The Legal News.

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GRANT v. *BEAUDRY.*

The appeal from the judgment of the Court of Queen's Bench, at Montreal (4 Legal News, p. 393), has been dismissed by the Supreme Court. The judgment of the Queen's Bench affirmed the judgment of Mr. Justice Mackay in the Superior Court (2 Legal News, p. 354).

The following appears in the *Montreal Herald* of January 12th :—

"Our special correspondent at Ottawa telegraphed last night to the following effect: The appeal in *Grant* v. *Beaudry* was dismissed to-day with costs. The judgment was upon the question of the sufficiency of the notice of action to the defendant in the first instance. In giving judgment the Chief Justice quoted authorities to show that the residence of the plaintiff or that of his attorney should be indicated in all notices of action against public officials. The Court had been asked to express an opinion as to the legality or illegality of the Orange Association in the Province of Quebec, but as no action could be sustained in this case because of the insufficiency of the notice any opinion the Court might express would be extra-judicial and unwarranted. Justices Strong, Fournier, Henry and Taschereau concurred. Mr. Justice Gwynne, while agreeing with the decision of his colleagues, censured the judges of the Court of Queen's Bench for exceeding their functions in giving their opinions upon the general question. They should, he contended, have confined their judgment to the points immediately at issue in the appeal."

"Censure" is a somewhat extraordinary expression to be used in this connection, and it is to be hoped that the special correspondent is in error. As to the opinion expressed by the Court of Queen's Bench upon the merits, it is to be remarked that all the evidence was before the Court, and our impression is that both parties were equally anxious for a decision upon the whole case, in order that further litigation might be avoided.

PROFESSIONAL FAME.

The fleeting nature of the great lawyer's triumphs is admirably depicted in the following passage (reproduced by the *Albany Law Journal*) which formed part of ex-governor Hubbard's eulogy on William Hungerford, and is printed in 39 Connecticut Reports :

"And now when I consider this long life closed—these many years ended of eminent labor in the highest ranks of the forum—and nothing left of it all but a tolling bell, a handful of earth and a passing tradition—a tradition already half past—I am reminded of the infelicity which attends the reputation of a great lawyer. To my thinking, the most vigorous brain work of the world is done in the ranks of our profession. And then our work concerns the highest of all temporal interests, property, reputation, the peace of families, liberty, life even, the foundations of society, the jurisprudence of the world, and as a recent event has shown, the arbitrations and peace of nations. The world accepts the work, but forgets the workers. The waste hours of Lord Bacon and Serjeant Talfourd were devoted to letters, and each is infinitely better remembered for his mere literary diversions than for his long and laborious professional life-work. The cheap caricatures of Dickens on the profession will outlive, I fear, in the popular memory, the judgments of Chief Justice Marshall, for the latter were not clownish burlesques, but only masterpieces of reason and jurisprudence. The victory gained by the counsel of the seven bishops was worth infinitely more to the people of England than all the triumphs of the Crimean war. But one Lord Cardigan led a foolishly brilliant charge against a Russian battery at Balaklava, and became immortal. Who led the great charge of the seven great confessors of the English church against the English crown at Westminster Hall? You must go to your books to answer. They were not on horseback. They wore gowns instead of epaulettes. The truth is, we are like the little insects that in the unseen depths of the ocean lay the coral foundations of uprising islands. In the end come the solid land, the olive and the vine, the habitations of man, the arts and industries of life, the havens of the sea and ships riding at anchor. But the busy toilers which laid the beams of a continent in a dreary waste are entombed in their work and forgotten in their tombs. Yet the infelicity to which I have alluded is not without its compensations. For what, after all, is posthumous fame to him who brought nothing into this world and may carry nothing out? The dead leave behind their reputations alike with their estates. A man may be libelled to-day as a

fool, fanatic, and a knave, and to-morrow his libellers sneak into his funeral procession, and the chief magistrate of forty millions of freemen begs the honor of two feet of space at his obsequies. It is the old story—the tax which posthumous fame so often pays for its title—a garret and a crust in life, a mausoleum and statue afterward. What avails it all? We may justly console ourselves with the reflection that we belong to a profession which above all others shapes and fashions the institutions in which we live, and which, in the language of a great statesman, 'is as ancient as the magistracy, as noble as virtue, as necessary as justice'—a profession, I venture to add, which is generous and fraternal above all others, and in which living merit is appreciated in its day, according to its deserts, and by none so quickly and so ungrudgingly as by those who are its professional contemporaries and its competitors in the same field. We have our rivalries—who else has more?—but they seldom produce jealousies. We have our contentions—who else has so many?—but they seldom produce enmities. The old Saxons used to cover their fires on every hearth at the sound of the evening curfew. In like manner, but to a better purpose, we also cover at each nightfall the embers of each day's struggle and strife. We never defer our amnesties till after death, and have less occasion therefore than some others to deal in *post mortem* bronzes and marbles. So much we may say without arrogance of ourselves—so much of our noble profession. No better proof and illustration can be found than in the life just closed — a life clear and clean in its aims—full of busy and useful labors—void, I dare believe, of offence toward God and man, and crowned in its course with that three-fold scriptural blessing—length of days, and riches, and honor."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, October 5, 1882.

DORION, C.J., MONK, RAMSAY, TESSIER, & BABY, JJ.

AYOTTE (plff. below), Appellant, & BOUCHER et al. (defts. below), Respondents.

Succession—Acceptance—Fraud.

The acceptance of a succession by a person who is of age is not binding when such acceptance was the result of fraud.

In the circumstances of this case there was fraud (Dorion, C. J., and Ramsay, J., dissenting.)

The appeal was from a judgment of the Superior Court at Three Rivers, March 16, 1882.

TESSIER, J., rendered the judgment of the Court, which confirmed the judgment of the Court below (See 8 Q.L.R. 327, where the opinion is reported in full).

The CHIEF JUSTICE and RAMSAY, J., dissented. We now give the opinion of Mr. Justice Ramsay.

RAMSAY, J. The question raised by this appeal is as to whether the respondents have accepted the succession of their late father Dr. Boucher. The appellant contends that they have done so impliedly and expressly. First, that after their father's death, they continued to live in their father's house till the death of their mother, that in her lifetime they collected the debts due to their father, used the furniture, animals and money belonging to the succession as if they were their own. Under the evidence I think this is not made out. The children seem only to have done conservatory acts and those of administration, and this for their mother, and it does not seem that they have in any of these transactions taken the quality of heirs. C. C. 646.

Secondly, the appellant pretends that in a deed of cession they took the quality of heirs. This is admitted, but the respondents said that they were induced to do this by the fraudulent machinations of appellant. I don't think this is proved. The notary Gallipeau says they did not know the consequences of the deed, and that appellant did, and it seems likely enough that the appellant wanted them to sign the deed as an act of heirship; but I don't think this is fraud. Ayotte was not obliged to put them on their guard as to the legal consequences of their act, and it nowhere appears that he made any false or incorrect statement as to the facts. All they can say is that they were in error, but error is no ground for setting aside an acceptance of a succession. C. C. 650.

I am therefore to reverse.

Judgment confirmed.

Turcotte & Paquin, for Appellant.

Hould & Grenier, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, November 24, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

REFORD et al. (defts. below), Appellants, & LES ECCLÉSIASTIQUES DU SÉMINAIRE DE MONTRÉAL (plffs. below), Respondents.

Sale of immoveable—Warranty.

Redpath sold to appellants a piece of real estate. They paid a portion of the price, leaving $20,000 secured on the property, payable in ten years, with interest. This balance Redpath gave to McGill College, and appellants accepted the transfer. Appellants then sold the immoveable to Burland, who bound himself personally to pay the debt, and the property remained hypothecated to secure the debt. Burland then exchanged the property with the Seminary for another property; and as the property coming from appellants was mortgaged as well for the balance of the original price (the $20,000 made over to McGill College) as for the extra price Burland agreed to pay, Burland hypothecated to the Seminary the property they gave him in exchange. Burland then sold to Ross the property he had acquired from the Seminary. The Seminary became parties to this last deed, and discharged Burland of his personal liability to them, and accepted Ross in his stead. Subsequently the rights of McGill College devolved on one Cunningham who notified the Seminary of the transfer. Interest on the $20,000 fell due, and as it was not paid by any of the parties personally liable, Cunningham sued the Seminary hypothecarily. The Seminary paid the debt, and were subrogated in the rights of Cunningham. They then sued the appellants who pleaded as an answer to the demand the discharge of Burland by the Seminary.

The question was as to the effect of this discharge.

The Court below (Rainville, J.,) held that the action of the Seminary should be maintained.

This judgment was maintained in appeal, Ramsay, J., dissenting on the ground that to maintain the action appeared to lead to a useless circuit of actions.

Judgment confirmed.

Girouard & Wurtele, for Appellants.
S. Bethune, Q.C., Counsel.
Geoffrion & Co., for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, Jan. 20, 1883.

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

MINISTER AND TRUSTEES OF ST. ANDREW'S CHURCH, MONTREAL, (defts. below), Appellants, and BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND, (plffs. below), Respondents.

Retrospective Legislation—45 *Vict.* (*Can.*) *cap.* 124.

Held, that the Act 45 *Vict.* (*Can.*) *cap.* 124, *confirming and ratifying all acts and doings of the Board of Temporalities, since the passing of the* 38 *Vict., cap.* 64, *was sufficient to sustain an action instituted by the Board before the passing of the* 45 *Vict., and the Dominion Parliament had authority to enact said statute, although the Privy Council in England had by their judgment in Dobie & Temporalities declared the Board to be illegally constituted.*

In this case the right of the Board for the Management of the Temporalities Fund to collect the amount of a mortgage dating back to the year 1860, was called in question. The action, it may be stated, was taken out after the judgment in the Superior Court dissolving the injunction in the Dobie case, but before the final judgment of the Judicial Committee of the Privy Council, declaring the Quebec Act 38 Vict., chap. 64, to be unconstitutional. (5 L. N. 58.)

The Court below maintained the action, whereupon the present appeal was instituted.

Macmaster, for the appellants, said the main pretension of his clients was this: The persons who call upon us to pay are not the persons to whom we owe the amount sought to be recovered. The indebtedness of the appellants, if any, was to a corporation created by an Act of the late Province of Canada (22 Vict., cap. 66), and the plaintiffs (now respondents) are not such corporation; but the persons now suing are a corporation existing and illegally administering, and constituted under an Act of the Quebec Legislature, 38 Victoria, which Act was illegal and unconstitutional, and could confer no right upon the respondents to collect the debt sued for, or to grant a legal receipt therefor. The validity of the Quebec statute had been contested before the courts in the

Dobie case, and a provisional injunction had been issued, restraining the present respondents from administering or acting as a Board. The Privy Council had declared the Quebec statute to be unconstitutional and *ultra vires*, so that the pretention of the appellants had been fully sustained.

Morris, for the respondents, submitted that the contract, which formed the basis of the action was made as long ago as 1860, and there was no question, therefore, as to the indebtedness. The right of the respondents to sue for the recovery of this debt was not dependent on the constitutionality of the Quebec statute, 38th Victoria—that was merely an amending Act, and the judgment by which it had been declared unconstitutional had the effect of leaving the original Act of incorporation still in force. It was from this original charter that the respondents derived their right. Being a duly incorporated body, they had a right to collect their debts and enforce payment of dues. It had been said that the respondents were restrained by an injunction from acting or administering as a Board; but the fact was that the injunction in the Dobie case was quashed by the judgment of the Superior Court before the present action was taken out. The injunction once dissolved, could not be restored by an appeal, and there was nothing to prevent the respondents from administering and collecting debts. The appellants had no right, by a plea to an action of debt, to criticise the election of the Board. Directors *de facto* are *prima facie* Directors *de jure*, and their receipt is a valid discharge. The only interest of the appellants was to pay to a party whose receipt would hold good. It was also submitted that by the by-laws, the respondents had a right to sue. The chairman holds office until his successors are legally elected. If the election under the Quebec Act of 1875 was invalid, the chairman was still entitled to administer, until a new and valid election had taken place. In conclusion, it was submitted that by a public Act of the Dominion Parliament, which had not been attacked, the proceedings of the Board elected in 1876 were ratified and confirmed. Therefore, the appellants in any case were not entitled to have the action dismissed. The judgment of the Court below should be confirmed, even if the costs were awarded against the respondents.

Some discussion ensued as to the effect of the Dominion Act referred to (45 Vict. cap. 124) upon pending cases. Subsequently a re-hearing was allowed on this point, at which,

Macmaster, for the appellants, submitted:—The Statute of Canada 45 Vic., cap. 124, is not retroactive, saving as expressly specified. It does not reanimate the unconstitutional Act of Quebec 38 Vic., cap. 64; it merely confirms and ratifies all "acts and doings" of the Board and of the acting members thereof since the Act 38 Vic., cap. 64 was passed—"had thereunder"—that is, in virtue of 38 Vic., cap. 64. These "acts and doings" can only mean acts and doings contemplated by the provisions of the (unconstitutional) Act 38 Vic., cap. 64, such as the payment of a subsidy to Queen's College, the payment of increased allowances to ministers, &c.—provisions in excess of the terms of the original Statute 22 Vic., cap. 66; but the right to sue is not conferred by the unconstitutional amendment, and the present action could not have been instituted by virtue of its provisions. The suit is not therefore ratified and confirmed by the Canada Act 45 Vic., cap. 124. As respondents say in their factum, it is not from the amending Act, (38 Vic., cap. 64), that the respondents derive their right to hold property *and collect their debts*, but from their original charter." It is true that the right to sue is derived from the original charter; but the plaintiffs here attempting to collect are not the corporation created by the original charter with 38 Vic., cap. 64, superadded. The defendants do not owe respondents—whose head was lopped off by the decision of the Privy Council, and has not been restored by the recent Act (45 Vic., cap. 124) of the Parliament of Canada. They owe the old corporation. 1. The defendants owe to the old corporation (22 Vic., c. 66), and there is no privity of contract with the corporation sueing. 2. The corporation created by 22 Vic., cap. 66, and 38 Vic., cap. 64, claim from defendants by the present suit. 3. Defendants say they do not owe this new corporation; that it is an illegal body; and that the judgment of the Privy Council in Dobie *v.* Temporalities Board annulled 38 Vic., cap. 64. 4. There is nothing in Statute of Canada 45 Vic., cap 124, which revives the annulled Statute 38 Vic., cap. 64 and restores to plaintiffs the corporate character and qualities they assumed at the time they instituted this action. The new Canadian Statute is not retro-

active to the extent of re-establishing the corporation now suing.

Morris, for the respondents, said if the Court was against him on the merits, he did not rely upon the statute except to this extent, that the Court might confirm the judgment, and dispense the respondents from the necessity of bringing a new action. In that event, however, he did not pretend that the costs should be given in his favor.

RAMSAY, J. (dissenting.)—This action was brought for the recovery of a mortgage debt of $1,000 and $120 interest. The respondents acted under the authority of a statute of the Legislature of the Province of Quebec, which purported to authorize the formation of the Board, respondent, in a different manner from that settled by the original Act of incorporation. The object of this amendment was to enable a new body, to be called "The Presbyterian Church in Canada," being a union of certain Presbyterian Churches, under certain conditions, to take possession of the property formerly belonging to a body known as the Presbyterian Church of Canada in connection with the Church of Scotland.

The appellant pleaded that the plaintiff, respondent, was not the party to whom he was indebted, that the Act of the Province of Quebec in question, 38 Vic., c. 64, was beyond the powers of a local Legislature, and that, therefore, the Board respondent was not organized by law and could not recover.

There is no controversy as to the facts, it being admitted that the Board respondent was acting under the authority of the local amendment. Judgment was rendered on this issue on the 28th of April, 1881, after the judgment in this Court in Dobie and the Trustees, declaring that the Act in question was not *ultra vires*, and the judgment of the Court below was given in conformity with the opinion expressed by the majority of this Court in that case. Subsequently, the decision in the case of Dobie was reversed in the Privy Council, and the local Act in question was declared to be an Act beyond the powers of legislation conferred on local legislatures by the British North America Act. This is not denied, but respondent argues that appellant is the debtor of the Board, and that consequently appellant cannot incidentally raise the question of the legality of the organization of the Board. The fallacy of this argument is plain. If the body respondent were the same body, and that the defect were only as to its proceedings, the principle invoked would be applicable and conclusive. But it is contended, and, I think, distinctly admitted, that the Board is improperly constituted, not only as to its individual members, but that it is a different body, avowedly acting in different interests, and in a capacity hostile to the real intentions of the body whose name it purloined. If we were to condemn appellants on this issue we should, in effect, say "you who are enjoined not to make or meddle with the temporalities of the Church of Scotland may compel a debtor to pay you." This seems to me to be an impossible conclusion. It is idle to say appellant had no interest to raise the question. Appellant had the most material reason for refusing to pay the wrong person, namely, to avoid paying twice. At the argument, however, another question arose, which had not been pleaded, or it seems contemplated, namely, that on the 17th May, 1882, more than a year after the rendering of the judgment in the Court below, Parliament passed an Act containing this provision:—

"1. Notwithstanding anything in the said Act of the late Province of Canada, relating to the said Temporalities Fund, or amendments thereto, all the acts and doings of the said Board, and of the acting members thereof, *from and since the passing of the said Act of the Province of Quebec, thirty-eight Victoria, chapter sixty-four, had thereunder, are hereby ratified and confirmed*, and the present acting members of the said Board are hereby authorized to hold office and administer the said fund according to the terms of this Act, until replaced by others elected hereunder.

The rule of the Roman law, as applying to the law-giver, is that he *ought* not to legislate so as to affect rights acquired in the past and so disturb existing legal relations. "*Cum conveniat leges futuris regulas imponere, non præteritis calumnias excitare.*" C. 10, 31, *l.* 65. For the judge it becomes a rule of interpretation of statutes, not to give a retroactive effect to the enactment so as to alter the legal position of parties as to rights acquired in the past. But this rule ceases to have its effect when it becomes clearly the intention of the legislature

to give a retroactive effect to a law of this character. C. 1, 14, *l.* 7. The passage to which I refer ends with these very guarded words, "*nisi nominatim et de præterito tempore et adhuc pendentibus negotiis cautum sit.*" That is, that the law must apply expressly to the bygone time and to pending transactions. It has been questioned whether this rule is binding, even in countries where the Roman law forms the basis of the law (Savigny, Pte. Int. Law, by Guthrie, p. 293), and in several countries, to avoid a doubt on this point, the non-retroactivity of the law is laid down as a fundamental principle of legislation. For instance, the Art. 2 C. N. declares: "*La loi ne dispose que pour l'avenir; elle n'a point d'effet rétroactif,*" and so also in Prussia and Austria (Savigny, Id. p. 295). I think the rule is different in England, and that the doctrine of the Roman law is precisely that which governs us. Hardcastle, p. 95, and authorities there cited, establish this proposition fully. I need hardly say that the effect of a statute belongs to the public law, and therefore is governed by the principles of English public law. See also the power of legislation of Parliament contrasted with the powers of Congress. (Wade on Retroactive Laws, §§ 4 and 5). As a general rule, in the United States laws divesting of vested rights are unconstitutional, and as a special instance of this it may be mentioned, that void judicial proceedings cannot be validated.* What it is pretended was done, therefore, by the Dominion Act in question, if attempted to be done by an Act of Congress in the United States, would produce no legal effect, however plainly expressed. With us theoretically it is different. This is probably an error in principle in our constitutional law, but it is a curious evidence of the immense influence of the Roman Law on the common law of England. The real principle, that which has governed the legislation of France, Austria, Prussia and the United States, is laid down by a great writer in a work now little read:—"If laws do not aim at the good of those that live under them, they are laws only in name; in reality they cannot be laws." Dante, De Monarchia. Coke, who admits the general principle, is reported to have said that if there was a monstrous and absurd law he would not put it in force. Practically, however, the result is not very different in England from that of other nations. They do not interpret the rule against retroactivity so as to deprive an Act of all kinds of retrospective effect. And we, while recognizing the doctrine of constitutional writers who exalt the powers of Parliament, permit the Courts, by interpretation, so to read statutes that vested rights are not impaired. In *Gairdner & Lucas*, L. R., 3 App. cases 603, Lord Blackburn seems to have stated the English rule shortly and correctly. He says: "Where the effect would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart so long as he pleased, binding—I think the *prima facie* construction of the Act is that it is not to be retrospective, and it would require strong reasons to show that it is not the case." This is pretty nearly the idea Coke meant to convey.

Now, what I think we have here to enquire is, whether there are such strong reasons in the present case. In pursuing the enquiry I would first observe that if the pretension of appellants be correct, the statute before us presents the most flagrant instance of an unjust law that could be imagined. It is not only a law passed to divest of a right, but of a right that had just been sanctioned by the Privy Council. Now, without attaching more importance than it deserves to the fact, that the decisions of the Privy Council take the form of a personal adjudication by the Sovereign, still it seems hardly possible to conceive that the Queen, Senate and Commons of Canada deliberately intended to ratify and confirm that which the Queen had, in the exercise of a constitutional and legal duty, declared to be invalid. Nor do I think the words necessarily imply such a construction. Parliament has ratified what the Board did from and since the passing of the local Act, that is in all effects after the passing of the Dominion Act, and therefore the Act goes on to confirm the appointment of the Board as it stood on the 17th May, 1872. There is not a word about giving a new effect to pending transactions, as required by the rule of Justinian's Code, and as is required by all the English cases. Thus it was held that a marriage contract made by

*See also Savigny Id. p. 357. This shows how odious it was considered to touch a legal proceeding terminated or not.

parol, without writing, before the 24th of June, 1677, the day the Statute of Frauds came into force, could not be affected by that Act, however general its terms were. Hardcastle, p. 196. Of course a different rule would apply in the matter of a will executed, but not come into effect, and a statute affecting wills generally would affect such a will for the reason given by the Master of the Rolls in *Haslock & Pedley*, L. R., 19 Ex. 273, (Hardcastle 207).

I therefore think that the action was bad when it was brought, and that as the statute does not expressly interpret the previous law and set aside the judgment of the Privy Council in so many words, but contents itself with ratifying and confirming the acts of the Board, as it must be supposed, for the future, we should reverse the judgment of the court below with costs. I stand, however, alone in this opinion, and the majority of the Court, recognizing the statute in question as an *ex post facto* law, shows such alacrity in welcoming this legislation, it will condemn the party who has been, by the Court's own admission, in the right all the time to pay his own costs. I cannot, therefore, use the deferential form of saying I regret that I cannot concur in the judgment. Of course, this remark only applies to the question of costs. As to the interpretation of the Act, that is a matter open to discussion, but on the other point I intend my dissent to take the form of a protest. I may add that I am also glad to remark that the majority of the Court is not agreed on this point, for I understand that Mr. Justice Tessier's opinion is that the appellants were not founded in their refusal to pay the respondent, even admitting that the Board was constituted on an unconstitutional law. This is the only point raised by the factums of the parties, and I have already alluded to it shortly. If I had supposed it had seriously gained the acquiescence of one of the judges I should probably have dealt with it more in detail. At the same time I cannot retract or modify what I have said on that point. I am to reverse with costs.

DORION, C. J., said that in 1875 two Acts were passed in Ontario and Quebec to alter and amend the Act which incorporated the respondents. The present Board were elected under these Acts. There was no other Board existing under the original Act. Therefore the respondents were the only parties in possession of the property. The right of the Local Legislatures to amend the original Act was challenged, but was maintained both in Ontario and Quebec. The Privy Council reversed that decision, and declared that the Local Legislatures had no right to pass those Acts. Since then an Act had been passed by the Dominion Parliament confirming the authority of the Board, and ratifying their acts under the Quebec Act. Two questions now arose: first, had the Dominion Legislature a right, constitutionally, to declare that this action was properly brought? And, secondly, if they have such right, have they, in fact, so declared? It was a question of interpretation of the statute. Everywhere there is a supreme power which decides what is constitutional and what is not. In England it is the Imperial Parliament which is supreme. When it has once decided in clear and emphatic terms, no Court of Justice can touch the decision. In the United States the Supreme Court is the supreme power. Although the Supreme Court might give a bad judgment,—one that everybody would admit to be bad, and which might have been rendered by a majority of one—yet there is the limit of the Constitution, and what the majority holds, is constitutional. The Court has not to decide whether this is a moral law or not, but only whether the Dominion Parliament had a right to pass it or not. It is not enough to say that it trenches on private rights. The recent legislation on the Irish question trenches upon the rights of individuals. So our bankrupt laws trench upon the rights of creditors. We had an instance in the case of *L'Union St. Jacques & Belisle* where parties who had a right to a fixed allowance were deprived of that right by the Legislature. The case went to England, and the Privy Council held that these parties could be deprived of their stipulated allowance by an Act of the Legislature of Quebec. That was no doubt an Act of the most arbitrary kind. There was a still more extraordinary case a good many years ago. Mr. Donegani came to this country with a son, who was at the time a few months old, and had been born abroad. The father acquired considerable property, and died without making a will. The son thought that he was entitled to all his father's property. But the children of a younger brother, who were born in this

country, came forward and claimed the whole estate. Very reluctantly the courts held that under the then existing law respecting aliens, an alien was not entitled to take the property, and it must all go to the nephews. The case went to the Privy Council, and there the judgment was confirmed because the son was an alien. Twice the Privy Council maintained that the nephews were entitled to the property. And then, in 1849 or 1850, after twenty years of litigation, the Legislature of the late Province of Canada passed an Act relieving this young man from the disabilities of an alien, and gave him the property which would have been his by inheritance if he had been born six months later. All the costs were allowed out of the estate. In 1849 there were several good constitutional lawyers in Parliament, yet the statute was contrary to the decisions of the Privy Council. The present case did not approach the case of Donegani. There were also Acts passed at Quebec on two occasions, giving validity to the minutes of notaries who had died without having their deeds countersigned. These instances showed that the Dominion Parliament had the power to pass the Act in question. The Privy Council, moreover, held that the Dominion Parliament had a right to deal with the question. The Dominion Parliament have dealt with it. The law is not so carefully worded as it might have been; but the Court has to interpret it. His Honor read the Act, and expressed the belief that it covered the present case. There was a question as to costs. Under the circumstances, the judgment would be maintained with costs of the lower Court, but each party would pay their own costs in appeal.

BABY, J., concurred entirely in the remarks of the Chief Justice.

Judgment confirmed, Ramsay, J., dissenting.

Macmaster, Hutchinson & Knapp, for Appellants.

J. L. Morris, for Respondents.

GENERAL NOTES.

SERGEANT K ——, having made two or three mistakes while conducting a cause, petulantly exclaimed, "I seem to be inoculated with dullness to-day." "Inoculated, brother," said Erskine, "I thought you had it in the natural way."

NOUS avons appris avec regret la mort de M. Abraham Lesieur Désaulniers, doyen du Barreau des Trois-Rivières et ex-député du comté de St. Maurice à la Chambre Locale. M. Désaulniers s'est éteint dans sa 60ième année. Jusqu'au temps de sa dernière maladie il avait été un collaborateur assidu à la presse canadienne.—*La Minerve.*

A DANISH colonial magistrate, for whose exceptional character and ability we can vouch, once made a grimly comic experiment in this direction, and upon this principle: He was appalled by the endless perjuries committed in cases before him, determined to stop them, and did. He, of course, said nothing of his method, but an English friend seated beside him on the bench noticed that whenever a witness told a palpable lie he jumped. He asked the reason, and the magistrate, after a caution, revealed his secret. "My orderly stands behind the witness, and whenever I put my left hand to my ear, that indicates that the evidence is false, and he runs a pin into him." It is a well known fact to the many who will recognize this story that the "sting of conscience" in this material form proved effectual, and that the magistrate, who died honored throughout Denmark, in three years turned an Alsatia into one of the most orderly and law-abiding of communities. He could always get the truth.—*London Spectator.*

GOOD RESOLUTIONS FOR THE NEW YEAR. (Copied surreptitiously from the Diary of a member of the Bar.)—

1. During the New Year not to lose any case; if it cannot be gained within the year, fight it over into the next.

2. When defeated don't lie down, but go up. If my client can afford to be beaten, tell him I can't.

3. Don't ask an adjournment for a reason that the other side know is a false pretext. Truth is the best policy, at least when the truth is known.

4. It is a good thing to have as many causes on the calendar as possible, even if there is nothing in them. It looks well, and keeps one's hand in.

5. Keep the diary full of entries, even if there is nothing doing. It looks busy.

6. When I go out to dinner or for a lounge with a cigar, always say I have gone to a reference. It keeps up respect and discipline in the office.

7. Always take two or three files of law papers in hand when walking through Nassau street or Broadway; it looks well. Never carry a book; it looks as if one hadn't all the law in his head.

8. When speaking of the judges to clients, always say "Old so and so." It impresses clients so favorably.

9. To get business, grab for it. Clients don't know whether to trust a lawyer till they see how hungry he is.

Query. Whether it is the best policy to make reasonble charges and build up a *clientèle*, or to take all I can get from each and then look out for a new client?

Query No. 2. Is it best in a doubtful case to engage senior counsel and succeed, or take the whole fee and run for luck?—*N. Y. Daily Register.*