present appeal, (Monk, J., dissenting.)"

Girouard & Wurtele for the Appellant.

Robertson & Fleet for the Respondent.

Doutre, Q.C., Counsel.

SUPERIOR COURT.

MONTREAL, March 31, 1882.

Before MACKAY, J.

NIELD v. VINEBERG.

Principal and Agent—Ratification.

During the plaintiff's absence from Montreal, his book-keeper and principal clerk signed in his behalf an agreement of composition with a debtor, and in pursuance thereof collected from the assignee the dividend realized from the estate. The plaintiff was informed by his clerk by letter of what he had done, and did not object at the time; but on his return to Montreal in the following month he claimed the whole debt from the debtor, crediting the dividend as a payment on account. Held, that under the circumstances, there was a ratification of the clerk's act.

PER CURIAM. The plaintiff sues upon a note of April, 1881, for $287.88. The plaintiff says that about the 26th of July, 1881, he "received from the defendant for and on account of the said note, $75.84, leaving a balance of $212.04." This is what is concluded for.

There are several pleas; their substance may be stated thus:—"What I owed you I paid you in July, 1881. In July I assigned my estate to one Lindsay for the benefit of you (plaintiff), and my creditors, by an agreement, and you, in consideration of it, discharged me, and you ought to return me this note now. Lindsay sold the estate and you received from him in July last $173.48, your share of the proceeds, in payment of what claims you had, including this note now sued upon." There is a replication by which the plaintiff admits to have received the $173.48 in July, but he says from the defendant, and that no agreement was ever signed by him to discharge the defendant, as now claimed by the defendant; if any document purports to discharge defendant from plaintiff's claim, it must have been signed without plaintiff's authority and against his will.

I consider this action an unfair and oppressive one, seeing what has passed. It is proved that

the defendant assigned as alleged, and that his assignee converted his estate, and paid all his creditors, including plaintiff, at equal rate. It was the defendant's brother who bought from the assignee, but all was above board, and managed well by the assignee for the creditors, who have received, I believe, as much as could have been expected out of such a bankrupt estate. The sale was after a meeting of creditors, but the plaintiff was not at the meeting. He builds up upon this a little. A discharge was signed by the creditors and by plaintiff's clerk in Montreal in the plaintiff's absence from the city. The clerk was the highest servant in the plaintiff's office; his book-keeper, attending to the general business, he says. He did not sign before consulting Mr. McLachlan, a friend of the plaintiff, who advised him to sign. Afterwards this clerk, Mr. Bryan, was urgent for his master's dividend and got it, by a cheque to the order of the plaintiff. The composition sum was forty-five cents in the dollar. The clerk promptly wrote his master's name on the cheque, drew the money, and advised his master in Ontario on the 11th of July. The plaintiff, examined by me, admits this, but says "he was travelling night and day, and lost and forgot it." He is asked by his own counsel: "Did the letter from Bryan make any mention of money?" to which he answers: "Nothing whatever. There was nothing in the letter except that he said he was trying to compromise." Immediately afterwards he is asked by defendant: "In the letter did he say that he had signed this composition?" to which he answers, "Yes. He said he had signed the composition for forty-five cents." According to all that is usual, was not that informing the plaintiff that he, Bryan, had received the composition sum and signed? I think it was. What was plaintiff's conduct? Did he blame his clerk? No; yet several times wrote to him afterwards from Ontario, and he has had the benefit of the money that the clerk got at the signing of the composition deed. Upon his return to Montreal in August, the plaintiff writes to defendant expressing surprise to hear that the latter has "compromised, or endeavored to compromise" with his creditors. That is plaintiff's expression. He charges the defendant in the same letter with having paid his (plaintiff's) book-keeper at that rate, but I cannot agree to any such arrangement," says the plaintiff, and "you must pay the balance at once, or I shall place the matter in the hands of my lawyers." Observe, he does not say that things must be put back into the position in which they were before. I cannot consider this fair treatment of the defendant. The plaintiff ought promptly to have repudiated *in toto* his clerk's agency if disapproving of it; but he would shape a course peculiar; express surprise at defendant's treaty with his clerk, repudiate in part, but not for the whole; accept all benefit, but repudiate all burden, return no money and shape an account between plaintiff and defendant, mere arbitrary, crediting defendant as with *a payment on account*, payment never made by defendant, and debiting him the difference. This treatment of defendant cannot be approved. I see the acts of plaintiff's clerk sufficiently ratified by the plaintiff. There are divers kinds of ratification.

The action is dismissed.

E. McKinnon for plaintiff.

Macmaster, Hutchinson & Knapp for defendant.

SUPERIOR COURT.

MONTREAL, April 1, 1881.

Before TORRANCE, J.

In re PATRICK GRACE, party expropriated, and THE GOVERNMENT OF THE PROVINCE OF QUEBEC, expropriating, and JOSEPH DUHAMEL, *distrayant*.

Costs—Expropriation—43-44 *Vic.* c. 43, s. 20.

In this matter, Patrick Grace had been expropriated, and an award of $2,470 made in his favour for land taken. His attorney now made application that his bill against the party expropriating be taxed under 43-44 Vic. c. 43, s. 20.

TORRANCE, J., before whom the petition came in chambers, conferred with his brethren Mackay and Jetté, J J., and decided to allow the fees of a contested bill of costs in a first class suit, including cross-examination (if any) of witnesses over five (44 of Tariff), besides disbursements and costs of the petition. The award had given $600 more than was offered.

J. Duhamel, petitioner.

De Bellefeuille, for government.

Erratum.—In *Lefaivre* v. *Belle* (p. 106) the headline, "*Before* TORRANCE, J.," was inadvertently omitted.

RECENT DECISIONS AT QUEBEC.

Prohibition to alienate.—Even under the law before the Code, a prohibition to alienate imposed under penalty of a forfeiture of the property given, cannot be deemed a *nudum præscriptum*, and effect must be given to it according to the will of the testator.—*Bourget* v. *Blanchard et al.*, 7 Q L. R. 322.

Railway.—Railways subsidized by the Province, under the Quebec Railway Act, 1869, are liable to seizure and sale by ordinary process of law.—*Wason Mfg. Co.* v. *Levis & Kennebec Railway Co.*, 7 Q.L.R. 330.

Local Legislature, Powers of—La clause du statut provincial, 42-43 Vict. ch. 4, ordonnant la fermeture le dimanche de la maison dans laquelle il se vend des liqueurs spiritueuses, est une mesure disciplinaire et de police, et n'est pas *ultra vires* de la législature provinciale. *Poulin* v. *La Corporation de Québec*, 7 Q. L. R. 337.

RECENT ONTARIO DECISIONS.

Indecent Assault—Evidence.—Evidence of subsequent conduct of a prisoner on trial for indecent assault was held admissible, as showing the character of the assault, and as, in fact, part of the same offence with which the accused stood charged.—*Regina* v. *Chute*, Queen's Bench Div., March 9th, 1882.

Principal and Surety.—The contract of suretyship is avoided by a representation which is false in fact, and by which the surety has been induced to become surety, though he who made it believed in its truth.—*Gananoque* v. *Stimden*, Q. B. Div. March 9, 1882.

Negligence, Contributory—Evidence.—In an action against a railway company for negligence whereby the plaintiff's lumber caught fire from one of the defendant's locomotives, and a large quantity thereof was burnt, the jury found that the fire which caused the damage came from the defendant's locomotive, from imperfection or structural defect in the smoke-stack, by reason of the cone being too close to the netting, and the bonnet rim not fitting to the bed so completely as it should have done. They further found that the plaintiff was not guilty of contributory negligence by reason of his piling his lumber on the defendants' ground, with their consent, within a short distance of the track, and not having sufficient means at hand for extinguishing fires should they occur. *Held*, that the evidence set out in the case, fully supported the findings of the jury; that as to finding that the cone was too close to the netting, it could not be supported by the evidence if it meant that it in consequence acted prejudicially to the netting, but that the finding meant that the cone was too high above the bonnet rim, and so too close to the netting, and in consequence the sparks deflected from it instead of being sent above the bonnet bed or below it, and thus escaped from the stack; and also that although the finding that the bonnet rim did not fit so completely as it should, was in a sense indefinite in not stating thereby sparks could or did escape, this was covered by the other findings.—The question as to the bonnet rim fitting the bed was not put to the jury until after they had rendered their verdict and answered the other questions, and after the judge had been moved for judgment upon those answers, but it was done while all the parties and their counsel were present, and before the jury had left the court room: *Held*, that the question was properly put to the jury.—*McLaren* v. *Canada Central Ry. Co.*, Com. Pleas Div., March 10, 1882.

GENERAL NOTES.

Chief Justice Folger, in leaving the bench of the New York Court of Appeals, says: "The forty volumes of New York Reports, they do indeed testify (I may say it now) to an unremitting judicial labor that has seldom been outstripped; and the sad memorials that appear in four of them tell, too, how often vigor of body yielded under strain of mind. The many opinions of all the seven are there, as finished they left their hands. But as no one may know, by looking on a work of art, the manifold deft touches that brought it to completeness, so no one can tell the thought, the care, the toilsome passage through perplexities, the laborious search for precedents, the doubt, the deliberation, the conference with fellows, the nice poising of reasons, that lead up to the laconic, yet weighty conclusions, 'judgment should be affirmed,' or 'judgment should be reversed.' But the dearest of my recollections of the Court of Appeals will be of the harmony of intercourse, the uniform courtesy, the mutual confidence, the unvarying respect for one another, the cordial appreciation, the brotherly love, that held us in happy, personal and official relations. When I reflect on all these things, I wonder almost to sobbing, that I could have been led to give up the place of formal head of such a court, the nominal chief of such a body of judges."