THE

LEGAL NEWS.

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TESTAMENTARY CAPACITY.

It is not proposed to offer any abstract discussion on this subject, but merely to say a few words suggested by the opinion of the General term of the Supreme Court in "Matter of the Will of Fricke." The principles it lays down are, of course, not new, but there seems to be a perennial necessity for their re-statement. We have been much impressed at different times by the dread average laymen have of will contests. Many hesitate to make wills, because of fear of their being "broken," and a large part of the estate consumed in lawyer's fees.

Will contests are apt to be conspicuous litigations, involving a great deal of the emotional element, and thereby securing newspaper notoriety. It is, of course, true that several wills offered for probate in this county during recent years, and purporting to pass large estates, have been contested by relatives of the testators; and many, even among intelligent laymen, do not stop to recall that most of such contests proved futile. The Tilden will case is not in point, as no doubt as to testamentary capacity was raised, and the litigation over it involved questions purely of law.

As a matter of fact, how few wills in proportion to the number offered for probate are contested, and what a small ratio of the contests are successful! That a will was drawn and witnessed by a reputable attorney is *prima facie* a strong argument in favor of testamentary capacity. A lawyer, of course, may be deceived by latent mental defects, but certainly a practitioner of conscience and standing cannot afford to become a promoter of

what purports to be a testamentary act on the part of an obvious incompetent. The opinion of the General Term in the Fricke matter attaches much weight to the testimony of the attorney who officiated at the execution of the will.

The attestation by professional men, either lawyers or doctors, of good character, is, therefore, presumptively a guaranty that the testator was mentally capable of executing and publishing the instrument. And this consideration suggests the prudence of having the testator's regular medical adviser, as well as the attorney drawing the will, sign as witnesses (unless, indeed, the latter be named as executor), if it be feared that opposition will be made to the probate.

The superstitious antipathy to will-making on the part of laymen finds its natural correlative in the prevailing persuasion that any will may be broken if distasteful to the heirs or next of kin. On this subject conscientious lawyers are obliged to reiterate many times in the course of a year certain legal truisms: There is no obligation, either of arbitrary law or implied contract, for the owner of property, real or personal, to devise or bequeath it to his blood relatives, or any of them.

A testator in possession of his faculties may do what he pleases with his own, save only that he cannot defeat his wife's dower in real estate, and that he must respect certain statutory prohibitions against charitable gifts and the creation of perpetuities. Undue influence does not consist in mere argument or persuasion, but in such personal ascendancy that the purpose and desire of the influencing party are substituted for those of the testator. Aphorisms might be multiplied, but the average lawyer can frame them for himself at his leisure. The truth is that a goodly percentage of will contests on the facts are without legitimate hope of success.

We do not feel called upon to decide for everybody the question of professional ethics arising when a testator has made an "unnatural" will, and a contest is proposed as a means of compelling a settlement. Legal questions as to the construction of wills are, of course, matters of legitimate controversy for practitioners. But we do believe that, on the whole, members of the bar are not as chary as they ought to be in advising contests, and that the prejudices and passions of clients are often humored when professional duty would require an uncompromising veto. —*New York Law Journal.*

CROSS-EXAMINATION—A SOCRATIC FRAGMENT.

Socrates. Shall we not be right in saying then that the object of cross-examining witnesses is to elicit the truth?

Philotimus. It would seem to be so, Socrates.

Soc. Then the good advocate, aiming at this mark, will ask only such questions as will help to discover the truth?

Phil. Only such questions, Socrates.

Soc. How shall we reconcile this with what we arrived at before, that it is the function of the judge to find out the truth, and not the function of the advocate?

Phil. This is a hard nut to crack, Socrates.

Soc. Have we not then been confusing two different kinds of excellence, that of the judge and that of the advocate, just as if we were to confuse the excellence of the terrier and the excellence of the rat?

Phil. We seem to have been guilty of some such mistake, Socrates.

Soc. Let us consider then what is the special excellence of the advocate. Will it not be to recommend himself to his client so that he may obtain more briefs, and become popular among litigious people?

Phil. This seems very probable, Socrates.

Soc. Then will not the advocate who proposes this end to himself try, if he has a bad case, to make the worse appear the better reason, and to hoodwink the jury, and to browbeat and bully the witnesses and do other things of this kind, if he sees that they please his employer and procure him special retainers?

Phil. This is likely enough, Socrates.

Soc. And if he sees a witness timid and nervous he will speak to him in a loud voice and try to frighten him, and will treat him roughly as if he was speaking lies?

Phil. We shall not be far wrong, Socrates, in expecting this.

Soc. And if he knows anything to the disadvantage of the witness he will rake it up, will he not, however old it may be, and whether it has anything to do with the matter in question or not; as if a witness is called to prove a will he will ask him whether he did not once steal apples when he was a boy, and if he knows nothing, he will suggest things which are not true and make innuendoes and insinuations?

Phil. This seems his best course, Socrates.

Soc. And if the judge interferes or remonstrates he will insult him as far as he dares, or make slighting remarks in an undertone, to make his employer think that he is master in the court and more knowing than the judge?

Phil. I should advise him to act so, if he would listen to me.

Soc. And thus he will get the reputation of a verdict-winner, and will be talked about in the newspapers, will he not, and will receive retainers and refreshers continually?

Phil. No doubt, Socrates.

Soc. While the unskillful advocate who asks only relevant questions and is courteous to witnesses and respectful to the judge will be neglected and his fee-book will suffer?

Phil. Assuredly, Socrates.

Soc. We seem to have arrived at this then, that law is in the nature of a cock-fight, and that the litigant who wishes to succeed must try and get an advocate who is a game bird with the best pluck and the sharpest spurs?

Phil. It would be madness not to do so, Socrates.

Soc. And to know the law and the true principles of justice will be a matter of secondary importance?

Phil. Altogether secondary.

Soc. So that we may say that the law is a matter of clever rhetoric and of bullying witnesses and cajoling juries and other such arts, may we not?

Phil. Apparently.

Soc. Then how shall we reconcile this with the saying of one of the greatest of the wise men, that "law ought to be the leading science in every well-ordered Commonwealth?"

Phil. We are in a fix, Socrates.

Soc. May we not have been wrong in saying that the special excellence of the advocate is to advertise himself and make himself popular with solicitors?

Phil. I am inclined to think that we must hark back, Socrates.

Edward Manson in "Law Quarterly Review."

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, Aug. 6, 1892.

Present: LORD HOBHOUSE, LORD HERSCHELL, LORD MACNAGHTEN, and LORD MORRIS.

WALKER v. BAIRD et al.

International law—Prerogative of Crown—Act of State—Personal responsibility of agent of Crown.

This was an appeal from a judgment of the Supreme Court of Newfoundland (see 14 Leg. News, 300) given in favor of the respondents, Messrs. Jas. Baird and Edward Leroux, on certain questions of law in an action brought by them against the appellant, Captain Sir Baldwin W. Walker, R.N., of her Majesty's ship Emerald, for wrongfully entering, on June 25, 1890, the respondents' premises, situated at Fishell's river, in Bay St. George, in Newfoundland, and taking possession of their lobster factory and the materials therein, and preventing the respondents from carrying on the business of catching and preserving lobsters.

The Attorney-General, Mr. Staveley Hill, Q.C., and Mr. A. T. Lawrence, were counsel for the appellant; Sir James S. Winter, Q.C. (of the Newfoundland Bar); Mr. J. E. C. Munro and Mr. T. Arnold Herbert for the respondents.

The arguments were heard on July 19 and 20 before a committee consisting of Lord Watson, Lord Hobhouse, Lord Herschell, Lord Macnaghten, Lord Morris, Lord Hannen, Sir Richard Couch and Lord Shand, when judgment was reserved.

LORD HERSCHELL, in now delivering their lordships' judgment, said:

This is an appeal from an order of the Supreme Court of Newfoundland. The respondents, by their statement of claim, alleged that the appellant wrongfully entered their messuage and premises, and took possession of their lobster factory and of the gear and implements therein, and kept possession of the same for a long time, and prevented the respondents from carrying on the business of catching and preserving lobsters at their factory. By his statement of defence, the appellant said that he was captain of Her Majesty's ship Emerald and the senior officer of the ships of Her Majesty the Queen employed during the current season on the Newfoundland fisheries; that to him, as such senior officer and captain, was committed by the Lords Commissioners

of the Admiralty, by command of Her Majesty, the care and charge of putting in force and giving effect to an agreement embodied in a *modus vivendi* for the lobster fishing in Newfoundland during the said season, which, as an act and matter of State and public policy, had been by Her Majesty entered into with the Government of the Republic of France; that the said agreement provided, amongst other things, that, on the coasts of Newfoundland, where the French enjoy rights of fishing conferred by the treaties, no lobster factories which were not in operation on July 1, 1889, should be permitted, unless by the joint consent of the commanders of the British and French naval stations; that the said lobster factory of the plaintiffs, being situate on the said part of the coasts of Newfoundland, and being one that was not in operation on the said 1st of July, 1889, and one which was without the consent aforesaid, being used and worked by the plaintiffs as a lobster factory whilst the said agreement was in force, and, such use and working thereof being prohibited by the said agreement and in contravention of its terms, the defendant in performance of his duties did for the cause assigned enter into and take possession of the messuage and premises in the statement of claim mentioned, and of certain gear and implements; that such entry into and taking possession of the said messuage and premises, gear and implements were made and done by the defendant in his public political capacity, and in exercise of the powers and authorities, and in performance of the duties committed to him, and were acts and matters of State done and performed under the provisions of the said *modus vivendi;* that the action taken by the defendant in putting in force the provisions of the said *modus vivendi* had, with full knowledge of all the circumstances and events, been approved and confirmed by Her Majesty as such act and matter of State and public policy, and as being in accordance with the instructions of Her Majesty's Government. The defendant submitted that the matters set forth in his answer to the statement of claim, and on which he rested his right to enter and take possession of the premises, were acts and matters of State arising out of the political relations between Her Majesty the Queen and the Government of the Republic of France; that they involved the construction of treaties and of the said *modus vivendi* and other acts of State, and were matters which could not be enquired into by the court. The plaintiffs objected that the defence did not set forth any answer or ground of defence to the action, and it was ordered by the court that the

points of law should be first disposed of. The Supreme Court of Newfoundland, after hearing argument, held that the statement of defence disclosed no answer to the plaintiffs' claim, but gave the defendant leave to amend. In their Lordships' opinion this judgment was clearly right, unless the defendant's acts can be justified on the ground that they were done by the authority of the Crown for the purpose of enforcing obedience to a treaty or agreement entered into between Her Majesty and a foreign power. The suggestion that they can be justified as acts of State, or that the court was not competent to enquire into a matter involving the construction of treaties and other acts of State, is wholly untenable. The learned Attorney-General, who argued the case before their Lordships on behalf of appellant, conceded that he could not maintain the proposition that the Crown could sanction an invasion by its officers of the rights of private individuals whenever it was necessary in order to compel obedience to the provisions of the treaty. The proposition he contended for was a more limited one. The power of making treaties of peace is, as he truly said, vested by our constitution in the Crown. He urged that there must of necessity also reside in the Crown the power of compelling its subjects to obey the provisions of a treaty arrived at for the purpose of putting an end to a state of war. He further contended that if this be so, the power must equally extend to the provisions of a treaty having for its object the preservation of peace; that an agreement which was arrived at to avert a war which was imminent was akin to a treaty of peace, and subject to the same constitutional law. Whether the power contended for does exist in the case of treaties of peace, and whether, if so, it exists equally in the case of treaties akin to a treaty of peace, or whether in both or either of these cases interference with private rights can be authorized otherwise than by the Legislature, are grave questions upon which their Lordships do not find it necessary to express an opinion. Their Lordships agree with the court below in thinking that the allegations contained in the statement of defence do not bring the case within the limits of the proposition for which alone the appellant's counsel contended. Their Lordships will, therefore, humbly advise her Majesty that the appeal should be dismissed with costs.

COURT OF APPEAL.

LONDON, Aug. 1, 1892.

Coram LINDLEY, LOPES, SMITH, L. JJ.

SCOTT v. BROWN.—SLAUGHTER v. BROWN, (27 L.J. N.C. 122).

Conspiracy — Illegal agreement — Company — Shares — Market — Agreement to buy shares in order to create a market.

These were actions for the rescission of contracts to purchase shares in the Steam Loop Company, upon the ground, amongst others, that the defendants, whilst acting as brokers, had passed off their own shares to the plaintiffs instead of buying them upon the market. WRIGHT, J., held that there was no evidence to go to a jury, and the plaintiffs applied for a new trial. At the time when the transactions occurred the company had not yet been brought out. Scott was interested in floating it, and Slaughter was the solicitor of the company. Both plaintiffs instructed the defendants to purchase for them shares in the company, and duly paid for these shares. In the course of the hearing of the appeal it appeared that the plaintiffs had agreed with the defendants to buy the shares, and had actually taken them at a premium in order to induce would-be buyers of shares in the company to believe that there was a market for A's shares, and that the shares were of greater value than they really were.

Their LORDSHIPS took the preliminary objection that this was an agreement to cheat the public; that an agreement by two or more to do an illegal act, and to do it by illegal means, had been proved; that an indictable conspiracy had been committed and had been brought to the notice of the Court, although it was not pleaded; and that the plaintiffs were not entitled to any relief.

Appeal dismissed with costs.

QUEEN'S BENCH DIVISION.

LONDON, Aug. 8, 1892.

HOSKINS v. CORFIELD (27 L.J. N.C. 131.)

Action of deceit—Statement made recklessly and without belief in its truth—Evidence of fraud—Nonsuit—New trial.

This was an appeal from the decision of the County Court judge of Clerkenwell nonsuiting the plaintiff in an action tried before him with a jury, and in which the plaintiff claimed damages for misrepresentation as to the sanitary condition of the

drainage of certain premises let by the plaintiff to the defendant.

On the facts before him the learned County Court judge was of opinion that there was evidence that the statement made by the defendant was untrue, and that it was made without reasonable ground for believing it to be true, but that there was no evidence to go to the jury that such statement was dishonestly made; and, therefore, on the authority of *Derry* v. *Peek*, 58 Law J. Rep. Chanc. 864; L. R. 14 App. Cas. 337, and *Glasier* v. *Rolls*, 58 Law J. Rep. Chanc. 820; L. R. 42 Chanc. Div. 436, nonsuited the plaintiff.

From this decision the plaintiff appealed.

Ritter for the appellant: The learned County Court judge's decision is based on a misconception of *Derry* v. *Peek* (*supra*), which, although it was therein held that the plaintiff must prove actual fraud, decided that fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it is true or false; and here the defendant made the statement without knowing anything about the property.

Kinniple (*Crawford* with him), for the respondent, contended there was no evidence of fraud [WRIGHT, J.: On the judge's notes, isn't there evidence of fraud?]; at any rate, the plaintiff must prove affirmatively that the defendant made the statement dishonestly. Cited *Glasier* v. *Rolls* (*supra*) and *Angus* v. *Clifford*, 60 Law J. Rep. Chanc. 443; L. R. (1891) 2 Chanc. 449.

The COURT (WRIGHT, J. and BRUCE, J.) held that there was evidence of fraud to go to the jury, as the statement by the defendant was made recklessly and without belief in its truth, and, therefore, ordered a new trial.

Appeal allowed.

STOCK EXCHANGE TRANSACTIONS.

'Ex turpi causâ non oritur actio' is a maxim that seems to have been lost sight of by the plaintiffs in *Scott* v. *Brown & Co.*, *Slaughter* v. *Brown & Co.*, 27 L. J. N. C. 122. At any rate, it remained for the Court of Appeal to demonstrate the turpitude of the negotiations upon which those actions were based. And that such proceedings do involve violation of the law, and are, in consequence, absolutely void, will, doubtless, come as a disagreeable surprise to a good many of the Stock Exchange fraternity and others who 'operate' within the purlieus of Capel

Court. But they will learn from the decision in those cases that the Court declines to lend its assistance to a person to enforce a demand originating in a breach of legal principles. Shortly stated, the decision comes to this: that a contract to rig the market on the Stock Exchange is an illegal conspiracy, and the Court will not give effect to rights acquired thereunder by the parties to such contract. The cant phrase to 'rig the market' has, unfortunately, become only too familiar of late, and is one of the numerous evils that attend speculation on the Stock Exchange. As a witty writer puts it in a recently published novel, 'the rigging of companies' shares, before and after allotment, would give thimble-rigging odds, and win easy.'

The facts of the two cases would lie in a nutshell. Scott, the plaintiff in the first action, was interested in floating a certain company, and Slaughter, the plaintiff in the second action, was the solicitor of that company. Both plaintiffs instructed the defendants, who were stockbrokers, to purchase for them shares in the company, and duly paid for such shares. In the course of the hearing of the appeal, however, it transpired that the plaintiffs had agreed with the defendants to buy the shares, and had actually taken them at a premium, in order to induce would-be shareholders in the company to believe that there was a market for its shares, and that the shares were of greater value than they in reality were—the old story, in short. The object of the action was to obtain rescission of the plaintiffs' respective contracts to purchase shares in the company on the ground, *inter alia*, that the defendants had passed off shares of their own to the plaintiffs instead of buying them upon the market. The true state of affairs having been brought to the notice of the Court of Appeal (Lords Justices Lindley, Lopes, and Smith), although it had not been pleaded, their lordships took the preliminary objection that there had been an agreement between the parties to cheat the public; that an agreement by two or more to do an illegal act, and to do it by illegal means, had been proved; and that, therefore, an indictable conspiracy had been committed. Under these circumstances the Court, of course, refused to grant any relief. The warning conveyed by the ominous words, 'indictable conspiracy,' should be taken to heart by persons engaged in the congenial, albeit surreptitious, occupation of 'rigging the market.' It may mean to them something more serious than a mere refusal by the Court to accede to their claims for relief.—*Law Journal* (London).

RECENT MANITOBA DECISIONS.

Criminal law—Conviction for gaming—Insufficient evidence of support by gaming.

Application for a writ of *habeas corpus* to bring up a prisoner in custody under conviction and sentence of imprisonment upon a charge of having been, on the 11th May, 1892, a person having no peaceable profession or calling to maintain himself by, but who, for the most part, supported himself by gaming, and of then being a loose, idle, and disorderly person and a vagrant.

The most important objection taken was that there was not before the magistrate evidence to warrant the conviction.

The charge was laid under R. S. C., c. 157, s. 8, s-s. (k), which provides that all persons who have no peaceable profession or calling to maintain themselves by, but who do, for the most part, support themselves by gaming or crime, or by the avails of prostitution, are loose, idle or disorderly persons, or vagrants. It was to "gaming" only that there was any pretence that the evidence pointed.

Held, that to support the conviction, it was necessary there should be evidence of four distinct propositions:—

1. That the accused had no peaceable profession or calling to support himself by.

2. That he practised gaming.

3. That from this practice he derived some substantial profits.

4. That these profits constituted the larger portion of his means of support.

There was abundant evidence of the first and second propositions, but there was no reasonable evidence to warrant a finding of either the third or fourth proposition. The accused might have neither profession nor calling by which to maintain himself. He might be possessed of sufficient means to enable him to live in idleness, or he might be supported by others. He might gamble extensively, and yet not derive from the practice any means of support. A few instances of winnings by the accused were mentioned in the evidence, but whether on the whole he won or lost there was nothing to show. The conviction was not supported by evidence of all the facts necessary to support it, and the prisoner must be discharged.—*Regina* v. *Davidson*, Killam, J., June 3, 1892.

INSOLVENT NOTICES.

Quebec Official Gazette, July 30, *Aug.* 6 *&* 13.

Judicial Abandonments.

BOITEAU, George, master carpenter, Quebec, Aug. 3.

BROWN, William Seavy, trader, Montreal, July 22.

COCHRANE, John, New Richmond, July 27.

DASTOUS, J., Ste. Flavie, Aug. 2.

DROLET, Delphis, dry goods, Quebec, July 28.

GILBERT, Thomas, tinsmith, St. George, Beauce, July 7.

MARTIN & Co., B., (Catherine Cleary), boot and shoe dealers, Montreal, Aug. 3.

ROY, Alfred, Thetford Mines, Aug. 2.

Curators Appointed.

BÉLANGER, Geo., Sherbrooke.—Royer & Burrage, Sherbrooke, joint curator, July 25.

BÉLIVEAU, David, St. Gabriel de Brandon.—J. E. Archambault, St. Gabriel, curator, July 23.

BROWN, W. S.—C. Desmarteau, Montreal, curator, July 29.

CHAYER, Fred. W.—C. Desmarteau, Montreal, curator, July 22.

"COMPAGNIE d'Imprimerie et de Publication du Canada."—J. B. Young, Montreal, liquidator, Aug. 9.

DASTOUS, J., Ste. Flavie.—H. A. Bedard, Quebec, curator, Aug. 8.

DUPONT, Napoléon.—C. Desmarteau, Montreal, curator, July 25.

FONTANELLE, Etienne.—Bilodeau & Renaud, Montreal, joint curator, July 27.

GAGNON, Antoine, Rivière Ouelle.—G. Bouchard, Quebec, curator, Aug. 10.

HARKIN & Co., B. (Catherine Cleary).—C. Desmarteau, Montreal, curator, Aug. 10.

JOUETTE, Léandre.—Bilodeau & Renaud, Montreal, joint curator, Aug. 2.

LANGLAIS, J. A., Quebec.—D. Arcand, Quebec, curator, Aug. 1.

METAYER, J. A., Montreal.—J. McD. Hains, Montreal, curator, July 23.

PEARSON, James, Montreal.—Kent & Turcotte, Montreal, joint curator, Aug. 2.

ROCHETTE, O. (Cardinal, Dame Emilie).—A. Gaboury, Quebec, curator, July 26.

ROUSSEAU, S.—L. G. G. Beliveau, Montreal, curator, Aug. 1.

WHITE & Co., J. D., Montreal.—Kent & Turcotte, Montreal, joint curator, Aug. 2.

Dividends.

BLAIS & Lefebvre, Quebec.—First dividend, payable Aug. 16, G. H. Burroughs, Quebec, curator.

BOA, Andrew.—First and final dividend, payable Aug. 31, J. M. M. Duff, Montreal, curator.

CHAPMAN, Alfred, & Jas. Drydale, Lachute.—First and final dividend, payable Aug. 9, G. J. Walker, Lachute, curator.

GÉLINAS, Joseph Edmond, Ste. Clothilde.—First and final dividend, payable Aug. 26, A. Quesnel, Arthabaskaville, curator.

HOLLAND & Co., R. Hy., Montreal.—First dividend, payable Sept. 1, A. W. Stevenson, Montreal, curator.

LANGLOIS, L. O. Hector, parish of St. Hugues.—First and final dividend, payable Aug. 23, J. O. Dion, St. Hyacinthe, curator.

LEROUX & Co., Imbleau, Montreal.—First dividend, payable Aug. 30, Kent & Turcotte, Montreal, joint curator.

MORIN, O. N., St. Pie.—First and final dividend, payable Aug. 17, J. Morin, St. Hyacinthe, curator.

PARÉ, J. D., Montreal.—First and final dividend, payable Aug. 15, Lamarche & Olivier, Montreal, joint curator.

PENNÉE, et al., F.—First and final dividend, payable Aug. 22, D. Arcand, Quebec, curator.

RICKABY & Co., J. B. H., Montreal.—First and final dividend, payable Aug. 2, J. McD. Hains, Montreal, curator.

SOUCY & Co., E., Quebec.—First and final dividend, payable Aug. 12, J. A. Turgeon, Quebec, curator.

TRUDEAU, Siméon G.—Dividend on proceeds of lands, payable Sept. 1, E. W. Morgan, Bedford, curator.

Quebec Official Gazette, August 20 & 27.

Judicial Abandonments.

ALAIN, J. E., furniture dealer, Quebec, Aug. 22.

BRODEUR & frère, traders, St. Hyacinthe, Aug. 16.

DUROCHER, David, trader, St. Timothée, Aug. 10.

ROBILLARD & Co. (Virginie Lanaud), Beauharnois, Aug. 10.

SANSFAÇON, A. Alfred, trader and shoemaker, Quebec, Aug. 19.

Curators Appointed.

BOITEAU, George.—G. H. Burroughs, Quebec, curator, Aug. 24.

BRULÉ, Dieudonné.—C. Desmarteau and F. D. O. Turcotte, Montreal, joint curator, Aug. 3.

COCHRANE, John.—L. P. Lebel, New Carlisle, curator, Aug. 10.

DROLET, Delphis, Quebec. — H. A. Bedard, Quebec, curator, August 12.

GIBERT, Thomas.—J. A. Turgeon, Quebec, curator, Aug. 17.

Dividends.

BOUVIER, Alexis, St. Barnabé.—First and final dividend, payable Sept. 15, J. Morin, St. Hyacinthe, curator.

DIXON, John C., Montreal.—First and final dividend, payable Sept. 15, A. W. Stevenson, Montreal, curator.

GOURDEAU, F., Quebec.—First and final dividend, payable Sept. 5, D. Arcand, Quebec, curator.

LEBRUN, Alexis.—First and final dividend on proceeds of real estate, payable Sept. 9, M. Deschenes, Fraserville, curator.

LUNAN & Son, Wm., Sorel.—First dividend, payable Sept. 13, John Hyde, Montreal, curator.

ROLLAND, Wilbrod, Montreal.—First and final dividend, payable Aug. 30, J. H. Leclerc, assignee under Insolvent Act of 1875.

TRUDEAU, Siméon G.—Report of distribution, open to contestation up to Sept. 24, E. W. Morgan, Bedford, curator.

GENERAL NOTES.

PHOTOGRAPHER'S USE OF PICTURES.—There is a Chicago man who no doubt sympathizes with ex-President Cleveland in his efforts to prevent his infant daughter being made too much of a public character. This gentleman's name is Davis, and he lives on Milwaukee avenue in the Windy City. His experience with a photographer in defence of his baby has led him to bring suit for damages against the camera man. When Mr. Davis recently became a fond parent one of the first things to be done, of course, was to have a picture taken of the baby. According to a not uncommon custom in infant portraiture, the picture was nude. Of course Mr. Davis thought his baby the most beautiful one ever born, so what was his surprise on passing the photographer's studio one day to see the infant's picture displayed in the window, with this legend attached to one of her pretty toelets: "An ugly baby will sometimes make a pretty picture." There was his idolized daughter's form on view to all the myriads of the unwashed, with libel added to injury. As it was put in the legal papers afterwards drawn up, the statement insinuated "that said Edna Davis was an ugly baby, and caused her honesty, integrity and reputation to be defamed. "When

Mr. Davis remonstrated with the photographer, the latter refused to remove the picture and the objectionable sign from his window, and high words ensued. Soon after another portrait of Miss Edna appeared in the window, with this derisive motto appended: "My pop thinks he owns the earth." This, the legal paper said, "insinuated that the said Edward A. Davis was an overbearing, avaricious, dishonest man, claiming more than he was lawfully entitled to." Even after this Mr. Davis took no more severe measures than remonstrance with the photographer. More high words ensued, and the next addition to the free art gallery in the window was a picture of Mr. Davis himself, with the inscription: "All cowards carry a gun; I hear that you carry one." This settled the business, and Mr. Davis decided to bring suit, with the result that the photographer is now held in $1,000 bonds to await the outcome of the trial.—*Buffalo Enquirer.*

LIABILITY OF BANK DIRECTORS.—The decision of the Supreme Court of the United States in *Briggs* v. *Spaulding* (141 U. S. 132), rendered by a divided court, is already bearing its crop of fruit. That decision held that the directors of a bank were not liable for losses of its assets under circumstances which, to an ordinary mind, ought to be characterized by the epithet gross negligence. In *Swenzel* v. *Penn Bank* (23 Atl. Rep. 505), the Penn Bank of Pittsburg, had been completely wrecked and gutted by its unfaithful servants, in the year 1884. The principal rascal was Riddle, its president. He proceeded with the knowledge of the cashier and the co-operation of one or more clerks and subordinates. He literally emptied the vaults of the bank in carrying on a gigantic speculation in oil. Nevertheless, the Supreme Court of Pennsylvania hold that the directors were not under an obligation to know this, and that they are not personally liable for not knowing it and preventing it. The New York Court of Appeals (*Hun* v. *Cary*, 82 N. Y. 65) has declared that the standard of diligence required of the trustees or directors of a corporation is that degree of care and prudence which men, prompted by self-interest, generally exercise in their own affairs; and it concedes that they are liable for that gross breach of duty which the civilians call *crassa negligentia.* (*Hun* v. *Cary*, 82 N. Y. 65; *Brinkerhoff* v. *Bostwick*, 88 N. Y. 52). Such also is the doctrine of the Supreme Court of Pennsylvania in an earlier case, (*Spering's Appeal*, 71 Pa. St. 11) which may properly be regarded as the leading American case on this question.—*Am. Law Review.*

EDWIN JAMES.—"A fat florid man, with a large, hard face, was Edwin James, with chambers in the Temple and rooms in Pall Mall; his practice was extensive, his fees enormous. I had many consultations with him, but found it difficult to keep him to the subject of my case; he liked talking, but always diverted the subject into other channels. One day I took Dickens, who had never seen Edwin James, to one of these consultations. James laid himself out to be specially agreeable. Dickens was quietly observant. About four months afterward appeared the early numbers of 'A Tale of Two Cities,' in which a prominent part was played by Mr. Stryver. After reading the description I said to Dickens: 'Stryver is a good likeness.' He smiled. 'Not bad, I think,' he said, 'especially after only one sitting.'"—*Edmund Yates' Fifty Years of London Life.*

THE BAR AND THE ADMINISTRATION OF JUSTICE.—The bar as a body care nothing for the administration of justice. If they did the bar committee would be a very different body; it would be well supported financially aud in every other way; on all occasions calling for the expression of professional opinion it would make itself heard, and its annual meeting would be an opportunity for prominent members of the bar to assemble, discuss deliberately matters of moment to their craft, and pass resolutions when necessary which would influence not only the tone of professional life and practice, but the constitution and sittings of the courts, the conduct of the bench and even the framing of our laws. But these Saturday afternoon flittings are indulged in for the purpose of throwing a veil over the utter indifference of the bar to the administration of justice and the proper government of the profession. On Saturday last, had the bar meant business, many matters might have been dealt with; there is the public prosecutor, the decline of legal business, professional advertising, the attitude of counsel in the Court of Appeal, the right of a judge to put in the dock for a lecture any one who is incidentally named at a criminal trial, the defence of witnesses, sketching in court, sons practising before paternal County Court judges, the appointment of County Court judges, the patronage of the lord chancellor and ministry of justice. Indeed the field of inquiry and discussion has scarcely any limit. But Sir Edward Clarke, Dr. Pankhurst and Mr. Oswald sailed round every thing to the safe harbor of an adjournment. And so we suppose it always will be.—*Law Times*, (London).