THE

LEGAL NEWS.

VOL. XVI. JUNE 15, 1893. No. 12.

CURRENT TOPICS AND CASES.

Baron Courcel, the president of the Behring Sea Arbitration, has not been sparing of compliments to the counsel who addressed the court. So eulogistic were his expressions to the United States counsel (as reported by cable) that it seemed as if words would fail him when the turn of the opposing counsel came. But the president, as reported, referred also in the highest terms to the rhetorical power of Attorney-General Russell's ten days' speech, and at the close of Sir Richard Webster's address he declared that the court was deeply indebted to him for the elaborate study he had made of the case, and expressed his admiration of "the unrestricted and friendly cooperation of yesterday's attorney-general with to-day's attorney-general," adding that the country was indeed to be envied "where party spirit admits of such cordial brotherly association of political rivals when the national interest is at stake,"—which seems to travel a little outside of the special duty assigned to Baron Courcel.

In *Mitchell* v. *Bradstreet Co.*, the Supreme Court of Missouri held, May 2, 1893, that a false publication by a commercial agency as to the solvency of a business firm is not privileged where the publication sheet is issued to all the subscribers of the agency without regard to their being creditors of the firm.

In *Baltimore & Ohio R. Co.* v. *Baugh*, the Supreme Court of the United States held, April 24, 1893, that a railroad company is not responsible for a personal injury to one of its firemen caused by the negligence of its locomotive engineer.

At the Lord Mayor's banquet in London, on June 7, the Lord Chancellor, in reponse to the toast of "Her Majesty's Judges," referred to some of the complaints which are commonly urged against the administration of the law, and the possibility of applying a remedy. The judges, he said, were alive to the fact that they could only discharge their functions so long as they deserved and enjoyed the confidence of their fellow-countrymen. There were none more conscious than the judges that the law and its administration were not all that could be desired. He wished on that occasion—as filling practically the position of Minister of Justice—to recognise the co-operation of the Bench in his endeavours to improve the administration of the law. The judges had sacrificed no small amount of time and labour to pointing out the defects of the system. The remedy was, unhappily, less visible than the disease. There were two points to be kept in view—expense, which was to be strenuously avoided, and expedition, which was no less earnestly to be sought. But it was difficult to apply the remedy. Each class was keen to see the defects of the other, but the different classes were not so ready to recognise evils in which they were personally interested. It was said that the expense of litigation largely consisted in the fees of counsel. But the remedy was easy. There were abundance of counsel who would do the work cheaply. But the people insisted on particular counsel, and if they indulge in luxury they must expect to pay for it. If people complained of the dearness of champagne, let them drink bottled beer or cheap champagne. A great picture by an English artist had recently been sold for many

thousands of pounds. The same canvas might have been brilliantly covered for as many thousand pence. Thus the remedy for this evil was ready at hand. If men were not content with this advice, he would say, 'Don't go to law.' At the same time he was desirous that every needless step in litigation should be abolished. It was in that direction that the judges were working. In late years expedition had been achieved to a very large extent. He remembered in his early days when one had to wait a year for a trial in Middlesex, and two or three years for an appeal to the House of Lords. Now they were hearing appeals in the House of Lords which were set down only two or three months ago; and there were no arrears in the Privy Council or the Court of Appeal, which was hearing appeals from decisions pronounced only three or four weeks ago. The solicitor-general added that he was firmly convinced, whatever was done to simplify the law, that it would never be a cheap luxury for the litigant. It would always be expounded at the expense of litigants for the benefit of those who were not litigants. A good deal of English litigation was due, not to a love of justice, but to the sporting instincts of the people, who loved to fight their battles out rather than adjust their differences.

Mr. F. K. Munton, in a lecture delivered in London, on "bogus concerns," commenced by explaining what he meant by the term. Although the word "bogus" might sound unparliamentary, a little research had satisfied him that it was not inappropriate, as he found the origin of the term to be as follows:—Early in the present century a person named Borghese was convicted in America of a series of robberies founded on the issue of bills of exchange either in counterfeit names, or payable at imaginary banks, and the extraordinary success which attended these frauds before their exposure gave rise to the popular description of any counterfeit transaction as a "Borghese" one, the word being corrupted by easy transition to "borgus," and ultimately into "bogus."

The birthday honours conferred this year include that of Knight Bachelor to Chief Justice Strong, the newly appointed chief justice of the Supreme Court of Canada. The same honour has been conferred on Mr. John Madden, Chief Justice of the Supreme Court of the colony of Victoria, and on Mr. Henry Dias, ex-puisne judge of the Supreme Court of the Island of Ceylon. Four English solicitors have been knighted, one member of the bar gets a peerage, and another a baronetcy.

The Quebec Statutes of 1893, 56 Victoria, have been issued, and comprise 101 chapters, making a total of 419 pages. A good deal of space is occupied with consolidations of town charters. The city of Hull has a consolidation Act of 540 sections, covering 94 pages. The city of Ste. Cunégonde follows with an amendment Act of 47 sections, filling 17 pages. The town of Cote St. Antoine has a consolidation Act of 135 sections, occupying 25 pages. The town of Longueuil has an amendment Act which covers 45 pages. Among other Acts of interest are cap. 42, which requires an appeal from an interlocutory judgment to be first allowed by one of the judges of the Court, upon a summary petition; and chap. 38 reduces the number of juridical holidays.

COURT OF APPEAL ABSTRACT.

Compagnie projetée—Mandat—Responsabilité—Avocat.

Jugé:—Que des individus qui permettent que l'on se serve de leurs noms comme directeurs provisoires d'une compagnie projetée, aux fins d'obtenir du parlement un acte constituant cette compagnie en corporation, et qui signent les requêtes à cet effet, sont responsables du paiement des honoraires du procureur retenu par le promoteur de cette compagnie.—*Augé et al., & Cornellier et al.*, Montréal, Baby, Bossé, Blanchet et Hall, JJ., 26 novembre 1892.

Droit municipal—Appel.

Jugé:—Qu'il n'y a pas d'appel du jugement de la cour de circuit cassant une résolution d'un conseil municipal pour la nomination d'un conseiller.—*La Corporation de St. Mathias & Lussier*, Montréal, Lacoste, J. C., Baby, Bossé, Hall et Wurtele, JJ., 26 septembre 1892.

Expropriation—Just indemnity—Country residence.

Held: 1. Where part of a property occupied as a country residence is expropriated for railway purposes and its value as a country residence is thereby greatly diminished, the true test in estimating the indemnity to which the owner is entitled is, what was the commercial value of the property as an attractive country residence at the time of the expropriation, and what was the depreciation in the marketable value by reason of the expropriation of the strip of land by the railway company, and the intended working of its train service across it.

2. While the court has the right, under the Dominion Railway Act, to reconsider the evidence of value, and to vary the decision of the arbitrators or a majority of them, this power was intended only as a check upon possible fraud, accidental error, or gross incompetence, and should never be exercised unless in correction of an award which carries upon its face unmistakeable evidence of serious injustice.—*Canada Atlantic Railway Co. & Norris*, Montreal, Sir A. Lacoste, C. J., Baby, Bossé, Hall and Wurtele, JJ., December 23, 1892.

Expropriation—City of Montreal—Just indemnity—Costs of witnesses and advocates—Art. 407, C. C.

Held: That in expropriation proceedings under the charter of the city of Montreal, the production of witnesses and the retaining of counsel before the commissioners being a necessary proceeding by the expropriated party, the expenses of such witnesses and counsel form part of the just indemnity to which he is entitled under art. 407, C. C., and should be added by the commissioners to the price of the property taken.—*Sentenne et al. & La Cité de Montréal*, Montreal, Sir A. Lacoste, C. J., Baby, Bossé, Hall and Wurtele, JJ., February 28, 1893.

Testament olographe—Mots écrits d'une main étrangère—Nullité—Articles 850, 855 *C.C.*

En 1875, une dame Metzler fit venir d'Ottawa un de ses neveux, le nommé John Jessie Reeves, qui demeura avec elle et en eut soin jusqu'à sa mort, arrivée en 1878. Avant cela, en 1868, Mme. Metzler avait fait un testament devant notaires en faveur du dit John Jessie Reeves et de deux autres de ses neveux. Après sa mort, J. J. Reeves produisit au greffe et fit prouver comme testament olographe de Mme. Metzler, un écrit sans date conçu textuellement en ces termes: "Je donne à mon neveux John J. J. Reeves tou se que je posède pour avoire hu soin de moi. (signé M. E. V. R. Metzler." Dans la déposition qu'il fit, aux fins de la vérification de ce testament, John Jessie Reeves affirma que tout cet écrit était de l'écriture de la testatrice. Il fut cependant prouvé que les mots "John J. Reeves" avaient été ajoutés par une main étrangère, mais tout le reste du testament était de l'écriture de Mme. Metzler.

Jugé: (infirmant le jugement de la cour de première instance, Baby et Bossé, JJ., *dissentientibus*), que le testament olographe en question n'étant pas en entier de l'écriture de la testatrice, les mots "John J. Reeves" ayant été ajoutés par une main étrangère, le dit testament était nul, et que le testament devant notaires de 1868 seul était en vigueur.—*Reeves & Cameron et vir*, Montréal, Lacoste, J. C., Baby, Bossé, Blanchet et Wurtele, JJ., 25 mars 1893.

ABSTRACT OF CROWN CASES.

Commitment—Erreur—Vagabondage—"Night-walker."

Jugé:—1. Qu'il est permis de corriger une erreur dans une commitment,—dans l'espèce, l'absence de date,—par la production d'une copie régulière.

2. Qu'une offense décrite comme suit: "of being a loose, idle or "disorderly person or a vagrant within the meaning of the "statute, for that she, on the 23rd day of March instant, at the "said city, being a night-walker, did unlawfully wander by night "between ten and eleven in the evening, in a public street of the "said city, St Dominique street, and did not then and there "render a satisfactory account of herself when required to do so "by the constable Paul Hill, contrary to the statute in such case

" made and provided," satisfait aux exigences de la loi.—*Ex parte Gagnon*, Assises criminelles, Montréal, Hall et Wurtele, JJ., mars 1893.

Jury du Coroner—Plaidoyer d'autrefois acquit.

Jugé :—Que le fait que le jury du coroner a rapporté un verdict de mort accidentelle dans l'affaire du prisonnier ne justifie pas un plaidoyer d'autrefois acquit de la part de ce dernier.—*La Reine* v. *Regis Labelle*, Assises Criminelles, Montréal, Sir A. Lacoste, J. C., juin 1892.

Tribunal étranger—Juridiction—Juge en chambre.

Jugé :—Qu'un juge en chambre ne peut réviser, sur une requête pour bref d'habeas corpus, la décision d'un tribunal étranger.—*Ex parte Lambert*, requérant, Montréal, Hall et Wurtele, JJ., en chambre, 7 avril 1893.

Droit criminel—Tentative d'assaut.

Jugé :—Qu'un verdict de tentative d'assaut n'a rien d'irrégulier. —*Leblanc* v. *La Reine*, Montréal, Sir A. Lacoste, J. C., Bossé, Blanchet et Hall, JJ., décembre 1892.

SUPERIOR COURT ABSTRACT.

Procédure—Inscription en révision par le représentant de la partie décédée—Reprise d'instance—Partage—Art. 746, C. C.

Jugé : Que le représentant de la partie décédée a le droit d'inscrire en révision sans au préalable reprendre l'instance.

Que la vente par un co-propriétaire par indivis, à son co-propriétaire, de sa part indivise n'a pas les effets du partage, et que partant l'hypothèque consentie par le vendeur continue de grever la part vendue, malgré cette vente.— *Varin* v. *Guerin*, C. R., Montréal, Jetté, Davidson et Pagnuelo, JJ., 31 janvier 1893.

Procédure—Preuve—Affaire commerciale—Témoignage de la partie—Art. 251, C. P. C.

Jugé : 1. Qu'un billet promissoire donné par un cultivateur à un autre cultivateur, pour argent prêté, n'est pas une affaire commerciale, et que la partie ne peut pas être témoin pour elle-même.

2. Que la preuve du paiement faite par les deux défendeurs comme témoins l'un pour l'autre, est insuffisante si elle n'est corroborée par une preuve étrangère.—*Hamilton* v. *Perry*, C. S., Montréal, Pagnuelo, J., 2 février 1893.

Capias—Personal indebtedness.

Held: Where the action is by a partner praying for the dissolution of the partnership and for the rendering of an account, the personal indebtedness in a sum amounting to or exceeding $40, which must be alleged in the affidavit for *capias*, cannot be considered to exist until such account has been rendered and accepted or settled.—*Phillips* v. *Kerr*, S. C., Montreal, Wurtele, J., April 2, 1892.

Necessary deposit—Keeper of boarding-house—Negligence.

Held: The keeper of a boarding-house who neglects to provide a lodger with a key to lock the room assigned to him is responsible for the value of effects stolen therefrom.—*Falconer* v. *Paterson*, S. C., Montreal, Tait, J., April 29, 1892.

Contract—Sale—Non-performance—Damages.

Held: 1. Where a person has obtained a promise of sale of real estate, and, relying on that promise, has resold the property, he is entitled to recover from the vendor, by way of damages, the profit he would have derived from the resale, if the vendor refuses without valid grounds to execute a deed of sale to him.

2. Where the purchaser of real estate was to make a cash payment by accepted cheque, the fact that he did not at first appear at the office of the notary with the cheque accepted, but got it accepted by the bank the same day, was not a valid ground for the seller's refusal to complete the sale.—*Newman* v. *Kennedy*, S. C., Montreal, Gill, J., January 18, 1892.

Droit ecclésiastique—Curé—Avis d'action—Refus des sacrements—Supplément à la dîme—Juridiction—Enregistrement des baptêmes—Art. 22, C. P. C.

Jugé: Que le curé, poursuivi pour avoir refusé de baptiser l'enfant du demandeur, n'a pas droit à un avis d'action aux termes de l'article 22 du C. P. C.

Qu'un demandeur qui attache son honneur à la participation aux sacrements, doit remplir les conditions imposées par les lois et ordonnances dont il invoque le bénéfice. (Il s'agissait dans l'espèce d'un supplément imposé par ordonnance épiscopale.)

Que si l'administration des sacrements est du ressort de l'autorité ecclésiastique, la participation aux sacrements est un droit qui appartient à tous les membres de la communion catholique et qui ne peut être soumis, dans son exercice, à des conditions ou à des exigences arbitraires; que lorsqu'il n'y a que le refus de sacrement, sans accompagnement d'injure articulée et personnelle, il n'y a lieu qu'à l'appel simple devant l'autorité ecclésiastique compétente, dans l'ordre de la conscience et selon les règles et l'application des canons, et que le pouvoir temporel ne devient compétent qu'autant que des injures, des outrages, l'oppression, le scandale se joignent à ce refus, lui donnent un caractère qu'il n'a pas par lui-même et font éprouver des dommages dans les biens et les droits civils.

Que les curés, prêtres ou ministres desservant les églises, congrégations ou sociétés religieuses autorisées à tenir les régistres de l'état civil, ne sont tenus que d'enregistrer les baptêmes, etc., faits par eux, et qu'ils ne sont pas obligés d'enregistrer la naissance des enfants dont ils ne font pas le baptême.—*Davignon* v. *Rev. Messire C. Lesage*, C. S., Montréal, Tellier, J., 7 janvier 1893.

Procédure—Inscription de faux—Changement du jour du retour d'un bref—Femme mariée autorisée par le juge—Désignation de la demanderesse—Art. 49 *C. P. C.*

Jugé: 1. Qu'il faut une inscription de faux pour pouvoir démontrer au tribunal que le bref d'assignation a été altéré ou falsifié après son émanation.

2. Que le jour du retour de bref peut être changé, avant signification, soit par le protonotaire lui-même, soit avec son assentiment.

3. Que la femme mariée, autorisée par un juge à ester en justice, au refus de son mari de l'autoriser, n'est pas tenu, aux termes de l'article 49 C. P. C., de mentionner dans le bref d'assignation la qualité ou l'occupation de son mari, lequel n'est pas en cause.—*Vendette* v. *Bolduc dit Germain*, C. S., Montréal, Taschereau, J., 31 janvier 1893.

Droit municipal—Résolution et règlement—Avis—Arts. 460, 475, 489, 490, 493, 498, *C. M.*

Jugé: 1. Qu'un conseil local peut statuer la construction d'un canal d'assainissement par résolution aussi bien que par règlement, mais que son entretien et la taxation voulue pour en défrayer le coût doivent être déterminés par réglement.

2. Qu'un réglement peut être considéré comme non avenu en ce qui concerne la construction de travaux déjà ordonnés par l'autorité compétente, et maintenu quant à la taxe qu'il impose pour en payer le coût.

3. Que nul avis préalable à l'adoption d'un tel règlement n'est requis, mais qu'il suffit que ce règlement soit publié en la maniére voulue par l'article 693 C. M.—*Archambault* v. *La Corporation de St. François d'Assize de la Longue Pointe*, C. C., Montréal, Loranger, J., 16 janvier 1893.

Voiturier—Paiement des frais de voiturage—Droit de rétention—Art. 1679, *C. C.*

Jugé: Que le voiturier ne peut réclamer ses frais de voiturage avant la livraison de tous les effets qu'il s'est engagé de transporter.

Que lorsque le voiturier a demandé ses frais de transport avant d'avoir complété le voiturage des effets en question et qu'il n'a pas renouvelé cette demande depuis, en offrant delivrer ces effets, il ne peut opposer son droit de rétention à la saisie-revendication du propriétaire des effets.—*Stout* v. *King*, S. C., Montréal, Loranger, J., 7 février 1893.

Sauvetage—Action par propriétaire seul—Exception à la forme.

Jugé:—Le propriétaire du vaisseau qui a opéré le sauvetage ne peut poursuivre en son nom seul que pour la part du dit sauvetage qui lui serait due, et s'il n'allègue pas en quoi consiste cette part, et ne fait pas connaître les noms et domiciles des autres intéressés, savoir le capitaine et l'équipage, son action sera renvoyée sur exception à la forme.—*Chabot* v. *Quebec Steamship Co.*, C. S., Québec, Routhier, J., 30 décembre 1892.

Vente—Clause de franc et quitte—Preuve testimoniale.

Jugé:—Qu'il incombe au vendeur sous la clause de " franc et quitte," qui réclame la balance du prix de vente, de faire voir qu'une hypothèque qui paraît exister contre l'immeuble vendu a été réellement radiée, et qu'il ne remplit pas son obligation en produisant une quittance enregistrée qui mentionne erronément une autre obligation et ne décharge pas l'immeuble en question.

Que dans ces circonstances le vendeur doit lui-même faire radier l'inscription avant d'exiger la balance du prix de vente.

Que la preuve testimoniale n'est pas admissible pour démontrer que malgré l'énonciation erronée qu'elle renfermait, la quittance produite s'appliquo réellement à la créance hypothécaire dont l'acheteur se plaint.—*Les curé et marguilliers de l'œuvre et fabrique de Notre-Dame de Montréal* v. *Monarque et uxor*, C. S., Montréal, Taschereau, J., 17 novembre 1892.

Demande incidente—Dépôt pour la révision—Frais—Arts. 151, 497 *C. P. C.*

Jugé: Que lorsque le défendeur a fait une demande incidente qui découle de la même cause d'action que la demande principale, il n'y a lieu de faire qu'un seul dépôt en révision, bien que l'inscription demande la révision du jugement rendu sur la demande principale et la demande incidente.—*Mackay* v. *Evans*, S. C., Montréal, Davidson, J., 31 janvier 1893.

Mari et femme—Requête pour aliments—Recours au civil et au criminel—Mauvaise conduite de la requérante—Réponse en droit.

Jugé:—Que le fait que la femme poursuivi en séparation de corps, qui demande, pendant l'instance, une pension alimentaire à son mari, a déjà poursuivi ce dernier devant la cour criminelle pour refus de pourvoir à ses besoins, ne la prive pas du droit de demander une pension alimentaire devant le tribunal civil.

Que des allégations de mauvaise conduite de la part de la requérante ne sont pas une réponse à une requête pour aliments, surtout lorsque la femme demande cette pension alimentaire tant pour elle que pour l'enfant né de son mariage avec le défendeur. —*Nunensynski* v. *Pilnik*, C. S., Montréal, Loranger, J., 8 février 1893.

Procédure—Exception à la forme—Désignation du demandeur—Art. 49 C. P. C.

Jugé:—Qu'un demandeur qui se désigne comme "gentilhomme" au bref de sommation, se donne une qualité suffisante au désir de la loi.—*Stevens* v. *Higgins*, Loranger, J., C. S., Montréal, 8 février 1893.

Imbécilité—Démence—Exception à la forme—C. P. C. 116—*C. C.* 327, 987.

Jugé:—Une exception à la forme à une action prise par une personne internée dans un asile d'aliénés, mais non-interdite, ne doit pas être renvoyée sur réponse en droit, mais doit être considérée comme une mise en demeure de la demanderesse de se faire assister d'un curateur.—*Mercier* v. *Mercier*, C. S., Québec, Routhier, J., 5 mars 1892.

Attachment by garnishment—C. C. P. 555, 614.

Held:—The writ of *saisie-arrêt* constitutes a new *instance*, and ought to be definite and complete in itself when issued.

Article 614, C. C. P., which provides that the writ must mention the amount of the judgment for the satisfaction of which it issues, is to be construed as meaning the amount remaining unsatisfied on such judgment.

Article 555 applies to the writ of *fieri facias*, and not to that of *saisie-arrêt*, between which writs there is an essential difference.—*Vezina* v. *Tousignant*, & *Paris*, T. S., S. C., Quebec, Routhier, Caron, Andrews, JJ., Feb. 28, 1893.

Obligation à terme—Action before expiry of term, for alleged diminution of security—C. C. 1092—*C. N.* 1188.

Held:—The provisions of article 1092, C. C., which deprive the debtor of the benefit of delay in certain cases, are to be strictly construed, and a creditor seeking to enforce payment of a debt before maturity must formulate clearly and distinctly in his declaration the reasons upon which he bases his demand.

As long as a debtor is not insolvent he has an absolute right to administer his estate and dispose of his assets, provided he does so prudently and without fraud, and article 1092 has no application to such administration; the security of which that article

forbids the diminution, meaning only securities specially given under contract.

The maturity of a note during the pendency of an action prematurely brought upon it, is no answer to the exception of the defendant that such note was not payable at the moment of the institution of the action.—*Wark* v. *Perron*, S. C., Quebec, Routhier, Caron, Andrews, JJ., Feb. 28, 1893.

Lessor and lessee—Damage by fire to premises leased—Dissolution of lease—Arts. 1634, 1660, *C. C.*

Premises leased for manufacturing purposes were partially injured by a fire. The lessee visited the premises daily during two or three weeks while repairs were in progress, and the repairs were fully completed about a month after the fire. The lessee did not protest for resiliation of the lease until fourteen days after the fire. *Held*, under these circumstances, that the lessee was not entitled to obtain the dissolution of the lease, especially as the legal presumption was that the fire was due to the carelessness of his watchman.—*Pinsonneault* v. *Hood et al.*, S. C., Montreal, Davidson, J., December 9, 1892.

Procedure—Incidental demand—Action pro socio—Arts. 18, 149, *C. C. P.*

Held:—In an action *pro socio* to account, an incidental demand by which the plaintiff claims damages for unfounded legal proceedings which, previous to the present suit, had been instituted by his partner to obtain the liquidation of the partnership business, will be dismissed on demurrer, such demand not being founded on a right accrued since the service of the principal suit nor connected with the right claimed by such suit, and not coming within the terms of Arts. 18, 149, C. C. P.—*Gerhardt* v. *Davis et al.*, S. C., Montreal, Tait, J., April 2, 1892. (1)

Suretyship—Appeal bond—Novation—Chose jugée—Debt of succession.

Held:—1. Where one of the sureties on an appeal bond became insolvent, and respondent's attorneys accepted $200 "pour valoir comme cautionnement en appel, et en tenir lieu à raison de l'insolvabilité d'une des cautions," that this did not operate a novation of the suretyship, but the same remained binding and effective.

(1) This decision has been since reversed in appeal.

2. A condemnation obtained against one of two co-sureties is *chose jugée* as regards the other surety and his representatives.—*Truteau* v. *Fahey et vir*, S. C., Montreal, Davidson, J., June 27, 1892.

Procedure—Execution—Seizure of movables—Sale suspended by opposition—Art. 578, *C. C. P.*

Held:—Where the seizure of movables by the first seizing creditor is suspended by reason of an opposition to his proceedings, the next seizing creditor is not thereby prevented from proceeding to the sale of the effects, the preference given to the first seizing creditor only subsisting so long as he is in a position to proceed to the sale of the effects seized and is not retarded by oppositions not affecting other creditors in a position to proceed.—*Joseph* v. *Leblanc, & Marcotte*, mis-en-cause, and Brown, opposant, S. C., Montreal, Doherty, J., June 24, 1892.

Servitudes—Division wall—Replacement of—Arts. 518, 519, *C. C.*

Held:—Where a gable wall on the dividing line between two properties is not *mitoyen*, the owner of the adjoining property has the right to convert it into a *mitoyen* wall only after complying with the requirements of Arts. 518 and 519, C. C. Even where the wall in question is not straight nor adapted for a common wall, the neighbour is not entitled, without the consent of the owner or process of law, to take possession thereof and demolish it, with a view to rebuilding it as a common wall.—*Bruchési* v. *Desjardins*, S. C., Montreal, Doherty J., March 10, 1892.

Charte de la cité de Montréal—Vente d'un immeuble grevé de substitution—Nullité de décret.

Jugé: Que le décret d'un immeuble, à la poursuite de la cité de Montréal, en vertu des dispositions de sa charte et en recouvrement de taxes, ne purge pas les substitutions non ouvertes qui grèvent cet immeuble, et que l'adjudicataire d'un tel immeuble peut se pourvoir en nullité de décret.—*Chaput* v. *La cité de Montréal, & Guenette et al.*, C. S., Montréal, Jetté, J., 30 novembre 1892.

Exécuteur testamentaire—Insaisissabilité—Consignation.

Jugé: 1. Qu'un exécuteur testamentaire qui a été poursuivi par un héritier en destitution de sa charge, et qui a fait débouter l'action de cet héritier avec dépens, peut charger à ce dernier, le montant des frais qu'il a ainsi payés, malgré que les revenus légués à cet héritier soient, par le testament, déclarés insaisissables.

2. Qu'un demandeur est non recevable à se plaindre de l'irrégularité d'une consignation faite par le défendeur lorsqu'il a touché le montant ainsi consigné.—*Quintal et vir* v. *Roberge*, C. S., Montréal, de Lorimier, J., 30 novembre 1892.

GENERAL NOTES.

DIVORCE IN FRANCE.—During the last five years about 30,000 couples have availed themselves of the French divorce law. The Chamber has just now read for the first time (says the Paris correspondent of the *Daily Telegraph*) a law tending to make a severance of the matrimonial bonds as easy as buying a ticket for the opera. According to the new bill, a mere judicial separation of the spouses can be changed to definite divorce after the lapse of three years, on the demand of either of the parties—plaintiff or respondent.

AN OLD CASE.—The memory of *Jarndyce* v. *Jarndyce* and the actuality of *Concha* v. *Concha* have been eclipsed by a still more protracted litigation. Recently a petition was presented to Mr. Justice Chitty in the case of *Greenhill* v. *Chauncey* for the payment out of certain shares in the accumulation of a sum of money which was paid into Court under the order of the old Court of Chancery in 1747. The original Greenhill and Chauncey appear to have been partners in the Temple Mills Brass Works, and there were also other persons interested in the firm. Squabbles took place over their respective shares in the business, and some time before 1747 they went to the Court of Chancery for a settlement of the dispute, little dreaming that '*Greenhill* v. *Chauncey*' would still figure in the Court list towards the end of the 19th century. In the course of the litigation a sum of £1,221 12s. 7d. was paid into Court and invested in South Sea Annuities. That sum has grown to the considerable figure of £14,243 6s. 2d., and is now claimed by the legal personal representatives of certain of the original partners in the Temple Mills Brass Works, on whose behalf the petition was presented. Mr. Justice Chitty intimated that 'Government duties' would absorb a large part of

the £14,000, that the claimants would have to prove their title at their own expense, and that it was doubtful what they would receive.

DIPLOMATIC IMMUNITIES.—The suite of ambassadors seem in some cases to presume unduly on the hospitable reception accorded to the principals in this country. On June 3 a magistrate was obliged to refuse a bastardy summons on the ground that the person alleged to be the putative father was a valet to the Japanese Minister, and, as such, entitled to the benefit of the Diplomatic Privileges Act, 1708 (7 Anne c. 12). Mr. Heard, in his 'Curiosities of Legal Reporting' (Boston, Mass., 1881), records a somewhat different result to a similar application. In 1768 a woman appeared before justices to swear a child on the secretary to Count Bruhl, the Saxon Minister, but the Court interfered and the justices were afraid to proceed. The woman applied to Sir Fletcher Norton (soon afterwards Attorney-General), who advised application for a peremptory *mandamus* to proceed with the affiliation. Lord Mansfield suggested application to the Attorney-General or the Foreign Minister for redress; whereupon Sir Fletcher Norton bearded the great judge and asserted his client's right as a subject to apply to the Court. Two of the judges were in favour of the grant of the motion; but we cannot trace the case further. So far as it goes, it is against the diplomatic immunity of a putative father. We would suggest that it is doubtful whether the Act of Anne was intended to do more than protect diplomatists and their suite from arrest on *mesne* process in civil proceedings. But in practice, undoubtedly, they are excused from liability to any process or taxation. Cabmen who are bilked by *attachés* cannot get a summons, and a *soi-disant* diplomatist some years since successfully claimed immunity in answer to an offence against the Hyde Park regulations, while the coroners have twice been foiled in attempts to hold inquests, once on a Chinese baby, and in the other case on a member of the Chinese Embassy who killed himself outside its curtilage. In the last two cases no doubt the English law might have taken a barbarous view of Celestial ethics; but in the preceding cases there seemed no violation of national independence in requiring a cab to be paid for or police regulations to be observed. We should not nowadays allow the retinue of the French and Spanish ambassadors (as Charles II. did) to have a pitched battle in the London streets for precedence of audience (*Pepys*, September 30, 1661).—*Law Journal* (London).