THE LEGAL NEWS.

Vol. IX. MONTREAL, MAY 22, 1886. No. 21.

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Montreal:
GAZETTE PRINTING COMPANY.
1886.

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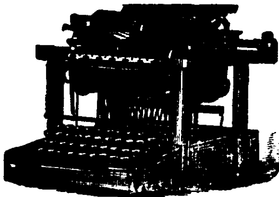

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The Legal News.

Vol. IX. MAY 22, 1886. No. 21.

THE EXCHANGE BANK & THE QUEEN.

"*Non omne, quod licet, honestum est.*"

Some judgments work so unfairly that the best reasons do not make them palatable, whilst others seem so equitable that the worst reasons in support of them pass muster. The judgment in the combined cases of *The Exchange Bank & The Queen* is an instance of the latter class. It is not denied that the statute, literally construed, gives to the Crown the priority claimed for it by the suit, and it is important to enquire what, and whether a sufficient reason is given to explain why the article should not be interpreted literally. To justify a judgment on the ground that it does substantial justice, is only to say that the judge has substituted his emotions for the prescription of the law. This may make a good *arrêt*, but it is an evil precedent.

The untenable argument in support of a judgment against law, lacks the casual advantage which sometimes attaches to the judgment itself. It is wholly mischievous, and it would be better to avow its arbitrary character than to include it within ordinary rules. In pointing out what we believe to be the error in the opinion delivered, for the judicial committee, by Lord Hobhouse, in this case, we shall endeavour to deal more fairly with the propositions of the learned lord than he does with those of the majority of the Court of Appeal.

About a third of the opinion is taken up with a discussion as to the value of the word "*comptable*"; the result of which is, that their Lordships agree with all the judges in Canada, that a *comptable*, within the meaning of the Code, is one who owes an account, and that the periphrasis of the English version (1994 C.C.) is intended to convey the sense of the word *comptables* used in the French version. In other words, they concur in saying that every *comptable* is a debtor, but every debtor is not a *comptable*. Had their lordships come to any other conclusion they would not only have *perverted* the use of language, but they would have diverted their readers. "*Redde rationem*" has not generally been considered as an injunction to pay one's tailor's bill.

Coming to the more important part of the opinion, the construction of Art. 611 of the code of civil procedure—their lordships' position appears to be this: (1) they reject the argument based on the word "defendant." It is used, they think, because it is the word suggested by the distribution of money in a suit; but it must be generalized when dealing with the abstract right. On this point again there is no difference of opinion among the judges. (2) An article of the code of civil procedure might create or establish rights not touched by the civil code. This was also the doctrine held by the majority of the Court of Appeal. (3) That if any article of the C. C. P. conflicts with an article of the C. C. as to the creation of a right, the C. C. P. must yield, because "it could be no part of the code of procedure to contravene the principles of the civil code, and it is clear from Art. 605 that the two were believed to be working in harmony." (4) That the C. C. P. extending a right *touched* by the C. C. is in conflict with it. The learned lord then goes on to resume the particulars of the present case. He contends that article 611 C. C. P. conflicts with par. 10 Art. 1994 C. C., swamps it and renders it unmeaning, and that it is "the duty of the judge, if possible, to reconcile the two."

In this statement of the argument we hope we have done the learned lord no injustice; but his style is so involved and his mode of setting forth his propositions is so peculiar and indefinite that it is not very easy to find out his meaning. With the last sentence of his statement we agree most cordially, but is it *possible*, according to known rules of law, to reconcile as he has done?

Taking our *resumé* as correct, we think it is impossible to reconcile his approbation of the refusal of the majority of the Court of Appeal, to "set aside" article 611 C. C. P., and the doctrine of reconciling or modification which he immediately applies to the utter annihilation of art. 611. He says the Court of Appeal should not have "set aside" 611, they should have construed it. Here is the

manner in which the learned judge proposes to perform the operation he suggests. He says: "their lordships hold that the meaning of the Legislature must have been to speak to the following effect:—"Subject to the special "privileges provided for in the Codes, the "Crown has such preference over chirographic creditors as is provided in Art. 1994." Or adhering as closely as possible to its rather inaccurate language, "In the absence of any "special privilege, the Crown has a preference "over unprivileged chirographic creditors for "sums due to it by the defendant, being a "person accountable for its money."

The *rather inaccurate* art. 611, is as follows: "In the absence of any special privilege, the crown has a preference over chirographic creditors, for sums due to it by the defendant."

It is a pity to talk vaguely of inaccuracy. It is very common, and it may mean much or little. We are not told in what the inaccuracy of 611 consists; but it is evidently totally at variance with the meaning their lordships attribute to the legislature. We should also have been glad to know which of the proposed amendments to art. 611 comes nearest to the learned lord's idea of perfect *redaction.* By the use of the word "Codes" instead of "Code" in the first version, the whole ground work of the P. C. opinion would be destroyed. And "being accountable for its money" is a copy of the periphrasis which so embarassed their lordships. It seems then that ransacking french dictionaries, from that of the académie to the five ponderous volumes of the patient and penitent M. Littré, has not been as profitable an occupation as might have been hoped.

It is however possible that Lord Hobhouse only means to say that 611 is inaccurate inasmuch as it sets down a law different from that of sub-section 10, art. 1994. If the two articles had been identical, there would have been no question to discuss, and we should not even be what Mr. Gladstone calls *des vis-à-vis.*

Article 611 not being inaccurate, but being on the contrary very precise and coherent as giving a new privilege to the crown, why should it be either "set aside" or *construed* out of existence? It was the answer to this question the Privy Council had to give us, rather than a dissertation on the word *comptable.* One expected to hear of some overlooked principle of interpretation; but there is nothing of the kind. All the known rules of interpretation reject the manner of dealing with a law to which the judicial committee has resorted in this case. For instance, it is now the unquestioned jurisprudence in England, that where a law is not ambiguous in its language, or relating to a technical matter, it is to be interpreted in the ordinary sense of the words. Again, the prior law yields to the later law if they are incompatible, "*quod non novum est.*" The only reason for ignoring these well known rules is, that to give any effect to 611 would be to "swamp" sub-section 10, art. 1994, C. C., and render it unmeaning.

Every new law swamps to some extent the pre-existing law, but no authority is shown to establish a distinction between *swamping* the common law incorporated in a civil code, and that which is not. If then this novel doctrine be well-founded, article 610 of the C. C. P., specially indicated by Lord Hobhouse as a specimen of an article "*creating or establishing* rights not touched by the civil code," might be construed away. Again, although the effect of a new law is to swamp more or less the previous law, it never renders it *unmeaning.*

At this point, the author of the opinion of the Privy Council starts off on a totally new tack. The swamping doctrine left isolated will not stand investigation, so we are told that "beyond this there is actual inconsistency between the two articles. According to the literal construction of 611 the Crown has priority over funeral expenses and other classes of debts which by 1994 have priority over the Crown." And it is added: the majority of the Court of Queen's Bench paid no attention to this conflict—they do not notice the conflict of 611 with 1994.

It would have been very difficult for the majority of the Court of Queen's Bench to notice what does not exist. Article 611 only gives priority to the Crown over other chirographic creditors "in the absence of any special privilege."

However, even if his Lordship's insidious

criticism had been well founded, it would scarcely have strengthened his argument. The more evident the conflict, the stronger is the reason for not construing away the subsequent law in order to revive the prior one.

But in reality there is no conflict between 611 and 1994. The article of the C. C. P. creates a new privilege for the Crown, perfectly different from any special privilege of the article of the C. C. It neither swamps it nor contradicts it. It does not set up a new privilege, relative as that of sub. sect. 10, art. 1994, but an absolute pre-eminence for all debts due the Crown, over all chirographic creditors, who have no special privilege.

Again, an argument is attempted to be drawn from article 605. That article does not take for granted the sort of harmony between the codes Lord Hobhouse chooses to presume, namely, that the code of civil procedure did not create new classes.* On the contrary it distinctly reserves the provisions of the code of procedure. It is in these words: "The moneys are distributed according to the order prescribed in the title of Privileges and Hypothecs, and the title of *Merchant Shipping* in the civil code, *and in the provisions hereinafter contained.*" As 611 is subsequent to 605, it is therefore a provision *hereinafter* contained.

On page 9 of the opinion, it is said they follow the rule laid down in article 12, C.C. On the contrary, they set it at defiance. Here there is neither doubt nor ambiguity, and this their Lordships say distinctly twice.

If Lord Hobhouse is not a very skilful disputant, the fault does not proceed from lack of courage. The opinion of the majority of the Court of Queen's Bench set forth specially, that in view of the decision of the Privy Council in *Carter & Molson*, they could not venture to efface the provisions of a statute clearly expressed. Lord Hobhouse does not hesitate to affirm, that setting aside Art. 611, *i. e.*, reconciling by effacing it, is supported by the decision in the case of *Carter & Molson*—how he does not say. Let us examine, then, whether the jurisprudence of the judicial committee is self-supporting, or the reverse, by examining that case.

Molson, arrested on *capias ad resp.*, was condemned to imprisonment under art. 2274 C. C. He appealed to the Court of Queen's Bench, and the judgment was confirmed. He then appealed to the Privy Council, and the judgment was again affirmed. On the return of the record to the Superior Court, Carter sought to have the order for imprisonment executed, but he was met by a new difficulty. Molson said, you cannot imprison me, for you can only do so "in the manner and form specified in the Code of Civil Procedure," and the Code of Civil Procedure specifies neither manner nor form. The Superior Court disregarded this formal objection. In appeal Molson was more fortunate, the majority of the Court holding that the etiquette observed on such a solemn occasion was the major consideration. The judicial committee adopted this view. The decision may be an excellent one; but it is difficult to conceive how it supports the present view as to the harmony of the codes—that the Civil Code establishes the right and the Code of Civil Procedure the detail, and that where the Code of Civil Procedure contradicts the general principle of the Civil Code, the former must be construed so as to reconcile the difficulty and maintain the institution, even if it be necessary to read black for white.

Reference having been made to the case of *Carter & Molson*, it may not be out of place to say that if a similar case should again come under the observation of their Lordships, they will do well to read 1360 C. C. P. with a little more attention than they have read articles 611 and 605 of the same Code; and doing so they will find a rule of interpretation expressly providing for the silence of the Code.

R.

* We would not willingly misinterpret his Lordship; but one sentence seems to be at variance with this, and with the rest of the paragraph of the opinion in which it is to be found. It is as follows: "And where fresh classes of priorities are established, they are subordinate classes, not interfering with the larger classification of the civil code;" We can only account for the appearance of this sentence by supposing that it formed part of an opinion written to support the judgment of the Court of Appeal, and subsequently made to do duty as an opinion to justify a reversal, and that this sentence accidentally remained.

SUPERIOR COURT, MONTREAL.*

Requête civile—Irrégularités.

JUGÉ:—Qu'il n'y a pas lieu à la requête civile pour des irrégularités de peu d'importance, lorsqu'il parait constant que le jugement qui serait rendu après le maintien de la requête civile, devrait être le même que celui déjà rendu.—*Trudel* v. *St. Cyr*, En Révision, Johnson, Doherty, Taschereau, JJ., 25 fev. 1886.

Compagnie de chemin de fer — Déraillement—Force-majeure—Responsabilité—Dommages—Voituriers—Preuve.

JUGÉ:—Que les voituriers sont responsables de la perte et des avaries des choses qui leur sont confiées, à moins qu'ils ne prouvent que la perte ou les avaries ont été causées par cas fortuit ou force majeure, ou proviennent des défauts de la chose elle-même.

2. Que de la même manière une compagnie de chemin de fer est responsable envers les voyageurs sur la ligne, des dommages à eux causés par suite d'un déraillement causé par la rupture d'un rail de sa voie, même s'il est prouvé que ce rail était d'une bonne qualité, avait subi les épreuves nécessaires, et que cette rupture n'est due qu'à un changement subit de température.

3. Que la force majeure en matière de déraillement n'est guère admissible, et qu'on ne peut considérer comme telle les variations de la température quelque subites qu'elles soient ou les vices même cachés du matériel.

4. Que dans le cas d'un voyageur blessé par suite d'un déraillement, ce n'est pas au voyageur qu'il incombe de prouver la faute de la compagnie, mais à celle-ci d'établir qu'elle n'est pas responsable.—*Chalifoux* v. *La Cie Canadienne du Chemin de fer du Pacifique*, Mathieu, J., 12 mars 1886.

Inventaire—Choix du notaire—Levée des scellés—Second notaire—Substitution.

JUGÉ:—1o. Que celui qui est tenu de faire inventaire a le choix du notaire instrumentaire, mais que les autres parties ont le droit d'y commettre un second notaire.

2o. Que lors de l'ouverture d'une substitution, ceux qui sont tenus de faire inventaire et qui par suite ont le choix du notaire, sont les héritiers du grevé de substitution décédé, et non pas les appelés à la substitution, qui peuvent néanmoins requérir l'assistance d'un second notaire.—*Labelle et al.* v. *Labelle et al.*, Mathieu, J., 5 mars 1886.

Nullité de mariage—Empêchement dirimant—Droit de dispense pour Catholiques Romains—C.C. 127, 134.

JUGÉ:—1o. Que jusqu'à la mise en force du Code Civil de la Province de Québec, la parenté au second degré de consanguinité en ligne collatérale a toujours, pour les Catholiques de cette Province, été reconnue comme un empêchement dirimant de mariage, dont les parties pour contracter validement mariage devaient obtenir dispense de l'autorité ecclésiastique.

2o. Que le Code Civil (Arts. 127 et 134) a laissé subsister pour les Catholiques de la dite Province les empêchements jusque là admis dans la dite Eglise Catholique, et a conservé à chaque croyance la jouissance de ses usages et de ses pratiques relatifs au mariage.

3. Que par conséquent le mariage célébré par un ministre protestant entre deux catholiques cousins-germains, sans publication de bans, en vertu d'une licence du lieutenant-gouverneur de la Province, mais sans dispense de l'autorité ecclésiastique catholique du dit empêchement, ou de telle publication de bans, doit être déclaré nul quant à ses effets civils.—*Globensky* v. *Wilson*, Bourgeois, J., 11 mars 1886.

COUR D'APPEL D'ORLEANS.

13 février 1886.

Présidence de M. DUBEC.

Epoux DORION c. NERET.

Commencement de Preuve par écrit—Vente—Femme mariée—Immeuble propre—Lettre du mari.

On ne peut opposer à une femme mariée, comme commencement de preuve par écrit de la vente d'un de ses immeubles propres, une lettre missive écrite au prétendu acquéreur par le mari de cette femme.

"La Cour,

"Considérant que les premiers juges ont admis Néret à prouver par témoins différents

*To appear in Montreal Law Reports, 2 S. C.

faits, tendant à établir la vente qu'il prétend lui avoir été faite, le 10 janvier 1885, par les époux Dorion, d'une maison et dépendances situées commune de la Riche et de 1 hectare et demi environ en pré, sis même commune et commune de Savonnières et de Saint-Genouph, le tout moyennant un prix de 10,000 francs, payable comptant; qu'ils se sont fondés, pour ordonner cette preuve, sur une lettre de Dorion à Néret, du 6 janvier 1885, dans laquelle ils ont vu un commencement de preuve par écrit de la vente alléguée par Néret, et que l'intimé invoque, en outre, devant la Cour, une autre lettre de Dorion, du 19 janvier 1885;

"Attendu que, si ces lettres peuvent avoir trait à un projet de vente qui est reconnu par les époux Dorion, aucun de leurs termes ne rend vraisemblable, plutôt les faits articulés (une vente ferme et l'accord de ces parties sur le prix et sur toutes les conditions) que des pourparlers et un simple projet de vente; qu'il ne se rencontre pas davantage de commencement de preuve par écrit des faits articulés dans l'interrogatoire sur faits et articles subi par les époux Dorion, et qu'il résulte de l'ensemble de leurs réponses, dans lesquelles il n'est relevé ni contradiction, ni invraisemblance, qu'il n'y a eu qu'un projet de vente entre eux et Néret, et qu'ils n'ont pu tomber d'accord sur le prix;

"Considérant que lors même qu'un commencement de preuve par écrit se trouverait dans les deux lettres ci-dessus visées, il serait inopérant; qu'en effet les biens en litige appartiennent en propre à la femme Dorion; que Néret ne saurait prétendre l'avoir ignoré, puisqu'il est fermier depuis longtemps de ces biens, et qu'il l'était même pendant la minorité de la femme Dorion et avant le mariage de celle-ci; que le commencement de preuve par écrit ne saurait donc être opposé à Dorion, qui n'avait ni qualité, ni mandat, pour aliéner les propres de sa femme;

"Par ces motifs, Infirme."

NOTE.—MM. Aubry et Rau, t. VIII, § 764, p. 338 posent en principe que, quels que soient les rapports existant entre deux personnes, les écrits émanés de l'une d'elles ne valent point, à l'égard de l'autre, comme commencement de preuve par écrit, lorsque la dernière n'est ni l'ayant cause, ni le mandant de la première. Ces auteurs approuvent, en conséquence, la doctrine d'un arrêt de la Ch. civile de la Cour de cassation du 8 décembre 1834 (S. 35.1.44), qui déclare que la lettre écrite par le mari ne forme pas un commencement de preuve par écrit contre sa femme séparée de biens, lors même qu'il a agi comme *negotiorum gestor* de celle-ci. Les mêmes raisons paraissent s'imposer pour faire reconnaître avec la Cour d'Orléans qu'on ne peut attribuer au regard de la femme, même commune en biens, le caractère de commencement de preuve par écrit à une lettre émanée du mari, lorsqu'il s'agit d'un acte que sa qualité de chef de la communauté ne lui donne pas le pouvoir de faire seul, et pour lequel le consentement de la femme est expressément requis. (*Gaz. du Palais*).

COUR D'APPEL DE PARIS (4e CH.)

19 mars 1886.

Présidence de M. FAURE-BIGUET.

GUILLOIS v. Vve TRILLAUD ès-qualités.

Responsabilité — Patron — Ouvrier mineur de seize ans—Machine dangereuse—Scie circulaire—Défaut d'organes protecteurs.

Le patron, qui emploie des enfants de moins de 16 ans dans ses ateliers, à proximité de machines dangereuses, doit prendre toutes les précautions nécessaires pour préserver ces enfants de toutes chances d'accident, même celles qui pourraient provenir de leur maladresse ou de leur imprudence personnelle.

La responsabilité du patron, qui n'a pas pris toutes les mesures préventives nécessaires, est donc engagée, en ce cas, par le seul fait de l'accident.

Il en est ainsi notamment au cas, où un enfant de moins de 16 ans, ayant été blessé à la main gauche, par une scie tournante près de laquelle il travaillait, il est constant que cette scie, qui était pourvue d'un garde-main du côté de la main droite, ne l'était pas au contraire, du côté de la main gauche, à laquelle est arrivé l'accident.

La faute de l'ouvrier ne pourrait être prise en considération pour atténuer ou faire disparaître la responsabilité du patron, qu'autant qu'elle dépasserait la mesure des actes de légèreté, conséquence naturelle de l'âge, et déjouerait

toutes les prévisions, et ce serait au patron à en rapporter la preuve.

Le 25 juin 1885, jugement du tribunal civil de la Seine ainsi conçu :

" Attendu qu'au 1er février 1883, date de l'accident dont il a été victime, Charles Trillaud était âgé de moins de seize ans ; qu'il travaillait à scier une tige de cuivre à l'aide d'une scie circulaire, dont les organes accessoires étaient combinés de manière à ce que l'ouvrier n'eût point à pousser la matière à scier contre la scie ; qu'aucune contravention à l'art. 6 du décret du 13 mai 1875 ne peut donc être reprochée au patron ;

" Mais, attendu que l'art. 2 du même décret interdit d'employer des enfants au-dessous de seize ans dans des ateliers qui mettent en jeu des machines, dont les parties dangereuses ne sont point couvertes de couvre-engrenages, de garde-mains ou autres appareils protecteurs, que de cette disposition, comme de l'ensemble de celles du décret précité et de la loi du 19 mai 1874, il résulte que la volonté du législateur a été d'imposer au patron, qni emploie des enfants à proximité de machines dangereuses, toutes les précautions nécessaires pour préserver ces enfants de toutes chances d'accident, même de celles qui pourraient provenir de leur maladresse où de leur imprudence personnelle ; qu'en conséquence, en ce qui concerne les enfants, la responsabilité du patron, qui n'a pas pris toutes les mesures préventives nécessaires, est engagée par le seul fait de l'accident ; que si la faute de l'ouvrier peut, en certains cas, être prise en considération, c'est seulement lorsqu'elle dépasse la mesure des actes de légèreté, qui sont la conséquence naturelle de l'âge, et qu'elle dépasse toutes les prévisions ; que même alors la preuve de la faute de la victime incombe au patron ;

" Attendu que la scie circulaire est par elle-même un outil dangereux ; que celle près de laquelle se trouvait Trillaud, pourvue d'un garde-main du côté de la main droite de l'ouvrier n'en avait point du côté de la main gauche ; que cette main, qui devait rester sur le levier, à trente centimètres de la scie, pouvait cependant, ainsi que l'événement l'a prouvé, être amenée par un faux mouvement ou dans un moment d'inattention à proximité de la scie, sans rencontrer un organe protecteur ; qu'il en résulte donc que l'installation de cette machine ne répondait pas aux exigences de l'art. 2 du décret du 13 mai 1875, en cas de présence d'enfants dans l'atelier ;

" Attendu que l'état de choses ainsi constaté suffit pour engager la responsabilité du patron ; qu'à la vérité l'accident, dont Charles Trillaud a été victime, ne peut s'expliquer sans une maladresse ou une inattention de sa part, mais qu'il n'est pas établi qu'elles aient présenté le caractère de faute grave, et que d'ailleurs elles n'eussent produit aucune conséquence fâcheuse, si Gillois avait plus scrupuleusement observé les règlements ;

" Attendu que la blessure faite à Charles Trillaud par la scie circulaire a complètement atrophié les muscles de la main gauche, et a aboli tout usage de cet organe au point de vue d'une profession quelconque ; que le Tribunal a les éléments nécessaires pour fixer les dommages-intérêts qui sont dus :

" Par ces motifs,

" Condamne Guillois, etc."

Appel par Guillois. Arrêt confirmatif dont la teneur suit :

" La Cour,

" Adoptant les motifs des premiers juges,

" Et considérant, en outre, que la partie dangereuse de la machine à laquelle était employé le jeune Trillaud n'était couverte par aucun autre organe protecteur que par une bielle mobile, laquelle pouvait être librement levée par l'enfant ; que d'ailleurs, même lorsque la bielle était baissée, la partie dangereuse de la machine demeurait découverte sur une notable partie de la circonférence ; que, dans ces conditions, la scie circulaire mise par Guillois à la disposition de son ouvrier était par elle-même une machine dangereuse, au service de laquelle le patron ne pouvait, sans imprudence, attacher un enfant de moins de 16 ans ;

" Confirme."

Note.—V. conf. Besançon 23 juin 1884 (Ga. Pal. 84.2. supp. 136) et la note.—*Gazette du Palais.*

ADMINISTRATION OF JUSTICE IN THE NORTH WEST.

From an address delivered by the Hon. Mr. Justice Johnson to the grand jury, on the 16th of May, 1871, at the opening of the General Quarterly Court, which formerly existed in Manitoba, we extract some particulars relating to the early history of the

administration of justice in the North West.

There appears to have been considerable doubt as to the laws in force at that time, for the learned judge remarks that no public authoritative statement had ever been made on the subject. In the first place a royal charter was granted to the Hudson's Bay company about two hundred years ago by Charles II., conferring on them very extensive powers and privileges, which were exercised for a long period of time under the company by the Governor and Council of Assiniboia. The authority of the laws so enacted was confirmed by a series of legislative and executive acts. The Rupert's Land act of 1868 continued in full force and effect, until the Parliament of Canada should otherwise provide, all existing laws, and the authority and jurisdiction of the established courts and of the magistrates acting within the limits was confirmed. In the following year the Parliament of Canada passed a statute for the temporary government of Rupert's Land and the North West Territories, and this act also recognized and continued the existing courts and laws.

Three Imperial statutes relating to the Northwest were also enacted. The first, 42 Geo. III, ch. 138, (A. D. 1803), provided that all offences committed within any of the Indian territories shall be tried in the same manner and subject to the same punishment as if the same had been committed within the provinces of Upper or Lower Canada. The second, 1 & 2 Geo. IV, c. 66, extended the Act of 1803, to all the territories of the Hudson's Bay company. Among other provisions it gave authority to the Crown to issue commissions under the Great Seal, empowering justices to hold courts of record for criminal offences as well as civil causes, notwithstanding anything contained in the Hudson's Bay company's charter. The jurisdiction of these courts, however, was not to extend to the trial of capital offences, nor to civil actions above £200. The third of the series of the Imperial statutes is the 22 & 23 Vict. ch. 36. This act recites the main provisions of the 43 Geo. III, and of the 1 & 2 Geo. IV., and the Crown is empowered, either by commission or order-in-council, to authorize such justices as might be appointed, to try, in a summary way, all crimes, misdemeanors and offences whatever, and to punish by fine or imprisonment or by both. In cases punishable by death and other serious crimes the justices might try the offender in the ordinary way, or send him to Upper Canada to be tried there under the Act of Geo. IV., or, if they saw fit, to British Columbia, to be tried by any court having cognizance of like offences committed there. The last mentioned act, however, was declared not to extend to the Territories of the Hudson's Bay company, the courts of which retained the jurisdiction that belonged to them. Up to the time that Mr. Justice Johnson delivered the charge we have referred to, these statutes had remained nearly inoperative. The only attempts to execute them were the trials in Upper Canada in 1818, arising out of the death of Governor Semple and others; the trial at Quebec, in the same year, of Reinhardt for murder, and the trial of Ladieu and Laigrasse at Three Rivers, in 1838, for murder committed in the Rocky Mountains. The learned judge remarks on this head:—"Although the Imperial statutes "were never (or at most, only to the extent "of a few cases in more than half a century) "put into operation, the jurisdiction of the "courts which ought to have been, but never "were, established, was limited, in criminal "cases, to felonies not capital, and in civil "cases to an amount of £200; there was no "such limit ever assigned to the ample juris- "diction, civil and criminal, conferred by "the charter; and accordingly there was no "such limit to the general court jurisdiction; "but that court could, and did, take cogniz- "ance of civil cases to any amount, and "could, and did, take cognizance of capital "offences, and executed their judgments, as "many of you must be personally aware." And he adds, that if any question could ever have arisen with respect to the authority and jurisdiction of the General Court, it was at an end since the enactment of a series of statutes by which all the courts which had been established in the territories were expressly continued. The series of legislative acts mentioned by the learned judge, is as follows:—First, by the Confederation and Rupert's Land acts all the courts in the ter-

ritory were continued. Secondly, by the act of 1869 of the Canada Parliament, the same provision is made. Thirdly, by the Manitoba act the Province of Manitoba was created for the greater part, out of the same district of Assiniboia, whose courts were by the terms of that act continued. Fourthly, by an express provision of the statute of the Manitoba Legislature of the previous session, the powers of the Supreme Court created by that act were conferred upon the General court, to be exercised until the new tribunal should be completely constituted. Finally, by a statute of the Parliament of Canada, in the preceding session, the entire body of the criminal law of England, as existing in the rest of the Dominion, was extended to Manitoba, and the General Court, and any other court that might be constituted to supersede it was vested with power to try and determine all criminal offences whatsoever. This brings the history up to the date of the charge in 1871.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, May 15.

Judicial Abandonments.

Dame Philomène Sauvé, *marchande publique*, Sorel, May 10.

Curators Appointed.

Re A. Beautron *dit* Major, St. Polycarpe.—Seath & Daveluy, Montreal, curator, April 22.

Re Alphonse Decelles.—J. O'Cain, St. John's, curator, May 12.

Re Thomas Dufresne and Noël Dufresne.—Geo. Dastous, Yamachiche, curator, May 10.

Re Fréchette & Cie., Ste. Marie Madeleine du Cap de la Madeleine.—G. Daveluy, Montreal, curator, May 8.

Re Joseph Goulden.—S. C. Fatt, Montreal, curator, May 12.

Dividend Sheets.

Re S. P. Bellay & Co.—First and final div. payable May 26, C. F. Bouchard, Fraserville, curator.

Re Philias Guillet.—First and final div. payable May 31, J. O'Cain, St. John's, curator.

Re Eusèbe Martel.—Final div. payable May 30, Kent & Turcotte, Montreal, curator.

Re L. E. Morin, Jr.—Final div. payable May 30, Kent & Turcotte, Montreal, curator.

Re Benjamin M. Pettes.—First and final div., May 11, John E. Fay, Knowlton, curator.

Sale of Estate.

Re Amable Jodoin.—Meeting of creditors, 3 p.m., May 20, at office of F. Beausoleil, trustee, Montreal, to authorize sale of estate.

Separation as to Property.

Albina Charlebois vs. Séraphin Brisebois, hotel keeper, Ste. Geneviève, May 6.

Separation from bed and board.

Malvina Bernard vs. Flavien Laforme, Ste. Hélène, May 4.

GENERAL NOTES.

The first volume of American reports, according to a United States contemporary, was Kirby's Connecticut Reports, issued in 1789. It was entirely a private enterprise, no statute authorizing either the compilation or publication of decisions having been enacted. The editor, in giving an account of the reception of his volume, says: "It became obvious to every one, that should histories of important cases be carefully taken and published, in which the whole process should appear, showing the true grounds and principles of the decision, it would in time produce a permanent system of common law. But the court being ambulatory through the State, the undertaking would be attended with considerable expense and interruption of other business, without any prospect of private advantage; therefore, no gentleman of the profession seemed willing to make so great a sacrifice." Mr. Kirby therefore decided, being urged thereto "by several gentlemen of distinction," upon the publication ofthe volume which bears his name, endeavoring "to throw the matter into as small a compass as was consistent with a right understanding of the case." He did not appeal entirely to the legal profession, but stated in the preface that "as the work is designed for general use in this State, I have avoided technical terms and phrases as much as posssible, that it might be intelligible to all classes of men." From this modest beginning, by Ephraim Kirby, in the year 1789, has grown and developed that vast aggregate of type, paper, and sheepskin which now embraces nearly three thousand five hundred volumes of the United States Reports.

THE WITNESS.

He calmly takes his place,
And stands with stately grace,
A smile upon his face,
Broad and bland.

I must affirm, he said,
And proudly raised his head:
An oath to me is dead,
On the stand.

The lawyers daze his wits,
Literally give him fits,
And break him all to bits,
In their net.

Questions they shrewdly ply,
Till they make the witness lie,
And he wishes he may die,
You can bet.

He leaves with sullen pace,
With hot and crimson face,
A decidedly hard case,
Made to squirm.

He is surly as a bear,
And to himself right there
He furiously doth swear,
Not affirm.

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