The Legal News.

Vol. VII. MARCH 1, 1884. No. 9.

CONSTITUTIONAL CASES BEFORE THE PRIVY COUNCIL.

The following is a list of cases involving questions as to the respective powers of the Dominion Parliament and of the local legislatures decided up to the present time, indicating where reported :—

The Queen & Coote, 11 March, 1873, L.R. 4 P. C. 599, 18 L. C. J. 103.

L'Union St. Jacques & Belisle, 8 July, 1874, L. R. 6 P. C. 31, 20 L. C. J. 29.

Dow & al. & Black & al., 5 March, 1875, L. R. 6 P. C. 272.

The Attorney-General for the Province of Quebec & The Queen Insurance Company, 5 July, 1878, 3 H. of L. & P. C. 1090, 22 L. C. J. 307, 1 Leg. News, 410.

Valin & Langlois, 13 December, 1879, 5 H. of L. & P. C. 115 ; 3 L. N. 38.

Bourgoin & La Cie. du Chemin de fer, 26 February, 1880, 5 H. of L. & P. C. 381, 24 L. C. J. 193, 3 Leg. News 178.

Cushing & Dupuy, 15 April, 1880, 5 H. of L. & P. C. 409, 24 L. C. J. 151, 3 Leg. News, 171.

The Citizens' Insurance Company & Parsons. The Queen's Insurance Company & Parsons, 26 November, 1881, 7 H. of L. & P. C. 96, 5 Leg. News, 25.

Dobie & The Board of Temporalities, 21 January, 1882, 7 H. of L. & P. C. 136, 26 L. C. J. 170, 5 Leg. News, 58.

The Western Counties Railway Company & The Windsor & Annapolis Railway Company, 22 February, 1882, 7 H. of L. & P. C. 178. Note.—In this case the question of respective powers was raised, but was not adjudicated upon by the P.C.

Russell & The Queen, 23 June, 1882, 7 H. of L. & P. C. 829, 5 Leg. News, 234.

The Attorney-General of the Province of Quebec & Mercer, 8 H. of L. & P. C. 767; 6 Legal News, 244.

The Colonial Building & Investment Association & The Attorney-General of the Province of Quebec, 1 December, 1883, 7 Leg. News, 10.

Hodge & The Queen, 15 December, 1883. 7 Leg. News, 18.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, December 21, 1883.

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

Ross et vir (defts. below), Appellants, and Ross et vir (plffs. below), Respondents.

Executor—Removal for cause.

An executrix appointed her husband her attorney to manage the estate, and he made a lease which, in the opinion of the Court, was disadvantageous to the estate and for the purpose of deriving an unfair advantage, and also received bonuses on several occasions without accounting for them. Held, sufficient ground for removal of the executrix from office.

The appeal was from a judgment of the Superior Court removing an executrix. See 5 L. N. 197 for judgment in the Court below.

RAMSAY, J. This is an action to set aside an executrix. The appellant is the sole surviving executrix of the will of the late John Ross, and the appellant and the respondent are the remaining legatees under the will.

The complaint of the respondent is :—1. That appellant had given a power of attorney to her husband to manage the estate in violation of the terms of the will.

2nd. Fraud in charging the estate with sums not legally chargeable to the estate, in charging a commission to remunerate her husband for the management of the estate while paying one Tuggey a commission for the same services, in taking bonuses for leases granted, to wit, from Stearns and Murray $500, and from Hart and Tuckwell $500, —in making a fraudulent lease to one Miss Cressy at a notoriously insufficient rent, to the injury of the estate,—in agreeing to pay $1200 to Hart and Tuckwell for the cancellation of the lease of part of the estate.

3rd. Waste in pulling down and erecting buildings on the estate.

The appellant denied all this waste and fraud, and maintained that she had a right to give her husband a power of attorney.

The evidence is very voluminous and in many parts of it rather difficult to be understood.

With regard to the first point respondent relies on these words: "And it is further- "more my will and wish that neither of the "husbands of any of my said daughters, nor "any of my daughters' future husbands shall "have any power over, control or interference "in any manner with the foregoing devise "and bequest to them, but shall be as abso- "lutely free from such power, control or "interference as if they had remained un- "married and single."

We do not think that the interpretation to be put on that clause is that the wife shall not be aided in her administration by her husband, but that the husband shall not have the control of his wife's share of the estate.

Before proceeding to examine the evidence it is necessary to examine a grievance complained of by appellant. She complains that the testimony of her husband should not have been excluded, and that it was competent to the Court, to allow the husband to be so examined. The appellant relies on the art. 252 C. C. P. and on 35 Vic. c. 6, sec. 9. We need not enter upon this question in the present case, for the judge has not permitted the introduction of this evidence, and we do not think that under the circumstances it would be our duty, even if we had the power, to send back the record in order to allow Dr. Thayer to be examined. It is evident from his wife's testimony that he is the party to blame, if blame there be, and allowing him to speak would simply be permitting him to disculpate himself under oath. It is unnecessary for us, therefore, to determine in the present case, whether appellant is strictly right in saying that the terms of the Act allow the wife to examine her husband as her witness if he be her agent. But the words of the statute are, "Whenever such examination shall be allowed, it shall be as unrestricted as would have been that of the other consort, whether as regards the admissibility of verbal evidence *or otherwise*." How far is the evidence of the other consort unrestricted? So far and no further can the husband, agent, be examined.

The evidence of Mrs. Thayer, covering twenty-one pages of the factum of respondent, is next to valueless. It confirms what the appellant does not seek to conceal, that she knows personally little or nothing of the affairs of the estate. Her husband manages everything with her consent, and if his administration is bad she is responsible. On one point her evidence is important, it is as to the ring given her by Mr. Decker. But we do not think this gift can be characterized as evidence of fraud. The acceptance of a present of this sort would require to be brought into connection with some sacrifice of the interests of the estate to warrant a Court in presuming it to be fraudulent.

The charge most insisted on at the argument was the transaction with Miss Cressy. It seems this person has been living in Dr. Thayer's house as "a lady friend" off and on for nearly nine years, it would seem almost all the time she has been in Canada. Who she is, how she came to be an inmate of Dr. Thayer's family, is surrounded with some mystery. They became acquainted, so far as we can learn, in an hotel, and her position in the family is not that of a servant. She receives no remuneration. It is not said that she is a boarder, but we are told she is a person of private means. One thing, however, is evident, she has been an inmate of Dr. Thayer's house for years, and while residing there on the 30th April, she leased from him a vacant lot of land for five years, on the condition that she should pay the taxes, that she should expend $600 on buildings on the property, that she should pay no rent for the first two years, and $50 a year for the last three. Within four days—on the 3rd May following—Miss Cressy re-leased these premises to Mr. Foley for five years for $500, and she got from him $250 cash in advance. She swears at first that she made the bargain with Foley herself, but being pressed, it turns out that Dr. Thayer opened communications between them with regard

to the re-lease. Foley is examined as a witness, and he tells us that he leased the premises from Dr. Thayer, and that he was to pay the rent to Miss Cressy; that it was about the middle of April negotiations with Thayer began, and it was not till fifteen days after he had leased the premises from Thayer that he ever saw Miss Cressy. He says: "I never saw her until the day I went and signed the lease at the notary's office, and I did not know who she was." Again he says, he supposed he was dealing with Dr. Thayer. "I did not know Miss Cressy." Until the day he signed the lease Dr. Thayer had not mentioned Miss Cressy's name to him, and he had not heard of her.

The appellant explains the transaction in this way. It is said that this property was producing no rent, that it was a charge to the estate, that the heirs could not agree among themselves as to borrowing money to build, and that therefore Dr. Thayer had resolved by getting Miss Cressy to enter into this lease to turn the property to account without borrowing. It is contended that the estate was relieved from taxation for five years, that it directly gained by rent $150, and that the building belonged to the estate at the end of the lease. It is also said that the estate could get back the property at any time by repaying to Miss Cressy what she had expended.

This is all very plausible, but it is not unanswerable. So long as Dr. Thayer manages the estate, there is no fear of the lease being broken, and if it were, it would only be on the repayment to Miss Cressy of what had been expended—not of $600. It is evident that the danger of the lease being broken in the interest of the estate was not contemplated as a possible contingency, for the lease to Foley was for two years positively, and for three years more at Foley's option. Two other curious pieces of evidence leaked out. The insurance of the new building was in Dr. Thayer's name, and he paid the assessments. This was at first attempted to be concealed or denied. It also appears that Foley had offered to build on the premises and to give $300 for a lease of five years. His sincerity in this respect is not to be questioned, for he has actually agreed to give Miss Cressy a great deal more.

We therefore think that a bargain disadvantageous to the estate has been entered into designedly with the intention either of favouring Miss Cressy at the cost of the estate, or of allowing Dr. Thayer or his wife to gain an unfair advantage through a person *interposée*—Miss Cressy.

The Stearns and Murray story really includes the charge of having received two sums of money. It is said that in 1877 one Decker having failed, Stearns and Murray, who held the lease of the Albion Hotel with Decker, desired to hold the lease in their own names; that Thayer would not consent unless they gave him $500, and that they ultimately gave him $150 and discharged his bill at the hotel for $147.

The story is scarcely denied, but it is attempted to be proved by one of the partners, Stearns, that this was done to indemnify Dr. Thayer for the expense of coming out from England to settle difficulties as to this lease. Stearns denies this, and at any rate an expenditure of this sort should have appeared on the books.

The other transaction with Stearns and Murray was two years later, when they wanted to renew their lease, and then they gave Thayer a cheque for $280 and $20 as a bonus for the lease. This again it is attempted to explain by saying that Thayer wanted $3,000 a year for the Albion, and that Kerby was willing to take $2,500; and that Thayer then said if Kerby was satisfied with $2,500 they might have it for that, but that he must be indemnified by getting $300. But it is evident a co-proprietor acting as agent, cannot make a bargain of that sort without the positive consent of the other proprietor.

A witness, Tuckwell, says that he and his partner Hart paid Thayer $500 to get a 12 years' lease of the premises they had of the estate at the rate of $1200 a year, and that subsequently Thayer got them to cancel their lease on receiving the $1200 they had paid for rent and bonus back again. It is contended on the part of respondent that this $1200 was all charged to the estate, but that the $500 was not credited to the estate.

I have not been able to trace the whole of

this transaction satisfactorily so as to say that it is proved that the $1200 was charged to the estate. The fact is the record is very inconveniently made up, and several papers I wished to see so as to be able to speak of them from positive inspection, I could not find. One, a note, an important paper, has evidently not been sent up, and there is no copy of it. Nevertheless we think it established that Dr. Thayer got the $500 and did not account for it for about two years.

The defendant has established that in many respects, the estate was well and profitably managed by Dr. Thayer, and that the charge of waste, in the sense of doing useless work, is not made out. Neither do we find any payments have been improperly made. And here we may say that we should not feel disposed to set aside an executrix, daughter of the testator, herself a legatee, on the evidence of small payments which might have been avoided. Nor do we think that the payment of a commission to Dr. Thayer for appreciable services, such as collections, would be a ground for displacing the executrix selected by the testator.

But we think the judgment should be confirmed on account of the Cressy transaction, and the taking of bonuses on several occasions without accounting for them.

Judgment confirmed.

J. L. Morris for appellant.

Kerr & Carter for respondent.

SUPERIOR COURT.

SHERBROOKE, November 10, 1883.

Before BROOKS, J.

Ex parte EDSON, Petr. for *certiorari*, and THE CORPORATION OF HATLEY, Respondents.

Quebec License Act of 1878—Sale of intoxicating liquors—Art. 561, Municipal Code.

1. *Although the local legislature has no authority to prohibit the sale of intoxicating liquors, it has power to make laws regulating the traffic therein, and to raise revenue for provincial purposes by restricting to license holders the right to sell liquor.*

2. *A municipal corporation has no power under art. 561 of the Municipal Code, to prohibit the sale of intoxicating liquors within the limits of the municipality.*

The petitioner had been convicted and fined $75, on complaint of the respondents, for selling intoxicating liquors without a license.

PER CURIAM. The local legislature may not prohibit, but it may legislate exclusively upon this subject for the purpose of raising a revenue for provincial, local or municipal purposes. The Quebec License Act of 1878, 41 Vict. cap. 7, enacts that whoever sells intoxicating liquors in any organized territory in this Province, outside of Montreal, without a license to that effect still in force, shall be liable to a fine of $75. The Court holds this provision not *ultra vires*.

It is said that the Municipal Council of the Township of Hatley, under Sec. 561 of the Municipal Code, had prohibited the sale within their territory. They could not legally do this, and what the petitioner had to do was to get the necessary certificate, present it to the Council, and demand its confirmation; and, if refused, either proceed by *mandamus* to enforce its confirmation, or, on establishing such refusal, tender to the local government or to its license inspector the amount due for provincial revenue purposes, and demand the license; but the petitioner cannot come forward and say that he has a right to sell without any license and without the payment of any duty.

Petition rejected.

J. L. Terrill and *J. W. Merry* for petitioner.

W. White, Q. C., for respondents.

COUR SUPÉRIEURE.

SOREL, 4 octobre 1883.

Coram GILL, J.

BAZIN v. LACOUTURE, *ès-qual.*

Procédure—Huissier—C. P. C. 74.

JUGÉ:—*Que la prohibition de l'Art. 74 du C. P. C. ne s'applique pas au cas où l'huissier qui a fait l'exploit d'assignation, a instrumenté contre ses parents ou alliés.*

Le jugement est comme suit:

" La Cour ayant entendu la plaidoierie contradictoire des parties sur le mérite de l'exception à la forme ;

"Considérant que la dite exception est basée sur le moyen unique que l'assignation est nulle parceque l'huissier qui a signifié l'exploit est marié à la cousine-germaine de la défenderesse;

"Considérant que les raisons qu'il y a de défendre aux huissiers d'exploiter pour leurs parents n'existent pas lorsque, comme dans cette cause, ils instrumentent contre leurs parents ou alliés et que, partant, la prohibition portée en l'article 74 du C. P. C. ne doit pas, en pareil cas, recevoir son application, a rejeté et rejette la dite exception à la forme comme mal fondée, avec dépens."

Exception à la forme rejetée.

A. Germain, C.R., pour le demandeur.

J. B. Brousseau, pour la défenderesse.

(A. G.)

COUR SUPÉRIEURE.

MONTRÉAL, 20 février 1884.

Coram TORRANCE, J.

DESROSIERS v. LESSARD.

Inscription à l'Enquête—Délai de l'avis—Art. 235 C. P. C.

Le 11 février 1884, le défendeur a fait signifier au demandeur l'inscription suivante: "Nous inscrivons la présente cause sur le rôle des Enquêtes, pour l'Enquête du demandeur, pour jeudi, le quatorzième jour de février courant."

Motion de la part du demandeur se lisant comme suit: "Attendu que le défendeur n'a pas accompagné son inscription de l'avis requis par la loi; attendu que les délais entre la signification de la dite inscription et le jour fixé pour l'Enquête (8 jours, art. 235 C. P. C.) sont insuffisants, conclut, etc."

Le défendeur répond en citant la 41ième règle de pratique de la Cour Supérieure, qui dit: "Aucune preuve ne sera reçue dans une cause contestée, à moins que deux jours en terme ou huit jours en vacance ne se soient écoulés entre l'avis de telle inscription et le jour fixé pour faire la preuve." Le demandeur réplique en disant que la règle de pratique n'a pu avoir pour effet de changer ou modifier le texte de la loi qu'il appartient à la législature de changer.

PER CURIAM:—"La Cour, parties ouïes sur la motion du demandeur du 15 février courant, demandant pour les causes et raisons ci-énoncées en icelle motion, que l'inscription par le défendeur sur le rôle des Enquêtes pour l'Enquête du demandeur pour le 14 février courant, soit rayée du dit rôle des Enquêtes, ayant examiné la procédure et délibéré, accorde la dite motion; en conséquence, ordonne que la dite motion à l'Enquête soit et elle est par les présentes rayée et biffée du dit rôle, à toutes fins que de droit, avec dépens." *Vide* 21 L. C. J. p. 39.

Lareau & Allard, pour le demandeur.

Globenski & Poirier, pour le défendeur.

SUPERIOR COURT.

MONTREAL, February 23, 1884.

Before TORRANCE, J.

Ex parte ISIDORE DAOUST, *père*, petitioner, and CORDELIE LEBOEUF, tutrix, *mise en cause*.

Procedure—Action against tutor.

A tutor cannot be impleaded except by writ in the ordinary form.

The question here was as to the summary removal of a tutrix for misconduct in her office.

The petitioner who was the sub-tutor presented a petition to the judge in chambers, who gave an order summoning the tutrix to appear on Friday the 22nd February, instant, before the Court.

The defendant appeared and made a preliminary objection to answer, there being no writ issued against her summoning her to appear.

PER CURIAM. The directions of our codes appear to be very plain. By C. C. 286-289, "actions for the removal of tutors may be brought before the Court, by any one related or allied to the minor, by the subrogate tutor, or by any other person having an interest in such removal." "May" is used, which is permissive. C. C. 289. "During the litigation, the tutor sued retains the management and administration, &c., unless the Court orders otherwise." The French version says: "La demande se poursuit devant le tribunal." It is directory or obligatory. Again, the word "Court," "*tribunal*," not "judge" is used. Turning now to the C. C. P. for the

procedure, by C. C. P. 28, "The Superior Court has original jurisdiction in all suits or actions which are not exclusively within the jurisdiction of the Circuit Court or of the Admiralty." The French version says: "toute demande ou action." C. C. P. 43. "Every action before the Superior Court is instituted by means of a writ of summons, in the name of the Sovereign: saving the exceptions contained in this code, and other cases provided for by special laws." C. C. P. 75 specifies the delays for different proceedings. I find no special rule for demands against tutors.

Turning now to the jurisprudence, there is no case reported since the Code, that I know of. In 3 Rev. de Lég. 365, *Darvault* v. *Fournier*, A.D. 1819, at Quebec, the Court intimates that a tutor should be removed by an action *en destitution*. It refers to a case at Montreal in 1741, reported in the edits and ordonnances 2, 202, edition of 1806, and finally settled by the Conseil Supérieur: Nouv. Den. vo. Curateur, 716. These show the procedure as to the merits, but the writ is an English proceeding adopted by our Code. Before the Code, namely in 1865, there is the case of *Stephen* v. *Stephen*, 1 L. C. Law Journal, 98, where the procedure now under consideration would appear to be approved of. As to the use of the word "Petition" or "declaration" I see no difference between the two. The question is whether the tutor can be brought before the Superior Court except by a writ without violation of the rules of our Codes. I think he cannot, and therefore the petition is dismissed.

Goyette for petitioner.
Bergevin for tutrix.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, February 4, 1884.

Before TORRANCE, J.

Ex parte EMELINA VALIQUETTE, petitioner.

Curator—Mother appointed curatrix to absent son.

The petitioner asked for the appointment of a curator to her absent son. The family council chose the petitioner, his mother, as curatrix. The advice of the council was homologated by the Judge, who held that as the petitioner could be elected tutrix to her minor children, she could also be elected curatrix to her absent son and administer his estate in his absence.

Bauset for petitioner.

SUPERIOR COURT.

MONTREAL, January 30, 1884.

Before TORRANCE, J.

ROLLAND v. CASSIDY.

Mediators—Proceedings of—Validity of award.

The action was to set aside an award of arbitrators and *amiables compositeurs*. The parties, Rolland and Cassidy, with one Adolphe Roy, went into partnership as wood merchants, in November, 1874. The partnership was dissolved in November 1881, and three arbitrators agreed upon between Rolland and Cassidy by deed of date 21st November, 1881, Roy having previously withdrawn by going into insolvency. An award was made on the 13th March, 1882, and Rolland found debtor of Cassidy for $11,000.

Rolland objected to the award on several grounds. 1. The conditions of the *compromis* were violated by Mr. Cassidy, giving him an advantage over Mr. Rolland. 2. There were fatal irregularities in the proceedings before the arbitrators and in the award.

As to the conditions of the submission, it was agreed that neither of the parties should be represented by an attorney or advocate before the arbitrators. It was charged that this condition had been violated. The irregularities complained of in the arbitration were—1. That the arbitrators had not been sworn. 2. The arbitrators had not sworn the witnesses; they had not taken notes of the evidence. The depositions had been taken by stenography. 3. The arbitrators had refused to hear witnesses for Rolland. 4. They had acted with partiality. 5. On the suggestion of Cassidy they had taken the opinion of his lawyer in the absence of plaintiff and of the other arbitrator, Mr. Grier, after a false statement of facts made by Mr. Cassidy.

PER CURIAM. I do not find that the condition of the submission was violated by the presence of lawyers. It is true that the opinion of Mr. Lacoste on one side and of Mr. Greenshields on the other, and also of Mr. Trenholme, had been taken as to whether Mr. Rolland was an agent for the partnership. I see no violation here. As to the irregularities complained of, I find, contrary to what the plaintiff has said, the arbitrators were sworn. The witnesses were sworn. Abundant notes of the evidence were taken by stenography. The fullest latitude was accorded the parties to produce witnesses. The only one they did not hear, and the three arbitrators seemed here to be of one mind, was Mr. Taillon, offered on some question of law. I have looked over the award and find it of the most elaborate character. Each party produced his factum and had the fullest hearing before the award was prepared, and no complaints were made till one side was condemned in a larger sum than he would submit to. *Hinc illæ lacrymæ.*

As to the rules governing proceedings before mediators, *vide* 2 Jousse, Justice Civile 717, n. 82; Guyot, Arbitrage, 546.

Action dismissed.

Mousseau & Co., for plaintiff.
Lacoste & Co., for defendant.

COURT OF REVIEW.

MONTREAL, January 31, 1884.

Before TORRANCE, DOHERTY & JETTÉ, JJ.

POIRIER v. MONETTE.

Damages — Excessive demand — Assessment of damages—Costs.

The judgment appealed from was rendered by the Superior Court (Belanger, J.) Beauharnois, Nov. 28, 1882.

TORRANCE, J. This was an action of damages for assault and battery. The action was dismissed because the evidence was contradictory. We find enough in the evidence to prove that plaintiff had a grievance, though a small one. At the celebration of the picnic of the Society of St. Jean Baptiste, the plaintiff was employed to keep order, and defendant without warrant interfered with the fulfilment of the programme and resisted the plaintiff in the performance of his duty as constable. The case should never have been in the Superior Court. Here we find for the plaintiff and assess his damages at $20 and $20 costs. We give him no more, for the complaint should have been made before a Magistrate's Court.

Judgment reversed.

T. Brossoit, for plaintiff.
J. K. Elliott, for defendant.

CIRCUIT COURT.

RICHMOND, January 22, 1884.

Before BROOKS, J.

WOODWARD v. THE CORPORATION OF RICHMOND.

Procedure—Resolution of County Council—M. C. 1061.

A resolution of a county council rescinding a procès-verbal is not a "decision," within the meaning of Art. 1061 *of the Municipal Code, from which an appeal lies to the Circuit Court.*

PER CURIAM. This is an appeal from a resolution of the Municipal Council of Richmond County under 1061 of the Municipal Code, asking to have it annulled. To this respondents have pleaded *inter alia* by an exception to the form, that said resolution is neither a "decision" nor a "judgment" such as is the subject of an appeal to this court.

Sub-section 2 of Art. 1061 is in these terms: "An appeal lies to the Circuit Court of the county or district from every decision given by a County Council respecting any *procès-verbal* made and homologated under the authority of such Council sitting otherwise than in appeal." Now the question in this matter is raised: Is this such a decision as is contemplated? I am of opinion that the Code refers to decisions of the County Council with regard to the proceedings of the Council respecting such *procès-verbal* up to the time it has been homologated and not afterwards, and not to independent resolutions which subsequently may affect such *procès-verbal.* Now Art. 100 has provided for the setting aside of any resolution on petition as provided by Art. 698, and that evidently was the course contemplated by the Code. The

resolution in question was a resolution assuming to rescind all action theretofore taken, but it appears from the proceedings that the *procès-verbal* in question had been completed, *i.e.*, made and homologated, and notice of the homologation given months before this resolution. In this matter I am not now called upon to decide as to the legality of the resolution, but simply to declare whether an appeal is the proper mode of attacking it. I think not; I think it does not come under the provision of the Code, and consequently the appeal is dismissed with costs.

Maclaren & Leet, for appellant.

H. B. Brown for respondent.

RECENT ENGLISH DECISIONS.

Trade mark—Innocent purchaser for private use liable for infringement.—In an action by a firm of cigar manufacturers for an injunction to restrain the defendant, who had bought 5,000 cigars for private purposes, from selling or parting with them in boxes bearing a colorable imitation of the plaintiffs' registered mark or brand; for the destruction of the boxes, and for damages; and where the plaintiffs on having learnt that the boxes bearing the spurious marks were warehoused at the docks to the order of the defendant, had served him with the writ in the present action without notice; and where the defendant had already assented to an order bein made against him in the terms asked by the plaintiffs; the defendant moved the court that he might not be compelled to pay the plaintiffs' costs as he was ignorant of all matters concerning the alleged spurious trademarks, and was an innocent purchaser of cigars for his own private purposes, and had committed no infringement. Held, that the defendant had used the plaintiffs' particular trade-mark, and was guilty of infringement; that it was not necessary and would have been unwise of the plaintiffs to have given the defendant notice before the issue of their writ in this action; that though the defendant might be an innocent purchaser, and never have intended to infringe the plaintiffs' trade-mark, he must pay the plaintiffs' costs. (Ch. Div., June 22, 1883.) *Upmann* v. *Forester*. Opinion by Chitty, J. (49 L. T. Rep. [N.S.] 122.)

Conflict of law.—Legacy to alien female infants married.—A legacy had been paid into court, to which, on the death of the tenant for life, two female infants, who were French subjects by birth, and resident in France, became absolutely entitled. They were both married, and by the French law under the settlements made on their respective marriages, their husbands were absolutely entitled to receive their shares of the fund. One of the infants had since attained twenty-one. *Held*, that the infants not being subjects of or domiciled or resident in England, the court had a discretion as to whether or not they should be treated as wards of court, and that the money might therefore be paid out to the husbands. (Ch. Div., Aug. 3, 1883.) *Brown* v. *Collins*. Opinion by Kay, J. (49 L. T. Rep. [N. S.] 329.

GENERAL NOTES.

The throne of England, so splendid when covered with silk velvet and gold, is in fact only an "old oak chair" over 600 years in use for the same purpose. Its existence has been traced back to the days of Edward I. The wood is very hard and solid; the back and sides were formerly painted in various colours, and the seat is made of a slab of rough-looking sandstone, 25 inches in length, 17 inches in breadth, and 19½ inches in thickness, and in this stone lies the grand peculiarity of the chair. Numberless legends are told in connection with it, the truth probably being that it was originally taken from Ireland to Scotland, and served at the coronation of the early Scottish Kings.

The annual report of the Montreal Board of Trade contains the following on the subject of insolvent legislation:—"At the last session of Parliament a bill was introduced by Mr. Curran to provide for the equitable distribution of the assets of insolvent estates. It had the approval of your Council, but the late date at which the measure was introduced prevented its being dealt with before Parliament rose. Since then, in connection with a similar measure prepared under the direction of a committee from the Boards of Trade of Toronto and Hamilton a conference was held at Toronto, at which this board was represented. A committee representing the three boards was then appointed to consider the points of difference in the two bills with a view to their amalgamation. The result has been to unite all parties upon one measure which has been submitted to the ministers at Ottawa by a deputation on which the committee on insolvency of your Council acted. The necessity for the enactment of the measure was fully set forth and there is reason to hope that the Government will not permit the coming session of Parliament to pass without legislating for the removal of the injustice at present suffered by the mercantile community in consequence of the absence of such a measure as that which has been prepared."