# The Legal News.

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## THE U. S. JUDICIARY.

The *Ohio Law Journal* gives the following table, showing the number of the judges constituting the highest court in each State in the Union, the length of term, and their salaries:

| State. | Number of Judges. | Term of Office. | Salary. |
|---|---|---|---|
| Alabama | Three | 6 years | $3,000 |
| Arkansas | Three | 8 " | 3,500 |
| California | Seven | 12 " | 6,000 |
| Colorado | Three | 9 " | 3,250 |
| Connecticut | Five | 8 " | 4,000 |
| Delaware | 1 Chief Justice | For life | 2,500 |
| | 1 Chancellor | " | 2,500 |
| | 3 Associate Justices | " | 2,000 |
| Florida | Three | " | 3,000 |
| Georgia | Three | 4 years | 2,500 |
| Illinois | Seven | 9 " | 5,000 |
| Indiana | Five | 6 " | 4,000 |
| Iowa | Five | 6 " | 4,000 |
| Kansas | 1 Chief Justice | 6 " | 3,000 |
| | 2 Associate Justices | 4 " | 3,000 |
| Kentucky | Three | 8 " | 5,000 |
| Louisiana | 1 Chief Justice | 8 " | 7,500 |
| | 4 Associate Justices | 5 " | 2,000 |
| Maine | Eight | 7 " | 3,000 |
| Maryland | Eight | 15 " | 3,500 |
| Massachusetts | 1 Chief Justice | During good behavior. | 6,500 |
| | 7 Associate Justices | | 6,000 |
| Michigan | Four | 8 years | 4,000 |
| Minnesota | 1 Chief Justice | 7 " | 4,500 |
| | 3 Associate Justices | 7 " | 4,000 |
| Mississippi | Three | 9 " | 3,500 |
| Missouri | Five | 10 " | 4,500 |
| Nebraska | Three | 6 " | 2,500 |
| Nevada | Three | 6 " | 7,000 |
| New Hampshire | 1 Chief Justice | Until 70 | 2,400 |
| | 6 Associate Justices | years old. | 2,200 |
| New Jersey | 1 Chancellor | 7 years | 10,000 |
| | 1 Chief Justice | 7 " | 5,500 |
| | 8 Associate Justices | 7 " | 5,000 |
| *New York | 1 Chief Justice | 14 " | 7,500 |
| | 6 Associate Justices | 14 " | 7,000 |
| North Carolina | Three | 8 " | 2,500 |
| Ohio | Five | 5 " | 3,000 |
| Oregon | Three | 6 " | 2,000 |
| Pennsylvania | Seven | 21 " | 7,000 |
| Rhode Island | Five | For life | 4,000 |
| South Carolina | 1 Chief Justice | 6 " | 4,000 |
| | 3 Associate Justices | 6 " | 3,500 |
| | 8 Circuit Judges | 4 " | 3,500 |
| Tennessee | Five | 8 " | 4,000 |
| Texas | Three | 4 " | 3,500 |
| Vermont | Seven | 2 " | 2,500 |
| Virginia | 1 Presiding Judge | 12 " | 3,250 |
| | 4 Associated Judges | 12 " | 3,000 |
| West Virginia | Four | 12 " | 2,250 |
| Wisconsin | Five | 10 " | 5,000 |

*Each judge is allowed $2,000 additional for expenses.

## BANQUETS TO JUDGES.

It appears that in New York there are some who would extend the public dinner business even to the judges. Surrogate Calvin has recently been honored with a "banquet." The *Albany Law Journal* very properly takes occasion to protest strongly against the threatened invasion. "It strikes us," says our contemporary, "as a very improper, undignified and unpleasant affair. Why should a judge be publicly fed and praised in speeches because he has done his duty? Especially, why should this feeding and puffing be done by the lawyers who are in the habit of practising before him, and who are in some measure dependent on him for patronage? The surrogate has unquestionably been a remarkably faithful, intelligent, and impartial officer, but he should find his reward in private. Let him eat his own victuals and drink his own drink in the consciousness that he has done well; let his friends give him words of praise in private, if they will. Let us reserve these public demonstrations for the winners of boat-races and billiard matches, for acrobats, actors, singers, and the managers of political canvasses. This feature of our society is a disgusting one. If any one has an axe to grind with a public man he gets him up a public dinner, or gives him a cane, or a silver service, and thus assumes to take possession of the public man. In respect to a judge, it is difficult to say who deserves the severest blame—the lawyer who offers, or the judge who accepts such fulsome incense. We are glad to believe there are few of our judges who would so degrade themselves."

## PERSONAL INJURIES.

Some criticism was called forth by the amount of damages for a crushed finger sanctioned by the Supreme Court, (see *ante*, p. 107). On this subject, "The value of the human body and bones," Mr. R. V. Rogers, jr., of Kingston, has penned an essay in his peculiar style, for the *Canadian Law Times*, which shows that juries and judges have permitted themselves considerable range in their estimate of personal injuries. We append a portion of the article.

One of the absolute rights of every British subject is that of personal security; and lawyers mean by that, the legal and uninterrupted enjoyment of life, limb, body, health and reputation. Any one interfering, either by accident or design, with the enjoyment by another of these rights, inherent by nature in every individual (unless, indeed, the interference is authorized by the proper power in the State), is liable to make good to the injured party the damages sustained by him. With questions of life and death, of health and reputation, we do not propose to deal; but we desire to glance at some of the very numerous cases which have been

decided in England, the United States, and Canada, upon the important subject of the pecuniary value of the various portions of a person's body. The value of the human form has been considered in many ways and by many people; not only in its dead state by medical students, but in its captive state by slave dealers, but also in its living, free, independent state—and that piecemeal—by jurors unimpeachable, and judges learned and venerable who have viewed it as a corpse and as a captive as well.

To begin with what the Sunday-school boy said was the chief end of man—the *head*. No jury, we believe, has yet been called upon to value the whole head of a living man; and with accidents fatal in their effects, we have nothing to do here. But different parts of the head—inside and out—have been appraised by intelligent jurors. In Maine, a man who could say with Hudibras,

> My head's not made of brass,
> As Friar Bacon's noddle was;
> Nor (like the Indian's skull) so tough,
> That authors say, 'twas musket proof;

had the external table of his *skull* cracked by an iron poker, wherewith he had been assaulted by a brakesman, and in consequence of the injury he was threatened with palsy of the optic nerve. He sued the railway company for the wrong inflicted by their servant, and recovered $4,000 damages; and although the company considered the amount excessive, the court did not. *Hanson* v. *European, etc., Ry.*, 62 Me. 84. But $1,700 was held too much to pay for striking a woman's head with a hatchet; she having been very provoking, and not being much hurt. *Hennies* v. *Vogel*, 87 Ill. 242. When, on a steamboat, a person received an injury, *resulting* in the temporary loss of the sight of one *eye*, and the jury calculated the damage at $5,000, the judges held the amount excessive, and ordered a new trial on that account. *Tenney* v. *New Jersey Steamboat Co.*, 5 Lans. 507. The jury, although not the judges, evidently considered this one of

> Those eyes, whose light seem'd rather given,
> To be ador'd than to adore—
> Such eyes as may have look'd from Heaven,
> But ne'er were raised to it before.

A little boy was kicked by a horse, and his eye, skull and brain were so severely hurt, that the witnesses at the trial considered he would never be able to obtain a living in an ordinary way. The jury granted him £150, as a slight compensation; and although the child died nine days after the verdict, yet the court would not grant a new trial asked for on the ground of excessive damages. *Kramer* v. *Waymark*, L.R., 1 Ex. 241.

Ho Ah Kow sued the sheriff of San Francisco for $10,000 damages for cutting off his *queue*. He had been fined for keeping a boarding-house in a manner contrary to the city by-laws, and in default he had been imprisoned in the county jail for five days; while in durance vile his head was shorn. The loss of his *queue*, he alleged in his pleadings, was a mark of disgrace, and attended with misfortune and suffering, and ostracised him from associating with his fellow-heavenlies here on earth. The defendant set up as a justification an ordinance of the city, authorizing the cutting off of a prisoner's hair. Kow demurred; and the judges were with him on the law, considering that such a rule was contrary to the celebrated fourteenth amendment of the Federal Constitution. *Ho Ah Kow* v. *Nunan*, 20 A. L. J. 250. What the jury said as to the value of the pig-tail, or if they have ever said anything, we do not know.

A judge and jurors attempted to estimate the worth of a man's *brains* in a late case. They calculated the value of that part of the brain that was injured (whether the bump of philoprogenitiveness, veneration or self-esteem, the reporter saith not, but we think it was the first named) at $10,000. Roy was sitting in a Pullman car, and the upper berth fell once and again, the second time striking him on the head, injuring his brain, incapacitating him from the performance of his usual avocations, and necessitating medical treatment. The court held the railway company liable, but granted a new trial solely on the ground that the number and ages of the man's children had been given in evidence, apparently to influence the verdict of the jury. *Penn. Railway Co.* v. *Roy*, 22 A. L. J. 510.

It is a serious matter to touch a person's *face* unless "Barkis is willing." Mitchell, a very rich man, spat on the *cheek* of Mr. Alcorn in a public place; and for thus using the human face divine as a spittoon, a jury of his fellow-citizens mulcted Mitchell in the sum of $1,000. He thought the amount excessive, but the

court did not assist him in getting a reduction. *Alcorn* v. *Mitchell*, 63 Ill. 553.

Kissing, too, is a very expensive way of touching the countenance of an unwilling fair one. A conductor on the Chicago & North Western Railway, saluted on the cheeks, Miss Cracker, a passenger on his train. The consequences were—not matrimony, but—a fine of $25 for an assault, the dismissal of the gay Lothario by the company, and a verdict of $1,000 against the company, at the suit of Miss C. The court did not consider the verdict excessive, as it is a carrier's duty to protect his passengers against all the world. *Cracker* v. *C. & N. W. Ry.*, 36 Wis. 657.

Some twenty years ago, in England, a little boy—aged five years, and named Cox—while playing on the highway, was, like the youngster before mentioned, kicked in the *face* by a horse that was there depasturing; he was badly hurt. The jury awarded him £20 for damages to his visage, but the court would not let him keep it, as they failed to see that the owner of the horse had been guilty of any negligence in allowing his equine to be at large. *Cox* v. *Burbridge*, 13 C. B. (N. S.) 430.

In fact a man's head is at least, judging from the view taken of it by some jurors, a very precious part of the body, and indeed everything connected with it becomes valuable. An individual once had to pay £500 for the slight amusement of knocking off another man's hat. He asked in vain for a new trial—*i. e.*, of his case. 5 Taunt. 443.

Now to leave the head and come to the trunk and its more humble members. Many years ago, Mrs. Elizabeth Dudley was riding on the outside of a coach in England. The coachee, before driving under an archway into the stable yard of an inn, asked his passengers to alight; Mrs. D. was dainty and unwilling to soil her boots, and so preferred being driven into the yard. The coach was eight feet nine inches high, and the arch nine feet nine inches. The consequence was that Mrs. Dudley was severely and permanently injured about the *shoulders and back* (the Divine Sarah might have escaped). An action for damages, and £100 verdict the result. *Dudley* v. *Smith*, 1 Camp. 167.

One Grieve was standing on a wharf, at Brockville, as the steamer Niagara was leaving, to plough her way along the St. Lawrence. The boat's fender caught in the wharf, broke, and hit G. on the shoulder and so hurt him that he lost the use of his *arm*. He recovered a verdict for £387.10*s*; but the court thought he had been guilty of contributory negligence and so allowed him to continue to grieve, and ordered a new trial, on payment of costs. *Grieve* v. *Ont. St. Co.*, 4 C. P. 387.

An injury to the *vertebræ* of the spine of a lady, married, had to be paid for by £500. Mr. and Mrs. Foy were travelling by rail; at the station where they stopped there was not room for all the cars to draw up to the platform, and some of the passengers, the Foys among the rest, were asked to get out upon the line. Mrs. F., with the aid of Mr. F., jumped from the top step of the car to the ground, a distance of three feet, and came down very heavily, jarring her vertebræ and injuring her spine. An English jury gave her the sum mentioned, and the judges declined to interfere. *Foy* v. *L. B. & S. C. Ry.*, 18 C. B. (N. S.) 225.

In Wisconsin, $2,750 was given for the fracture of one of the spinal vertebræ and the dislocation of the hip-joint; and the court did not consider the sum exorbitant. *Houfe* v. *Fulton*, 34 Wis. 408. Nor did the court in Illinois think $7,500 too much for a healthy young woman who, through a defect in a sidewalk, fell and fractured her lower vertebræ, so that paralysis ensued. *Chicago* v. *Herz*, 87 Ill. 541.

Mrs. Toms and her son and heir were driving in a buggy over a bridge on which some new planks had been placed. The nag shied at these, and backed up against the railing which broke; the hind wheels went over the bank, and the occupants of the buggy were thrown into the water below. Mrs. Toms' *spine* was injured, and even when before the jury she had not recovered her strength. The first victory was $750 for herself and $50 for her husband, for his consequential damages. Unfortunately she had insisted upon swearing at the trial, and the court considered that so improper that they set the verdict aside. *Toms* v. *Whitby*, 32 U. C. R. 24. Another trial was had, and the jury magnanimously gave $2,500 to the suffering lady and $250 for Mr. Toms. Again the court interfered, thinking the damages very large, and ordered a third trial unless the Tomses would consent to take $1,250 between them; this they wisely agreed to do (35 U. C. R. 195), and the Court of

Appeal, to which the defendants went, would not take that sum away from them. 37 U. C. R. 100.

A school teacher was allowed to keep $8,958 given for a permanent injury to her spine. *Ill. C. R.* v. *Parks*, 88 Ill. 373.

*Arms*, both male and female have been valued. The case just about to be cited must not be taken as a ground for arguing that a lady's arm is worth more than a similar lateral appendage owned by a gentleman. A Miss or Mrs. Sweely (we are not sure which, but judging from her influence on the jurors, we fancy she must have been married) was walking in the town of Ottawa and was severely injured through a defect in the sidewalk. Her arm was hurt so that the muscles gradually wasted away until she completely lost its use, and the wearing away was accompanied by constant pain. She sued the town, and the jury rendered a verdict in her favor of $3,200, and this the court considered not excessive. *Ottawa* v. *Sweely*, 65 Ill. 434.

Another woman, through a railway accident, lost one arm and the use of the other, and was withal so bruised, battered, blackened and injured, that she was in constant pain, and suffered from impaired health and memory; she sued the company for damages. The jury at first took a moderate view and gave her $10,000; the company cried "Pshaw! that's too much," and the court, thinking it exorbitant, directed a new trial. The second jury awarded $18,000; the company and the court thought as before, and a third trial was ordered. The jury took the bit in their mouths and assessed the injuries of the damaged lady at $22,500. The company more dissatisfied than ever, again appealed to the court, but the judges (doubtless impressed with the more than sybilline character of the proceedings) declined to interfere, and allowed the suffering—but persistent—woman to keep the money. *Shaw* v. *Boston & W. Ry.*, 8 Gray, 45.

Mr. Drysdale was (perhaps is) a clergyman, enjoying a salary of $1,400; while travelling on a half-fare ticket (one of the numerous little perquisities of the cloth) he tried to shut a window in the car, and his arm was broken by the standard of a lumber car standing upon a side track. He was detained from his duties for eight weeks (whether either he or his people lost anything by this does not appear), and suffered great pain from time to time for eight months (perchance his flock suffered similarly on Sundays, only longer). He sued the railway company and recovered a verdict for $3,000. The company considered, and we think rightly, that this was too large a sum to be compelled to pay for breaking a part of a parson, and applied to the court to set aside the verdict. The court, however, deemed the figure not so exorbitant as to justify a reversal. This was in Georgia where ministers may be scarce; nearer home, we fancy, they are not so highly prized. *Western, etc, Ry.* v. *Drysdale*, 51 Ga. 646.

Query—Do ladies serve on juries in Georgia as they do in Montana (we believe)? If so, and Mr. D. was unmarried, young and good looking, we understand the verdict.

We are not left entirely in the dark as to the value of a Canadian's arm. One Watson, in 1864, was journeying on the Northern Railway, and went into the express car, where he should not have gone, but the conductor who saw him there did not tell him to leave. There was a collision, and W.'s arm, the right one, was broken; no one in the passenger car was seriously hurt. The injured man was in the house four and a half weeks and attended by two doctors; he suffered a good deal, kept the arm in a sling for some time, and then found it smaller than the other and scarcely fit to use. The jury gave $2,000. The court said that the company might have a new trial upon payment of costs as they were not quite satisfied as to the extent of the plaintiff's injuries; and to the chief justice the damages appeared extremely large. *Watson* v. *N. R. Co.* 24 U. C. R. 98.

Coming down still lower we find what some people think should be paid for a broken *wrist*. Mrs. Jones was a nurse, and through a broken board in the sidewalk she stumbled and fell and fractured her right arm at the wrist, and for this the metropolis of the Prairies had to pay her $1,000. *Chicago* v. *Jones*, 66 Ill. 349.

In Kansas, the court decided that $5,000 was an excessive amount for the railway company to be compelled to pay for an injury causing a deformity of the right *hand*. *Union etc., Ry. Co.* v. *Hand*, 7 Kan. 380.

*Fingers* even have been valued. Fordham was getting into an English railway carriage. The door being at the side and opening outward, and having a parcel in his right hand,

he placed his left on the door plate to assist him in entering. The guard, without any previous warning, flung to the door and badly crushed F's fingers. Both the Court of Common Pleas and the Exchequer Chamber thought the guard had been careless and that Fordham had done nothing amiss, and so they let him keep the damages given by the jury against the railway company, £25. *Fordham* v. *L. B. & S. C. Ry.*, L. R., 3 C. P. 368; 4 C. P. 619, Ex. Ch. A servant and apprentice of one Hodsell, a goldsmith, was bitten by Stallebras' dog, two of the fingers, the right hand and the right arm being badly lacerated. Hodsell sued for the loss of the services of his apprentice, a lad of seventeen, and recovered £30, one-third for past loss and the balance for future loss. *Hodsell* v. *Stallebras*, 11 A. & E. 301. Some boys were coming home from school, and in passing a machine which stood unguarded beside the road, a child of seven years induced another of four to place his fingers within the machine, while another boy by turning a handle set it in motion; the fingers were badly crushed, and had to be amputated. The jury gave £10 damages for them, but the court considered that the owner of the machine was not liable. *Mangan* v. *Atterton*, L. R., 1 Ex. 239.

One Jackson was riding in the underground railway from Moorgate street to Westbourne Park, the car was full, yet at the stations others tried to enter, which those already within sought to prevent; the door being open as the car was about to pass into a tunnel, the porter slammed it to, and jammed Jackson's *thumb* in the hinge. The jury gave him £50 to salve his injuries. The judges of the Court of Common Pleas and of Appeal said: "Let him keep the money;" but when the company went before the House of Lords, that august assemblage said: "He cannot have the money, as the porter was not guilty of negligence." *Jackson* v. *Metropolitan Ry.*, L. R., 10 C. P. 49; 2 C.P.D. 125; 3 App. Ca. 193. Another passenger had a thumb squeezed in a very similar way by the porter shutting the carriage door upon it; and the jury estimated his injury at £20. The court thought that the evidence showed that the passenger and not the porter had been negligent. *Richardson* v. *Metropolitan Ry.*, 37 L. J., C. P. 300. Still another thumb was appraised in a later case. A man was getting into a car, but before he had taken his seat the servants of the company shut the door without warning: the man's thumb was squeezed by the hinge, and in an action for damages, the jury, following the example set by the last, awarded £20 for the injury, but the court considered that there was no evidence of negligence on the part of the company's servants, and so set the verdict aside. *Maddox* v. *L. C. & D. Ry.*, 38 L. T. 458. Fortunately on our Canadian cars thumbs are not in such danger.

[To be continued.]

## NOTES OF CASES.

### COURT OF REVIEW.

MONTREAL, May 31, 1881.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From S. C., Montreal.

BARIL v. MASTERMAN.

*Patent—Invention—Novelty.*

*An immaterial variation of a machine in general use cannot be the subject of a patent right: there must be at least a new adaptation of a known principle, or some change which has called forth the inventive faculty.*

JOHNSON, J. This action was brought to recover damages from the defendant for having infringed a patent invention. The thing which was patented was a refrigerator; and the defendant answered the action first by a denial; and then by a special plea, averring that the invention claimed by the plaintiff had been in public and general use for over fifteen years prior to the plaintiff's alleged right. The learned judge who tried the case found the facts for the defendant, and gave judgment in consequence, dismissing the plaintiff's action; and the case now comes up for review on the whole of the proof.

The issues are these: First, the plaintiff says he is the inventor of a certain useful improvement in meat refrigerators, and has got letters-patent for this improvement, and that the defendant has used his property and right thus acquired. The defendant answers him: "You "are not the inventor you pretend to be; you "have only varied, without material alteration, "an old machine in common use; and whether "you are the inventor or not of this slight "variation which you claim as an improvement, "I have not infringed what you claim as your

" right; I have not used what you describe, but " I have used something else."

There are two questions: Is the plaintiff the inventor? Has the defendant violated his right? On the first question the evidence is strongly against the plaintiff. There may be very little difference between the two things, one of which is claimed by the plaintiff as his invention, and the other by the defendant as having been used already a long time before the patent; but in these cases there must be something that calls forth the inventive faculty before it can be the subject of a patent right. It need not be an entire novelty, of course; it may be a new adaptation, perhaps, of a known principle; but here we see neither the one nor the other. We see the defendant using, for many years before this alleged invention, a kind of refrigerator made on the principle of causing a double current of air, by applying the laws of expansion by heat and contraction by cold. We see the plaintiff, years after this had been in use, getting a patent for substantially the same thing; the only difference between the two machines being that while both of them introduce a current of air which is cooled by contact with ice, one passes under the ice and the other over it. And we say it matters not whether the thing used by the defendant is very nearly the same, or even precisely the same as the plaintiff's so-called invention. He could not trammel the defendant's right to use what he had always used by petitioning for a patent and getting it, even with this immaterial variation. It appears from the plaintiff's factum that there has been at least one case, and perhaps more, in which the plaintiff has succeeded, but it does not appear that the same question was raised.

The judgment is confirmed in all respects.

*Longpré & Co.*, for plaintiff.

*Macmaster & Co.*, for defendant.

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## COURT OF REVIEW.

MONTREAL, May 31, 1881.

RAINVILLE, JETTÉ, BUCHANAN, JJ.

[From S. C., Montreal.

LORD et al. v. BERNIER et al.

*Contract made by partner for benefit of firm—Action by firm.*

*Where a mortgage on a schooner was granted to one partner individually for the benefit of the firm, and by him transferred to the other partner, and the firm had possession of the vessel, an action by the firm for the freight earned by the vessel was held to be properly brought.*

BUCHANAN, J. One Charlebois, owner of the schooner Francis, gave a mortgage thereon for $3,000, to James Lord, one of the plaintiffs, the defendant Bernier being then master of the vessel. About November 12th, 1875, James Lord on behalf of the plaintiffs, under this mortgage, took possession of the schooner, provided her with a new outfit for a voyage to Newfoundland, and found a cargo for her, and continued Bernier, as master at wages of $40 per month. The vessel sailed, and arrived at Newfoundland, and delivered her cargo, and Bernier received from the consignees of the freight about $680.

Some few days afterwards, Bernier, apparently without Lord's knowledge, rechartered the vessel for a voyage to England, and put another master in her, and he then received from the consignors of the new cargo about $1,150 on account of freight. With these sums (in excess of the money he expended) he obtained from the Union Bank of Newfoundland a draft on the Bank of Montreal for $1,400, and caused the same to be made payable to the order of his wife, and brought it home with him, and deposited it in the hands of Pacquet and Potvin, the other defendants. This draft, which, as the plaintiffs contend, represents the freight earned by the vessel, of which as mortgagees, they had taken possession, is their property, and they have attached it by process of revendication.

Two issues are raised; the first being that the plaintiffs have no right of action, because the mortgage in question never was the property of the co-partnership bringing the suit. On this head it is established that this mortgage was granted by Charlebois to Lord individually, and by him transferred to Munn, also individually, both these persons being plaintiffs and members of the co-partnership. Could this transaction, therefore, inure to the benefit of the plaintiff's firm so as to enable it to maintain a suit? The evidence goes to establish the fact that this firm usually took such mortgages in the name of an individual co-partner, and that the money advanced by Lord to Charlebois was part of the funds of the co-partnership.

It was not without some hesitation I arrived at the conclusion that the plaintiffs could recover under their action as brought, and I did so upon the principle laid down by the text writers, that if a party enters into a contract in his own name for the benefit of others, either he may be sued, because he entered into the contract, or those persons for whom he entered into it may be sued, and *e converso* the agent may sue, or the parties for whose benefit the contract was effected may sue; so therefore an action may be maintained by all the partners on a guarantee given in terms to one only, if given for the benefit of all, or it may be maintained by that partner alone to whom it was given. Here the mortgage, as I have said, was given to one partner, by him transferred to another partner, and suit is brought by the firm, the actual owner of the mortgage, and under the rule of law above cited, the action was properly brought.

There now remains the question as to the right of the mortgagees to recover the amount of freight in question earned by the vessel.

The evidence appears to be conclusive, that about the 12th of November, 1879, the plaintiffs, availing themselves of a right conferred upon them by law, took possession of the schooner under the mortgage, and not only provided her with a new outfit, but also found a cargo for her, gave the defendant, Bernier, as master, an advance of $50 on his wages, who acknowledged the plaintiffs as his employers, made advances to the crew, and provided the vessel with supplies; and the plaintiffs, as such mortgagees in possession, are, by the ruling authorities in English commercial law, held entitled to all the rights of an owner. These are the principles maintained by the judgment of the Superior Court, and consequently the judgment must be confirmed.

*Kerr, Carter & McGibbon* for plaintiffs.

*Duhamel, Pagnuelo & Rainville* for defendants.

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SUPERIOR COURT,

MONTREAL, May 31, 1881.

*Before* TORRANCE, J.

MORIN v. BERGER.

*Infringement of patent—Provisional order.*

TORRANCE, J. The case is before the Court on the merits of a petition for a provisional order against the defendants. The action began in January, 1880, and claimed damages against the defendants for infringement of a patent, issued in favour of plaintiff, with a prayer for an injunction against the defendants, prohibiting them from using the invention. In February, 1880, the plaintiff presented a petition praying for a provisional order against the defendants prohibiting them from using the invention during the suit. Issue has been joined on the principal demand as well as on the petition, and evidence at great length has been produced on the issue on the petition for a provisional order. The enquête began in February, 1880, and was only closed in the month of November. The order asked for is in the discretion of the Court, and in view of the great delays which have taken place in the completion of the enquête on the petition, seeing that the enquête on the main demand may easily be disposed of, I think it right to order the parties to complete their enquête on the principal demand before disposing of the petition, which is, as I have said, one of the demands of the principal action. I give this order after perusal of the enquête taken on the provisional petition.

*Robidoux* for plaintiff.

*Beique & McGoun* for defendant.

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SUPERIOR COURT.

MONTREAL, May 9, 1881.

*Before* CARON, J.

THE MOLSONS BANK v. LIONAIS, & HON. L. T. DRUMMOND, T. S.

*Incidental demand filed during contestation of a saisie-arrêt by the garnishee must be served on the defendant—The proper remedy a new writ—Monies not due at the time of the issuing of the writ, can not be attached.*

CARON, J. Un bref de saisie-arrêt après jugement a été émané et signifié au tiers saisi, qui l'a contesté sur différents moyens de forme. Pendant que cette contestation se débattait, la demanderesse produisit une demande incidente qui fut seulement signifiée au tiers-saisi et non au défendeur. Cette demande avait pour but de demander une condamnation contre le tiers-saisi, pour des argens devenus dûs et échus pour du loyer, depuis l'émanation du bref de saisie-arrêt. Cette demande incidente a été contestée par le tiers-saisi.

Je suis d'opinion que la demande incidente aurait dû être signifiée au défendeur, car, il est en réalité la partie adverse de l demande incidente, ce sont ses argents qui sont saisis, et il a plus d'intérêt que le tiers-saisi à les conserver. Je ne crois pas qu'une demande semblable puisse être faite sur un bref de saisie-arrêt, qui n'est qu'un bref exécutoire d'un jugement, les articles 18 et 147 du C.P.C. ne peuvent s'appliquer à la cause actuelle, et il me semble que le moyen qu'aurait dû adopter la demanderesse, est celui d'une nouvelle saisie-arrêt.

Pour ces motifs, je maintiens la contestation et renvoie la demande incidente avec dépens. Je n'ai aucune hésitation à déclarer incidemment, que lorsqu'une dette n'existe pas, lors de l'émanation ou de la signification d'un bref de saisie-arrêt, et qu'elle ne vient à exister que postérieurement, qu'alors elle ne peut pas être arrêtée en vertu de ce bref qui ne vaut pas, il faut une nouvelle saisie, et je concours pleinement dans le jugement de la Cour de Révision, rendu dans cette cause entre les mêmes parties, moins le tiers-saisi, qui était la Société de Construction Mutuelle des Artisans, et rapporté au Legal News vol. III, (1880) p. 116.

*Barnard & Beauchamp*, for plaintiff.
*Piché & Moffat*, for garnishee.

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## SUPERIOR COURT.

MONTREAL, May 31, 1881.

*Before* PAPINEAU, J.

THE ST. ANN'S MUTUAL BUILDING SOCIETY v. REV. JAMES BROWN.

*Corporation — Acquisition of Immovables — Demurrer.*

PER CURIAM. La demanderesse poursuit le défendeur pour une partie du prix d'une vente qu'elle a consentie au défendeur le 5 de mai 1877, et divers versements à faire au lieu d'intérêt, et aussi pour partie du montant d'une obligation de $1,000 qu'il a empruntées de la demanderesse subséquemment. Elle lui donne crédit du prix du loyer d'une propriété qu'elle a louée du défendeur.

Le plaidoyer du défendeur se réduit à prétendre que la demanderesse a acheté d'un nommé Cox la propriété qu'elle a plus tard revendue au défendeur. Que la demanderesse étant une main morte, n'avait pas le droit d'acquérir des immeubles sans une autorisation spéciale du souverain ou du parlement, sous l'opération de l'art. 366 du code civil. Que cette disposition du code n'est qu'une reproduction d'une partie de l'édit de 1743, qui par une autre disposition frappait de nullité les acquisitions d'immeubles, ainsi faites sans l'autorisation du souverain. Que la vente à la demanderesse étant nulle, celle de la demanderesse au défendeur était également nulle, et qu'elle ne doit rien du prix. Que le montant dû sur l'obligation étant compensé par le loyer dû au défendeur, il revient quelque chose à ce dernier qu'il se réserve le droit de réclamer par la suite.

Il conclut à ce qu'il soit déclaré que la vente par Cox, à la demanderesse le 3 d'avril 1876, était nulle, et n'a jamais transféré la propriété à la demanderesse, et à ce que l'action de la demanderesse soit renvoyée avec dépens.

La demanderesse a fait une réponse en droit qui peut se réduire aux moyens suivants: 1. Le défendeur ne fait voir aucun intérêt à se plaindre de la nullité de la vente de Cox à la demanderesse, qui est *res inter alios acta*. 2. Il n'est pas vrai en loi que la demanderesse n'ait pas le droit de faire cette acquisition quand elle l'a faite. 3. Il ne prétend pas avoir été évincé ni même troublé.

La demanderesse a répondu spécialement que lors de l'acquisition qu'elle a faite de la propriété de Cox, elle l'avait acquise de lui pour des avances qu'elle avait faites à ce dernier, qui était un de ses membres, et qu'elle lui en avait consenti de suite un bail, avec la convention qu'il pourrait redevenir propriétaire en remboursant à la demanderesse les avances qu'elle lui avait faites. Que ce n'était qu'un mode permis par la loi d'assurer le recouvrement des avances faites par la société à ses membres, et que Cox n'ayant pas rempli ses obligations, avait perdu ses droits sur la propriété qu'il avait cédée à la demanderesse.

Les répliques sont générales.

Par l'art. 366 les gens de main morte et corps incorporées ne sont pas absolument et dans tous les cas incapables d'acquérir des biens immeubles ou réputés tels, sans l'autorité du souverain. Cet article fait voir qu'il y a certaines fins pour lesquelles les corps incorporés peuvent acquérir des immeubles, puisqu'il contient l'expression d'une exception.

Il n'y a donc pas nullité absolue et générale de toutes les acquisitions faites par des corps incorporées, et ces nullités n'étant pas pour tous les cas, ceux qui les prétendent doivent faire voir que dans le cas particulier dont ils se plaignent, la nullité existe.

Le défendeur ne le fait pas voir. Il ne se prétend pas évincé ni même troublé. Il ne fait pas voir que dans le cas particulier de l'acquisition par la demanderesse de la propriété de Cox, la demanderesse n'avait pas le droit d'acquérir. Il aurait dû faire connaitre la cause de nullité afin que la cour pût prononcer en connaissance de cause. D'ailleurs Cox n'est pas en cause et il pourrait y avoir imprudence à déclarer nulle une vente faite par lui sans l'entendre.

La réponse en droit est maintenue. Les défenses du défendeur sont renvoyées, et jugement est rendu en faveur de la demanderesse suivant les conclusions de sa demande.

*Doutre & Joseph*, for plaintiffs.
*Girouard & Wurtele*, for defendant.