THE

LEGAL NEWS.

VOL. XV. APRIL 1, 1892. No. 7.

The Judicial Committee of the Privy Council, in the recent case of *Huntingdon* v. *Attrill*, 8 Times Law Reports, 341, paid the United States Supreme Court the compliment of adopting a definition enunciated by the latter tribunal. The question having arisen as to the proper test of whether or not an action is "penal" within the meaning of the well-known rule of private international law which prohibits one State from enforcing the penal law of another, their lordships adopted "without hesitation" that prescribed by Mr. Justice Gray in *Wisconsin* v. *Pelican Insurance Company* (127 U.S. 20 Davis, at p. 265): "The rule that the Courts of no country execute the law of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favour of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties."

Mr. Kenelm E. Digby, who has appeared before the Judicial Committee of the Privy Council in numerous Canadian cases, including the *cause célèbre* respecting taxes on commercial corporations, has been appointed by the Lord Chancellor to be judge of the County Courts for Derbyshire. The *London Law Journal* says:—"No

better appointment to a County Court judgeship could have been made than that of Mr. Kenelm E Digby. In the prime of life, a sound lawyer, and a sufficiently experienced practitioner, he will soon command the respect of the Derbyshire County Courts."

THE NEW TARIFF OF FEES.

A correspondent writes as follows:—

"I enclose you a copy of the judgment in the case of *Quebec Bank & Bryant, Powis & Bryant, & Walker*, opposant, to which it would be well to call attention in the *Legal News*. The point is one of interest to the bar, as it is entirely different from the holding in this district (Montreal) relative to the application of the new tariff of advocates' fees."

The opinion referred to was delivered by Mr. Justice Routhier, in the Court of Review, Quebec, and reads as follows:—

ROUTHIER, J. Cette cause a été inscrite en Révision le 8 juillet 1891. La demanderesse, intimée, a comparu le 1 septembre, et a produit son factum le — septembre 1891. La cause a été entendue et jugée depuis.

Il s'agit maintenant de savoir si le mémoire de frais des avocats de l'intimée doit être taxé suivant l'ancien tarif, ou conformément au tarif actuel qui est entré en vigueur le 1 septembre dernier.

La question ne nous parait pas douteuse. Le tarif est une loi, et cette loi est entrée en vigueur le 1er septembre; elle doit être appliquée à toutes les procédures faites ce jour-là et depuis.

"Mais," dit-on, "cette cause était commencée antérieurement."

Cette objection peut affecter les articles du tarif qui fixent les honoraires des avocats pour tous leurs services dans une cause, suivant l'étage auquel cette cause en est rendue, c-à-d. les dix premiers articles du tarif de la Cour Supérieure; mais elle n'affecte pas les articles, fixant des honoraires spéciaux pour certaines procédures spéciales.

Lorsqu'un avocat se charge d'une cause il ne saurait prévoir toutes les procédures qu'il aura à faire pour conduire cette cause à jugement, ni pendant combien de temps cette cause sera pendante, ni à quelles dates il devra faire telles et telles procédures dans l'intérêt de son client; et dès lors il ne saurait déter-

miner d'une manière certaine quel sera le montant que lui devra son client lorsque la cause sera finie.

Dans le mandat qui intervient alors entre eux le prix des services de l'avocat reste à déterminer plus tard, et il dépendra des procédures qu'il devra faire et du tarif alors applicable à ces procédures. D'une part l'avocat s'oblige à faire toutes les procédures que l'intérêt de son client exigera, et d'autre part, celui-ci promet payer à son avocat les honoraires alors fixés par le tarif pour ces procédures.

Il nous semble donc évident que toutes les procédures auxquelles sont attachés des honoraires spéciaux, et qui ont été faites depuis la mise en force du nouveau tarif, doivent en bénéficier, lors même que la cause dans laquelle elles sont faites aurait été commencée longtemps auparavant; ce n'est pas donner à la loi un effet rétroactif.

Mais que faut-il décider relativement aux dix premiers articles du tarif dans les causes commencées avant le 1er septembre et terminées depuis?

Nous croyons que la même règle doit s'appliquer, c-a-d. que le prix des services doit être fixé suivant le tarif en force à l'époque où les services ont été rendus. Dès lors nous accorderons à l'avocat les honoraires fixés par le nouveau tarif, mais nous en déduirons la différence entre les deux tarifs à l'étage auquel la cause était rendue au 1er septembre dernier. Ainsi par exemple supposons une action de la première classe dans laquelle l'issue était jointe mais qui n'était pas inscrite au 1er septembre, et qui a été jugée depuis, au mérite, après audition finale. Nous accorderons dans ce cas à l'avocat du demandeur $80, moins la différence entre l'item 8 du nouveau tarif et l'item — de l'ancien tarif, soit $ —.

Telle est la jurisprudence établie à Québec sur cette question.

Casgrain, Angers & Lavery, attorneys for plaintiff.

Chapleau, Hall, Brown & Sharp, attorneys for defendant.

Charles Fitzpatrick, counsel.

SUPREME COURT OF CANADA.

OTTAWA, Nov. 17, 1891.

Quebec.]

BENNING et al. v. THIBAUDEAU ES QUAL.

Insolvency—Claim against insolvent—Notes held as collateral security—Collocation—Joint and several liability.

Held, affirming the judgment of the Court below, M.L.R., 5 Q. B. 425, that a creditor who, by way of security for his debt,

holds a portion of the assets of his debtor, consisting of certain goods and promissory notes endorsed over to him, is not entitled, until fully paid, to be collocated upon the estate of such debtor in liquidation under a voluntary assignment for the full amount of his claim, but is obliged to deduct any sums of money he may have received from other parties liable upon such notes or which he may have realized upon the goods, provided it is before the day appointed for the distribution of the assets of the estate on which the claim is made.

Fournier, J., dissenting on the ground that the notes having been endorsed over to the creditor, as additional security, all the parties thereto became jointly and severally liable, and that under the common law the creditor of joint and several debtors is entitled to rank on the estate of each of the co-debtors for the full amount of his claim until he has been paid in full, without being obliged to deduct therefrom any sum from the estates of the co-debtors jointly and severally liable therefor.

Gwynne, J., dissenting on the ground that there being no insolvency law in force, the respondent was bound upon the construction of the agreement between the parties, viz., the voluntary assignment of Feb. 1882, to collocate the appellants upon the whole of their claim as secured by the deed.

Appeal dismissed with costs.

Beique, Q.C., for appellant.
Geoffrion, Q.C., for respondent.

Quebec.]

OTTAWA, Nov. 17, 1891.

ONTARIO BANK v. CHAPLIN.

Joint and several debtors — Insolvency—Distribution of assets—Privilege—Winding up Act, sec. 62—Deposit with Bank after suspension.

Held:—1st. Affirming the judgment of the Court below, M.L. R., 5 Q.B. 407, Strong and Fournier, JJ., dissenting, *Per* Ritchie, C.J., and Taschereau, J., that a creditor is not entitled to rank for the full amount of his claim upon the separate estates of insolvent debtors jointly and severally liable for the amount of the debt; but is obliged to deduct from his claim the amount previously received from the estates of other parties jointly and severally liable therefor.

Per Gwynne and Patterson, JJ. That a person who has realised a portion of his debt upon the insolvent estate of one of his

co-debtors, cannot be allowed to rank upon the estate in liquidation under the Winding up Act of his other co-debtor jointly and severally liable, without first deducting the amount he has previously received from the other estate. R.S.C., ch. 129, sec. 62. The Winding up Act.

2. (Affirming the judgment of the Court below), a person who makes a deposit with a bank after its suspension, the deposit consisting of cheques of third parties drawn on and accepted by the bank in question, is not entitled to be paid by privilege the amount of such deposit.

Appeal dismissed with costs.

H. Abbott, Q.C., for appellant.
Greenshields, Q.C., for respondent.

Quebec.]

OTTAWA, Feb. 16, 1892.

BELLECHASSE ELECTION CASE.

G. AMYOT v. LABRECQUE.

Dominion Controverted Elections—Election Petition—Status of petitioner—Onus probandi.

The election petition was served upon the appellant on the 12th of May, 1891, and on the 16th of May the appellant filed preliminary objections, the first objection being as to the status of petitioners. When the parties were heard upon the merits of the preliminary objections, no evidence was given as to the status of the petitioners and the Court dismissed the preliminary objections. On appeal to the Supreme Court it was

Held, reversing the judgment of the Court below and following the decision of this Court in the *Stanstead election*, (*ante*, p. 8) that the onus was on the petitioner to prove his status as a voter (Gwynne, J., disssenting).

Appeal allowed and petition dismissed.

Amyot for appellant.
Belleau, Q.C., for respondent.

Quebec.]

OTTAWA, Feb. 16, 1892.

ARGENTEUIL ELECTION CASE.

CHRISTIE v. MORRISON.

Dominion Controverted Elections—Election petition—Preliminary objections—Deposit of security—R.S.C., ch. 9 sec. 9(f).

The preliminary objection in the case was that the security and

deposit receipt was illegal, null and void, the written receipt signed by the prothonotary of the Court being as follows: "that "the security required by law has been given on behalf of the "petitioners by a sum of $1000, in a Dominion note, to wit, "a note of $1000 (Dominion of Canada) bearing the number 2914, "deposited in our hands by the said petitioners, constituting a "legal tender under the statute now in force." The deposit was in fact a Dominion note of $1000.

Held, affirming the judgment of the Court below, that the deposit and receipt complied sufficiently with section 9 (*f*) of the Dominion Controverted Elections Act.

Appeal dismissed with costs.

Code for appellant.

H. Abbott, Q.C., for respondent.

Quebec.]

OTTAWA, Feb. 16, 1892.

LAPRAIRIE ELECTION CASE.

GIBEAULT v. PELLETIER.

Dominion Controverted Elections—Election Petition—Preliminary examination of respondent—Order to postpone until after session —Effect of—Six months' limit—R.S.C., ch. 9, secs. 19 and 32.

On the 23rd April, 1891, after the petition in this case was at issue, the petitioner moved to have the respondent examined prior to the trial, so that he might use the deposition upon the trial. The respondent moved to postpone such examination until after the session, on the ground that being attorney in his own case, it would not "be possible for him to appear, answer the in-"terrogatories, and to attend to the case in which his presence "was necessary, before the closing of the Session." This motion was supported by an affidavit of the respondent, stating that it would be "absolutely necessary for him to be constantly in Court "to attend to the present election petition," that it was not possible "for him to attend to the present case, for which his presence "is necessary, before the closing of the Session," and the Court ordered the respondent not to appear until after the Session of Parliament. Immediately after the Session was over an application was made to fix a day for the trial, and it was fixed for the 10th of December, 1891, and the respondent was examined in the interval. On the 10th of December the respondent objected to the jurisdiction of the Court on the ground that the trial had

not commenced within six months following the filing of the petition, and the objection was maintained.

Held, reversing the judgment of the Court below, that as it appeared by the proceedings in the case and the affidavit of the respondent, that the respondent's presence at the trial was necessary, in the computation of time for the commencement of the trial, the time occupied by the Session of Parliament should not be included, R.S.C. ch. 9, sec. 32.

Appeal allowed with costs.

Choquette for appellant.
Lajoie for respondent.

Quebec.]

OTTAWA, Feb. 18, 1892.

PRESCOTT ELECTION CASE.

PROULX v. FRASER.

Dominion Controverted Elections — Election petition — Status of petitioner — When to be determined — R.S.C., ch. 9, secs. 12 & 13.

In this case the respondent by preliminary objection objected to the status of the petitioner, and the case being at issue, copies of the voter's lists for the electoral district were filed, but no other evidence was offered, and the Court set aside the preliminary objection without prejudice to the right of the respondent if so advised to raise the same objection at the trial of the petition. No appeal was taken from this decision, and the case went on to trial, when the objection was renewed, but the Court overruled the objection, holding they had no right to entertain it, and on the merits allowed the petition and voided the election. Thereupon the appellant appealed to the Supreme Court on the ground that the onus was on the respondent to prove the status, and that the status had not been proved.

Held, affirming the judgment of the Court below, that the objection raising the question of the qualification of the petitioner must be raised by preliminary objection and disposed of in a summary manner, and if the decision of the Court thereon is not appealed from, the Court will not entertain such preliminary objection at the trial. R.S.C. ch. 9, secs. 12 & 13.

Appeal dismissed with costs.

Belcourt for appellant.
Ferguson, Q.C., for respondent.

Quebec.]

OTTAWA, March 9, 1892.

DOMINION SALVAGE AND WRECKING COMPANY v. BROWN.

Action for call of $1,000—*Future rights—R.S.C. sec.* 29, *subsec.* (*b*) *of the Supreme and Exchequer Courts Act.*

The company sued the defendant B. for $1000, being a call of ten per cent on 100 shares of $100 each alleged to have been subscribed by B. in the capital stock of the Company, and prayed that the defendant be condemned to pay the said sum of $1000 with costs. The defendant denied any liability, and alleged that he was not a shareholder, and the Company's action was dismissed.

On appeal to the Supreme Court of Canada by the Company,

Held, that the appeal would not lie, the amount being under $2,000, and there being no such future rights as specified in subsec. (*b*) of sec. 29, which might be bound by the judgment. *Gilbert & Gilman*, 16 Can. S. C. R. 189.

Appeal quashed without costs.

Goldstein for appellant.

Blake, Q.C., for respondent.

Manitoba]

OTTAWA, Nov. 17, 1891.

WHELAN v. RYAN.

Assessment and Taxes—Irregular assessment—By-law—Validating Acts—Effect of—Crown lands.

In 1879 lands were purchased from the Dominion Government but patent did not issue until April, 1881. The patentee conveyed the lands which in May, 1882, were mortgaged to R. In 1880 and 1881 the lands were taxed by the municipality in which they were situate, and the taxes not having been paid, they were, in March, 1882, sold for unpaid taxes. The purchaser at the tax sale received a deed in March, 1883, and by conveyances from him the lands were transferred to W, who applied for a certificate of title thereto. R. filed a caveat against the granting of such certificate.

By the Statutes under which the lands are taxed the Municipal Council must, after the final revision of the assessment roll in every year, pass a by-law for levying a rate on all real and personal property assessed by said roll. No such by-law was passed in either of the years 1880 or 1881.

45 Vict. c. 16, s. 7, makes all deeds executed in pursuance of a sale for taxes valid, notwithstanding any informality in or preceding the sale, unless questioned within one year from the date of their execution, and 51 Vict. c. 101, s. 58, provides that "all assessments made and rates heretofore struck by the municipalities are hereby confirmed, and declared valid and binding upon all persons and corporations affected thereby."

Held, affirming the decision of the Court of Queen's Bench (6 Man. L. R. 565) Patterson J. dissenting, that the assessments for the years 1880 and 1881 were illegal for want of a by-law, and the sale made for unpaid taxes thereunder was void.

Held, per Strong and Gwynne, JJ., Patterson, J., *contra*, 1. The Acts 45 Vict. c. 16, sec. 7, and 51 Vict. c. 101, s. 58, only cure irregularities, but will not make good a deed that was absolutely void as in this case.

2. That until the patent was issued by the Dominion Government, these lands were exempt from taxation. The patent did not issue until April, 1881. Hence the taxes for which the lands were sold accrued due while they were vested in the Crown.

Held, per Strong, J., following *McKay* v. *Chrysler* (3 Can. S. C. R. 436) and *OBrien* v. *Cogswell* (17 Can. S. C. R. 420), that the defects cured by 45 Vict. c. 16, s. 7, are only irregularities in the proceedings connected with the sale, as distinguished from informalities in the assessment and levying of the taxes.

Appeal dismissed with costs.

S. H. Blake, Q.C., for the appellant.

Gormully, Q. C., for the respondent.

Manitoba.]

OTTAWA, Nov. 17, 1891.

STEPHENS v. MCARTHUR.

Construction of Statute—Transfer of personal property—Preference by—Pressure—Intent.

By the Manitoba Act, 49 Vict. s. 45, s. 3, "every gift, conveyance etc, of goods, chattels or effects made by a person at a time when he is in insolvent circumstances with intent to defeat, delay or prejudice his creditors, or to give to any one or more of them a preference over his other creditors or over any one or more of them, or which has such effect, shall as against them be utterly void."

Held, reversing the judgment of the Court of Queen's Bench

(6 Man. L. R. 496) Patterson, J., dissenting, that the meaning of the word "preference" in this act is that which has always been given to the expression when used in bankruptcy and insolvency statutes; it imports a voluntary preference, and does not apply to a case where the transfer has been induced by the pressure of the creditor.

Held, further, that a mere demand by the creditor without even a threat of legal proceedings, is sufficient pressure to rebut the presumption of a preference.

The words "or which has such effect" in the act apply only to a case where that had been done indirectly which, if it had been done directly, would have been a preference within the statute. The preference mentioned in the act being a voluntary preference, the instruments to be avoided as having the effect of a preference are only those which are the spontaneous acts of the debtor. *Molsons Bank* v. *Halter* (18 Can. S. C. R. 88) approved and followed.

Held, per Patterson, J., that any transfer by an insolvent debtor which has the effect of giving one creditor a priority over the others in payment of his debt, or which is given with the intent that it shall so operate, is void under the statute, whether or not it is the voluntary act of the debtor or given as the result of pressure.

Appeal allowed with costs.

Moss, Q.C., and *Wade* for the appellant.
Elliott, Q.C., for the respondent.

Manitoba.]

OTTAWA, Nov. 16, 1891.

ASHDOWN v. MANITOBA FREE PRESS Co.

Libel—Provisions of Act relating to newspapers—Compliance with—Special damages—Loss of custom—50 Vict. cc. 22 and 23, (Man.)

By section 13 of 50 Vict. c. 22, (Man.) "The Libel Act," no person is entitled to the benefit thereof unless he has complied with the provisions of 50 Vict. c. 23, "An act respecting newspapers and other like publications." By section 1 of the latter act no person shall print or publish a newspaper until an affidavit or affirmation, made and signed, and containing such matter as the act directs, has been deposited with the prothonotary of the Court of Queen's Bench or Clerk of the Crown for the district in which the newspaper is published.

By section 2 such affidavit or affirmation shall set forth the real and true names, etc, of the printer or publisher of the newspaper and of all the proprietors; and by sec. 6 if the number of publishers does not exceed four the affidavit or affirmation shall be made by all, and if they exceed four it shall be made by four of them; sec. 5 provides that the affidavit or affirmation may be taken before a justice of the peace or commissioner for taking affidavits to be used in the Court of Queen's Bench.

Held, affirming the decision of the Court of Queen's Bench (6 Man. L. R. 578), 1. That 50 Vict. c. 23, contemplates and its provisions apply to the case of a corporation being the sole publisher and proprietor of a newspaper.

2. That sec. 2 is complied with if the affidavit or affirmation states that a corporation is the proprietor of the newspaper and prints and publishes the same. Gwynne, J., dissenting.

3. That the affidavit or affirmation, in case the proprietor is a corporation, may be made by the managing director.

4. That in every proceeding under sec. 1 there is the option either to swear or affirm, and the right to affirm is not restricted to members of certain religious bodies or persons having religious scruples.

5. That if an affidavit or affirmation purports to have been taken before a commissioner, his authority will be presumed, and need not be proved in the first place.

By sec. 11 of the Libel Act, actual malice or culpable negligence must be proved in an action for libel unless special damages are claimed.

Held, that such malice or negligence must be established to the satisfaction of the jury, and if there is a disagreement as to these issues the verdict cannot stand.

Held, further, that a general allegation of damages by loss of custom is not a claim for special damages under this section.

Per Strong, J.—Damages by loss of custom must be specifically alleged and the names of the customers given, otherwise evidence of such damages is inadmissible.

Appeal dismissed with costs.

McCarthy, Q.C., for appellant.
Robinson, Q.C., for respondents.

Ontario]

OTTAWA, Nov. 16, 1891.

ELECTRIC DESPATCH CO. v. BELL TELEPHONE CO.

Contract—Telephone service—Transmission of messages—Construction of term—Breach.

The Bell Telephone Company sold to the Electric Despatch Company all its messenger, cab, etc, business in Toronto and the good-will thereof, and agreed, among other things, that they would in no manner, during the continuance of the agreement, transmit or give, directly or indirectly, any messenger, cab etc, orders to any person or persons, company or corporation, except the Electric Despatch Co. An action was brought for breach of this agreement, such alleged breach consisting of the Bell Telephone Company's allowing their wires to be used by their lessees for the purpose of sending orders for messengers, cabs, etc.

Held, affirming the judgment of the Court below, (17 Ont. App. R. 292) and of the Divisional Court (17 O. R. 495), Ritchie C. J., doubting, that the Telephone Company could not restrict the use of the wires by their lessees; that being ignorant of the nature of communications made over the wires by persons using them, the Company could not be said to "transmit" the messages within the meaning of the agreement, and that they were under no obligation, even if it were possible to do so, to take measures to ascertain the nature of all messages sent over the wires and prevent any being sent relating to messenger, cab etc orders.

Appeal dismissed with costs.

Robinson, Q. C., and *Moss, Q. C.*, for appellants.

Lash, Q. C., for respondents.

COURT OF QUEEN'S BENCH.

QUEBEC, May 4, 1885.

Coram DORION, C.J., RAMSAY, TESSIER, CROSS, BABY, JJ.

TOURVILLE et al. (plaintiffs in Court below), appellants, and BRITISH AMERICA ASSURANCE CO. (defendant in Court below), respondent.

Procedure—Service—Exception to the form.

HELD:—*Where the defendant, by exception to the form, attacks merely the sufficiency of the service, and it appears that the service is in fact insufficient, the Court in maintaining the exception*

should not dismiss the action, but should reserve to the plaintiff the right to adopt the necessary proceedings to have a proper service made of the action as provided by law, more especially where the dismissal of the suit would cause the right of action to be prescribed.

APPEAL from a judgment of the Superior Court, Three Rivers (BOURGEOIS, J.), Nov. 8, 1884, maintaining an exception to the form pleaded by the respondent, and dismissing the action. The judgment is in the following terms:—

"La Cour, après avoir entendu les parties par leurs avocats sur l'exception à la forme de la dite défenderesse, etc.....

"Considérant que la dite défenderesse a fait la preuve des allégations essentielles de sa dite exception à la forme, et que la dite exception est bien fondée;

"Maintient la dite exception à la forme de la dite défenderesse, déclare l'assignation en cette cause irrégulière et nulle, et renvoie l'action des dits demandeurs sauf aux demandeurs à se pourvoir, avec dépens, distraits, etc."

The action was brought by the appellants to recover the sum of $5,000, amount of a policy of insurance issued by the respondent in favor of one Duval, and transferred by Duval to the appellants.

The respondent is a foreign corporation having its principal establishment at Toronto. At the time the policy was issued the company respondent had an agent at Three Rivers, who at the same time was agent of several other insurance companies.

The appellants pleaded a declinatory exception which was dismissed. They also pleaded an exception to the form, which was maintained by the Court below, and the action dismissed.

The exception to the form alleged:

"Que la défenderesse (l'intimée) est une compagnie étrangère ayant son bureau principal à Toronto, dans la province d'Ontario;

"Qu'elle n'a pas de bureau à Trois-Rivières, ni d'agent à qui la signification d'une action puisse être légalement faite;

"Que l'assignation en cette cause est en conséquence irrégulière et illégale."

The appellants complained especially of the part of the judgment which dismissed their action. By their factum in appeal they submitted the following argument:—

"Si l'assignation était insuffisante aux yeux de la Cour, le jugement devait déclarer l'assignation irrégulière, mais non pas débouter la demande en cette cause. Cette demande était en

effet régulière et suffisante, et le bref de sommation émané en cette cause, était encore, malgré la prétendue insuffisance de l'assignation, un procédé régulier et utile, et pouvant servir de base à une nouvelle assignation, c'est-à-dire à l'assignation pourvue par l'article 62 du C. P. Ce bref n'était entaché d'aucune irrégularité, d'aucun vice, et puisqu'il pouvait encore servir, il n'y avait donc pas lieu de renvoyer l'action et de priver les appelants des droits acquis par l'institution même de l'action. L'intimée ne se plaignant, par son exception, que de l'insuffisance de l'assignation, la Cour ne devait pas rejeter la demande, mais bien se contenter de déclarer l'assignation irrégulière, si elle l'était.

"Pourquoi, en effet, débouter la demande lorsqu'elle est régulière, suffisante et légale, et qu'il n'y a qu'un simple défaut dans l'assignation; pourquoi surtout la rejeter, lorsque le bref et la demande sont encore valables, malgré l'irrégularité de l'assignation, et que la même action peut servir? En la rejetant, c'est faire encourir au demandeur des frais inutiles, c'est aussi quelque fois l'exposer à perdre même tous ses droits, comme dans le cas actuel. En référant à la police d'assurance sur laquelle est basée l'action en cette cause, on voit en effet que le recouvrement du montant de l'assurance ne peut être demandé en justice, à moins que l'action ou poursuite ne soit commencée dans l'année que la perte de la chose assurée a eu lieu. C'est là une condition essentielle, et la clause 15 de la police en question, prononce la déchéance de tous les droits de l'assuré si l'action n'est instituée dans l'année de l'incendie.

"Pigeau, 1er vol., p. 159, dit que les juges ne doivent pas admettre les nullités dont se plaignent les parties lorsqu'il y a mauvaise foi de leur part, comme lorsqu'elles ont éludé de répondre afin d'acquérir une prescription. Sous les circonstances, la Cour ne devait pas débouter cette action qui avait été prise en temps utile, lorsque surtout l'intimée s'était plaint de cette assignation dans un temps peu éloigné de la prescription, et que le jugement de la Cour exposait les appelants à perdre leur créance."

The appeal was maintained by the following judgment:—

"The Court of Our Lady the Queen now here, having heard the appellants and respondents by their counsel respectively; examined as well the record and proceedings in the Court below as the reasons of appeal filed by the said appellants and the answers thereto, and mature deliberation on the whole being had:

"Considering that, as it appears by the evidence in this cause, the company respondent had no office in the city of Three Rivers when the service of the action was made;

"And considering that although W. C. Pentland, upon whom the service was made, was at the time the agent of the company respondent with limited powers and for certain purposes only, and it does not clearly appear that he was such an agent as is contemplated by article 61 of the Code of Civil Procedure, upon whom a valid service of this action could have been made;

"And considering that it appears by the evidence in this cause that the company respondent has its principal office in the province of Ontario;

"And considering that although the service made in this cause appears to be insufficient, yet under the circumstances a valid service of the action can still be made, as provided for by article 62 and also by article 69 of the Code of Civil Procedure;

"And considering that instead of dismissing the action of the appellants on the ground that the service was insufficient, the Court below should have merely declared the service made insufficient, and allowed the appellants to make a proper service of the action as they had a right to do, and thereby preserve their right of action;

"The Court doth reverse the judgment rendered by the Court below on the 8th of November, 1884, and proceeding to render the judgment which the said Superior Court should have rendered, doth declare that the service of the present action is insufficient and null, and doth reserve to the appellants the right to adopt the necessary proceedings to have a proper service made of the action as provided by law against a foreign corporation;

"And the Court doth condemn the appellants to pay to the respondent the costs incurred on the exception *à la forme* of the said respondent and proceedings had thereon in the Court below;

"And as to the costs in appeal,

"Considering the appellants might have some reason to believe that W. C. Pentland, through whom the contract of insurance on which this action was made, was an agent on whom the action could be served, yet there was some default on their part in not making proper inquiries on the subject, it is hereby ordered that each party shall pay his own costs on the present appeal.'

Judgment reversed.

P. N. Martel for appellants.

Honan & Tourigny for respondent.

INSOLVENT NOTICES.

Quebec Official Gazette, Feb. 6, 13, 20.

Dividends.

BARBEAU, L., grocer, Montreal.—First and final dividend, payable March 9, C. Desmarteau, Montreal, curator.

BILODEAU & Godbout, Quebec.—First and final dividend, payable March 1, H. A. Bedard, Quebec, curator.

BOWER, William F., Malbaie.—First and final dividend, payable Feb. 29, J. T. Tuzo, Percé, curator.

BOYER & Co., Jules, St. John's.—First and final dividend, payable March 1, C. Desmarteau, Montreal, curator.

BRISEBOIS, Pierre, grocer, Montreal.—First and final dividend, payable March 10, C. Desmarteau, Montreal, curator.

CADIEUX, J. B., grocer, Montreal.—First and final dividend, payable March 11, C. Desmarteau, Montreal, curator.

CAMPBELL & Co., Kenneth.—First and final dividend (30 c.), payable Feb. 23, A. W. Stevenson, Montreal, curator.

CHAMBERLAND, Théo., Quebec.—Second and final dividend, payable March 1, H. A. Bedard, Quebec, curator.

DÉRY & Co., St. Charles.—First and final dividend, payable Feb. 23, D. Arcand, Quebec, curator.

DION, C., Three Rivers.—First dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

EXCHANGE Bank of Canada.—Dividend (2 c.), payable Feb. 16, Campbell & Stearns, liquidators.

GABOURY, A., Montreal.—Amended dividend, payable March 8, Kent & Turcotte, Montreal, joint curator.

GAGNÉ, O., Sorel.—First dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

GAUTHIER, A., Montreal.—First and final dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

GERMAIN, Gaspard.—Second and final dividend, payable March 8, D. Guay, Quebec, curator.

GIROUX, Francis, Montreal.—Second and final dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

GODBOUT & Bergeron, Quebec.—Second and final dividend, payable March 1, H. A. Bedard, Quebec, curator.

HAMILTON, John, New Glasgow.—First dividend, payable March 15, Kent & Turcotte, Montreal, joint curator.

JARRY, H. V.—First and final dividend, payable Feb. 24, C. Desmarteau, Montreal, curator.