The Legal News.

Vol. XI. NOVEMBER 17, 1888. No. 46.

The facility with which laws are made and amended in Canada probably tends to induce forgetfulness of them when made. The proclamation constituting the "Bar of Ottawa" under 44-45 Vict. ch. 27, was issued, apparently, without any recollection of the more recent statute, 49-50 Vict. ch. 34, by which the organization of new sections of the bar is placed under the control of the General Council of the Bar of the Province, and which requires that there must be at least thirty advocates entered on the roll of the district.

Judge Daniels, of New York, has refused an application for naturalization, on the ground that the applicant was a man of bad habits. It appeared that the aspirant to citizenship was in the habit of using liquor too freely, and sometimes got drunk and beat his wife. The judge, however, held out the hope that a reform in the habits of the applicant might eventually secure the privilege. This is said to be an extremely rare case of exclusion, with the exception of the Chinese.

The *Boston Advertiser* contains an account of an interview with Mr. W. D. Howells, in which the American novelist explains his method of securing copyright in England. "Every instalment of a story is forwarded to the British publishers and put into type upon the other side. It is then published in pamphlet form simultaneously with its publication in *Harper's Magazine* in this country. To meet the requirements of law, at least twenty-five copies are printed, and a *bond fide* sale of at least one copy is made. This secures the copyright. The story is not published as a serial in an English magazine simultaneously with its appearance in *Harper's*, because the publishers of *Harper's* would hardly agree to that. When the story is completed, a duplicate set of plates is made by the British publishers, and forwarded to me, so that the book may be printed on either side of the water as may be desired, and it is covered by copyright in both countries."

In a recent case of *United States* v. *Denicke*, 36 Fed. Rep. 407, it was held that a decoy letter with a fictitious address, which therefore cannot be delivered, is not "intended to be conveyed by mail," within the meaning of the statute of embezzlement. Speer, J., said: "It seems to come most clearly within the decision of Judge Neuman in the case of *United States* v. *Rapp*, 30 Fed. Rep. 818. In that case a 'nixe'—that is, a letter addressed to a fictitious person, or to a place where there was no post-office—was placed in what is known as the 'nixe basket,' a receptacle for unmailable matter. This was to be forwarded to the dead-letter office. This was held by the court not to be mail matter within the meaning of sections 5467, 5469, of the Revised Statutes. In the English case of *Queen* v. *Gardner*, 1 Car. & K. 628, cited by Judge Neuman, the embezzlement of a decoy letter was held not stealing a post-letter within the statute; taking of the contents was held larceny. In the case of *Queen* v. *Rathbone*, 2 Moody Cr. Cas. 242, an inspector secretly put a letter prepared for the purpose, containing a sovereign, among some letters which a letter carrier, suspected of dishonesty, was about to sort. The letter carrier stole the sovereign. Mr. Baron Gurney held that he could not be convicted of stealing a post-letter, such letter not having been put in the post in the ordinary way, but was rightly convicted of larceny of the sovereign laid as the property of the postmaster general.

SUPERIOR COURT.

MONTREAL, Oct. 19, 1888.

Before LORANGER, J.

LECLERC et al. v. SAUVÉ, and CARDINAL, Petitioner, and ST. AMOUR, *mis en cause.*

Bailiff retaining from guardian current money seized.

A voluntary guardian petitioned to have a sum of current money which was among the articles seized, placed under his guardianship by the bailiff, who was retaining it. The lat-

ter refused, citing 564 C. C. P.: "If current "money is seized, mention of its kind and "quantity must be made in the inventory, "and the Sheriff must return it with the "monies levied." The petitioner submitted that this was a command to seizing officers to retain in their own possession, till return of the warrant of execution, any current moneys seized.

Lighthall for petitioner:—C. C. P. 564 has not such a meaning, but merely directs the seizing officer to return such money *at the same time* as the monies levied from the sale. Meanwhile it ought to pass, like other articles, into the guardian's possession. See Art. 560. "The Sheriff or officer making the seizure, is "bound to accept a solvent depositary offered "by the debtor." Cf. Art. 562...." that the *property seized* be placed under his care..... "after a verification and inventory *of the* "*whole* has been made." If held otherwise, a defendant, or third party, might be put to great loss during a seizure where the whole seized was in cash, and lose entirely the benefit of offering a guardian or surety. As a matter of fact, in the present case, all the ready cash of a third party's business was taken away and held by the bailiff.

DeBellefeuille, contra:—The word "must" in Art. 564 is "imperative," not "facultative," therefore the bailiff is obliged to hold the currency until he returns the other moneys levied.

The Court held the latter view, and thus interpreting articles 564 & 601, dismissed the petition.

W. D. Lighthall, for petitioner.

E. Lef. DeBellefeuille, for *mis en cause*.

(W. D. L.)

SUPERIOR COURT.

AYLMER, (Dist. of Ottawa,) Feb. 24, 1887.

Before WURTELE, J.

LAVELL v. MCANDREW.

Action en bornage—Rents, issues and profits—Possession—Annulment of letters patent.

HELD:—1. *That a demand for damages or compensation for fruits, issues and profits, cannot be included in an action of boundary.*

2. *That in order to bring and maintain an action of boundary, it is necessary to be in possession, under claim of ownership, of the body of the property for which a boundary is sought.*

3. *That letters patent granted by the Crown, for land, cannot be annulled at the suit of a private individual, and can only be declared null and repealed upon information brought by one of the law officers of the Crown.*

PER CURIAM.—The action in this cause is one of boundary, to which the plaintiff has joined a demand for past fruits and issues.

The defendant pleads by demurrer: 1. That the lands in question are not contiguous, and that an action for boundary consequently does not lie; and 2. That a demand for damages, or compensation for fruits and issues, cannot be included in an action for boundary.

He also pleads, by a peremptory exception, in the first place, that the plaintiff is not in possession as owner of the land in respect of which he claims a division line and boundaries; and, in the next place, that the letters patent granted to the plaintiff for the land claimed by him were obtained by fraud, and should be declared null and repealed by the Court.

The plaintiff has answered this exception in law; alleging, in answer to the first allegation, that the defendant cannot question his title, and in answer to the other allegation, that letters patent granting lands can only be annulled at the suit of the Crown.

Both the demurrer and the answer in law are now before the Court for judgment.

I will first take up the demurrer.

A reference to the declaration shows that it does not appear by the allegations that the lands in question are not contiguous. Whether they are so or not is a question of fact, requiring investigation and proof, but is not matter for a demurrer. The first ground of demurrer must, therefore, be rejected.

The object of an action of boundary, according to Articles 941 and 945 of the Code of Civil Procedure, is solely to determine the boundaries between two contiguous lands and, if necessary, to place boundary marks in the division line. Prévôt de la Jannès, vol. 2, No. 585, thus defines this action:— "L'action de bornage est celle par laquelle

" je conclus contre mon voisin, à ce qu'il soit " ordonné qu'il sera planté par des experts " des bornes et limites entre nos héritages " contigus." It is not the revendication by one of the parties of a certain and definite piece of land from the other, but is an action which seeks to render certain that which is uncertain, to fix by a definite division line limits then uncertain. In the action in revendication one of the parties is plaintiff and the other defendant, while in the action of boundary, each of the parties is at the same time in effect plaintiff and defendant; in the latter action, each seeks to be maintained in the possession of what he claims as his own. This is clearly put by Aubry & Rau, Vol. 2, Section 199:—"Bien que l'action en bor- " nage, formée par un voisin qui se plaint " d'anticipations commises à son préjudice, " tende à obtenir des restitutions de terrain, " elle ne perd pas pour cela son caractère " propre, et ne dégénère pas en action en re- " vendication. Elle n'en constitue pas moins, " malgré cette circonstance, un *judicium du-* " *plex*, c'est-à-dire une de ces actions dans " lesquelles chacune des parties est à la fois " demanderesse et défenderesse, et doit par " conséquent faire preuve de son droit."

The owner who revendicates his land can only claim the fruits and issues of the past from the possessor in bad faith. Article 411 of the Civil Code lays down this rule: "A " mere possessor only acquires the fruits in " the case of his possession being in good " faith: otherwise he is obliged to give the " produce as well as the thing itself to the " proprietor who claims it." And Pothier, *Propriété*, No. 335, says: "Le possesseur de " mauvaise foi est tenu de faire raison de " tous les fruits de la chose revendiquée qu'il " a perçus.....depuis son indue possession."

Now, in an action of boundary, where the object is to determine limits which are uncertain, where each of the parties claims and has to prove what is his, how can either party be accused of having encroached in bad faith until after the uncertain has been made certain by a definite settlement of the limits, and the existence of an encroachment has been thereby established? I conclude, therefore, that a demand for fruits and issues of the past cannot be joined to an action of boundary, which ceases to be pending when its object has been accomplished, that is when the boundaries have been definitely settled. I am with the defendant on this point; and I maintain the second ground of his demurrer, and order the demand for damages or compensation to be struck from the declaration.

I now pass on to the answer in law.

Who has the right to bring an action of boundary? Only an owner, who is in possession of his property. 5 Pandectes Françaises, page 381, No. 46: "La demande à fin " de bornage peut être formée par quiconque " est en possession légitime." 3 Dénisart, *verbo* Bornage, page 655: "L'action de bor- " nage peut être instituée par toute personne " qui possède paisiblement." 8 Poullain Duparc, page 12: "L'action de bornage est une " action réelle, qui compète au possesseur " d'un héritage contre le possesseur du ter- " rain contigu, pour qu'il soit mis des signes " propres à constater à perpétuité la distinc- " tion des deux terrains." Where another person is in possession of a property ostensibly as owner, the real owner cannot, therefore, bring an action of boundary; before he can do so, he must first oust the intruder and recover the possession of the body of his property by means of a petitory action, and then only can he call upon the neighbours to verify and settle the limits and place bounds. The defendant's plea that the plaintiff is not in possession of the hereditament of which he asks for a boundary is therefore good in law, and that part of the answer in law objecting to it must be dismissed.

By Article 1038 of the Code of Civil Procedure, any interested party had the right to ask by suit for the annulling of letters patent granting lands, in accordance with chapter 22 of the C. S. L. C.; but the article above mentioned was abrogated and this right was withdrawn by the statute of Quebec, 32 Vict., chapter 11; and now all demands for annulling such letters patent can only be made by the Crown, represented by one of its law officers or by some other officer duly authorized for that purpose, as provided by Article 1035 of the Code of Civil Procedure and section 30 of the statute of Quebec above mentioned. The defendant has no right,

herefore, to ask by his exception for the annulling of the letters patent in favor of the plaintiff, and the reason in the latter's answer in law objecting to that part of his exception is well founded, and I order that the allegations and the conclusions tending to that end be struck from the exception.

The judgment of the Court is as follows:—

"The Court, having heard the parties, by their counsel, as well on the demurrer filed by the defendant as on the answer in law to the first peremptory exception, having examined the proceedings, and having deliberated thereon;

"Proceeding to adjudicate on the demurrer:

"Considering that it does not appear by the allegations of the declaration that the properties of which the boundary is prayed for are not contiguous, and that the allegation of such being the case is therefore not a ground or reason of demurrer;

"Considering that a demand for damages or for compensation for issues and profits cannot be included in an action for boundary;

"Doth overrule the ground or reason of the demurrer herein above first mentioned, and doth maintain the other reason or ground of the demurrer, and consequently reject the allegations and that part of the conclusions of the declaration respecting a demand for damages;

"And proceeding to adjudicate on the answer in law to the first peremptory exception:—

"Considering that in order to bring and maintain an action of boundary, it is necessary that the plaintiff should be in possession under claim of ownership of the body of the property for which a boundary is sought, and that it is a good plea to the merits to oppose the absence of such possession by the plaintiff and the possession under claim of ownership of another person;

"Considering that Letters Patent granted by the Crown for land can only be declared null and be repealed by the Superior Court upon information brought by one of the law officers of the Crown;

"Doth overrule all the grounds or reasons of the answer in law, save and except that relative to the demand for the annulling of the Letters Patent set up by the plaintiff in his declaration, and doth maintain the ground or reason respecting the demand for such annulling, and consequently reject the allegations and that part of the conclusions of the first peremptory exception respecting the demand for annulling the said Letters Patent;

"The whole with costs compensated."

C. B. Major for plaintiff.

Asa Gordon for defendant.

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*RECENT DECISIONS AT QUEBEC.**

Gage—Possession—Art. 1970, *C. C.*

JUGÉ:—Le créancier nanti d'un gage, qui le remet à son débiteur sur une reconnaissance écrite de ce dernier qu'il ne le prend que comme fidéi-commissaire (*bailee*), perd son privilège; ce mode de conversion de possession, admis par le droit anglais, n'étant pas reconnu par le nôtre.—*La Banque Molson* v. *Rochette*, C. S., Casault, J., 5 mai 1888.

Claim against estate of joint debtor en déconfiture Dividend—48 Vict., ch. 22.

HELD:—1. The 48th Vict., ch. 22, does not affect the common law as to right of creditor to claim against the estate *en déconfiture* of a joint debtor.

2. Under the common law of this Province, a creditor claiming against the estate of a joint debtor, is entitled to take a dividend on his claim, only after deduction therefrom of whatever he may have received from his other joint debtors.

3. Money due by the creditor at the time of the claim is to be set off against it and not against the dividend to be declared upon it. —*In re Chinic, The Bank of B. N. A.*, claimant, and *Rattray et al.*, contesting, S. C., Andrews, J., Sept. 10, 1888.

Arrérages — Prescription—Enregistrement—Articles 2009, 2084, 2086, 2123, *et* 2125 *C. C.*

JUGÉ:—Les titres originaires de concession par la Couronne ne sont pas soumis aux formalités de l'enregistrement, et les arrérages des rentes constituées créées par ces titres, qui ne sont pas prescrits, sont tous dus par

*14 Q. L. R.

privilège au même rang, nonobstant les articles 2086 et 2125 *C. C.*—*Corporation de Québec* v. *Ferland*, C. S., Casault, J., 1er juin 1888.

Péage—Barrière Préventive—41 Vict., ch. 46 et amendements.

JUGÉ:—Les plaignants ne peuvent percevoir de péages qu'au moyen de barrières placées sur leurs chemins, avec affiche d'un tableau des péages, ou de barrières préventives (*check toll-gates*) tel que voulu par la loi.—*Les Syndics des Chemins à Barrière de la Rive Nord* v. *Parent*, cour des sessions de la paix, Chauveau, J., 10 sept. 1888.

Receipt—Verbal Testimony—Articles 1233 *and* 1234 *C. C.*

HELD:—1. In non-commercial matters, verbal testimony is inadmissible to extend or alter the purport of a written receipt.

2. Verbal testimony is inadmissible to impugn a written document for fraud, except where such fraud is charged in the making of the document or immediately connected therewith, in such a manner that the party against whom it was practised, could not protect himself in the drawing of the document or otherwise in writing.

3. A document, to avail as a *commencement de preuve par écrit*, must be the best evidence obtainable of its kind, and will not give rise to the presumption, where the existence, in the hands of the party, of other more direct and better written evidence is made to appear, no cause being shown for its non-production.—*Gilchrist* v. *Lachaud*, S.C., Andrews, J., Sept. 10, 1888.

ATTEMPT TO COMMIT LARCENY.

In *Clark* v. *State*, Tennessee Supreme Court, April, 1888, it was held that the act of opening a cash drawer for the purpose of stealing money is an attempt to commit larceny, although there was no money in the drawer at the time. The Court said: "The direct question here presented has never been passed upon by this court, but it is by no means one without authority. It has received much discussion in the text-books, and in the adjudged cases from other courts. The English cases are conflicting. In *Reg.* v. *Collins*, Leigh & C. 471, it was held there could be no attempt to pick the pocket of a person who had no money at the time in her pocket; while in *Reg.* v. *Goodhall*, 1 Denison Br. Cas. 187, it was held an attempt to produce a miscarriage could be committed on a woman supposed to be, but not in fact pregnant. It appears to us that these cases cannot be reconciled, although Mr. Heard, in his second edition of Leading Criminal Cases (vol. 2, pp. 482, 483) has attempted to do so. We are constrained to agree with Mr. Bishop that 'these differing opinions must have sprung from opposite views in the two benches of Judges.' Bish. Crim. Law (7th ed.), § 741, note 1. The American cases seem to be uniform, or at least substantially so, for here the few conflicts are more apparent than real. In *Rogers* v. *Commonwealth*, 5 Serg. & R. 463, the Pennsylvania court held that an indictment for assault with intent to steal from the pocket is good, though it contains no setting out of any thing in the pocket to be stolen. Duncan, J., in delivering the opinion of the court, said: 'The intention of the person was to pick the pocket of whatever he found in it, and although there might be nothing in the pocket, the intention to steal is the same.' So in Massachusetts, under a statute differing in terms but the same in substance as our own above herein quoted, it was held that the indictment need not allege, and the prosecutor need not prove, that there was in the pocket any thing which could be the subject of larceny. *Commonwealth* v. *McDonald*, 5 Cush. 365. See also *Commonwealth* v. *Jacobs*, 9 Allen, 274. To the same effect is *State* v. *Wilson*, 30 Conn. 500. So in Indiana it has been held that an assault on one with intent to rob him of his money may be committed, though he has no money in possession at the time. *Hamilton* v. *State*, 36 Ind. 280; S. C., 10 Am. Rep. 22 If an indictment for an attempt to steal the contents of a trunk or room would not be good where it transpired that there was nothing in the trunk or room, then it would seem to follow that the indictment, in the case where there were goods in the trunk or room, would have to allege what particular goods the thief purposed to steal; and if necessary to

allege, it is necessary to prove; and how could this be proven where there was a variety of different goods, and the thief was arrested before he had laid hands upon any article? Again, if the thief is caught with his hand in your pocket before he can grasp any of the contents, and it is found that the pocket contains both money and a watch, how can it be proven that he intended to steal both; and if not both, which? And in the case last put is there any more of an attempt to steal, the thief being ignorant of the presence of the watch or money, than there would be, had he with similar intent and ignorance, placed his hand in an empty pocket? In each case there is the substantive and distinct offence as prescribed by the statute. There is the criminal intent, and an effort made to carry out the intent to the point of completion, interrupted by some unforeseen impediment or lack outside of himself, special to the particular case, and not open to observation, intervening to prevent success, without the abandonment of effort or change of purpose on the part of the accused. As said by Mr. Bishop: 'It being accepted truth that the defendant deserves punishment by reason of his criminal intent, no one can seriously doubt that the protection of the public requires the punishment to be administered, equally whether in the unseen depths of the pocket, etc., what was supposed to exist was really present or not.' 1 Bish. Crim. Law, § 741. The community suffers from the mere alarm of crime. Again: 'Where the thing intended (attempted) is a crime, and what is done is of a sort to create alarm—in other words, excite apprehension that the evil intention will be carried out—the incipient act which the law of attempt takes cognizance of is in reason committed.' 1 Bish. Crim. Law, § 742. The true legal reason for the conclusions reached is that the defendant, with the criminal intent, has performed an act tending to disturb the public repose. Id., § 744. Mr. Wharton's views on this at one time perplexing question are in accord with Mr. Bishop. See 1 Whart. Crim. Law, (9th ed.) §§ 182, 183, 185, 186, 192." Pregnancy not essential to an attempt to commit abortion, *State* v. *Fitzgerald*, 49 Iowa, 260; S. C., 31 Am. Rep. 148. Snapping uncapped gun, *Mullen* v. *State*, 45 Ala. 53; S. C., 6 Am. Rep. 691. Breaking an empty safe, *State* v. *Beal*, 37 Ohio St. 108; S. C., 41 Am. Rep. 490. See note, 41 Am. Rep. 492.—*Albany Law Journal.*

THE VALUE OF A HUSBAND UNDER LORD CAMPBELL'S ACT.

Can there be circumstances under which a husband becomes absolutely of no value to his wife? This appears to be the question raised in the case of *Stimpson* v. *Wood*, 57 Law J. Rep. Q. B. 484, reported in the September number of the *Law Journal Reports*. The necessity for appraising the value of the husband in question arose from the fact that he had been killed by the negligence of the defendants or their servants. The common law made short work of the difficulty with the simple rule that a personal action dies with the person; but Lord Campbell, by the Act which bears his name, and which was the outcome of a more complicated state of society, altered the common law, and the death of a husband, father, brother, or other relative is no longer treated as an injury which is nullified by the fact that the chief sufferer is dead. The change cannot seriously be supported on the ground that the old law was an inducement to negligent persons to take care to kill their victims outright instead of maiming them. If there be such depravity in human nature it should be dealt with not in the civil but the criminal court. The common law looked upon death as a common enemy against which all but murderers were anxious to guard, so that its victims must lie where they fall. Lord Campbell's Act imposes the burden on the nearest shoulders, which have frequently to bear a grievous weight quite disproportionate to the offence committed. Whether or not this measure was just is not a matter of law, although the consideration of the principles involved throws light on the application of the Act which has now been in force for forty years almost in the same terms, vague and general as they are, in which it was originally passed.

Those who read the report of the case will, at an early moment, be struck with the singular appropriateness of the verdict of the

jury. The action was brought on behalf of a wife who had left her husband and lived as the wife of another man, while he conversely lived with another woman. She received no support from him, but only casual small sums which might have been given by a stranger. Substantially, therefore, she did not lose much, but still she had lost her husband, for which the jury gave her £5. To this happy conclusion of the case the defendants demurred, and moved that judgment be entered for them on the ground that there was no cause of action. In giving judgment, Mr. Justice Manisty lays down the law as to the duties of husbands towards their wives. Lord Coke is vouched for the proposition that an adulterous wife tarrying away from her husband loses her dower, and later on the Court of King's Bench laid down that a husband is not obliged to support an adulterous wife. A similar view was taken in a poor-law case. The question under the Act was whether the wife had suffered any pecuniary loss by the death of her husband. Mr. Justice Manisty decides that under the circumstances, and there being no evidence of any reconciliation being probable, the wife loses her cause of action. Mr. Justice Stephen assumes in the plaintiff's favour that the statute applies when there is a legal right in the plaintiff to support from the deceased, but that the right must be such as to give a reasonable expectation of pecuniary advantage. The example he gives of a father who supports his son, and whose income depends on his own life, being killed, and his son bringing an action, is not particularly happy. A father is not bound to support his son; and if the point of the illustration lies in the father having a life interest, the case put is one in which the plaintiff has no legal right, but he has reasonable expectations of pecuniary advantage. If the point lies in the fact that there was no legal duty on the father, it only helps the present occasion to the extent of showing that it is unnecessary, which appears an elementary proposition.

The true solution of the question would seem to lie in the fact that Lord Campbell's Act does not create a cause of action. It adds heads of damage to existing causes of action, and to decide that the bare fact of matrimony gives the wife a right to succeed under Lord Campbell's Act, would be to read that Act as if it brought into existence a new cause of action. The test is not whether the person killed was legally bound to support the plaintiff, but whether he did in fact support him, and would have continued to do so. The woman with whom the dead man had been living would, from this point of view, better qualify as a plaintiff under the Act than the lawful wife. She may have had a reasonable prospect that the husband's provision for her would be continued, but she could not sue for the reason that the statute only applies to relatives, which means legal relatives. The mere fact that the plaintiff was the wife of the deceased was no doubt of pecuniary value to her, and enabled her to obtain the small sums given her, and it is no objection under Lord Campbell's Act that the pecuniary gain was gratuitous. A schoolboy could, we suppose, recover damages for the loss of an uncle who gave him a sovereign every Christmas. The fact of having a husband, although separated from him in the way in question, is in a sense a commodity, but its loss can hardly be held to amount to a pecuniary loss under Lord Campbell's Act unless that Act creates an entirely new cause of action.—*Law Journal* (London).

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Lease—Occupation of shed not mentioned in the lease—Accessory—Acquiescence.

Held:—Where the lessee leased buildings in course of construction, and on taking possession of the same, also occupied and used, without objection on the part of the lessor, during nearly four years, a small shed in the rear of the leased premises,—that the shed, though not mentioned in the lease, nor shown on the architect's plans of the buildings, must be considered as an accessory of the premises leased, and that the lessor, by acquiescing in the lessee's occupation, for so long a period, without claiming rent, had placed that construction upon the contract.—*Myler et vir & Styles*, Dorion, C. J., Cross, Baby, Church, JJ., Feb. 25, 1888.

*To appear in Montreal Law Reports, 4 Q. B.

Procedure—Putting husband of defendant in the cause—Lease, Construction of.

Held:—1. Where the plaintiff was ordered, by a judgment of the Court, to bring the husband of the female defendant personally into the cause, that the service of a new writ and declaration setting forth the demand in full, upon both husband and wife, was sufficient.

2. That where the lease stipulated that the lessee should have the use of a portion of the yard in rear of the building leased, which portion should be determined by the lessor, with right to the lessee to fence the same at his option, that the lessor was not entitled, after the lessee had been four years in possession, with the yard open, to erect a fence across the yard, more especially as the fence deprived the lessee of light and air.—*Myler et vir & Styles*, Dorion, C. J., Cross, Baby, Church, JJ., Feb. 25, 1888.

Libel—Telegraph Company—Transmission of libellous matter—Publication of judicial proceedings—Damages.

Held:—1. That the publication of an extract from the declaration of a party in a suit entered, but before the return of the action, is not privileged.

2. That the communication by a telegraph company of a dispatch to its employees engaged in transmitting and receiving such dispatch, is a publication.

3. That a telegraph company is not bound to transmit a dispatch of a libellous nature, and is not entitled to plead its statutory obligation to transmit the dispatches entrusted to it, in answer to an action of libel for the transmission of a libellous dispatch.

4. That the refusal of the defendant to disclose the name of the person at whose request the libellous matter was transmitted, was an aggravation of the wrong, and substantial damages should be awarded, (Dorion, C. J., and Cross, J. dissenting as to damages).—*Archambault & Great North Western Telegraph Co.*, Dorion, C. J., Monk, Tessier, Cross, Baby, JJ., March 27, 1886.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Nov. 10.

Judicial Abandonments.

Laurent Chandonnet, trader, St. Pierre Les Becquets, Nov. 6.

U. T. A. Donahue, trader, Roberval, Oct. 27.

Marie Goulet, shoe merchant, Lévis, Oct. 30.

Timothy Kenna, Montreal, Nov. 2.

I. McIver & Co., Salaberry de Valleyfield, Nov. 6.

Curators appointed.

Re Zoël S. Aubut.—W. A. Caldwell, Montreal, curator, Nov. 8.

Re Lefaivre & Laberge.—C. Desmarteau, Montreal, curator, Nov. 7.

Re Napoléon Proulx.—C. Desmarteau, Montreal, curator, Nov. 2.

Dividends.

Re Olivier Champigny, trader, St. Hyacinthe.—First and final dividend, payable Nov. 27, J. E. Morin, St. Hyacinthe, curator.

Re C. T. Jetté.—First and final dividend, payable Nov. 24, C. Desmarteau, Montreal, curator.

Re J. L. Lamplough.—Dividend, S. C. Fatt, Montreal, curator.

Re Avila Birs, trader, St. Hilaire.—Dividend, payable Nov. 28, M. E. Bernier, St. Hyacinthe, curator.

Separation as to property.

Emélia Mageau vs. Henry Shawl, Montreal, Nov. 7.

GENERAL NOTES.

JUDICIAL WEIGHT.—The new Chief Justice, says a New Orleans journal, is the smallest man of the Supreme Court of the United States, weighing 125 pounds, and being 5 feet 6 inches in height. Associate Justice Gray is the largest, measuring 6 feet 5 inches in height, and pulling the scales at almost 300 pounds. Justices Bradley and Blatchford are about an inch higher than the Chief Justice and weigh 20 pounds more. Associate Justice Harlan is next to Gray in height, 6 feet 2 inches being his distance from the ground, and 250 pounds his weight. The other Justices are an even height, being between 5 feet 9 and 10 inches. With the Chief Justice in the centre and the two big men at each end, a V is formed when all stand in line.

POMP WITHOUT DIGNITY.—Lord Cockburn, in his "Circuit Journeys," gives a ludicrous account of one of the processions by which the Judges on Circuit were received in the Court towns:—"A line of soldiers, or the more civic array of paltry policemen, or of doited special constables, protecting a couple of judges who flounder in awkward wigs and gowns through the ill-paved streets, followed by a few swearing advocates, and preceded by two or three sheriffs, or their substitutes, with white swords which trip them, and a provost and some baillie-bodies trying to look grand, the whole defended by a poor iron mace, and advancing each with a different step, to the sound of two cracked trumpets, ill-blown by a couple of drunken royal trumpeters, the spectators all laughing, &c." All the surroundings of the judicial system were laughable. "At Inverness," he says, "one man was tried for jail-breaking, and his defence was that he was ill-fed, and that the prison was so weak that he had sent a message to his jailer that if he did not get more meat, *he would not stay in anothe. hour*, and he was as good as his word." On another occasion the jailer had gone to the country, *taking the key of the prison with him*. When the prisoners were to be brought before the judges, *they could not be got out.*