The Legal News.

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DONATIONS BY MARRIAGE CONTRACT.

A decision of some interest has been given by the Chief Justice of the Superior Court at Quebec in the case of *Behan* v. *Erickson*. Erickson bought some household furniture in May, executed a marriage contract 18th of November, and 17 days after made an assignment under the Insolvent Act of 1875. By the marriage contract he made a gift of the furniture to his intended wife. The person who sold him the furniture sued Erickson for the price before the marriage, got judgment, and seized his own goods as well as other household effects on the 12th December. The wife then claimed the effects under her marriage contract. The Court holds that the man being insolvent at the date of the marriage contract, the donation thereby made was null and void, although there was no proof that the wife had any knowledge of the insolvency. Art. 1038 of our Code says: "An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts, is not voidable." As the wife here was in good faith, it appears by the present decision that a gift by marriage contract to the intended wife is not an onerous contract. This view was shown to be sustained by Troplong, Larombière, Demolombe, and in fact all the authors except Chardon.

TELEPHONE COMPANIES.

We give in the present issue a fuller report of a case, *Reg.* v. *Mohr*, briefly noted on p. 328, of Vol. 4, L. N., including the observations of Mr. Justice Ramsay, which have not before been published. The case is one of considerable interest, and illustrates the care with which charters must be drawn, in order to avoid constitutional difficulties. It is obvious that a good deal may be said in favor of the constitutionality of the Telephone Act in question. However, the judgment of the Queen's Bench upon the case reserved by Mr. Justice Cross is unanimous, and the decision will form a very important precedent.

THE LATE MR. PARSONS.

Theophilus Parsons, an author who is cited with almost equal respect in British, Canadian and U. S. Courts, died at his residence in Cambridge, Mass., on the 26th of February, in the 85th year of his age. Mr. Parsons, who was the eldest son of Chief Justice Parsons of Massachusetts, was born March 17, 1797. He was educated in Boston and at Harvard College. In 1817 he made a tour of Europe, and on his return, having completed his legal studies, he was admitted to the bar and began to practice in Boston. His practice was successful, especially in admiralty and insurance cases. In 1847 he accepted the Chair of Dane Professor of Law in Harvard University, his predecessor being Greenleaf, author of the well known work on evidence. Mr. Parsons retained his professorship until 1869, when he resigned in order to spend his declining years in the leisure and privacy of his home.

Mr. Parsons is best known to us by his numerous legal works, the most important of which is his "Law of Contracts," which has passed through many editions and is in general use as a text book. He was also connected with numerous literary ventures, besides writing several more important works, such as "Deus Homo," in answer to "Ecce Homo." Mr. Parsons was a Swedenborgian, and contributed largely to the *New Jerusalem Magazine*, a monthly organ of the Swedenborgian Church.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, January 31, 1882.

MACKAY, RAINVILLE, BUCHANAN, J J.

[From S. C., Montreal.

BRUNET v. LEROUX.

Separation from bed and board—Communication of venereal disease—Mutual recrimination.

The communication of venereal disease by the husband to the wife is sufficient ground for granting a separation de corps et de biens.

Semble, where husband and wife accuse one another of ill treatment and grave offences, it is the duty of the Court, in the interest of morality and public order, to pronounce a separation de corps.

The judgment under review was rendered by the Superior Court, Montreal, (Taschereau, J.) Sept. 9, 1881.

MACKAY, J. This is an action for *séparation de corps* for ill treatment, desertion, communicating venereal disease to plaintiff, &c. The judgment has dismissed the action with costs. It has found much of the plaintiff's case unproved, the plaintiff guilty of much *légèreté*, &c., and the *mal vénérien* charge not proved. We are of opinion to reverse. The communication of venereal disease to plaintiff by defendant is proved, and that is enough to entitle the plaintiff to a judgment. From that and the course of defendant, and from what has occurred between the parties before and during the litigation between them, we are unanimously of opinion that the plaintiff is entitled to obtain the sentence of separation that she asks. The course of the defendant at enquête also calls for observation—particularly his examination of the witness Madore. Defendant asked this witness whether he has not had illicit intercourse with the plaintiff. The Court may apply 4 Demolombe du Mariage, p. 526. This authority advises to separate under such circumstances.

"Le mari et la femme sont, chacun de son côté, adultères; ou bien ils se prodiguent réciproquement toutes sortes d'injures, d'excès et de sévices... Voilà notre fait... Eh, bien! je dis que, non-seulement les textes, comme je crois l'avoir établi, commandent de prononcer la séparation, mais qu'ainsi le veulent encore les principes et les plus hautes considérations de morale et d'intérêt public. Qu'est-ce donc que la séparation de corps? C'est en méconnaître, selon moi, le caractère, que de n'y voir qu'*une réparation* (Vazeille, t. II, No. 574), ou *un refuge* au conjoint opprimé qui mérite la protection de la justice (Massol, p. 85, No. 13). La séparation de corps sans doute se propose l'intérêt des époux, l'intérêt principalement de l'époux opprimé, j'en conviens; mais c'est aussi, ne l'oublions pas! une institution d'ordre public, qui se propose le bon ordre des familles, le bon ordre de la société. Et les deux époux, fussent-ils également coupables, également odieux, il n'en faudra pas moins prononcer la séparation, si vous reconnaissez que la vie commune n'est pour eux qu'un enfer, et pour la société qu'un scandale. Oui, certes, il y a là un grand intérêt public! car nous devons tout craindre de ces situations, lorsqu'elles nous révèlent d'irréconciliables haines."

If the plaintiff's case were less clear, that authority would lead us to separate these parties; but, as said before, the plaintiff's case is clear enough.

The judgment was entered up as follows:—

"Considering that although some of the plaintiff's allegations of declaration are not, others, and material ones, are proved;

"Considering, for instance, that it is well proved that the defendant did communicate to the plaintiff "*une maladie vénérienne*," as is charged;

"Considering, from what has passed between the parties, and what is proved, that it is plain that *vie commune* between them is now impracticable, and that "les plus hautes considéra-"tions de morale et d'intérêt public command-"ent de prononcer la séparation;—(4, Demolombe.)

"Considering that in the judgment complained against by the plaintiff to the contrary there is error;" &c.,

Judgment reversed, and judgment of separation pronounced, as per conclusions of plaintiff's declaration, with costs to plaintiff against defendant in the Court below, and in this Court.

M A. Adam for plaintiff.

St. Pierre & Scanlan for defendant.

COURT OF REVIEW.

MONTREAL, Dec. 24, 1881.

JOHNSON, RAINVILLE, JETTÉ, J J.

[From S. C., Montreal.

THE SUN MUTUAL LIFE INS. CO. v. BELAND.

Policy of life insurance—Alleged Error—Parol Evidence.

The judgment complained of was rendered by the Superior Court, Montreal, Torrance, J., July 8, 1881, in favor of the plaintiffs. The learned judge in the Court below made the following observations:—

"The plaintiff's action is to recover the amount of a promissory note for $160. It was the defendant's first year's premium on an insurance on his life for $5,000, payable at death, and the premiums were payable during 20 years if life lasted so long. The defendant's pretension is that he agreed for a policy payable at death or in 20 years. It is a question of evidence. On one side there are witnesses who are positive that the contract with the company was for a policy payable at death or in twenty years. On

the other hand, the two agents of the company Labonté and Delesderniers are positive that the agreement was for a policy payable at death, of which the premiums terminated at death or at farthest in 20 years. The application signed by the defendant agrees with this, and so does the tariff of rates. If the defendant's pretension were to prevail, he bargained with the company to receive in 20 years $5000 for which his payments would only have been $3,200 in 20 payments. No company could continue solvent on such terms. The defendant had the policy and the benefit of the insurance for a year, and should pay for it. The burden of proof was upon him to disprove the consideration given for the note, and he has failed to do so. He says he did not understand English. That is probably true, but the negociation was in French, and Delesderniers is most positive that the dotation system, namely the payment of the policy in a term of years, was never discussed. It is incredible to suppose that he discussed it with the tariff contended for by defendant. Judgment for plaintiff."

In Review, the judgment was reversed.

JOHNSON, J. The defendant inscribes the judgment of the Superior Court here condemning him to pay the amount of a note of hand representing the premium of a life insurance. The plea was that the contract of insurance for which the defendant gave his note as premium was different from the one actually witnessed by the policy, which he repudiated as soon as he was made aware of its conditions. He says he intended to insure for twenty years, and the policy is for life. Delesderniers' evidence leaves no doubt in the mind of the Court that there was error in respect of the terms of this contract. I mean that the agent intended to make one contract, and the insured another. Mr. Delesderniers' words were, "*Votre police sera payée au bout de vingt ans, vouz serez assuré pour la vie*'.' What he meant, no doubt, was that there were to be twenty annual payments of the premium, giving the assured meanwhile a share in the profits, and that the policy would then be a paid up one. The defendant, however, may well have understood that in twenty years he was to get the amount for which he insured. I think the verbal evidence respecting all the circumstances surrounding the alleged fraud practised on the defendant has been properly received, and that in the nature of things there could be none other than verbal evidence. In the case of *Brodie* v. *The Ætna Insurance Company*,* such evidence was admitted, and to hold the defendant to the terms of the written and printed form, which he says he misunderstood, without ascertaining, by the only practicable evidence, whether what he says is true or not would be to shut him out from making his defence. It may not be out of place to remark that in a country like this, where there are many persons who do not understand a word of English, agents, who are naturally (and I do not mean to say improperly) eager for commissions in this sort of business, ought to be very cautious about making themselves well understood. There are systems of insurance that are sufficiently complicated to require long attention, even from those who understand the language in which they are set forth, before they can be sufficiently understood.

We reverse this judgment with costs.

Judgment reversed.

Davidson & Cross for plaintiff.

Trudel, Charbonneau, Trudel & Lamothe for defendant.

COURT OF QUEEN'S BENCH.

QUEBEC, June 8, 1881.

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

REGINA v. MOHR.

Nuisance — Telephone Company—Local Work—Powers of Dominion Legislature.

To give the Dominion Parliament power to incorporate a Telephone Company, and authorize it to erect poles in the streets of cities in Provinces of the Dominion, it would be necessary either that the Company should have been incorporated for the purpose of connecting by telephone lines one Province with any other or others of the Provinces, or of extending its lines beyond the limits of the Province; or it should have been declared by the Federal Parliament to be for the general advantage of Canada, or of two or more of the Provinces.

The erection of telegraph poles in the streets of a city, so as to impede ordinary traffic, if unauthorized by competent legal authority, is a nuisance at common law.

The case came up on a Reserved Case, which reads as follows:—

* 5 Supreme Court Rep. 1.

"The Defendant, Sigismund Mohr, is put upon his trial upon an indictment for causing a public nuisance in Buade street, in the City of Quebec; to wit, for having on the 13th day of December, 1880, and on divers days and times between that day and the taking of the inquisition on the said indictment, on which the Grand Jury found a true bill the 2nd of May, 1881, obstructed a certain street called Buade street, situate in the City of Quebec, in the District of Quebec, being the Queen's common highway, by unlawfully and injuriously putting, planting and erecting in said street three posts or poles commonly called telegraph poles, and ever since unlawfully and injuriously permitting, suffering and causing said poles to be and remain in and upon the Queen's highway aforesaid, whereby it was obstructed and straitened so that the Queen's liege subjects could not pass in said highway as they were wont to do with their horses and carriages, to the great damage and common nuisance of all Her Majesty's liege subjects going and returning in, through and upon the said Queen's highway, to the evil example of all others in like case offending, and against the peace of our lady the Queen, her Crown and dignity.

"The private prosecutor, James Carroll, the Mayor, the City Engineer, the City Clerk and several other witnesses were examined in support of the prosecution, and two witnesses for the defence.

"The result of the evidence went to show that the defendant Sigismund Mohr, as agent and employee of the Bell Telephone Company, in the month of May, 1880, placed three telegraph poles in Buade Street, in the City of Quebec, on the south side of the street; one opposite the office of the *Telegraph* newspaper owned and occupied by James Carroll, the private prosecutor, one opposite Renfrew, the furrier's establishment, and the third at Poston's corner, further to the west. These posts were used by the Bell Telephone Company for placing their wires thereon, and for the purpose of communicating in the course of their business. The narrowest part of the street is opposite the *Telegraph* office, having there a width of only 32 feet, and the post placed at this point is let into the footpath, which for the purpose is cut to the width of 18 inches. The other two posts are placed in the street immediately outside the line of the footpath. The City Passenger Railway passes through the same street and terminates near the *Telegraph* office, which it passes. It is also placed on the south side of the street, very near the footpath; when the car passes there is but a space of 12 inches between it and the post opposite the *Telegraph* office. These posts are an obstruction which diminish the free use of the street, particularly the foot path at the *Telegraph* office, which had a width of six feet, now diminished to about four and a half feet by the erection of the telegraph pole at that point. Previous to its erection, three foot passengers could pass abreast; since, only two can pass, and that with difficulty. The obstruction would be dangerous in case of runaway horses or persons attempting to get in or out of the City cars when in motion near the post.

The posts were so placed in Buade street by the defendant Sigismund Mohr on behalf and by the instructions of the Bell Telephone Company, who for the purpose obtained the sanction and approval of the City Corporation. The City engineer was first applied to, and gave his sanction to have the posts placed on the north side of the street, at points by him selected and pointed out for the purpose; but the Mayor noticing them going on, and differing in opinion with the engineer as to the side of the street on which they should be placed, he stopped the work and had the matter referred to the City Council, who adopted his view, and ordered the posts to be placed on the south side, whereupon the engineer selected the spots for placing them, but has himself retained the opinion that they would have caused less inconvenience on the north side.

"By purchasing rights from private proprietors the company might have avoided placing the posts in the street. This course was recommended by the Mayor, but was for the time found by the Company to be impracticable. Stretching the wires on posts is the least objectionable way of using them in cities. Buade street is a main thoroughfare between the Upper and Lower Town, and is much frequented.

"In the district of Quebec, the Bell Telephone Company have extended their poles and wires from Bridgewater to Montmorency, and are using them for the purpose of their business, in communicating within and between these

points. They are incorporated under the Statute of the Dominion Parliament 43 Vic. c. 67, and placed the said three poles in Buade Street, claiming that they had a right to do so under the authority given them by said statute, under the direction and supervision of the city engineer or such other officer as might be appointed by said city council for the purpose, and the said Municipal Council and their said engineer, in sanctioning and approving as they did the placing of said poles in said street, did so under the belief that the said Bell Telephone Company were authorized and had a right under said statute to place said poles in said street, and that the said City Council and their engineer could exercise no further or greater functions in the matter than to supervise and direct as to the manner and localities in which said poles should be placed in said street, which supervision and direction they exercised.

"On this state of facts the jury, under the direction of the Court, found a verdict of *Guilty* against the defendant, subject to the question reserved for the determination of the Court *in banco*, whether the said Bell Telephone Company had sufficient authority under the said Statute 43 Vic. c. 67, or were otherwise authorized by law, to place said poles in said street, and if so, whether the Dominion legislature had a legal right to grant such authority."

RAMSAY, J. The defendant was indicted for a nuisance in planting three telephone posts in the streets of Quebec, in such a way as to interrupt the communication. The defence was that he acted under the authority of an Act of the Dominion Parliament. He was convicted, and the learned judge who tried the case reserved for the consideration of this Court, whether the defendant had sufficient authority under 43 Vic. cap. 67, or were otherwise authorized by law to place said poles in said street; and if so, whether the Dominion Legislature had a legal right to grant such authority.

It appears that defendant acted strictly in accordance with the Dominion Statute, and therefore it only remains for us to enquire whether the Dominion Act was a statute which the Dominion Parliament had a right to enact. It is hardly necessary to say that there is no special rule in the Statute applicable to telephone companies, for telephones were unknown when the Confederation Act was passed. There has been a suggestion to class them with telegraphs. Perhaps there might be no very serious objection to such a classification, but I do not see that it is necessary to have recourse in this case to a mode of interpretation which is open to question. If we were dealing with an act of incorporation relating to telegraph or railway companies, it would not alter the matter. Generally the Local Legislatures have a right to legislate with regard to "local works and undertakings," to "the incorporation of companies with Provincial objects," and "generally to all matters of a merely local nature." There is no exception to these rules in the enumeration of Section 91. The only exceptions are to be found in paragraphs A, B, and C, of Section 92, Sub-section 10. The two former apply to Companies whose lines extend beyond the limits of a Province, whether it be to join one Province to another, or to a foreign country. The last grants power to Parliament to declare any work to be for the general advantage of Canada, or for the advantage of two or more Provinces, and then such work ceases to be subject to local legislation. Now, does the Dominion Statute before us come within any of these exceptions? Clearly it contains no declaration as is required by paragraph C, and it seems to me to be equally clear, even if we assimilate a telephone company to a telegraph company, that it is not the incorporation of any telephone company connecting one Province with another, or extending beyond the limits of the Province. The powers sought to be conveyed to the Company are: 1st, the power to manufacture telephones and other apparatus connected therewith, &c., and 2nd, to purchase, sell or lease the same and rights relating thereto; and to build, establish, construct, purchase, &c., any line or lines for the transmission of messages by telephone, in Canada or elsewhere.

That is, they may erect shops for the manufacture of these articles in any Province. This is in violation of the three sub-sections already quoted, namely, 10, 11 and 16, and it does not pretend to be within any exception of sub-section 10. Again, they may make a telephone line anywhere in Quebec, in Ontario, at Halifax, or Fredericton. This is evidently *ultra vires*. But it is argued, the Company may, if it chooses, make connection with any line of telegraph or telephone in Canada or elsewhere. In other

words, the Company may by its acts make the Dominion Act valid or the reverse. That is, if they had constructed a telephone line to connect Ottawa with the eastern bank of the Ottawa River, this would have been within the charter, and that therefore the Dominion Act is good to some extent. Such an interpretation would be of no use to the defendant, for it does not appear that he was engaged in a work of the kind, and furthermore, I think such a mode of interpreting the B. N. A. Act would lead to an evasion of the law, and therefore wholly inadmissible. I may also add that I think there is great room to question whether as a general proposition a law can be partly within the powers of a legislature and partly beyond. I do not mean to say that where a statute affects to grant two separate powers, one of which is within the jurisdiction of the legislative body and the other without, that the former may not be maintained although the latter is rejected; but where a legislature mixes up matters over which it has jurisdiction with those over which it has none, in such a manner that the object of the law cannot be attained by reason of the lack of those dispositions the legislature had not power to enact, I am inclined to think the whole law is inoperative, otherwise the intention of the legislature might be completely frustrated. I throw this out more as a possible rule of interpretation suggested by this case rather than as one applicable to this case, for I do not think Parliament had jurisdiction over any part of the subjects coming under our consideration in this case. I would therefore maintain the conviction.

DORION, C. J. In the distribution of the powers assigned respectively to the Dominion Parliament and to the legislature of each province by the B. N. A. Act, 1867, the intention is throughout made apparent, not only by the classification of the subjects, but also by express enactments, that to the Dominion Parliament should appertain the right to legislate on subjects which from their nature affect the interest of the whole Dominion, and that all matters of a local nature affecting but one of the Provinces, or a portion of a Province, are within the control of the whole legislature of the Province affected thereby, unless excepted from this general rule by a special enactment. The powers so conferred by Sections 91 and 92 of the Act are exclusive, so that within the limits assigned to the Dominion Parliament and to the legislature of each Province, these powers are exclusive, and as free from the control of the one over the other, as they are from the control of each of the other Provinces.

The power conferred by Sec. 92 on each Province to make laws concerning the different subjects therein enumerated, comprises municipal institutions in the Province, local works and undertakings generally, without any limitation as to whether such works constitute a commercial undertaking or not, the incorporation of companies with provincial objects, that is, whose objects are to be carried on within each Province, property and civil rights in the Province; and to leave no doubt as to the intention of the Act, Sec. 92 closes with this comprehensive declaration, "generally all matters of a merely local or private nature in the Province." These general powers are limited in certain cases, and S. S. 29 of S. 91 provides that the exclusive legislative authority of the Dominion of Canada extends to such subjects as are expressly excepted in the enumeration of the classes of subjects exclusively assigned to the legislature of the Province, as, for instance, Marine Hospitals, which are specially excepted by S.S. 7 of S. 92; Lines of steam or other ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Provinces with any other or others of the Provinces, or extending beyond the limits of the Province; Lines of steamships between the Province and any British or foreign country. Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the Provinces, are also excepted by S.S. 10 of S. 92. Therefore all works wholly situate within one Province, whether the undertaking to which they appertain be for a commercial purpose or otherwise, no distinction being made in that respect, are within the control and subject to the legislation of the Province in which they are made, unless they are by the Parliament of Canada declared to be for the general advantage of Canada, or of two or more of the Provinces. The power of the Provincial legislature is further limited by S. 91 in matters relating to the

incorporation of banks, which, although they may be local, must be incorporated by the Dominion Parliament.

Under these provisions a Bank may be incorporated by the Dominion Parliament to do business in the city of Quebec, or in the city of Montreal, or in both, although within the Province of Quebec; but the Dominion Parliament could not authorize the establishment of a Telegraph Company in the cities of Quebec or Montreal, nor between any two points within the Province of Quebec, unless it declared that such Telegraph was for the advantage of the Dominion, or for the advantage of at least two of the Provinces of the Dominion. For the same reason, the Dominion Parliament could not authorize the establishment of a Telegraph wholly within the Province of Ontario or of any of the other Provinces, for such work and undertaking, being entirely within one Province, is expressly declared to be subject to the exclusive control and legislation of the Province within which it would be established.

If the Dominion cannot incorporate separate companies for the purpose of establishing separate lines of telegraph in one or two or more Provinces unless such lines are to connect two or more Provinces, or extend beyond the limits of one Province, or are expressly declared to be for the advantage of the Dominion or of two or more Provinces, it is because by their nature these separate Telegraph lines are local works and undertakings subject to the exclusive control of the legislature of the Province in which they are situated, and if the Dominion cannot authorize separate Companies to establish such separate lines of Telegraph, whence could it derive its authority to incorporate one Company to establish those several works? It is evident that the nature and character of such undertakings cannot be altered from being local undertakings to become general by the mere fact that they are to be established by one Company instead of several Companies. Their character is determined by the location and object, or by an express declaration of the Dominion Parliament, and not by the accident that the same Company is authorized to carry on similar works in different Provinces.

In considering the nature and character of the Bell Telephone, we must apply the same rules as are applicable to telegraph lines,—they being of the same character, and therefore included in the general terms of other works and undertakings, to be found in S.S. 10 of S. 92 of the Act. From the case reserved by the learned Judge who presided at the trial, it appears that the Bell Telephone Company have extended their poles and wires from Bridgewater to Montmorency, and are using them for the purpose of their business in communicating within and between those points, both of which are within the District and Province of Quebec.

It is true that by its Act of Incorporation passed by the Dominion Parliament in the 43rd year of Her Majesty's reign, c. 67, the Bell Telephone Company is authorized to establish telephone lines in the several Provinces of the Dominion, but the Company is not incorporated for the purpose of connecting two or more Provinces by the telephone lines, and it cannot therefore establish independent lines of telephone in each Province, not connecting the one with the other. Each such work would be a local work or undertaking, and subject to the legislature of the Province in which it might be situate.

To empower the Dominion Parliament to give to the Bell Telephone Company the right to impede the circulation and traffic in the streets of Quebec, one of two conditions would have been required, that the Telephone Company should have been incorporated for the purpose of connecting by telephone lines the Province of Quebec with any other or others of the Provinces of the Dominion, or of extending its line of telephone beyond the limits of the Province of Quebec, or that it should have been declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces. Neither of these conditions existing, it follows that the Parliament of the Dominion had no power to confer on the Bell Telephone Company the right to erect telegraph poles in the streets of the City of Quebec, which are such an impediment as to be adjudged by a petty jury to be a nuisance.

It is not necessary to decide whether or not the whole Act of incorporation is *ultra vires*; it is sufficient for this case that the authority given to erect telegraph poles in the streets of the City of Quebec be *ultra vires*, to maintain the conviction pronounced against the defendant by a petty jury.

There could have been no public nuisance committed by the Company or by its officers in erecting their telegraph poles, according to the directions provided for by law, if the authority to do so had been conferred by the proper legislative body; but the law being *ultra vires*, the Company had no special authority to erect poles in the streets, and it was a question of fact to be determined by the jury whether in doing it, it had obstructed the use of the street so as to commit a nuisance (*Commonwealth of Massachusetts* v. *City of Boston*, Allen's Telegraph Cases 365.)

The verdict must therefore be affirmed, and this is the unanimous judgment of the Court.

Conviction maintained.

R. Alleyn, Q. C., for the Crown.

O'Farrell, Bradley, and *Tessier* for private prosecution.

Irvine & Pemberton, for the defendant.

CIRCUIT COURT.

MONTREAL, Dec. 22, 1881.

Before RAINVILLE, J.

CREVIER v. DEGRANDPRÉ, and LAMOTHE, T. S.

Art. 628, *C. P. C.—Seizure of salaries of public officers.*

The Act 38 *Vict. c.* 12 (*Quebec*) *does not apply to employés of the Federal Government.*

Le défendeur est porteur de lettres au bureau de poste, à Montréal. Il est payé par le maître de poste qui reçoit chaque mois un chèque pour toutes les dépenses de son bureau. Comme tiers-saisi il déclare ne pas être tenu de payer le demandeur, vu l'insaisissabilité du salaire de son employé. Le demandeur conteste cette déclaration.

Lareau, pour le demandeur :—Le salaire des fonctionnaires publics est insaisissable (Art. 628, C. P. C.), mais cette loi générale a été amendée par la 38 Vic., ch. 12. Ce statut est d'une application générale à tous les employés publics *dans la province* de Québec, qu'ils relèvent du gouvernement fédéral ou du gouvernement provincial. Ce statut n'a jamais été désavoué à Ottawa; on ne peut donc pas invoquer son inconstitutionalité. En second lieu, la loi n'exempte de saisie que le salaire des *fonctionnaires publics*. Or, un porteur de lettres, dans le département des postes, est-il un fonctionnaire public? L'on ne doit entendre par fonctionnaire public que celui à qui sa fonction confère une portion de la puissance publique (*vide* Roll. de Villargues, vo. Fonctionnaire public). Autrement, il faudra conclure que le balayeur dans une bâtisse publique est un employé dont le salaire est insaisissable.

RAINVILLE, J. Je suis d'opinion que le statut 38 Vict., ch. 12, ne s'applique pas aux employés du gouvernement fédéral. L'insaisissabilité du salaire des employés publics est de droit constitutionnel, et la loi provinciale ne saurait affecter les droits des fonctionnaires qui relèvent du gouvernement d'Ottawa. Contestation renvoyée avec dépens.

Lareau & Lebœuf, pour le demandeur.

Church, Chapleau, Hall & Atwater, pour le tiers-saisi.

RECENT DECISIONS AT QUEBEC.

Opposition.—If the fifteenth day before the day fixed for the sale of real estate, under a writ *de terris*, be a legal holiday, an opposition to the sale, filed on the fourteenth day before the day fixed for the sale is in time—*Boivin* v. *Welch*, (Superior Court, Quebec; opinion by Meredith, C. J.), 7 Q.L.R. 293.

Seamen's Wages.—Tout matelot engagé à bord d'une goëlette naviguant sur les eaux intérieures du Canada peut poursuivre pour ses gages devant un Juge des Sessions de la Paix, etc., mais dans ce cas il faut prouver que la goëlette est dûment enregistrée suivant l'Acte 34 et 35 Vict., ch. 110, la preuve d'une licence accordée par la Commission du Hâvre n'étant pas suffisante pour établir la jurisdiction.—*Tremblay* v. *Lamothe*, (Sessions of the Peace, Quebec; opinion by Chauveau, J. S. P.), 7 Q.L.R. 294.

Donation by Marriage Contract, by Insolvent.—A donation by marriage contract, by an insolvent to his wife, in fraud of his creditors, will be set aside, even though his wife had no share in the fraud. A gift of household furniture, in and by a marriage contract, by the intended husband to the intended wife, is not an onerous contract within the meaning of Art. 1038 C.C., and is liable to be set aside, if the donor, at the time it was made, was and knew himself to be insolvent; and this without proof of bad faith on the part of the donee.—*Behan* v. *Erickson*, (Superior Court, Quebec; opinion by Meredith, C. J.), 7 Q. L. R. 295.