The Legal News.

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CONFINEMENT AFTER EXPIRATION OF SENTENCE.

The *Criminal Law Magazine*, for September, contains a case of some interest, *Gross* v. *Rice*, in which a question arose as to the constitutionality of a statute of Maine, providing that no convict shall be discharged from the State prison until he has remained the full term for which he was sentenced, *excluding the time he may have been in solitary confinement for violation of the rules and regulations of the prison.* The prisoner who had been sentenced for four years, was in solitary confinement at various times for 144 days, for a number of reasons; and he was not discharged until he had served his sentence and 68 days' imprisonment additional. This extension of the term of imprisonment for which he had been sentenced by the Court, was held to be in derogation of a provision of the national constitution, that no State shall deprive any person of life, liberty or property, without due process of law. Although, therefore, a convict may by good conduct earn remission of a portion of his sentence, he cannot prolong it by any measure of misconduct. This view, which seems reasonable enough, was held by four judges of the Supreme Court of Maine. Two differed, and the seventh, being a relative of the defendant, did not sit.

JUDICIAL INCREASE.

New York State is proposing to add at one stroke twelve additional justices to its Supreme Court, and an amendment to that effect, of the judiciary article of the State Constitution, is pending, to be voted on at the election next fall. Even this enormous increase, it is said, will be only an alleviation, not a cure, of existing ills. In Massachusetts, the Bench also seems to be hard pressed, for Judge Colt recently committed suicide in a fit of melancholy and distraction brought on, it is said, by overwork.

LORD SHERBROOKE ON BANKRUPTCY LEGISLATION.

"A great deal of time, of trouble, of expense, and of misery, would have been saved to mankind if legislators could have been induced to consider more narrowly not only what they are legislating about, but for whom they are legislating, and what good society is likely to derive from their work."

Thus writes Lord Sherbrooke with reference to the subject of bankruptcy legislation; and in this, the opening sentence of an able article on "What shall we do with our Bankrupts? which appears in the current number of the *Nineteenth Century*, his Lordship propounds a theory which, as regards the particular subject he has taken in hand, is especially true and appropriate. The fact is that in bankruptcy legislation we have never properly considered for whom we are legislating. The main object which our legislators seem to have had in view has been the comfort and convenience of those unable or unwilling to pay their just debts, rather than the protection of those whom one would think were most deserving of consideration—innocent and gullible creditors. Had it been otherwise, and had we thought more of the interest of the honest trader, rather than of the dishonest, or, at any rate, careless debtor, our commercial morality would probably be far higher than it is. This is the line of argument which is suggested by a perusal of Lord Sherbrooke's article. It bristles with interesting historical and classical references; it is a short but clear and concise history of bankruptcy legislation from the earliest times downwards to the present day, and in it the author shows what a great mistake we made in protecting the debtor in the way we do.

Before embarking on the contemplated revision and reconstruction of our present bankruptcy code, Lord Sherbrooke retraces the history of the bankruptcy laws from their earliest date, and points out the steps by which a code which has existed in one shape or another for so long a period now comes, in the fulness of time and the exhaustion of every conceivable remedy, to be re-created, or at any rate, redressed. He first treats of the legendary origin of bankruptcy as mixed up with the fabulous period of Roman history, and he next opens up the great question of English bankruptcy law,

which he alleges was founded on a singularly unsound and narrow basis. He traces out the origin of the theory whereby it was considered how traders were assumed to be the only persons who have any right to run into debt, and, while declining to refute the arguments which satisfied our forefathers as to this part of the subject, he brings us down to the beginning of the present reign, when courts for the relief of insolvent debtors were first established. Later on we come to the period which witnessed the abolition of all distinctions between those who are not engaged in trade and commerce. A fresh domestic mischief then began to eat into the very heart of the system, which Lord Sherbrooke very vividly describes: "Much care had been taken of the debtors, writes his Lordship, but very serious complaints arose on the part of the creditors. Somehow or other the dividends on insolvent estates began to fall fearfully short. The Court of Bankruptcy was a sink into which money was continually poured, but where, with the true instinct of gravity, it never rose again. The system worked with what Lord Byron somewhere calls ruinous perfection. The army of bankruptcy was complete in all its parts, and the very model of a perfect and well-ordered department. All went merry as a marriage bell, until a fault, which in no degree injured the symmetry but somewhat diminished the popularity of this splendid system, began to make itself manifest. The official assignees gathered to themselves an evil repute, and creditors discovered that the Bankruptcy Court had one fault; a great deal of money went into it, and a very little ever came out. As a natural result the whole machinery of bankruptcy was brought to a standstill. Once more Parliament went to work, and another Bankruptcy Bill was the result. The plan of trusting the property of bankrupts to officials had turned out a complete failure, and the state of the Bankruptcy Court had been allowed to become a public scandal. The course which the government of the day took was a very natural one, and deserved, as Lord Sherbrooke suggests, better success than it achieved. It produced the elaborately worked-out Bill of 1869, which entirely remodelled the bankruptcy law, taking the management of bankrupts' estates out of the hands of government officials, and giving it to those who have a direct interest in obtaining the very largest dividend possible—the creditors themselves. Nothing could seem fairer than such a proposition, writes Lord Sherbrooke. It was clearly the interest of the creditor to obtain as large a dividend as possible, and as clearly he was invested with the power, what more could be desired? I cannot say that there was any fault in the reasoning as far as it went, continues his Lordship. Its error was that it did not take into consideration certain other feelings which ultimately proved too strong even for the very powerful motives which in this case seem at first sight to make the private identical with the public interest. The creditor dislikes the whole subject. He has been done. He knows what many people, in dealing with these subjects, seem studiously to forget, that without lenders there would be no borrowers. He does not like to pass as an unsuccessful man, still less as a man who has been taken in. He would rather do and think of something else. The business is intricate, and the prospect of a dividend scarcely worth the trouble it is sure to entail. In this strain Lord Sherbrooke goes on still further. It is quite evident to him that a system of this kind can be satisfactory to no one but the dishonest creditor. It is founded on a totally false estimate of human nature. It is a signal and conspicuous failure, and the riddle, continues our author, is as far from being solved as ever.

Lord Sherbrooke next comes to the bill brought into the House of Commons this session, but he has no belief in its healing virtue. He sees no reason why the Board of Trade should displace the Chancellor, nor why an official of less rank and infinitely less knowledge should displace the unquestioned head of the English Bar. This, he says, is wanton innovation; and he considers it a very bold and startling innovation to mix up a political office like the Board of Trade with the duties of a court of law. Much might also be said of the difficulties which such a a supervision would impose upon a court fettered and dictated to by such superior officers of the courts, whose principal duty shall be to act as spies upon the bankrupt, and who, as *ad interim* receivers of his estate, do not appear to Lord Sherbrooke very promising additions to

an already somewhat discredited institution. They seem too closely connected with him to be able to act as his friends. The fault of bankrupt proceedings, he thinks, is clear enough, and will instantly appear when compared with ordinary litigation.

An impartial judge and two litigants or advocates, whose interest or whose business it is to sustain a distinct and clearly marked controversy, has been found by the theory and practice of mankind to be the only way of satisfactorily determining controversies relating to property. One great and fatal weakness in the Court of Bankruptcy is that this conflict is wanting. The question is not as to the decision of the battle, but as to the quantum of the loss.

Lord Sherbrooke next propounds the three grounds on which he says the adoption of a bankrupt law may be supported. The first is to mitigate the cruelty of the common law, which is now entirely obsolete; the second, the necessity of punishing the failure of the particular contract in question, namely: that between borrower and lender, in a manner quite different from the manner of treating all other contracts, which he has shown, he trusts, has nothing left on which it can be supported; and the third, which consists in the machinery devised for making an equal division of the wreck of the property amongst the creditors. His Lordship denies that natural equity requires that the wreck of the estate should be divided among the creditors. It appears to him that the law of bankruptcy has ceased to be required as a refuge from the harshness of the general law; that it has been the fruitful mother of chicanery and embezzlement; and that against these and many other objections there is nothing to offer except the public semblance of equity exhibited by the empty show of a symmetrical dividend, the substance of which the Bankruptcy Court has previously devoured. It seems to him that these considerations, joined to the fact that the present bill has been twice amended during the present reign, and is now about to undergo a third transformation, and to masquerade as a hybrid department of the State, have given us sufficient proof that the time is come when, as Hamlet says, we "ought to reform it altogether. His Lordship ventures to think that he has shown ample reasons why the Bankruptcy Court should no longer be a snare to us; and that, having perplexed and disgraced our statute book for several centuries, it should perplex and disgrace it no more. If asked what he would put in its place, he answers without hesitation—nothing. He reminds us that we have a common law purified from the barbarism of imprisonment for debt, and he cannot see that we require anything more except a measure to shorten the Statute of Limitations. The effect of such a law would be, he believes, most salutary; with nothing but the estate of the debtor to look to, he thinks there would be fewer bad debts; trade would be more safely and therefore more profitably managed, and the ridiculous notions as to the peculiar wickedness alternately imputed to borrowers and lenders, would, he contends, be once and for all exploded. Lord Sherbrooke does not deny that the estate of a bankrupt belongs to his creditors. He admits that they ought to have full control over it; but, he goes on to say, have we not abundant experience that to give them control is of small avail unless some hitherto undiscovered deity will impart what he has hitherto firmly denied to our prayers—the will and strength to use it. Repayment on any considerable scale through the bankrupt law is, he contends, a patent and threadbare delusion; and, in conclusion, he argues that it is better that debts should be paid unequally than that the property should be destroyed in the effort to ascertain an equality which yields a purely metaphysical and imaginary satisfaction to the thirsty creditor.—London *Law Times*.

TRADE MARK IN NAME OF PUBLICATION.

In a case of *Walter* v. *Head*, before the Master of the Rolls, on the 22nd July, a motion was made to restrain the defendant from selling any newspaper under the name or title of the *Times*. The defendant had been issuing reprints of old copies of the *Times*, which were exact *fac similes* of the former issues, except the last sheets, upon which the defendant had inserted advertisements for his own profit. He had also issued future numbers of the *Times* as skits, also inserting advertisements for profit. The prices of the defendant's issues and those of the plaintiffs

were dissimilar, but the name and the device and arms at the commencement of the defendant's issues were exactly the same as the plaintiffs'. The plaintiffs now moved for an injunction, on the ground that the defendant's issues were a colorable imitation of the plaintiffs', and an infringement of their trade-mark in their name and device. For the defendant it was contended that the plaintiffs had no special property in the name of the *Times*, which was used in conjunction with other words by numerous other papers, and further, that the only ground upon which the plaintiffs could succeed was that the issues of the defendant were calculated to deceive the public into the idea that they were buying those of the plaintiffs, which it was submitted they were not. Jessel, M. R., was of opinion that the issues by the defendant were an exact copy of the plaintiffs' paper; that the plaintiffs had a right of property in their name and heading, which the defendant had infringed; and that the defendant had also attempted to appropriate one of the most profitable branches of the plaintiffs' business—their advertisements—and he must therefore grant the injunction asked for.—*Solicitors' Journal.*

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 30, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

ROBERT (plff. below), Appellant, and THE CITY OF MONTREAL (deft. below), Respondent.

Prescription—C. C. 2261.

Where the action is not an action for damages resulting from an offence or quasi-offence, but merely claims the price or value of materials wrongfully taken away, the two years' prescription under C.C. 2261 *does not apply.*

The judgment appealed from was rendered by the Superior Court, Montreal (Jetté, J.), September 30, 1879, dismissing an action brought against the Corporation of Montreal for the value of certain fencing. The judgment was as follows:—

"La Cour, etc....

"Considérant que les faits établis en preuve démontrent que les clôtures dont le demandeur réclame la valeur ont été enlevées en 1874 et en 1876, c'est-à-dire plus de deux ans avant l'institution de l'action, et ce par Donnelly, l'entrepreneur des travaux de l'aqueduc;

"Considérant que les prétendues reconnaissances de la réclamation du demandeur et de la responsabilité de la cité que le demandeur prétend avoir été faites et données par Louis Lesage, surintendant de l'aqueduc, et qu'il invoque comme interruption de la prescription de deux ans acquise contre sa demande, ne sont pas prouvées et que le fussent-elles, elles ne pourraient lier la défenderesse, attendu que le dit Lesage n'avait aucune autorité pour lier la corporation sous ce rapport;

"Maintient la première défense de la défenderesse à l'action du demandeur, déclare en conséquence que la dite action était prescrite lors de l'institution d'icelle par la prescription de deux ans établie par l'article 2261 du Code Civil, et la renvoie avec dépens."

RAMSAY, J. (*diss.*) I do not think the prescription of Art. 2261 C. C. applies to a case like the present. There is no question of a *quasi-délit* here. The obligation turns on a *quasi-contrat* rather. There was an error as to rights under a contract, and without any idea of wrong-doing, the contractor made use of the fencing which he had properly removed. There is some difficulty as to the classification adopted by the C. C. 983, notwithstanding its symmetrical form (Ortolan III, Nos. 1198 and 1621). Since, then, Art. 2261, C. C. compels one to attribute the obligation to its origin, it seems to me it takes its rise in what resembles a contract, rather than in what resembles an offence—let us translate it trespass. This helps us to settle another point in this case, namely the pretension that the contractor and not the Corporation is liable. It seems to me Donnelly only acted, and indeed he could only act for the Corporation. What he did was under a misapprehension of the rights of the Corporation, therefore it is impossible to say that the Corporation can send the plaintiff to his recourse against Donnelly. They had full notice of the claim, and they should have settled the matter with Donnelly. Again, I do not think the Corporation can ignore the acts of their agents Lesage and McConnell. They were evidently performing duties which a corporation can only perform by an agent, and their acts within the scope of these duties necessarily bind the Cor-

poration whether ratified or not.

As to the facts, there can be no difficulty; the use made of some of the fencing is distinctly traced, and although Robidoux says some of it was carried away and burned by himself and others, Lesage tells us that it appeared to be in the possession of Donnelly. I am, therefore, of opinion to reverse.

BABY, J., also dissented, and concurred in the reasons stated by Ramsay, J.

DORION, C. J., remarked that there was no difficulty that prescription could not be invoked in this case. It was not an action based on a *délit* or *quasi délit;* it was an action for the value of the fencing taken away. It seemed absurd that if a man sold goods, he would have five years to bring his action, but if somebody took them away, the claim would be extinguished by the lapse of two years. The judgment could not be supported on the reasons stated therein; but on the merits the claim must fail, because the corporation was not liable for the act of Donnelly in using part of the fencing.

MONK, J., said that the judges were all agreed that the two years' prescription did not apply. Upon the merits, the majority of the Court were of opinion to confirm.

The judgment is as follows:

"La Cour, etc....

"Considérant que l'appelant a porté cette action pour recouvrer de l'intimé le prix et la valeur des matériaux de la clôture qui existait en 1872 sur un terrain qu'il a vendu, ainsi que ceux qu'il représente, à l'intimé, pour y faire un nouvel aqueduc, désigné sous le nom d'*Inland Cut*, lesquels matériaux l'appelant, et ceux qu'il représente, s'étaient réservés le droit d'enlever;

"Et considérant qu'il est prouvé que John Donnelly, qui avait entrepris pour l'intimé de creuser le canal pour le dit aqueduc, a défait les dites clôtures lorsqu'il a commencé les travaux dans l'automne de 1873, et que les matériaux sont demeurés entassés sur les lieux jusqu'au printemps suivant, sans que l'appelant, ni ceux qu'il représente, ait fait aucune démarche pour les enlever, ainsi qu'ils avaient le droit de le faire;

"Et considérant qu'il est de plus prouvé qu'une partie de ces matériaux, ainsi demeurés sur les lieux, ont été brûlés par des personnes demeurant dans les environs, et que le reste, sans qu'il soit possible de déterminer la quantité, a été employé par Donnelly lui-même pour faire une clôture temporaire, pour séparer la terre de la veuve Dunberry du terrain qu'elle avait vendu à l'intimée, clôture que le dit Donnelly était tenu de faire à ses frais, en sorte que la dite intimée n'a pas profité des matériaux ainsi employés par le dit Donnelly;

"Et considérant que les prétendues reconnaissances de la réclamation du demandeur, et de la responsabilité de la cité, que le demandeur prétend avoir été faites et données par Louis Lesage, surintendant de l'aqueduc, ne sont pas prouvées, et que, sous ces circonstances, l'intimée n'est pas responsable du prix et de la valeur d'aucune partie des matériaux, perches et piquets de la clôture que le dit appelant et ceux qu'il représente s'étaient réservés le droit d'enlever;

"Et considérant qu'il n'y a pas d'erreur dans le jugement rendu par la Cour Supérieure à Montréal, le 30e jour de septembre 1879;

"Cette Cour, pour les raisons ci-dessus, et non pour celles données dans le dit jugement, confirme le dit jugement."

(*Dissentientibus* Ramsay and Baby, JJ.)

Judgment confirmed.

Coursol, Girouard, Wurtele & Sexton for appellant.

R. Roy, Q. C., for respondent.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, Sept. 7, 1881.

Before MACKAY, J.

LOW v. MONTREAL TELEGRAPH CO.

Injunction—Interim Order.

In a suit attacking the validity of an alleged transfer of the telegraph lines and franchises and privileges of a telegraph company, the Court will not grant, before return of the action, an interlocutory order restraining the company from raising the rates for the transmission of telegraphic communications in pursuance of the agreement.

MACKAY, J. The Montreal Telegraph Company is incorporated under 10 & 11 Vic., cap. 38. Under section 1 of this Act its franchise is acquired, corporate name and powers are conferred upon it, and it is enacted that also they and their successors shall be in law capable of purchasing, having and holding to them and

their successors any estate, real and personal, or mixed, to and for the use of said Company, and of letting, conveying or otherwise parting therewith for the benefit and on account of the said Company from time to time as they shall deem necessary or expedient.

On the 7th of August last the Montreal Telegraph Company made an agreement with the Great North-Western Telegraph Company, by which the latter Company is for 97 years from the 1st of July last to work and operate the system of telegraph owned and heretofore operated by the Montreal Company, collecting in the name of the Montreal Company such rates as the said Company shall establish from time to time, etc. The contractors, the Great North-Western Company, are to have the right to use and occupy during the term of the agreement all the stations, offices and buildings of the Montreal Company, except the board room of the Company in Montreal, the Secretary's room adjacent, and a sufficient portion of the vaults of the Company for the safe custody of books, papers, etc., etc. But the Montreal Company may sell for its own benefit the buildings in Montreal and Ottawa, not now used or required for the use of the Company in its business. Upon the requisition of the Great North Western Company, the Montreal Company shall from time to time change their tariff of fees and rates in such manner as shall be ordered in such requisition, provided the rates per ten words over the present lines of the Montreal Company in Canada do not exceed twenty-five cents, but subject to be increased, etc., etc. The Great North-Western Company oblige themselves to pay to the Montreal Company quarterly, during the term of the agreement, $41,250, etc., etc., also all costs of operating, municipal taxes and assessments on property occupied by the Great North-Western Company, etc. After this follow clauses for the cases of the Great North-Western Company not paying punctually, etc.

On the 23rd of August the plaintiff, Mr. Low, a stockholder in the Montreal Company, commenced a suit against the Montreal and Great North-Western Companies to have the agreement before referred to declared *ultra vires* of the Montreal Company and to have the defendants enjoined not to carry out the same, that the Montreal Company be ordered to resume possession of all that it nominally parted with by the said agreement, that the Great North-Western Company be ordered to give up all it acquired by the said agreement and to cease to operate the lines of the Montreal Company. The return day of the writ was September 5th. One of the plaintiff's principal allegations is to the effect that the Montreal Company has no power to sell, lease or convey its telegraph lines or any dues or charges for transmitting telegrams or any of the privileges or franchises conferred upon it by statute, or to delegate to any other corporation whatever its powers or functions; (as by the agreement in question it is contended that it does).

On the 29th of August, before the return of the writ, the plaintiff presented a petition asking for an interlocutory order enjoining and restraining the Montreal Company from raising rates for the transmission of telegraphic communications over their lines above the present rates of twenty cents for ten words and one cent for each additional word, until final judgment be rendered in this case or until it shall be otherwise legally ordered, etc. The petition reposes on allegations that the petitioner is informed that the Montreal Company is, under the illegal agreement of August 7th, immediately about to change its rates by increasing of the same at the requisition of the G. N. W. Company, and for the interest of the latter, and not of the Montreal Company or its stockholders, that if the Montreal Company is not restrained from so acting, petitioners' interests will be damaged and endangered by the action of the Montreal Company provoking the formation of opposition companies, and leading to the Attorney-General taking steps to have the Company's charter forfeited, etc., etc.

Upon this petition the defendants simply appeared without written appearances, answered nothing by writing, but filed an affidavit of their manager and chief agent Mr. Dakers. Mr. Dakers was cross-examined, and thereupon and upon oral argument the petition was submitted. From Mr. Dakers' statements we may say that Mr. Low was right in believing, on the 29th of August, that the Montreal Company was about to change their rates by increasing them, for from the 26th of August at 6 p.m. the rates had been raised by Mr. Dakers and the Montreal Company by order of Mr. Wiman, of the G. N. W. Company. Mr. Dakers says that on

the 25th of August the President of the Montreal Company verbally authorized the raising of the rates, but whether from that date or on the 1st of September, is not clear. Mr. Wiman asked for the raising of the rates to take place even before the first of September, by a telegram from Toronto after Mr. Dakers had received service of Low's process. This telegram was communicated to the President of the Montreal Company, who simply advised Mr. Dakers to consult with Mr. Tait, defendant's counsel. It seems, however, that the President had before that verbally authorized Mr. Dakers to raise the rates, but from what time it is not clear. On the 19th of August the Directors of the Montreal Company passed a resolution as follows :—"As by the agreement of this Company with the G.N.W. Telegraph Company, the rate charged by this Company was to be increased to 25 cents to make the business remunerative, it is hereby resolved that the rate for ordinary messages throughout this Company's lines in Canada be raised to 25 cents per ten words, and one cent per word extra at such time as shall be ordered by the president, who is hereby authorized to fix such time."

Mr. Low's petition must be granted, if at all, by Judge or Court, holding sound his proposition that the agreement of 17th August was and is, beyond legality, beyond the power of the Montreal Company. He wants it declared that the act complained of (raising the rates) is illegal, because the agreement, in pursuance of which the act is proposed to be done, is illegal. His counsel have argued that the agreement is illegal because the Montreal Company has exceeded its powers by entering into the agreement referred to.

I agree with the counsel that it may be considered as settled that a corporation cannot lease or alienate any property necessary to perform its obligations and duties to the State without legislative authority; also that the powers of such a Company as the Montreal Company are only those of their charter. What is expressly granted, and what may fairly be implied as granted, may be taken, I hold, to be the measure of the Company's powers. I agree that a lease by a railway Company of its road and rolling stock, there being no authority to lease given by the charter, is *ultra vires* and void. I agree that a Railway Company requires legislative authority to hand over its line to be worked by another Company (*Beman* v. *Rufford*). But does it follow that at this stage of the case, upon a summary petition like this made before the return day of the writ, in a suit brought for the very purpose of having this agreement declared *ultra vires* and illegal, I ought to declare the agreement illegal and grant the petition? The petition as formulated can be granted only on a finding that the agreement is illegal. It is plain that acts which without legislative authority are null may be perfectly good if sanctioned by legislative authority. The Montreal Company's charter, article 1, allows, etc. (as I have stated in commencing). Upon such a charter taken with the agreement, or say rather, upon such an agreement taken with such a charter, is there no room for argument that the agreement is not *ultra vires*? I ought not now to decide this question. Its decision must depend upon the settlement of several other questions. What is a franchise? Does the agreement alienate the Montreal Company's franchise? What is leased or "parted with" by the agreement? Upon the question of what is *ultra vires* in cases analogous to the present one judges differ. In the last English case of the kind (*Attorney-General* v. *Great Eastern Railway*, 27 English Law reports, page 672), the Master of the Rolls and the Attorney-General were upon an appeal held, by two judges against one, to have committed error. The matter is discussed in the case of *Thomas* v. *West Jersey Railway Company* (Albany Law Journal, vol. 21, page 409). I have resolved to grant no injunction at present, but to suspend final judgment upon the petition until after judgment in the principal cause to which I order this petition to be joined. Costs reserved.

Maclaren & Leet for petitioner.
Bethune, Q. C., and *Lacoste, Q. C.*, counsel.
Abbott, Tait & Abbott for the Company.
Girouard, Q. C., counsel.

COURT OF REVIEW.

MONTREAL, April 29, 1881.

TORRANCE, RAINVILLE, JETTÉ, JJ.

[From S.C., Montreal.

DUSTIN v. THE HOCHELAGA MUTUAL FIRE INSURANCE CO.

Mutual Insurance Company — Consent to other insurance.

The statutory requirement applicable to insurance in mutual insurance companies, that the consent of the directors must be signified by an endorsement on the policy, or other acknowledgment in writing, is not satisfied by evidence of mere knowledge by the insurers of other insurance.

The judgment, from which the present inscription was taken, was rendered by the Superior Court, Montreal (Johnson, J.), Jan. 31, 1880, dismissing the action. The learned judge made the following observations :—

"This is an action to recover the amount of a fire policy, and the defendants, being a mutual society, plead the statute which voids an insurance contract, where there has been another insurance effected without their consent; and also a special condition of the policy (No. 5) to the same effect. This is the principal point in the case. A variety of circumstances were adverted to, tending to show a knowledge by the defendants of the existence of another contract. That, however, does not appear to me, under any reasonable view of the law, to be enough. There must be a consent. The words of the statute are: 'unless the double insurance subsists with the consent of the directors signified by endorsement on the policy signed by the manager or secretary, or other officer authorized to do so, or otherwise acknowledged in writing.' This is not satisfied by evidence of mere knowledge on the part of the insurers of other contracts. Besides, the evidence seems to me to show that the Company only took the risk because they understood the application to the other office had been withdrawn.

"There are other points raised; but I do not enter upon them; because I am of opinion to maintain the defendants' first plea, and dismiss the action."

In Review, the judgment was confirmed, Jetté, J., dissenting.

Greenshields & Busteed, for plaintiff.

Davidson & Cross, for defendants.

GENERAL NOTES.

The *American Law Review* for August contains the following leading articles: Liability of officers acting in a judicial capacity, by Arthur Biddle; Why should not a decedent's real estate descend and be administered like personalty? by Wm. Reynolds; Subjection of the State to law, by Roger Foster.

About fixing Friday for executions a correspondent writes to a N. Y. contemporary :—"The judges of the Supreme Court ought not to foster this superstition by making an almost invariable practice of sentencing criminals convicted of murder to be executed on Friday. In my acquaintance a respectable lawyer, under the influence of prejudice, avoided the commencement of any new business on Friday. There are many things which must be done on Friday. Becoming a mother cannot be adjourned, and there is no reason why the day of the nativity of one equal seventh of mankind should be clouded by a cruel old custom sanctioned by judicial authority. Are not Friday-born people entitled to relief? Let the judges appoint some other day of the week for the execution of the sentence 'by hanging of the convict by the neck until he be dead.'"

The lawyer's legitimate fee, says Judge Cooley, is payable irrespective of the result, and he is supposed to occupy a position from which he can contemplate the controversy with a desire that the correct rule of law shall be applied, and the truth be expressed in the judgment, whether the result to his client be favorable or unfavorable. This is a statement which would probably give rise to strong opposition, even from lawyers of the most pure and upright character. Lord Brougham would certainly not have been content to adopt Judge Cooley's view, nor is it necessary to do so in order to express condemnation of the "no cure no pay" system. The conclusion to which Judge Cooley arrives is, that if poor persons need assistance to enforce their rights, and are unable to pay for it, a lawyer ought to prefer to give assistance as a matter of charity, rather than place himself in a position antagonistic to his duty and the interest of his client. Probably this is the only safe way of deciding the question.—*London Law Times.*

If a judicial decision were necessary to demonstrate that Americans spit, it would not be wanting. In 7 Federal Reporter are several cases involving patents on "cuspidors," which, we believe, is the genteel expression for spittoons. In *United States Stamping Co. v. Jewett*, id. 869, we find the following choice extract: "As to one of the Weber cuspidors which Mr. Adams had in his house, given to him by Weber, Mr. Adams states, in his testimony, that he had it in his family as early as 1868—probably, he says, the first of January, 1868—and that it was a New Year's present to aid in furnishing a new library, completed in 1867. Mrs. Adams, his wife, testifies that this Weber cuspidor was brought to her house in 1867 or 1868, after the library was completed, and two years certainly before she went to Europe, which was July 12, 1870; that she connected it with another gift which was received about the same time—a fire-screen—given by Mr. John Dow, the screen being a cut-glass one, in which the cuspidor was reflected; that the cuspidor was also reflected in a mirror and in the windows of a bookcase; and that the room appearing to be full of cuspidors, the article was sent into the attic." A room apparently full of spittoons is too disgusting to contemplate, of course, but it seems rather onerous on Mr. Adams to compel him to go up to the attic every time he wanted to spit. Why did not Mr. Adams banish the fire-screen? This account shows who was the stronger party in that household. A spittoon as part of the furniture of a library seems a novel idea. It might possibly be useful during the reading of these books which Lord Bacon says are "to be chewed."—*Albany Law Journal.*