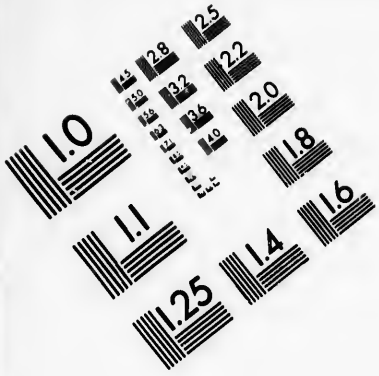
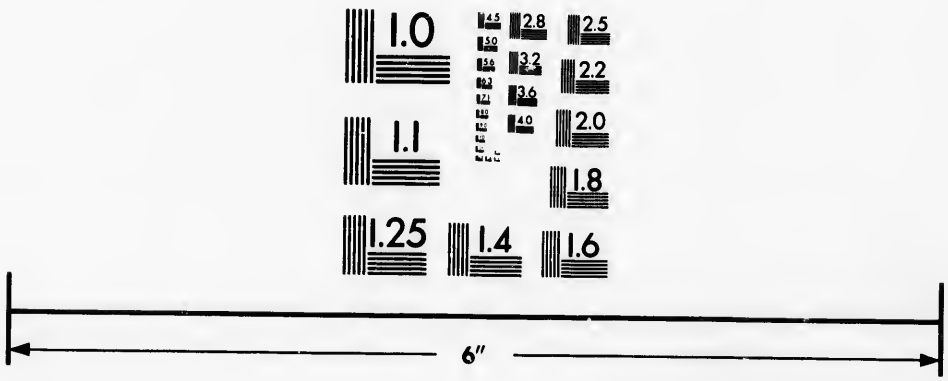
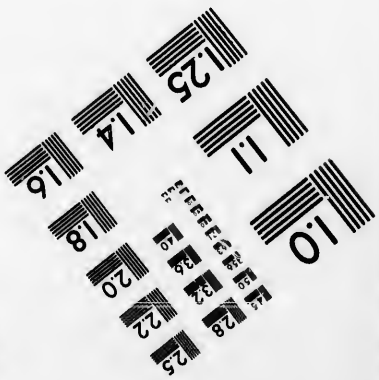


IMAGE EVALUATION
TEST TARGET (MT-3)





Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Continuous pagination/ Pagination continue
- ☐ Includes index(es)/ Comprend un (des) index

Title on header taken from:/ Le titre de l'en-tête provient:

- ☐ Title page of issue/ Page de titre de la livraison
- ☐ Caption of issue/ Titre de départ de la livraison
- ☐ Masthead/ Générique (périodiques) de la livraison

☐ Additional comments:/ Commentaires supplémentaires:

This item is filmed at the reduction ratio checked below/ Ce document est filmé au taux de réduction indiqué ci-dessous.

10X 12X 14X 16X 18X 20X 22X 24X 26X 28X 30X 32X

The copy filmed here has been reproduced thanks to the generosity of:

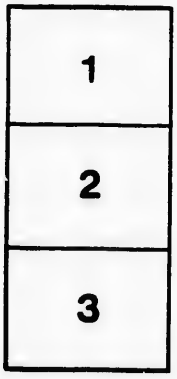
Library of the National
Archives of Canada

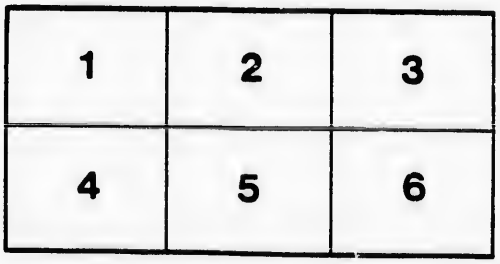
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol ⟶ (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:





L'exemplaire filmé fut reproduit grâce à la générosité de:

La bibliothèque des Archives
nationales du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole ⟶ signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

Additional *errata* found in first volume: *

1. For *having registered* in Art. 408, p. 248, read *not having registered.*
2. For 15 *L. C. J.* 300, in reference to Art. 755, p. 102, read 306.
3. For 9 *L. C. R.* 353, Art. 37, p. 570, read 9 L. C. R. 360.
4. For *demanded* in Art. 76, p. 904, read *amended.*
5. For *necessary* in Art. 150, p. 912, read *unnecessary.*
6. For *admissible*, Art. 221, p. 955, read *demurrable.*
7. For 10 *L. C. J.*, in reference to Art. 888, p. 1038, read 16 *L. C. J.*

* It is recommended that all the *errata* be entered in their appropriate places in the work.

THE

QUEBEC LAW DIGEST,

VOL. II,

BEING

A COMPLETE COMPILATION

OF ALL THE

REPORTED DECISIONS IN THE PROVINCE OF QUEBEC,

From the First of January, 1877, down to the First of January, 1881,

TOGETHER WITH A LARGE NUMBER OF IMPORTANT DECISIONS, PRINCIPALLY OF THE YEARS 1876-77, NOT TO BE FOUND IN ANY OF THE REPORTS,

THE WHOLE

ANALYTICALLY DIGESTED AND ARRANGED,

WITH

CONSTANT REFERENCE TO THE CODES AND STATUTES

IN RELATION THERETO,

BY

CHARLES HENRY STEPHENS, B.C.L.,

ADVOCATE.

MONTREAL:
PUBLISHED BY JOHN LOVELL & SON,
1882.

PREFACE.

THIS volume is, of course, a continuation of the first. In its preparation, however, I have enjoyed several advantages as compared with the first which only require to be mentioned to be obvious to every one. These are the experience acquired in the preparation of the first; a greater personal familiarity with the cases to be digested; and a body of matter more easily handled. By means of these I have (as I believe) been able to carry out more perfectly the aim of the first volume, namely, to make the work not only a mere index to the reported cases, but to make it a work of reference such as may be to a great extent cited with confidence without further reference to the reports. In digesting a case I have studied to give all of its essentials, all which appears to have influenced the decision as far as could be gathered from the report; to make, in other words, the digested statement a complete epitome of the case in as few words as possible.

Besides being a digest of the reported cases for the period mentioned on the title page, this volume will be found also a digest of the principal public statutes of the Province and of the Dominion for the same period. This it is hoped will add very largely to its usefulness. Statutes so short as to run a chance of being overlooked have been reproduced, while others are pointed out under the headings to which they belong, making the volume a digest not only of the jurisprudence, but of the legislation of the years which it represents.

In the arrangement of the matter both the system and the nomenclature of the first volume has been strictly adhered to, so that whatever the heading under which a given subject is found in the first volume, the same will be the heading and arrangement under which to find it in the second.

Great care has been taken to follow and discover the fate of each decision carried to the higher courts, though, from the absence of all system in reporting, this is sometimes a task of great difficulty, and many decisions are overruled of which no report is ever made.

As it seems inevitable that a digest such as is here attempted will become a periodical necessity, it is recommended that the different volumes be made uniform in appearance and numbered on the outside for facility of reference.

C. H. S.

MONTREAL, *August 21st*, 1882.

C. C

C. C

C. C.
C. S.

C. S.

C. Vi
Ins. A
L. J.
L. C. J
L. N.
Mag.
M. C.

LIST OF ABBREVIATIONS.

C. C.....(Following reference to Reports) Circuit Court.
C. C.....(Following a number thus: 999 C. C.) Civil Code.
C. C. P.....Code of Civil Procedure.
C. S. C.....Consolidated Statutes of Canada.
C. S. L. C....Consolidated Statutes of Lower Canada.
C. Vic., etc..Dominion Statutes.
Ins. Act.....Insolvent Act.
L. J.....English Law Reports.
L. C. J.....Lower Canada Jurist.
L. N.....Legal News.
Mag. Ct.....Magistrates' Court.
M. C.....Municipal Code.
M. P. C. R..Moore's Privy Council Reports.
P. C.....Privy Council.
Po. Ct.....Police Court.
Q. B.....Queen's Bench.
Q. B. R.....Queen's Bench Reports.
Q. L. R.....Quebec Law Reports.
Q. S.....Quarter Sessions.
Q. Vic., &c..Quebec Statutes.
Rec. Ct.....Recorder's Court.
R. L.....Révue Legale.
S. C.....Superior Court.
S. C. R.....Superior Court in Review.
S. C. Rep...Supreme Court Reports.
Su. Ct.....Supreme Court.
V. A. C.....Vice-Admiralty Court.

LIST OF REPORTS

DIGESTED IN THIS VOLUME.

Legal News, ... Vols. 1, 2 & 3.
Lower Canada Jurist, ... 21, 22, 23 & 24.
Quebec Law Reports, ... 3, 4, 5 & 6.
Revue Légale, ... 7, 8, 9 & 10.
Supreme Court Reports, ... 1, 2 & 3.

And as much of subsequent volumes as refer to appeals from judgments reported in the volumes above cited.

A COMPLETE

ANALYTICAL DIGEST

OF ALL THE

REPORTED DECISIONS IN THE PROVINCE OF QUEBEC.

A.

SUMMARY OF TITLES.

	Page
ABANDONMENT	3
ABATEMENT	3
ABDUCTION	3
ABSCONDING DEBTOR	3
ABSENCE	3
ABSENTEE	3
ACCEPTANCE	4
ACCEPTANCES	5
ACCESS	5
ACCESSION	5
ACCIDENTS	5
ACCOMMODATION PAPER	5
ACCOUNT	5
ACCOUNTS	6
ACKNOWLEDGMENT	7
ACQUIESCENCE	7
ACQUISITIONS	7
ACQUITTAL	7
ACQUITTANCE	8
ACTE	8
ACTION	8
ACTS OF PARLIAMENT	35
ADJUDICATAIRE	39
ADMINISTRATION	39
ADMINISTRATORS	39
ADMIRALTY	40
ADMISSIONS	40
ADULTERY	40
ADVANCES	40
ADVERTISEMENTS	41
ADVICE	41
ADVOCATES	41
AFFIDAVIT	42
AFFREIGHTMENT	43
AGE	45
AGENCY	45
AGENT	52
AGGRAVATED ASSAULT	52
AGGRAVATION	52
AGREEMENT	52
ALDERMEN	53
ALIAS WRIT	53
ALIENATION	53
ALIENS	53
ALIMENTS	53
ALLOWANCE	54
ALTERATION	55
ALTERNATIVE OBLIGATION	55
AMABLE COMPOSITEURS	55
AMENDMENT	55
AMEUBLISSEMENT	55
ANIMALS	55
ANSWERS	55
ANSWER-IN-LAW	55
APPEAL	55
APPEARANCE	77
APPRENTICES	77
APPROPRIATION	77
ARBITRATION	77
ARCHITECTS	78
ARCHIVES	79
ARPENTEURS	79
ARREARS	79
ARREST	79
ARSON	79
ARTICULATION OF FACTS	79
ASCENDANT DONATEUR	79
ASSAULT	79
ASSEMBLÉE DE PARENTS	80
ASSESSMENT ROLL	80
ASSESSMENTS	80
ASSESSORS	80
ASSETS	80
ASSIGNEE	80
ASSIGNEES	80
ASSIGNMENT	80
ASSOCIATIONS	81
ASSURANCE	81
"ATALAYA," THE	81
ATERMOIEMENT	81
ATTACHMENT	81
ATTESTATION	89
ATTORNEY	89
ATTORNEYS AD LITEM	89
ATTORNEY GENERAL	91
AUCTION	91
AUCTIONEER	92
AUTHENTIC ACTES	92
AUTHORITY	92
AUTHORIZATION	92
AVEU JUDICIAIRE	92
AVIS DE PARENS	92
AVOWAL	92
AWARD	92

ABANDONMENT.

I. Declaration of, in Cases of Capias, *see* CAPIAS.

II. Of Judgment, *see* PROCEDURE De-sistement.

III. Of Property against which the Hypothecary Action is brought, *see* ACTION Hypothecary, HYPOTHEC.

ABATEMENT.

I. Of Public Nuisance, *see* NUISANCE.

ABDUCTION—*See* CRIMINAL LAW.

ABSCONDING DEBTOR—*See* CAPIAS.

ABSENCE.

I. Of Defendant arrested on Capias, *see* CAPIAS.

ABSENTEE.

I. Action against.

II. Prescription against.

I. Action against.

1. Defendant being sued in Montreal declined the jurisdiction on the ground that the right of action did not origionte there; that he had not been served personally there, and that he was not domiciled there, but in New York. The Superior Court maintained the exception; but in Review the judgment was reversed, on the ground that the defendant had property and money within the jurisdiction*. *Macdonald & MacKay & Routh*, 2 L. N. 301, S. C. R. 1879, & Q. B., 1880.

II. Prescription against.

2. In an action in declaration of hypothec the defendant pleaded *inter alia* prescription of ten years with title—*Held*, that as the plaintiff had been absent all the time, and the prescription invoked was prior to the Code that the plea must be dismissed†. *Hebert & Menard*, 10 R. L. 6, S. C. 1876.

*If the defendant has left or has never had his domicile in Lower Canada the court or judge, or the prothonotary, upon a return statbig that he cannot be found in the district, may order him to appear within two months from the last publication of such order. The order must be published in the French and English languages, and be twice inserted in a newspaper published in each language respectively, in the district where the court is held; and in default of either of such newspapers in such district, then it is inserted in a similar newspaper of the nearest locality, and such newspapers are indicated in the order by the court or judge, or the prothonotary. 68 C. C. P.

†Prescription runs against absentees as against persons present, and by the same lapse of time, saving what is declared as to persons authorized to take provisional possession of the estate of an absentee. 2292 C. C.

ACCEPTANCE.

I. Of Delegation.
II. Of Delivery of Goods.
III. Of Guarantee.
IV. Of Succession.
V. Of Transfer to Minor.

I. Of Delegation.

3. Appellants were the mortgagees of a property purchased by respondent from the mortgagor, with undertaking by respondent to pay the mortgage. Respondent to an action on this undertaking pleaded want of acceptance. Appellant, on the other hand, pretended that tacit acceptance was sufficient, and that the registration of the undertaking, and above all that respondent had made payments on account of the mortgage to appellants—*Held*, in appeal that the registration was not evidence of acceptance, and that the receipts of payments did not imply an acceptance of the new debtor, but only of the money. *La Société Permanente de Construction & Robinson*,* 2 L. N. 148, S. C., & 4 L. N. 38, Q. B. 1880.

4. But where the creditor had accepted the delegation without discharging the first debtor—*Held*, on a contestation of a collocation in favor of the creditor that novation had not taken place, and the release by the creditor of half the land applied only to his hypothec thereon, and did not affect the personal liability of the original debtor. *Middlemiss & Jackson & Leduc*, 2 L. N. 404, & 24 L. C. J. 33, S. C. R. 1879.

5. But in the Superior Court, under similar circumstances, the mortgage creditors having sued the *delégué* the latter demurred on the ground that it was not alleged that the delegation had been accepted prior to the institution of the action—*Held*, that the action was a sufficient acceptance of the delegation. *O'Halloran & Boucher*, 2 L. N. 285, S. C. R. 1879, & *Drummond & Holland*, *Ib.* & 23 L. C. J. 240, S. C. & *Gadoury & Archambault*, followed.

6. And in a later case—*Held*, that the acceptance was matter of consent merely between the creditor and the purchaser, and may be proved by shewing that both purchaser and creditor acknowledged and accepted the relation of debtor and creditor. *Trust & Loan Co. & Guertin*, 3 L. N. 382, S. C. R. 1880.

II. Of Delivery of Goods.

7. A person who takes delivery of goods ordered by another person in his name and shipped to his address, on the understanding that the sellers should draw on such party for the amount of invoice, cannot retain the goods and refuse to accept the draft, or pay the amount thereof. *Poulin & Williams*, 22 L. C. J. 18, Q. B. 1877.

*The simple indication by the debtor of a person who is to pay in his place, or the simple indication by the creditor of a person who is to receive in his place, or the transfer of a debt with or without the acceptance of the debtor does not affect novation, 1174, C. C.

And see *Mallette & Hudon* (22 L. C. J. 101) in which an indication of payment by the creditor in favor of another was held to be no bar to an action by such creditor so long as there was no express acceptance of the delegation.

III. Of Guarantee.

8. A letter of guarantee by an agent of a tanner, to the effect that, in consideration of the party to whom the letter is addressed endorsing a note for $2,000 in favor of the tanner, he will retain in his hands the surplus funds to the extent of $2,000 arising from the sales of sole leather then coming in for sale and in process of manufacture, is binding on such agent personally, without special acceptance, and is also binding, notwithstanding that the note so endorsed should be for $2,200 instead of $2,000. *Beattie & Workman*, 2 L. N. 212, & 24 L. C. J. 15, Q. B. 1879.

IV. Of Succession.

9. Where a succession had been accepted by a tutor to minors, with the advice of a family council—*Held*, that it could not be set aside without making the minors parties to the action. *Rolland & Michaud*, 9 R. L. 19, Q. B. 1876.

V. Of Transfer to Minor.

10. Where a father made a transfer of Bank shares from himself to himself in trust for his minor son, and the Bank paid two dividends under the transfer, but refused to pay further—*Held*, on an action by a tutor appointed *ad hoc*, that the transfer was void for want of acceptance. *Walsh & Union Bank*, 5 Q. L. R. 289, S. C. 1879.

ACCEPTANCES.

I. Liability of Acceptor, *see* BILLS OF EXCHANGE.

ACCESS.

I. Right of, *see* RIPARIAN PROPRIETORS, RIVER BEACHES, SERVITUDES.

ACCESSION—*See* Ownership.

ACCIDENTS.

I. Caused by Contributory Negligence, *see* NEGLIGENCE.

II. Liability for, *see* MASTER & SERVANT, DAMAGES, RAILWAYS.

ACCOMMODATION PAPER.

I. Rights of Transferee on, *see* BILLS OF EXCHANGE.

ACCOUNT.

I. Action on, *see* ACTION Assumpsit.
II. Action to, *see* ACTION.
III. Of Administration of Sec.-Treasurer of School Commissioners.
IV. Of Continued Community.
V. Of Tutorship.

I. Action to.

11. In an action to account brought against the representatives of one who had been tutor to the plaintiff—*Held*, that the nullity mentioned in Art. 311 of the Civil Code* with regard to settlements between a minor become of age and his tutor, relating to the administration, is only a relative nullity, and must be be invoked by the pupil, who cannot bring an action to account *de plano* against the tutor, without asking to be relieved from the discharge given upon the first account. *Pierce & Butters*, 3 L. N. 28, & 24 L. C. J., 167 Q. B. 1879.

12. Action to account between *quondam* partners. Plea, that it was for plaintiff to render an account, as he had in his possession the books and papers of the partnership. Plea overruled, and defendant condemned to render an account. *Powell & Jones*, 2 L. N. 325, S. C. 1879.

II. Of Administration of Sec.-Treas. of School Commissioners.

13. An account of the administration of the Sec.-Treas. of School Commissioners must be rendered before action can be brought for balance due him. *Dorais* v. *School Commissioners of Warwick*, 9 R. L. 161, Q. B. 1877.

IV. Of Continued Community.

14. A woman in community with her husband died, leaving a will by which she bequeathed to her husband during the time he should remain unmarried the usufruct and enjoyment of all her property, on his making a good and faithful inventory thereof, and on his death the remainder was to her heirs. The husband neglected to make an inventory, and on being sued for an account by one of the heirs, pleaded that she had sold to him all her right of succession in the estate of the deceased, and after her majority ratified and acknowledged the sale—*Held*, that by such sale the plaintiff had stripped herself of the right to demand an account and partage of the effects of the community. *St. Aubin* v. *St. Aubin*, 1 L. N. 116, Q. B. 1878.

V. Of Tutorship.

15. Where a minor, while only emancipated by marriage, had accepted an account from her tutor and approved of it—*Held*, that she could not get an order against her tutor to render another account, until she had asked to be released from the first one. *Desgroseillers & Riendeau*, 24 L. C. J. 170, Q. B. 1877.

Nor is a tutor obliged to render an account because he should have in his hands a small sum of money which he has disbursed to the knowledge of the minor, since become major, and done other acts of administration since ratified by the minor. *Pelletier & Pelletier*, 10 R. L. 476, S. C. 1879.

ACCOUNTS.

I. Between Partners, *see* PARTNERSHIP.
II. Of Executors.
III. Rendering of.
IV. Settlement of.
V. Vouchers with.

*Every settlement between a minor become of age and his tutor, relating to the administration and account of the latter, is null, unless it is preceded by a detailed account and the delivery of vouchers in support thereof.

II. Of Executors.

16. Action by appellant as universal legatee of his wife for an account to be rendered by the respondents of their administration of the property of the deceased, and for the partage of a certain immoveable belonging to the succession of his deceased wife's mother—*Held*, that as to the immoveable, which was alleged to belong to various commercial partnerships, the appellant could have no rights therein, so long as the affairs of the said commercial firm had not been liquidated.* *Chevalier & Cuvillier*, 2 L. N. 239, Q. B. 1879.

17. And *held*, also, that as to certain real estate alleged to belong to his deceased wife's father, and to have been sold by the sheriff at the suit of the respondents, and to have been bought in by themselves, the appellant could have no right therein so long as the said decrêt had not been set aside. *Ib.*

III. Rendering of.

18. An account rendered and filed under a judgment of the court will be rejected as irregular, if it does not exhibit the three heads of "receipts," "disbursements," and "the balance to be recovered." *Les Curés et Marguilliers de la Paroisse de St. Clement de Beauharnois v. Robillard*, 21 L. C. J. 122, S. C. 1877.

IV. Settlement of.

19. In an action on account the defendant tendered $60, and the plaintiff in reply produced a settlement between the parties by which the amount sued for was shewn to be what the parties had agreed upon as the proper balance due by defendant—*Held*, on the evidence, that the settlement would be maintained. *Duhaime v. Ayotte*, 3 L. N. 273, Q. B. 1880.

V. Vouchers.

20. Motion was made to reject an account because unaccompanied by vouchers. Affidavit was filed with the account, shewing that the vouchers were in the possession of third parties, and were not obtainable. Motion rejected. *Chevalier & Cuvillier et al.*, 21 L. C. J. 308, S. C. 1877.

ACKNOWLEDGMENT—*See* EVIDENCE, Admissions.

I. Of Debt Sufficient to Prevent Prescription, *see* PRESCRIPTION.

ACQUIESCENCE—*See* WAIVER.

I. In Judgments, *see* JUDGMENTS.

II. What is, *see* COSTS, where Defendant Declines to Plead De Novo.

ACQUISITIONS.

I. Made by Wife During Marriage, *see* MARRIAGE.

ACQUITTAL.

I. Discharge of Jury During Trial not Equivalent to, *see* CRIMINAL LAW Trial.

* Affirmed in Supreme Court.

ACQUITTANCE—*See* PAYMENT, RECEIPT, etc.

ACTE.

I. Authentic, *see* DEEDS.
II. Of Partage, *see* PARTITION.

ACTION.

I. Against.
Absentee.
Assignee.
Interdict.
Minors.
Municipal Corporations.
Partnership, see PARTNERSHIP.
School Commissioners.
Succession.
Women.
II. All Parties Interested must be Joined in.
III. Assumpsit.
IV. By.
Father of Minor.
Partnership after Change of Partners.
Purchaser of House to Eject Lessee.
Representative of Person Deceased.
Sequêstre.
Surety.
V. Continued for Costs, *see* COSTS.
VI. Conviction a bar to.
VII. Cumulation of.
VIII. Discontinuance of Subject to Payment of Costs, *see* COSTS.
IX. En Bornage.
X. En Complainte.
XI. En Declaration de Paternité.
XII. En Destitution de Curatelle.
XIII. En Garantie.
XIV. En Reddition de Compte.
XV. En Réintegrande.
XVI. En Réméré.
XVII. En Repetition.
XVIII. En Resolution de Vente.
XIX. En Séparation de Biens.
XX. En Séparation de Corps.
XXI. For Fees for Measuring Timber.
XXII. For Liquor.
XXIII. Form of.
XXIV. For Rent.
XXV. For Salary, *see* MASTER & SERVANT.
XXVI. For Taxes.
XXVII. For Wages.
XXVIII. Hypothecary.
XXIX. Incompatible Grounds of, *see* Cumulation of.
XXX. In Ejectment.
XXXI. Interest in.
XXXII. Nature of.
XXXIII. Notice of, *see* PROCEDURE.
XXXIV. Of Damages.
XXXV. On Bets.
XXXVI. On Bills and Notes.
XXXVII. On Foreign Judgment.
XXXVIII. On Obligation Signed by Attorney.
XXXIX. On Penalty in Contracts.
XL. On Surety Bond.
XLI. On Unsigned Notarial Transfer.

XLII. Petitory.
XLIII. Pionoratitia Directa.
XLIV. Populaire, *see* Qui Tam.
XLV. Possessory.
XLVI. Pro Socio, *see* en Reddition de Compte.
XLVII. Quanto Minoris.
LXVIII. Quantum Meruit.
XLIX. Qui Tam.
L. Redhibitory.
LI. Revocatory.
LII. Right of.
On Transferred Claim.
Where arises.
LIII. Service of, *see* PROCEDURE.
LIV. Suspension of by Death of Party.
LV. To Account, *see* en Reddition.
LVI. To set aside Acceptance of Succession.
LVII. To s t aside Deeds of Sale.
LVIII To annul Municipal By Laws, *see* MUNICIPAL CORPORATIONS.
LIX. Under Lessor and Lessee Act.
LX. Union of.

I. Against.

21. *Absentee.*—To an action against defendant, accompanied by *saisie arrêt en main tierce*, defendant filed declinatory exception, alleging that the action being purely personal he was wrongly sued in Montreal, the right of action not having originated there, and no personal service having been made upon him there, and that he was not domiciled there but in New York. The Superior Court maintained the exception; but in review the judgment was reversed on the ground that defendant had property and money within the jurisdiction. *Macdonald & McKay & Routh*, 2 L. N. 301, S. C. R. 1879, & Q. B. 1880.

22. *Assignees in Insolvency.*—Under the Insolvent Act of 1875—*Held*, that in cases where the Insolvent Act did not afford relief against an assignee the remedy by ordinary suit was not taken away, notwithstanding anything contained in sec. 125 of the Insolvent Act of 1875, and, therefore, where the assignee to an insolvent estate sold a portion of the insolvents' real estate, and the purchaser was sued by the neighboring proprietor by reason of a building which had been erected by the insolvent against said neighbor's wall without having acquired the right of *mitoyenneté*, the assignee was properly called in as a *garant* by the purchaser. *Stewart & Farmer*, 24 L. C. J. 79, Q. B. 1879.

23. *Interdict.*—Action against an interdict personally because his name was not correctly spelled in the *tableau des interdits*. The *conseil* was afterwards called in; judgment against *causeil*, but not against interdict personally. *Ritchot* v. *Hayvren*, 2 L. N. 248, S. C. 1879.

24. *Minors.*—In an action against a minor the defendant, even if he has not pleaded his minority, has a right to suggest the fact to the court at any stage of the case and get relief. *Bousquet & Rousseau*, 2 L. N. 59, S. C. R. 1879.

25. A minor, emancipated by marriage, does not require the assistance of a curator to defend a personal action. *Gagnon* v. *Sylva*, 3 L. N. 332, S. C. R. 1880.

26. *Municipal Corporations.*—The Statute 27 & 28 Vic., cap. 60, sec. 18,* which provides the procedure to be followed in certain actions against the Corporation of Montreal for damage to private property, does not exclude the right to proceed by ordinary action, and if the Corporation wishes to establish the amount of the damage by means of commissioners, it is for them to demand the appointment of such commissioners. *Morrison & Mayor, &c., of Montreal*, 4 L. N. 25, & 1 Q. B. R. 107, Q. B. 1880.

27. *Partnership.* — Action was instituted against a firm as composed of D. G. & W. G. Plen, that no partnership existed. Evidence, that there was a firm, but not composed as alleged. Action dismissed, but without costs, as the plea ought to have disclosed the composition of the firm. *Morey* v. *Gaherty*, 2 L. N. 108, S. C. 1879.

28. *School Commissioners.*—Action by school commissioners as a corporation against three of their number personally. It was alleged that the defendants without cause or reason, but illegally, fraudulently, and in bad faith, had paid to a woman named A. C. to whom nothing was due, $136 out of the funds of the plaintiffs. Further, that in January, 1878, another sum of $20.20 was paid by defendants, with the money of plaintiffs, for costs on a judgment rendered in December, 1877, by the Magistrate's Court at Ste. Marthe against plaintiffs, at the suit of J. A., who claimed her salary as a teacher, which sums defendants illegally, unjustly and in bad faith refused to pay her. Defendants pleaded want of notice of action, and that more than six months elapsed between the act complained of and the institution of the action, and there was consequently prescription under C. S. L. C., cap. 101; s.s. 1 & 7. They also pleaded good faith—*Held*, that the pleas were unfounded, but that, on the allegations of the declarations, the demand should have been for damages. *School Commissioners of Ste. Marthe & St. Pierre*, 2 L. N. 343, S. C. 1879.

* All the provisions contained in the 13th section of the present Act, with regard to the appointment of Commissioners, and the mode of ascertaining the value of the pieces or parcels of land or real estate taken by the corporation of the said city, shall be and are hereby extended to all cases in which it shall become necessary to ascertain the amount of compensation to be paid by the said corporation to any proprietor of real estate, or his representatives, for any damage he or they may have sustained by reason of any alteration made by order of the said council, in the level of any foot-path or sidewalk, or by reason of the removal of any establishment subject to be removed under any by-law of the said corporation, or to any party by reason of any other Act of the said council, for which they are bound to make compensation, and with regard to the amount of compensation, for which damage the party sustaining the same, and the said corporation shall not agree, and the amount of such compensation shall be paid at once by the said corporation to the party having a right to the same without further formality; and any person who shall erect any building whatever upon or contiguous to any established or contemplated street, public place or square in the said city, without having previously obtained from the city surveyor the level of such street, public place or square, shall forfeit his or her claim for damages or compensation, by reason of any injury caused to the property when such level shall be settled and determined by the said council through the road committee.

29. *Succession.*—The action of an heir-at-law for letters of administration of a succession can be granted only in the district where the succession opened. *McCorkill Exp.*, S. C. 1879.

30. *Women.* - A wife sued as a widow may, without authorization, plead the existence of her husband, and the plaintiff will be obliged to call him in. *Smith* v. *Chretien*, 2 L. N. 39, & 23 L. C. J. 8, C. C. 1878.

31. When a woman is sued as a widow, and she establishes that before the institution of the action she was re-married, the action should be dismissed, and a special answer alleging that when the debt was contracted the defendant was a widow, and that she is separated as to property from her second husband, should also be dismissed on demurrer. *Dynes* v. *Falardeau*, 6 Q. L. R. 348, C. C. 1880.

II. All Parties interested must be joined in.

32. Plaintiff sued defendant to compel him to accept the transfer of a piece of land. Defendant pleaded that the purchase was dependent upon him (the plaintiff) furnishing him all the documents necessary to prove his title; that plaintiff had not furnished such documents, and, in fact, plaintiff was only proprietor of one-half, the other half, which belonged to his wife, was bequeathed by her to her children. The facts being established as pleaded, the action was dismissed. *Thompson* v. *Foster*, 2 L. N. 343, S. C. 1879.

33. But where a sale was attacked by the contestation of an opposition, in which it was set up as made in fraud of the creditors of the vendor, among whom was the contestant, it was pointed out that all the parties to the deed thus attacked need not be joined, as they were jointly and severally responsible as for a *quasi délit*. *Kane* v. *Racine*, 3 L. N. 66, & 24 L. C. J. 216, Q. B. 1880.

34. And where all the parties who should be joined have not been, it is the duty of the court to order them to be called in and not to dismiss the action. *Ib.*

III. Assumpsit, *see* By *Partnership*.

35. Appellant sold lumber to one P, who used it in building two houses on the property of respondent. Respondent paid appellant for the lumber used in the construction of one of the houses, but refused to pay for that used in the construction of the other on the ground that he had never authorized P to purchase lumber for the second house—P having built it for his own benefit. Appellant brought action in assumpsit for the full amount of the lumber used by P—*Held*, that the action in assumpsit in such case was wrongly brought, and judgment dismissing confirmed *Ryder & Vaughan*, 3 L. N. 91, & 1 Q. B. R. 19, Q. B. 1880.

36. A person who had been secretary-treasurer of Common School Commissioners for a number of years, and who had carried on business at the same time, failed, and his book debts were sold by the assignee, who sold to plaintiff the claim of the insolvent against the school commissioners. The plaintiff brought action in assumpsit for $152.40, which appeared to him to be due, without seeking an account or filing one—*Held*, that the action must be dismissed in default of an account of the administration of the late secretary-treasurer, shewing the details and balance due. *Dorais* v. *School Commissioners of Warwick*, 9 R. L. 161, Q. B. 1877.

IV. By.

37. *Father of Minor.*—Action by father for wages due to his son by the defendant. There was no allegation that he had been appointed tutor to his son, nor that it was the father who had placed him in the service of the defendant. The grounds of the action were that by special agreement the defendant had acknowledged to owe the debt to the plaintiff. Action dismissed on demurrer. *Renaud* v. *Dussault*, 6 Q. L. R. 259, C. C. 1880.

38. *Partnership after Change of Partners.*—B & O carried on business at Sherbrooke under the firm of B, O & Co., and respondent was carrying on mining operations at the mines in Ascot. B & O opened a shop there in order to supply the workmen at the mines. The business went on for a long time, and they supplied a large quantity of goods to respondent. O died on the 20th December, 1871, and the business was then continued under the same name by B and the wife of the deceased, O, who acted as well in her own name as having been *commune en biens* with her deceased husband, as in her quality of tutrix to her minor children. They continued to supply respondent with goods. The action was now brought by the new firm. Most of the items charged in the account were for goods supplied by the old firm. The plaintiffs amended their declaration so as to make it apply to both firms, but there was an omission to state that the widow represented her late husband as having been *commune en biens* and as tutrix to the minors. The action resolved itself into a mere action of assumpsit for goods sold and delivered, and for moneys advanced. The court below dismissed the action upon two grounds: First. That the old firm was dissolved by the death of O, and it was not shewn that the present plaintiffs legally represented the late firm. Second. Because the drafts referred to in the account were not produced. In appeal—*Held*, that these two grounds were very proper, but there was a third stronger still. The action, instead of being brought in *assumpsit* merely, should have shewn that these partnership accounts had been settled in some way, so as to give the plaintiffs a right to sue. Judgment dismissing the action confirmed. *Brooks & Adams*, Q. B. 1877.

39. *Purchaser of House to Ejeet the Lessee.*—Plaintiff purchased a house of which the defendant had a lease, and in the deed of purchase recognized the lease and undertook to be subject to it. Afterwards he took petitory action to gain possession, alleging that the lease had expired—*Held*, that the petitory action was wrongly brought; that having recognized the lease his proper course was an action in ejectment, as between lessor and lessee; and that, moreover, there being no term fixed by the lease, the defendant was entitled to three months' notice. *Boudreau & Dorais*, 10 R. L. 458, Q. B. 1880.

40.—*Representatives of a person deceased.*—In an action by the father of a person killed on the Grand Trunk Railway as representing himself, the mother, two brothers and a minor sister

ount of the administration of easurer, shewing the details *Dorais* v. *School Commis-*, 9 R. L. 161, Q. B. 1877.

nor.—Action by father for by the defendant. There at he had been appointed that it was the father who e service of the defendant. action were that by special dant had acknowledged to plaintiff. Action dismissed *d* v. *Dussault*, 6 Q. L. R.

ter Change of Partners.— siness at Sherbrooke under o, and respondent was car- erations at the mines in d a shop there in order to at the mines. The busi- g time, and they supplied ods to respondent. O died r, 1871, and the business nder the same name by B ased, O, who acted as well having been *commune en* ceased husband, as in ix to her minor chil- d to supply respondent on was now brought by f the items charged in the supplied by the old firm. l their declaration so as h firms, but there was an he widow represented her g been *commune en biens* minors. The action re- e action of assumpsit for ed, and for moneys ad- low dismissed the action t. That the old firm was n of O, and it was not plaintiffs legally repre-

Second. Because the account were not pro- , that these two grounds ere was a third stronger d of being brought in I have shewn that these d been settled in some aintiffs a right to sue. he action confirmed. 1877.

e to Eject the Lessee.— use of which the de- in the deed of purchase ndertook to be subject petitory action to gain the lease had expired y action was wrongly cognized the lease his tion in ejectment, as ; and that, moreover, by the lease, the de- hree months' notice. . L. 458, Q. B. 1880.

a person deceased.— of a person killed on as representing him- ers and a minor sister

of the deceased—*Held*, that the consort and ascendant and descendant relatives could alone have the right to claim damages for death occasioned by a quasi offence, and that, therefore, in so far as the brothers and sister were concerned, the action was unfounded, and must be dismissed. *Ruest* v. *Grand Trunk Railway*, 4 Q. L. R. 181, S. C. 1878; and *Thompson & Strange*, 5 Q. L. R. 205, S. C. 1879.

41. *Sequêstre.*—To an action by a *sequestre* to set aside a pretended donation of the property sequestrated, the defendant pleaded first by an exception to the form, which was dismissed, and afterwards to the merits, denying the right of a *sequestre* to bring such action—*Held*, that he had such right as the action was one of administration merely, and that there was a wide distinction between an action to annul an instrument valid *primâ facie* and one to have it declared that it is null already and of no effect. *Laframboise* v. *D'Amour*, S. C. 1876.

42. *Surety.*—An endorser of a note may bring action as surety against the maker in order to secure himself, though the note be not in his possession. *Desbarats* v. *Hamilton*, 2 L. N. 279, S. C. 1879.

VI. Criminal Conviction a Bar to.

43. Where a carter had been arrested for loitering, and was tried before the Recorder of Montreal and convicted—*Held*, that though the conviction may have been wrong and unjust, that, nevertheless, it was a complete bar to an action of damages for want of reasonable and probable cause for the arrest. *Rinahan* v. *Geriken*, S. C. 1879.

44. And in an action of damages for assault, to which the defendant pleaded that he had been already fined in the Recorder's Court—*Held*, that a conviction in such case may be pleaded in bar of any other proceedings, either civil or criminal, for the same cause.* *Callahan & Vincent*, 3 L. N. 154, S. C. R. 1880.

45. But in another case—*Held*, that it must be pleaded in order to avail. *Simard & Marsan*, 2 L. N. 333, S. C. 1880.

VII. Cumulation of.

46. Plaintiff alleged that defendant's cattle came on his property and caused damages, and concluded for damages and a fine. Defendant pleaded cumulation of actions—*Held*, that an action of damages, which is purely a civil remedy, is incompatible with an action for a fine, and that the two could not be joined,

*If the Justice upon the hearing of any case of assault or battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved, under the last preceding section, deems the offence not to be proved, or finds the assault and battery to have been justified, or so trifling as not to merit any punishment and accordingly dismisses the complaint, he shall forthwith make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred C. 32-33 Vic. cap. 20, sec. 44.

If any person against whom such complaint, as in either of the last two preceding sections mentioned, has been preferred by or on behalf of the party aggrieved, has obtained such certificate, or, having been convicted, has paid the whole amount adjudged to be paid, or has suffered the imprisonment, or imprisonment with hard labour awarded, *in every such case he shall be released from all further proceedings, civil or criminal, for the same cause. Ib.*, sec. 45.

except when expressly authorized by statute; but that, in the instance in question, they were perfectly justified by C. S. L. C. cap. 26, which had not been repealed by the Municipal Code, under which the action was brought. *Daoust* v. *Proulx*, 7 R. L. 317, Mag. Ct. 1875.

47. But in another case in which the plaintiff asked for damages, and a fine under Art. 381 of the Municipal Code* for a nuisance on a public road caused by wood which the defendant had placed there; the cumulation was held not to be authorized, and the demand for damages rejected. *Labelle & Gratton*, 7 R. L. 325, Mag. Ct. 1874.

48. An action *en declaration de Paternité* and for maintenance for the child may be joined with an action of damages for the mother resulting from the seduction. *Kingsborough & Powell*, 4 Q. L. R. 11, Q. B. 1878.

49. The appellant sued the respondent on a lease, and joined with the action a count for goods sold. The defendant pleaded by *exception dilatoire* that the action was founded upon incompatible grounds, and that the plaintiff should be held to make option between the different demands—*Held*, that Article 15† of the Code of Procedure had added nothing to the old law; it did not pretend to alter it in any way. It laid down the rule that several causes of action may be joined in the same suit, provided they are not incompatible or contradictory, that they seek condemnations of a like nature, that their joinder is not prohibited by some express provision, and that they are susceptible of the same mode of trial. The joinder in this case was not open to any form of objection: The demands were clearly susceptible of the same mode of trial, and there was no incompatibility. Judgment reversed. *Mullin & Gray Creek Dairy Co.*, Q. B. 1876.

IX. En Bornage.

50. An interlocutory judgment in an action *en bornage* ordering a bornage should indicate where the boundaries are to be placed, and if it does not do so, and there is no antecedent report, establishing the position of the boundaries, the *arpenteur* can only proceed to place the boundaries with the consent of the parties, and on observing all the formalities required by law. *Brown & Perkins*, 10 R. L. 427, Q. B. 1880.

51. An action *en bornage*, alleging that the property of the defendant adjoins that of the plaintiff on a certain side, is maintainable, though it be proved that his property adjoins on another side. *Bouffard & Nadeau*, 8 R. L. 321, Q. B. 1876.

*Tout inspecteur de voirie qui refuse ou neglige sans motif raisonnable de remplir quelque devoir qui lui est imposé par les dispositions de ce Code ou des réglements municipaux ou qui est requis de lui en vertu de ces dispositions ou d'obeir des ordres de conseil local ou du conseil du compté relativement à des travaux qui sont sur sa surveillance encourt outre les dommages occasionés pour chaque negligence ou refus une amende de pas moins d'une ni de plus de douze piastres sauf les cas autrement règlés.

† Several causes of action may be joined in the same suit, provided they are not incompatible or contradictory; that they seek condemnations of a like nature; that their joinder is not prohibited by some express provision, and they are susceptible of the same mode of trial. A creditor cannot divide his debt for the purpose of suing the several portions of it by different actions.

52. And if the defendant pleads *defense en fait* he will be condemned in the costs. *Ib.*

53. And the surveyor in his report is not obliged to state that the parties have signed or have been requested to sign. *Ib.*

54. In an action *en bornage* a surveyor must first be appointed to visit the properties and make a report, pointing out the separation lines between the parties; and an interlocutory judgment which pretends to order the fixing of boundaries between the parties without occasion being had to be heard on the report of the surveyor is irregular and will be set aside.* *Brown & Perkins*, 6 Q. L. R. 143, Q. B. 1880.

55. The proceedings of a surveyor in obedience to such an interlocutory order cannot be validated without subsequent homologation of the report. *Ib.*

56. And when the case has been reported to a surveyor before enquete, and with power to the surveyor to hear witnesses, it is not competent to the parties, without the special permission of the court, to adduce evidence before the court of the same facts as those concerning which the surveyor himself heard witnesses. *Plante* v. *Legendre*, 6 Q. L. R. 201, S. C. 1880.

57. And where a person brings an action *en bornage*, without previous demand, and joins with it a claim for damages, of which no proof is made, he will be condemned to pay the costs of suit. *Rochon* v. *Coté*, 21 L. C. J. 273, S. C. 1877.

X. En Complainte.

58. The *adjudicataire* of an immoveable sold by licitation, who takes possession of the immoveable, cannot be sued *en complainte* by the possessor of the property, especially if he has been a party to the action. *Hus* v. *Joseph*, 7 R. L. 90, S. C. 1875, & 9 R. L. 56, Q. B. 1879.

XI. En Declaration de Paternité.

59. Action by plaintiff, a minor, assisted by his tutor in declaration of his paternity. Plaintiff was the illegitimate child of one Martha Dawson, by whom he was born in January, 1865, according to her story; but, according to a Doctor Lawrence, in January, 1874. In order to corroborate the statement of the mother, a pretended certificate of baptism was produced, which stated that the child was baptized in May, 1875, by a Rev. M. Woodrich, but did not state of what church, parish or congregation, nor as to the register in which it was entered, nor whether any was kept by the minister, nor as to his official character. The paper was not signed by the minister, but by one Chapman. Such was not an *extrait de baptême* according to Art. 45 of the Civil Code.* Action dismissed *sauf à se pourvoir et sans frais. Osgood & Goodenough*, 7 R. L. 719, S. C. 1877.

60. An action in declaration of paternity and for maintenance for the child may be joined with an action of damages for the mother resulting from the seduction. *Kingsborough & Pound*, 4 Q. L. R. 11, Q. B. 1878. And *held*, also, that such action may be brought by the mother in her own name. *Ib.*

XII. En Destitution de Curatelle.

61. To an action to set aside the appointment of a curator to an interdict on the ground that he lived in Ontario, and that plaintiff was dependent on her father and unable to compel the defendant to contribute thereto, defendant pleaded that he was known to be living in Ontario at the time of his appointment, and moreover plaintiff had since married and was not now dependent on her father for support. The plea was dismissed on demurrer. *Legge* v. *Legge & Simpson*, 3 L. N. 160, & 24 L. C. J. 83, S. C. 1880.

XIII. En Garantie.

62. An action *en garantie* will not lie against the members of the executive by a purchaser of lands under an order in council to guarantee and indemnify him against an action brought by the Attorney General for and on behalf of Her Majesty to set aside the deed of sale on the ground *inter alia*, that the sale itself was *ultra vires*, and that the deed was executed without lawful authority. *Attorney General* v. *Middlemiss & Archambault et al.*, 21 L. C. J. 319, S. C. 1877.

XIV. En Reddition de Compte, *see* ACCOUNT.

63. Action was brought by appellants *en reddition de compte* of the respondent's administration of Mrs. H.'s estate. The respondent produced an account, and notified the appellants to file any contestation which they might have to make to the account produced within a delay stated. No contestation was made, and appellants were foreclosed from contesting—*Held*, that the foreclosure must be maintained. *Hart & Hart*, 3 L. N. 24, & 24 L. C. J. 161, Q. B. 1879; 527 & 530 C. C. P.

*If the parties do not agree the court names a sworn surveyor, whom it charges with making a plan of the locality, shewing the respective pretensions of the parties, and with making such other operations as it may deem necessary. 942 C. C. P.

The surveyor thus named is bound under his oath of office to proceed in the same manner as experts. 943 C. C. P.

If the parties desire it, more than one surveyor may be appointed. 944 C. C. P.

The fixing of bounds, the verifying of ancient boundaries, or rectifying of division lines is ordered in conformity with the rights and titles of the parties, and is done by the person named by the court, who proceeds in accordance with the judgment, and, if necessary, places boundary marks in presence of witnesses, in accordance with the provisions contained in chap. 77 of the C. S. C., and must draw up a statement of his operations, and return the original of such statement into court. 945 C. C. P.

* Acts of Civil Status are inscribed in two registers of the same tenor kept for each Roman Catholic parish church, each Protestant church or congregation or other religious community entitled by law to keep such registers, each of which is authentic, and has in law equal authority. 42 C. C.

The duplicate register so kept must, at the instance of the party keeping it, be presented to one of the judges of the Superior Court, or to the prothonotary of the district, or to the clerk of the Circuit Court instead of the prothonotary in the case specified in the Statute 25 Vic. cap. 16, to be by such judge, prothonotary or clerk numbered or initialed in the manner prescribed by the Code of Civil Procedure. 45 C. C. & see Note to Art. 45, page vi. C. C.

64. Proceedings between partners *en reddition de compte* of the partnership. *Bourgoin & Plante*, 9 R. L. 461, Q. B. 1876.

65. The appellant brought suit against the respondent, alleging a purchase by them jointly of certain promissory notes and securities which the respondent collected for their common profit, the appellant's share acknowledged by the respondent being $713.75. The appellant added the common assumpsit counts, and prayed for an account in the usual form with vouchers, and that in default the respondent should be condemned to pay the said sum of $713.75—*Held*, on demurrer, that the demand for an account was not warranted by the allegations of the plaintiff's declaration, and was not the proper remedy for the cause of complaint therein stated. *Michaud & Vézina*, 6 Q. L. R. 353, Q. B. 1880.

XV. En Reintegrande.

66. In an action *en reintegrande* the plaintiff alleged a public and peaceable possession of more than a year and a day *à titre depropriétaire*, and generally a possession of upwards of twenty years prior to the 1st May, 1876, but in his answer to the defendant's plea that his possession up to 1856 was for his son, and from 1856 was as usufructuary only, and no interversion was proved—*Held*, that the action was properly dismissed. *Rhicard* v. *Chicoine*, 24 L. C. J. 47, S. C. R. 1879.

XVI. En Reméré.

67. Action *en reméré* under a deed of sale. The court at Sorel dismissed the action on the ground that the plaintiff had not tendered the price, and besides that the action had been instituted too late, being returned after the expiration of the delay fixed for the exercise of the privilege of *reméré*. Judgment confirmed.

XVII. En Repétition, *see* PRESCRIPTION.

68. Plaintiff having brought an action in the Superior Court, which was dismissed, wished to appeal, but in order to avoid giving security for costs paid the taxed costs of the opposite party to the attorney who had obtained distraction, but under reserve of their rights in case the judgment should be reversed. The judgment was reversed, and the plaintiff then sued the attorney to whom he had paid to get his money back on the ground of having paid in error—*Held*, there was no error, and that the attorneys having obtained *distraction* he had no right to recover. *Holton* v. *Andrews*, 3 Q. L. R. 19, S. C. 1876.

69. The husband of the plaintiff in order to raise money mortgaged her property without her knowledge or consent. Having thereby rendered himself liable to imprisonment, his wife in order to secure his liberty became bail for him, and the bail being in time forfeit, sold a portion of the property and with the proceeds paid off the amount. This transaction being as invalid as the first, the wife sometime afterwards brought action to recover the money with interest. In the court of first instance, she obtained judgment according to her demand, but in revision, the defendant being held to have been in good faith, interest was only allowed from date of service of process, and this judgment was confirmed unanimously in appeal.* *Buckley* v. *Brunelle et vir.*, 21 L. C. J. 133, Q. B. 1873; 1051 & 1301 C. C.

70. Respondent purchased from appellant his rights and pretensions in a certain lot of land in Westchester, which he had occupied for several years, and which belonged to one C in Upper Canada. He paid $50 cash, and gave two notes for the balance. After he had been in possession a year, C, the proprietor, turned up to sell the property he owned there. Appellant, who occupied the lots adjoining, entered into a lease with the proprietor, and respondent's lot with his consent was included in the lease, and he continued in possession without trouble or fear of trouble. He afterwards brought action to recover his money from appellant, on the ground that the latter had guaranteed his possession. In appeal, reversing judgment of Court of Review, action dismissed. *Dubois* v. *Croteau*, 8 R. L. 245, Q. B. 1876.

71. Taxes paid under an existing by-law of a Corporation cannot be recovered until the by-law has been set aside. *Calmel* v. *City of Montreal*, 1 L. N. 64, S. C. 1877.

72. Where action is brought to recover taxes paid under an illegal assessment roll, if the assessment roll is admitted by the plea it is not necessary for the plaintiff to produce it in court. *Baylis* v. *The City of Montreal*, 2 L. N. 340, & 23 L. C. J. 301, Q. B. 1879.

73. Where a person borrowed $50, and the lender got him to sign a note for $58, supposing it to be for $50, not having read it, and nothing having been said about the $8—*Held*, that having paid the amount of the note to a third holder, he was entitled to an action *en repétition* of the eight dollars against the lender. *Lemire & Gelinas*, 10 R. L. 20, C. C. 1879.

XVIII. En Resolution de Vente.

74. Under the Coutume de Paris the transferree pure and simple of a *prix de vente* may exercise the action *en resolution de vente* for default of payment either total or partial. The action may also be brought for *défaut de prestation* of a constituted rent, price of an immoveable, even by the seller who has sued for the payment of the price. *St. Cyr* v. *Millette*, 3 Q. L. R. 369, S. C. R. 1877.

XIX. En Séparation de Biens.

75. There is no community of property between persons married in a foreign country and who afterwards come to Quebec to live, unless there is proof that they married with the intention of coming there to live, and therefore an action of separation of property in such case will not lie. *Wiggins* v. *Morgan*, 9 R. L. 546, S. C. 1879; & *Dalton & King*, 9 R. L. 548, S. C. 1879.

* If the person receiving be in good faith he is not obliged to restore the profits of the thing received. 1047 C. C.

XX. En Séparation de Corps.

76. An action in separation from bed and board may be settled by a reconciliation, and where such had taken place, and the attorneys continued for their costs—*Held*, that the plaintiff had a right to disavow them. *Gerard & Lemire & St. Pierre*, 2 L. N. 255, S. C. R. 1879.

XXI. For Fees for Measuring Timber.

77. A suit for fees for the measuring of timber by licensed cullers, acting under the supervisor of cullers at Quebec, pursuant to C S. C. cap. 46, is properly brought in the name of the Crown. *Laflamme* v. *Prendergast*, 4 Q. L. R. 285, S. C. 1878.

XXII. For Liquor.

78. There is no action for the price of intoxicating liquor sold by tavernkeepers to be drunk on the premises to other than travellers, even when the debtor has acknowledged the debt, the nature of which is not changed by the acknowledgment. *Bergeron* v. *Fleury*, 7 R. L. 183, C. C. 1874.

XXIII. Form of.

79. Respondent by a verbal agreement undertook to repair a house for the appellant, and he made several repairs to another building. He sued the appellant on a simple account. The plea was that the repairs to the first house were made under a verbal contract, and that the plaintiff should have set out this contract. But the plaintiff asked just what the defendant acknowledged to owe, except that he said the repairs were not all done as they ought to have been. The court below reduced the account some $13. It would be too technical to reverse the judgment upon the ground that the plaintiff ought to have alleged the contract in his action. Judgment confirmed. *Springle & Genereux*, Q. B. 1876.

XXIV. For Rent, *see* LESSOR AND LESSEE.

80. An action for so much rent due and to become due under a lease, where the lessee has abandoned the premises, and left nothing to secure the rent, is good without mention of damages. *Theroux* v. *Blanchard*, 2 L. N. 331, S. C. R. 1879.

XXVI. For Taxes, *see* TAXES.

81. A lessor has no right to an action for taxes due under the lease until he has himself paid to the Corporation. *Maillé & Richler*, 2 L. N. 414, S. C. 1879.

XXVII. For Wages, *see* MASTER AND SERVANT.

82. In action by a discharged servant for wages, the amount claimed can only be the amount of wages accrued and not that to become due. *Beauchemin & Simon*, 1 L. N. 40, Q. B. 1877.

XXVIII. Hypothecary, *see* HYPOTHEC.

83. In a hypothecary action the plaintiff may pray that the defendant be condemned to pay unless he prefers to abandon, although Art. 2061 of the Civil Code says that the hypothecary action is to have the defendant condemned to abandon unless he prefers to pay. *Leclair & Filion*, 7 R. L. 428, C. C. 1875.

84. And where the plaintiff had been a party to an exchange of properties between the donee of the plaintiff and the defendant, and had declared that he accepted the defendant as his personal debtor, as if the donation had been made to him, and in consequence that he discharged the donee personally without novation or derogation—*Held*, that the plaintiff had not thereby deprived himself of his hypothecary recourse against the defendant. *Ib.*

85. One "C" granted a hypothec to the plaintiff and also undertook to keep certain property insured by way of collateral security. Plaintiff sued defendant, a third holder, under said hypothec for a balance due, and in computing the balance included four items of six dollars each for premiums paid for said insurance, and six dollars and fifty cents cost of deed and registration—*Held*, that there was no hypothec for such amounts, and therefore no action against defendant, who was a mere holder and never undertook to pay them. *Michon & Moreney*, 6 Q. L. R. 238, S. C. 1877.

86. A third party in whose favor charges are made in a deed of donation of real estate may bring hypothecary action against the *detenteur* of the immoveable, although there be no stipulation to that effect in the deed. *Dufresne & Dubord*, 1 L. N. 43, Q. B. 1877.

87. An action in declaration of a hypothec for a sum of $36 cannot be brought in the Circuit Court. *Massé & Coté*, 3 Q. L. R. 322, C. C. 1877.

88. The ordinary hypothecary action cannot be exercised against an assignee who is in possession of immoveable property of an estate in his quality as such. *Dawes & Fulton*, 1 L. N. 243, S. C. 1878.

89. *Right to in hands of immediate debtor.*—The plaintiff having taken a mortgage from his debtor in security of his debt afterwards brought hypothecary action to recover the amount. Defendant pleaded that the hypothecary action could only be brought against a *tiers detenteur*, and not against the original personal debtor. Simultaneously with the filing of the plea plaintiff filed a *desistement* of the hypothecary conclusions, and adhered merely to the demand for a personal condemnation—*Held*, that under the terms of Art. 2058 of the Civil Code the plaintiff had a perfect right to the hypothecary conclusions; but that, having given the defendant the option of paying the amount or abandoning the property, he could not withdraw that option as he had done, and thereby deprive the defendant of his choice. *Lebrun* v. *Bedard*, 21 L. C. J. 157, S. C. 1877.

90. A hypothecary creditor, whatever the amount of his claim, may take an hypothecary action against his debtor, holder of the immoveable hypothecated, although he has already a

judgment against the said debtor personally for the same claim. *Dorval & Boucher*, 6 Q. L. R. 197, S. C. 1879.

XXX. In Ejectment.

91. Defendant was employed as a school-teacher by plaintiffs, with the privilege of occupying the school-house as her residence. Her engagement having been declared at an end by a resolution of the plaintiffs, she persisted, against their will, in occupying the school-house —*Held*, that an action to eject her under Art. 887 of the Code of Procedure* would have to be dismissed for want of jurisdiction, there being no lease and no occupation with the consent of the proprietors of the premises. *School Commissioners of St David* v. *Devarennes*, 4 Q. L. R. 206, C. C. 1878.

92. But an action in ejectment may be brought by a sub-tenant against his immediate lessor under a lease, to obtain possession of the premises. *Jaeger* v. *Sauvé*, 1 L. N. 139, S. C. 1878.

XXXI. Interest in, *see* Right of.

93. The appellant was collocated on the proceeds of the estate of one Lemieux, insolvent, for the amount of a mortgage. The respondent contested the collocation, on the ground that the mortgage was given in fraud of the rights of the creditors of the mortgagor, who was insolvent at the time the mortgage was given—*Held*, overruling the decision of the Court below, that as the contestants were not shown to have been creditors of the mortgagor at the time the mortgage was given that they were without right and interest to contest on that ground, and the collocation was maintained.† *Dufresne & Mechanics' Bank*, 3 L. N. 26, Q. B. 1879.

94. The appellant brought opposition in his quality of tutor to his minor son, to the seizure of an immoveable in his possession on the ground, *inter alia*, that the immoveable in question formed part of the community between himself and his wife deceased—*Held*, that he was without interest to oppose the seizure. *Lefebvre* v. *Turgeon*, 3 L. N. 20, Q. B. 1880.

95. And where one S. transferred his interest under a certain lease and in certain furniture to appellants, "acting as trustees for and on behalf "of divers persons and firms, creditors of the "said S., under a certain paper-writing or "memorandum of agreement made and entered "into by and between the said S. and his credi-"tors and hereunto annexed"—*Held* in an action by appellants, in their quality of "trustees duly named of the creditors of S.," that they had no right or standing to appear as such before a Court of Justice.* *Browne & Pinsonneault*, 3 S. C. Rep. 102, Su. Ct. 1879.

96. Action to recover the value of a cargo of peas lost on the scow Marie Joseph, in consequence of a collision with a steamboat belonging to defendants in Lachine Canal. Plea that plaintiff had been paid the value of the peas by the insurers, for whom plaintiffs were a mere *prête nom* and had no interest—*Held*, confirming the judgment of the Court below, that, notwithstanding the payment by the insurers, the latter had no right to sue until notice of the transfer and subrogation, and the action was properly brought. *Richelieu & Ontario Navigation Co. & Lafrenière*, 2 L. N. 204, Q. B. 1879.

XXXII. Nature of.

97. The plaintiff, a judgment creditor of one of the defendants, brought action in the district of Montreal to set aside a deed of sale of real estate situated in the district of Iberville, from the judgment debtor to the other defendant—*Held*, on declinatory exception, that such action was a purely personal one, and did not require to be brought where the real estate was situated.† *Scriver* v. *Stapleton*, 2 L. N. 190, S. C. 1879.

98. An action by which the plaintiff alleges that defendant collusively made and registered a mortgage before the mortgage given to plaintiff, and asks that the order of registration be changed, or defendant be condemned to pay the indebtedness, is a mixed action. *Faucher & Painchaud*, 3 L. N. 316, S. C. 1880.

99. Action in ejectment under the Lessor and Lessee Act. Plaintiff had leased to defendant premises at Calumet, in the district of Terrebonne. The lease contained a promise of sale. Plea, declinatory exception, on the grounds: 1st, that she was in possession under a promise of sale, and could not be impleaded in the Lessor Court. 2nd, that her right was a real right and she could only be impleaded where the property was. Exception dismissed on both grounds. *Menzies* v. *Bell*, 3 L. N. 159, S. C. 1880.

XXXIV. Of Damages, *see* DAMAGES.

100. *For Death of Relative.*—Action by relatives for death caused by carelessness of appellant. The action was brought by parents of deceased and by his brother and sister. The appellant demurred on the ground that no such action would lie. The demurrer was maintained as to the collateral relatives and dismissed as to the others. The defendant moved for leave to appeal, on the ground that if the action was bad as to one plaintiff it was bad as to all—*Held*, that as the action was allowed to certain relations by special statute, only one

* Actions to annul or rescind a lease or to recover damages resulting from the contravention of any of the stipulations of the lease, or the nonfulfilment of any of the obligations which the law attaches to it, or arising from the relations of lessor and lessee, are instituted either in the Superior Court or in the Circuit Court, according to the value or the amount of the rent or the amount of damages alleged.

† No person can bring a suit at law unless he has an interest therein. 13 C. C. P.

* No person can use the name of another to plead, except the Crown through its recognized officers. Tutors, curators and others representing persons who have not the free exercise of their rights, plead in their own name in their respective qualities. Corporations plead in their corporate name. 19 C. C. P.

† In every real or mixed action, the defendant may be summoned before the court of his domicile or before that of the place where the object in dispute is situated. 37 C. C. P.

action could be instituted, and it was the duty of the court in awarding damages to distribute the share coming to each person. Leave to appeal refused. *Grand Trunk Railway Co. & Ruel*, 1 L. N. 129, Q. B. 1878.

XXXV. On Bets.

101. Action to recover $100 amount of a bet on a batteau race. One G, the master of a batteau, having inserted a challenge in the *Morning Chronicle* to run his batteau against any other batteau for $100 a side, the defendant accepted the challenge through the same paper. Among other conditions the race was to be run by the batteaux in working order, which the evidence showed to mean in the condition in which up to that time the batteaux were employed to work. A previous race between the same batteaux had been run shortly before for a bet between the same parties, and the money, $100 a side, was deposited in the hands of the Company defendant. Shortly before the race, but after the bet, the sail of G.'s batteau was enlarged, and the condition in which it had been used to work with changed in this particular—*Held*, that batteau races do not come within the exception of the law,* and that no action would lie for the recovery of a bet made on such a race; that in fact there was no bet between the plaintiff and defendant, and that the action, whether brought in the name of plaintiff or of G, should fail for unfairness in enlarging the sail of the plaintiff's batteau. *Wagner* v. *L'Hastie*, 3 Q. L. R. 373, S. C. 1877.

102. In a case in the Circuit Court action was brought on a cheque for $25 given for a wager on the result of an election of a member for the House of Commons, but which the loser had countermanded, on the ground that the winner knew the result of the election (which was already over) when the wager was made. The winner denied this, but transferred the cheque to the plaintiff who brought action. At the trial it was shown that the bank to whom it had been transferred had paid nothing for it and was in fact a mere *prêt nom* for the winner of the bet—*Held*, that considering the circumstances of the bet the action would be dismissed. *Banque Ville Marie & Maclean*, C. C. 1876.

XXXVI. On Bills and Notes, *see* BILLS AND NOTES.

103. An action on a promissory note not filed and not in possession of the plaintiff will be dismissed. *Hudon & Girouard*, 21 L. C. J. 15, Q. B. 1875.

104. After the maturity of a note the holder cannot add an endorser simply for the purpose of changing the jurisdiction on it and bringing the other parties into a district different from that in which they could otherwise have been summoned. *Wilkes & Marchand*, 21 L. C. J. 118, S. C. 1876.

105. A defense *en fait* to an action on a promissory note if unsupported by affidavit will be rejected on motion. *Laprise & Methot*, 4 Q. L. R. 328, S. C. 1877.

106. In an action on a promissory note the court may, on motion of the plaintiff, strike out subsequent endorsements not recited in the declaration. *Fisher* v. *McKnight*, 22 L. C. J. 146, S. C. 1878.

107. The bearer of two promissory notes against the same maker may sue on them separately by two different actions. *Laliberté* v. *Chenard*, 6 Q. L. R. 12, S. C. 1879.

XXXVII. On Foreign Judgment.

108. Where the plaintiff sued on a foreign judgment, and in the declaration added counts in assumpsit without filing any statement a motion was granted asking that proceedings be stayed until a statement of account was filed. *Holme* v. *Cassils et al.*, 21 L. C. J. 28, S. C. 1877.

109. In a suit on a judgment obtained in Ontario where it was admitted that the summons in the original suit had been served personally upon defendant in Quebec—*Held*, that he was not entitled to raise any objection which he might have urged to the original suit. *Alcock et al.* v. *Howie*, 22 L. C. J. 145, & 1 L. N. 78, S. C. R. 1878.

110. The plaintiff obtained judgment against defendant in the Common Pleas, Ont., on the 22nd September, 1877, for $255.25 for debt and costs, and on the 17th October of the same year he brought action in the district of Ottawa, Quebec, on the judgment—*Held*, that where in such cases a defendant is served personally, or where he appears even if not so served, he cannot be allowed to repeat in the Province in which an action is brought to enforce such judgment what he might have pleaded in the first instance *Bates & Lauzon*, 2 L. N. 117, S. C. R. 1879.

XXXVIII. On Obligation Signed by Attorney.

111. Appellant sued respondent for the amount of an authentic obligation executed by one of the respondents as attorney of his wife the other respondent. The obligation was filed, and mentioned the nature of the power of attorney, its date and its registration. The defendants failed to appear and default was entered against them. The plaintiff then inscribed for judgment by default when his action was dismissed by the court *suo motu*, on the ground that the power of attorney was not produced in the record and this judgment was sustained in appeal. *Forneret & Larallée*, 7 R. L. 611, Q. B. 1876.

XXXIX. On Penalty in Contracts.

112. The parties in the cause having been some time in commercial partnership and wish-

* There is no action for the recovery of money or any other thing claimed under a gaming contract or bet. But if the money or thing have been paid by the losing party he cannot recover it back unless fraud be proved. 1927 C. C.

The denial of the right of action declared in the preceding article is subject to exception in favor of exercises for promoting skill in arms and of horse and foot races and other lawful games which require bodily activity and address; nevertheless, the court may in its discretion reject the action when the sum demanded appears to be excessive. 1928 C. C.

diction on it and bringing
a district different from
could otherwise have been
& Marchand, 21 L. C. J.

Fait to an action on a pro-
pported by affidavit will be
Laprise & Methot, 4
877.

on a promissory note the
of the plaintiff, strike out
ents not recited in the
McKnight, 22 L. C. J.

f two promissory notes
aker may sue on them
ferent actions. *Laliberté*
12, S. C. 1879.

IGN JUDGMENT.

aintiff sued on a foreign
declarnation added counts
filing any statement a
cing that proceedings be
ent of account was filed.
l., 21 L. C. J. 28, S. C.

dgment obtained in On-
cted that the summons in
n served personally upon
Held, that he was not
jection which he might
nal suit. *Alcock et al.*
145, & 1 L. N. 78,

ained judgment against
on Pleas, Ont., on the
or $255.25 for debt and
ctober of the same year
he district of Ottawa,
—*Held*, that where in
s served personally, or
not so served, he cannot
he Province in which
enforce such judgment
pleaded in the first
uzon, 2 L. N. 117,

TION SIGNED BY AT-

respondent for the
bligation executed by
attorney of his wife
obligation was filed,
re of the power of
egistration. The de-
d default was entered
iff then inscribed for
his action was dis-
motu, on the ground
was not produced in
nt was sustained in
ée, 7 R. L. 611, Q. B.

N CONTRACTS.

cause having been
rtnership and wish-

ing to wind up, agreed to appoint arbitrators and to abide by their decision strictly as by a judgment of the Superior Court under a penalty of $1,000. The arbitrators were appointed and condemned the defendant to restore to the plaintiff certain merchandise and pay him besides a balance of $193.50. The first part of the award was immediately fulfilled by defendant, but he refused to pay the money. After action for the $193.50 and payment of the same and costs by defendant, plaintiff took action for the $1,000 penalty.—*Held*, that plaintiff could only claim the penalty in case it had been stipulated for simple delay in the fulfilment of the award, which was not the case in the instance, nor was there the slightest proof or indication that such was the case, and all presumption of such a thing was taken away by the great disproportion between the amount of the penalty and the amount of the award; and as there were other things remaining to be done on both sides under the award the plaintiff had no right to the penalty, and the action was properly dismissed.* *Lépine & Fiset*, 10 R. L. 153, Q. B. 1879.

XL. ON SURETY BOND.

113. To an action on a surety bond in appeal one of the defendants pleaded he was insolvent and the plaintiff ough have had another named in his stead, and also that the appellant was insolvent and the assignee to his estate ought to have been called in—*Held*, dismissing both pleas. *Fuller* v. *Farquhar*, 2 L. N. 142, S. C. 1879.

XLI. ON UNSIGNED NOTARIAL TRANSFER.

114. The action was brought on a transfer, and the notarial copy produced was not signed by the notary—*Held*, that this omission was fatal. There were also other irregularities. Judgment of the Court of Review, which dismissed the action, confirmed. *Ricker & Simon*, Q. B. 1877.

XLII. PETITORY.

115. On appeal from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), compelling the appellant to pay $100 damages for acts of trespass complained of by respondent in building on a mitoyen wall without notice and without estimate—*Held*, that the action was in the nature of a petitory action for the recovery of property, and the demolition of works completed may properly be demanded in such action. *Joyce & Hart*, 1 S. C. Rep. 321, Su. Ct. 1877.

116. Petitory action respecting a lot of land upon which valuable buildings had been erected. The plaintiff was the owner of an

* The penalty is not incurred until the debtor is in default of performing the primary obligation or has done the thing which he obliged himself not to do. 1134 C. C.

The amount of penalty cannot be reduced by the court, But if the obligation have been performed in part to the benefit of the creditor, and the time fixed for its complete performance be not material, the penalty may be reduced unless there is a special agreement to the contrary. 1135 C. C.

undivided eighth of the real estate in question, and the defendant, who had been in possession of the whole of it up to the time of the institution of the action, denied the right of the plaintiff to any part of it. The plaintiff thereupon brought petitory action. In review the defendant admitted the right of the plaintiff to an eighth, but argued that the rights of the parties being undivided petitory action would not lie—*Held*, that as the defendant had denied the right of the plaintiff to any part of it, and as her rights must be co-extensive with her interest, which might not be served by a partition, that she was not confined to an action *en partage* but that she could bring action to establish her undivided right, as she had done. *Armitage* v. *Evans*, 4 Q. L. R. 300, S. C. R. 1878.*

117. Petitory action against a Municipal Corporation for having illegally opened a road through plaintiff's farm, which had the effect of dividing his farm into parts and obstructing the communication from one part to the other; that they had pulled down his fences, destroyed his crops and caused damage to the extent of $600. Defendants pleaded that by a previous action of plaintiff against one of their employees for the same cause, and which was confirmed in appeal, judgment had been rendered pronouncing the road illegal, and giving plaintiff a certain amount for his damages; that defendants had acquiesced in that judgment, and desisted from using said road or claiming any right or control over the same, and that prior to the institution of the action against them —*Held*, that as it was proved that at the time of the institution of the action, plaintiff was in full and undisputed possession of his property, and defendants had abandoned all claim to said road, that the petitory conclusion would have to be dismissed, and plaintiff would get $76 as a balance of indemnity due him. *Corporation de St. Gabriel West & Holton*, 8 R. L. 293, Q. B. 1877.

118. A proprietor of an immoveable cannot bring a petitory action against his neighbor before having placed him *en demeure* to contest his title, and if it is a question of boundaries his proper recourse is by an action *en bornage*. *Fraser* v. *Gaynon*, 4 Q. L. R. 381, Q. B. 1878.

XLIII. PIGNORATITIA DIRECTA.

119. The action *pignoratitia directa* does not lie when the pledgee is allowed to sell or dispose of the thing pledged by the very terms of the written instrument of pledge. *Dempsey* v. *Macdougall*, 21 L. C. J. 328, S. C. 1877.

XLV. POSSESSORY, *see* SALE, JUDICIAL.

120. Appeal from judgments of the Court of Queen's Bench, appeal side, which dismissed six actions brought by appellants to have themselves declared the true possessors of the land in dispute, and for an injunction to restrain the defendants from further trespass and for damages for the injury they had already sustained—*Held*,

* ...annon v. O'Neil, 1 L. C. R. 160; Hart v. McNeil, 4 ...8; McAdam v. Kingsbury, 1 L. C. J. 287; and ...er v. Gladu, 7 L. C. ... referred to and commented on. See I Digest, p. 44.

affirming the judgment of the Queen's Bench, that the object of a possessory action, within the meaning of and governed by secs. 946, 947 and 948 of the Code of Procedure,* must be definite and certain, and, if a piece of land, must be capable of being distinguished by known if not visible metes and bounds, or by some description within sec. 52 of the same Code.† The possession to be proved must be *une possession annale*, and also a possession capable of being the foundation of a title by prescription, continuous and uninterrupted, peaceable, public, unequivocal, and *à titre de propriétaire*. *DeGaspé & Bessener*, 4 L. R. 135, P. C. 1878.

XLVII. Quanto Minoris.

121. The respondent, an assignee in insolvency, sold to appellant a certain immoveable in the village of Princeville belonging to an insolvent estate in his hands. The land was described as having eighty feet in front by a hundred feet in depth. The purchase money was to be paid, according to the conditions of sale, partly in cash and partly in six months from the date of sale. Appellant took possession of the lot and paid all the purchase money within the time stipulated. The property was not enclosed on one side, and two months after having completed his payments, appellant found that his neighbor was making a fence on that side. He said to him that he was encroaching on his property, and his neighbor replied no, he was on the line. Appellant then sent for a surveyor and had it measured, when he discovered that it was only 58½ feet front instead of 80—*Held*, that though in a general way a person who had purchased and paid for, by mistake, more than he got had a right of action to recover, it was necessary in such cases to show that the purchaser had been actually deceived in the property, which had not been done, and as it had been described by boundaries the action must be dismissed. *Thomas & Murphy*, 8 R. L. 231, Q. B. 1877.

122. Where the plaintiff, by writing, purchased from the defendant 2265 cords of wood, "as now corded at Port Lewis," for the sum of $4520, and by the same writing acknowledged receipt of the wood, declared himself satisfied therewith, and discharged the vendor *de toute garantie ultérieure*, and afterwards having measured the wood found it 423 cords short and a portion of it rotten—*Held*, on action for the value of the part not delivered and the part which was rotten, that by the terms of the agreement the sale was *en bloc* and not by the cord, and the plaintiff could not recover. *Lalonde & Drolet*, 1 L. N. 29, Q. B. 1877.

123. Action on account of a deficiency in quantity of certain land purchased by plaintiff. The action was dismissed in the court of first instance, because it concluded for damages instead of for a diminution of price.—*Held*, reversing this judgment, that the plaintiff had a right to conclude for damages or else there would be two actions, one for a diminution of the price and one for damages for being leprived of a part of the advantage of the purchase. *Doutney & Bruyère*, 24 L. C. J. 17, Q. B. 1878.

124. Under a covenant to sell and convey "all the estate, right, title, interest, claim or demand" that the vendors had in certain lots specified, an action of damages cannot be maintained against the vendors for failure to deliver the whole of the lots mentioned, where they had included by mistake a lot to which they had no claim. *Fulton* v. *McDonnell*, 1 L. N. 531, Q. B. 1878.

125. And in another the adjudicataire of a property sold at sheriff's sale brought opposition *afin de conserver* to the proceeds of the sale for a deficiency in the contents. The plaintiff answered first by demurrer based on Art. 708 of the Code of Procedure*, which was dismissed on the ground that the adjudicataire had recourse against the moneys in such case as long as they were not distributed. On the merits, however—*Held*,† that since the Code of Procedure, the adjudication of an *immeuble* is always without *garantie* of its contents, and the *adjudicataire* cannot by opposition *afin de conserver*, filed against the proceeds of the sale, claim the value of a deficiency in the contents. *Pelletier & Chassé & Castonguay*, 3 Q. L. R. 65, S. C. 1877.

XLVIII. Quantum Meruit.

126. Where a person had worked for several years in a general way to advance the interests of a railway company, such as canvassing for stock and assisting in the election of city councillors and others who favored the granting of aid to the undertaking—*Held*, that he was

*The possessor of any immoveable, or real right, other than a farmer on shares, or a holder by sufferance who is disturbed in his possession, may bring an action on disturbance against the person who prevents his enjoyment in order to put an end to and to be maintained in his possession. The action for repossession may be brought by any person who has had possession of an immoveable or real right for a year and a day, against any person who has forcibly dispossessed him. 946 C. C. P.

Possessory actions must be brought within a year from the disturbance. 947 C. C. P.

Saving the provisions of Art. 1110, actions on disturbance or for repossession cannot be joined with the petitory claim, nor can the latter be brought until the action on disturbance or for repossession has been terminated, and the condemnation has been satisfied and executed. Nevertheless, if the party who has obtained judgment is in default with regard to the taxation of the costs and the liquidation of the damages, the other party may bring his petitory action on giving security that he will satisfy such condemnation. 948 C. C. P.

† If the object of the demaud is a thing certain it should be described in such a manner as clearly to establish its identity. If it relates to a corporeal immoveable, the nature of such immoveable, the city, town, village, parish or township, street, range or concession wherein it is situated, and also the lands conterminous to it should be mentioned. If it is a body of land known under a particular name it is sufficient to give its name and its situation. If the immoveable forms part of a township, parish, city, town or village, the lots in which are numbered, it is sufficient to state its number. If the demand relates to rents constituted for the redemption of seigniorial rights, or to rights relating to any seigniory, they must be described according to the provisions of the Act 27 and 28 Vic. cap. 39. 52 C. C. P.

*The adjudication is always without any warranty as to the contents of the immoveable, but it conveys all rights which belong to it and which the judgment debtor might have exercised, and also all active servitudes attached to it even though they are not mentioned in the minutes of seizure.

† Following Herrick & Sixby, 8 L. C. J. 324; Labadie v. Truteau, 3 L. C. R. 155; Muiro v. Lalonde, 13 L. C. J. 128.

pe dismissed. *Thomas &*
, Q. B. 1877.

plaintiff, by writing, pur-
endant 2265 cords of wood,
Port Lewis," for the sum of
ame writing acknowledged
declared himself satisfied
arged the vendor *de toute*
and afterwards having
ound it 423 cords short and
n—*Held*, on action for the
ot delivered and the part
t by the terms of the agree-
bloe and not by the cord,
d not recover. *Lalonde &*
B. 1877.

count of a deficiency in
nd purchased by plaintiff,
ssed in the court of first
ncluded for damages in-
on of price.—*Held*, revers-
t the plaintiff had a right
es or else there would be
iminution of the price and
ing deprived of a part of
purchase. *Doutney &*
7, Q. B. 1878.

ant to sell and convey
title, interest, claim or
lors had in certain lots
amages cannot be main-
ors for failure to deliver
entioned, where they had
ot to which they had no
nnell, 1 L. N. 531, Q. B.

the adjudicataire of a
s sale brought opposi-
to the proceeds of the
n the contents. The
by demurrer based on
Procedure*, which was
l that the adjudicataire
e moneys in such case
t distributed. On the
that since the Code of
tion of an *immeuble* is
of its contents, and
t by opposition *afin de*
e proceeds of the sale,
iency in the contents.
ongnay, 3 Q. L. R. 65,

NUIT.

ld worked for several
advance the interests
ch as canvassing for
election of city coun-
vored the granting of
—*Held*, that he was

without any warranty as
eable, but it conveys all
hich the judgment debtor
so all active servitudes
y are not mentioned in

8 L. C. J. 324; Labadie
ro v. Lalonde, 13 L. C. J.

entitled to compensation for the value of his services although he had not been promised any remuneration. *The Montreal, Ottawa and Western Railway and Bury*, 1 L. N. 28, Q. B. 1877.

127. An architect may recover on a *quantum meruit* the value of his services in superintending the construction of a building. *Roy* v. *Huot*, 2 L. N. 317, S. C. 1879.

128. And in an action for a *quantum meruit* of work and labor done, the court is not bound to award the lowest figure at which it may be in evidence the work could be done for. *Laflamme* v. *Dubrule*, 2 L. N. 157, S. C. 1879.

129. Where the plaintiff, a Roman Catholic curé, brought action alleging that the defendant was indebted to him in the sum of $4, being for two years spiritual and temporal services and care rendered by the plaintiff in his capacity of curé to the defendant and his family, who were Roman Catholics, residing in the parish—*Held*, that the services of a curé of a parish are of a nature partly spiritual and partly temporal, and that they could be appreciated in money, and that further, as in taking the care and charge of a parish the curé is bound to certain obligations towards the parishioners, they are reciprocally bound to and liable for his maintenance and support, and, therefore, the plaintiff was entitled to recover the amount claimed on a *quantum meruit*. *Courtemanche & Maillioux*, 10 R. L. 195, Mag. Ct. 1879.

XLIX. QUI TAM.

130. Plaintiff sued for $42 as fines and penalties incurred by defendant under Art. 440 of the Municipal Code* for trespass of the defendant's cattle on his land, and concluded by praying that such be divided according to law. The defendant pleaded that the action should have been brought as well in the name of the municipality as in that of the plaintiff, and that the court could not grant half of the penalty to a Corporation which was not in the case—*Held*, maintaining the demurrer, and action dismissed with costs. *Lahaie* v. *McMartin*, 7 R. L. 185, C. C. 1875.

131. Neither under Art. 1046 of the Municipal Code† nor under C. S. L. C. cap. 24, s. 64, is there a right of action *qui tam*, but an action *populaire* which may be brought by any person of majority in his own name, and by the head of the council in the name of the Municipal Corporation. *Labelle* v. *Gratton*, 7 R. L. 325, Mag. Ct. 1874.

132. Action by the plaintiff in his own name for the recovery of a fine of $20, which he alleged had been incurred by defendant for having voted on the 13th January, 1879, at an election of councillors for the Corporation of the Parish of St. Bazile without having paid his school taxes, in contravention of Arts. 291

* Giving the tariff of fines to be paid by the owners of animals found estray.

† Telle poursuite peut être intentée par toute personne majeure en son nom particulier ou par le chef du conseil au nom de la Corporation Municipale.

and 316 of the Municipal Code.* The proof established the offence, but in his conclusions the plaintiff asked that the defendant be condemned to pay $20, amount of the fine, half to him and half to the "Corporation Municipale de St. Bazile." As that was not the proper title of the Corporation, the term "Municipal" being used in the Municipal Code only as a term of general description and not as part of the title of any particular Corporation, and as the plaintiff had not in any part of his declaration described correctly the Corporation to which half the fine should be paid, and as judgment could not be delivered for half, the action was dismissed. *Graham* v. *Morissette*, 5 Q. L. R. 346, C. C. 1879.

133. *Pleading in.*—Where the declaration (in an action for a penalty for the non-registration of a partnership) alleged in a first count that defendant for more than sixty days before the institution of the action had carried on business in partnership with A B & C, under the firm of "C. A. Sons," *for the purpose of trading and manufacturing*, and in a second count that defendant (for more than sixty days, etc.) had carried on business in partnership with "other persons" under the firm of "C. A. & Sons" for trading purposes, and then proceeded to allege that no declaration of "said partnership" had been registered as required by law—*Held*, that the two counts referred with sufficient distinctness to the same partnership, and moreover the objection should have been specially raised by a preliminary plea and not on the merits. *McWilliam & Findlay*, 25 L. C. J. 245, Q. B. 1874.

L. REDHIBITORY.

134. Action to recover the price of a horse which the appellant bought from the respondent. The averment in the declaration was that the day after the sale the appellant sent back the horse as unsound, being subject to wind gall, but that respondent refused to receive it back. It appeared from the evidence that the horse was suffering from spring halt. The plaintiff moved for leave to amend, but the motion was rejected—*Held*, in the Court of Appeal confirming the judgment of the Superior Court, that the amendment was properly refused, particularly as there was no special warranty, but that there was no fixed time within which the action must be brought, and that eight days was not an unreasonable delay within which to bring the action. *Lauthier & Champagne*, 23 L. C. J. 254, Q. B. 1874.

135. The right to an action redhibitory is lost by a delay from the 23rd June to 20th September. *Veroneau* v. *Poupart*, 21 L. C. J. 326, S. C. & Q. B. 1877.

136. Appellant bought a horse from respondent on the 6th May, on the 9th he took the horse home. On the 26th, 17 days after taking the horse home, he brought action for a *vice redhibitoire*—*Held*, in appeal, confirming the judgment of the court below, that while the

* Quiconque vote à une élection de conseillers municipaux sans avoir au moment où il donne son vote les qualités requises d'un électeur municipal, encourt une amende de vingt piastres. 316 M. C.

court would not be bound by the nine days rule laid down in the custom and followed in the judgment of the court below, that the delay was too long, and the action was properly dismissed.* *Donihee & Murphy*, 2 L. N. 94, Q. B. 1879.

137. Where there is no express warranty the redhibitory action must be brought within nine days. *Cerier* v. *Chayer*, 3 L. N. 84, S. C. 1880.

LI. REVOCATORY.

138. Where an opposant claims from an assignee land which the latter holds under deeds of sale, and the vendors are not in the cause, recourse must be had to the revocatory action in which all concerned shall be parties. *Woods & Lajoie & Laurin*, 23 L. C. J. 65, S. C. 1879.

LII. RIGHT OF, *see* INTEREST IN.

139. Where petitions were brought in the name of the commissioners of the Quebec, Montreal, Ottawa and Occidental Railway, which at the time was a public work belonging to the Province of Quebec, and all the property and rights of action of which, and all franchises and privileges thereof, were vested in her Majesty to and for the use of the Province —*Held*, that the commissioners had no such right of action, and that the proceedings ought to have been brought by the Attorney-General in the name of Her Majesty. *Commissioners of the Q. M. O. & O. Railway* v. *O'Neil et al.*, 4 Q. L. R. 216, S. C. 1876.

140. *On Transferred Claim.*—A creditor has no right of action on a claim transferred by a garnishee order of a court. *Theberge & Fournier*, 8 R. L. 390, Q. B. 1876.

141. *Where Arises.*—To an action in Montreal by a creditor of a railway company against a shareholder for the amount due on his shares, defendant filed declinatory exception, saying that he resided in Stanbridge, in the county of Missisquoi, and that the cause of action arose in Bedford in said county, which was the place where he subscribed for his shares—*Held*, that the cause of action arose at Montreal, where the company had its principal office and where judgment was rendered for the debt due by the company. *Welch* v. *Baker*, 21 L. C. J. 97, S. C. 1876.

142. Action for the recovery of the amount due for subscription to the newspaper plaintiff. The subscription was taken in Berthier, in the district of Richelieu, and the newspaper was published and posted in the district of Montreal. On this ground defendant objected that the action should have been taken in the district of Richelieu and not in Montreal—*Held*, that as delivery of the paper was made in Montreal, that there was a right of action there. *Nouveau Monde* v. *Le Crière*, 7 R. L. 543, C. C. 1877.

143. A publisher of a newspaper at Montreal who sends there copies of his newspaper containing libellous matter to a number of individuals and to public reading rooms in Quebec,

will be held to publish that matter in Quebec. *Irvine & Duvernay*, 1 L. N. 138, & 4 Q. L. R. 85 S. C. 1878.

144. An action on a promissory note dated in St. Hyacinthe, and payable in Montreal, should be brought in St. Hyacinthe. *Mulholland* v. *La Cie. de Fonderie A. Chagnon et al.*, 21 L. C. J. 114, S. C. 1877.

145. An insurance company, having its domicile at Montreal and issuing its policies at Montreal, takes risks at Quebec by means of its agent resident there—*Held*, that the company could be sued at Quebec, as the right of action arose there. *O'Malley* v. *Scottish Commercial Insurance Co.*, 4 Q. L. R. 226, S. C. 1878.

146. And an absentee who has property in Montreal may be sued there, although the right of action did not originate there, and no personal service is made upon him there. *Macdonald & McKay & Routh*, 2 L. N. 301, S. C. R., & Q. B. 1879.

147. Defendant, domiciled at Montreal, wrote to the plaintiff, a resident of Arthabaska, requesting him to take charge of his, the defendant's, lands at the latter place, and promising to indemnify him for his services—*Held*, that an action for the value of such services brought in the district of Arthabaska was properly dismissed on exception *declinatoire*. *Cloutier & Lapierre*, 4 Q. L. R. 321, S. C. R. 1878.

148. The defendant gave to one R., at Rimouski, a cheque on the Bank of Montreal for $20, dated at Quebec. R. came to Quebec, endorsed the cheque and passed it to plaintiff. Plaintiff presented it at the Bank and on refusal of payment sued on it before the Circuit Court at Quebec—*Held*, on declinatory exception, that the action should have been brought at Rimouski. *Lepage & Billy*, 4 Q. L. R. 383, C. C 1878.

149. Action at Quebec for the price of work done at Moisic, in the district of Saguenay, under a verbal hiring which took place at the City of Quebec—*Held*, that as the whole cause of action did not arise at Quebec, and as defendant was not domiciled there nor personally served there, that a declinatory exception would lie. *Trudel & Duval*, 4 Q. L. R. 180, S. C. 1878.

150. The right of action on goods sold by sample in Richmond, in the district of St. Francis, for a house in Montreal does not arise in Montreal, but in the district of St. Francis. *Shupe* v. *Vasey*, 23 L. C. J. 295, S. C. 1878.

151. The plaintiff sued the defendant upon a note dated at Montreal and payable at Montreal. Defendant filed a declinatory exception alleging and proving that the note though dated at Montreal had been signed at Sorel, in the district of Richelieu—*Held*, that the cause of action arose at Sorel. *National Insurance Co.* v. *Cartier*, 22 L. C. J. 336, C. C. 1878.

152. Action on a premium note given for insurance in a Mutual Insurance Company. The action was taken at Waterloo, in the district of Bedford, where the head office of the company was situated, and served on defendant in Vercheres, in the district of Montreal, where he resided, and where the note was executed. —*Held*, that the action should have been in

*The redhibitory action resulting from the obligation of warranty against latent defects must be brought with reasonable diligence according to the nature of the defect and the usage of the place where the sale is made. 1530 C. C.

the district of Montreal. *Eastern Townships Mutual Fire Insurance Co.* v. *Bienvenu*, 2 L. N. 363 & 23 L. C. J. 316, S. C. 1879.

153. Defendant subscribed for stock in the company, plaintiff, in the district of St. Francis. Being sued on his subscription in the district of Montreal, he declined the jurisdiction—*Held*, that as part of the cause of action, particularly the promise to pay, took place in Montreal, the exception was well taken and the action must be dismissed. *National Insurance Co. & Paige*, 2 L. N. 93 & 24 L. C. J. 187, Q. B. 1879.

154. On an *exception declinatoire* to an attachment in revendication of certain horses and waggons and a lot of cordwood—*Held*, that an attachment in revendication either of moveables or immoveables is a real action, and should be brought in the place where the property is situated. *Ethier* v. *Dandurand*, 2 L. N. 158, S. C. 1879.

155. Defendant was sued on a promissory note made in the city of Ottawa, where she resided, and where she was personally served with summons to appear before the Superior Court in the district of Ottawa and Province of Quebec—*Held*, that the action was properly brought. *Cuddy* v. *Cassidy*, 2 L. N. 346, S. C. 1879.

156. The company obtained a writ of mandamus against the defendants, as representing the county of Ottawa, to compel them to carry out the terms of a subscription of $200,000 in aid of the railway, in pursuance of a by-law duly passed and accepted by the company. The plaintiffs alleged that they had commenced the work and complied with the conditions imposed on them, but that the defendants, though put *en demeure*, had refused to sign the bonds or deliver them to the plaintiffs. The mandamus was obtained for the purpose of having the defendants ordered to deliver the bonds to the plaintiffs. The defendants met the action by a declinatory exception, alleging that they had been wrongly sued at Montreal, as they had their office and place of business at Ottawa. The plaintiffs contended that this exception had been waived by subsequently pleading to the merits. The Court of Appeals, however, ha[d] held in the Gray case that this was not a waiver—*Held*, that the declinatory exception was well founded, and must be maintained. Both the defendants resided in the same jurisdiction, viz., the district of Ottawa, and the service of one of them in Montreal could not give the court here jurisdiction. Articles 34 and 38 governed this matter, and Art. 38 applied only where the defendants resided in different jurisdictions. *M. O. & O. Ry. Co.* v. *Devlin & Ward*, S. C. 1879.

157. The right of action on an account for goods sold by a commercial traveller in the country for a house in Montreal, subject to the approval of such house and to delivery at Montreal, arises at Montreal. *Gnaedinger* v. *Bertrand*, 2 L. N. 377 & 24 L. C. J. 8, S. C. 1879.

158. And the right of action on notes signed in blank in another district for the price of such goods, but filled up and made payable in Montreal, is in Montreal. *Ib.*

159. *Held* in another case, that the right of action on an account for goods sold under such circumstances is where the order was taken and not where the goods were shipped.* *Gault & Bertrand*, 2 L. N. 411 & 24 L. C. J. 9, S. C. 1879.

160. The plaintiffs, merchants doing business in Montreal, sued the defendants in the district of Montreal for a balance of $86.96 for goods sold and delivered. The defendant was described in the writ as of New Edinburgh, in the Co. of Carleton, Ontario, and he was served personally in the city of Ottawa. The goods had been sold on an order obtained from defendant at his domicile by a travelling agent of plaintiff and ratified by them in Montreal. Defendant excepted to the jurisdiction—*Held*, following *Gault & Bertrand*, that the right of action was not in Montreal, and action dismissed. *Demarteau* v. *Mansfield*, 3 L. N. 136, S. C. 1880.

161. But, *held*, in a similar case, in which the goods had been sold by a broker in Toronto, and ratified and shipped in Montreal, that the right of action arose in Montreal. *Pierost* v. *Jackson*, 3 L. N. 136, C. C. 1880.

162. Action on a premium note in a Mutual Insurance Co. The application was made or taken in the district of Bedford to a Company having its head office in Sherbrooke, in the district of St. Francis. The note was made payable at Sherbrooke and the policy issued there—*Held*, that the action was properly brought in Sherbrooke. *Mutual Fire Insurance Company of Stanstead* v. *Galiput*, 3 L. N. 239, S. C. R. 1880.

163. Action taken at Quebec on a promissory note purporting to have been signed at Quebec, though in fact signed at St. Luce, in Rimouski—*Held*, that the defendant in signing the note, and transmitting from St. Luce to Quebec to the plaintiffs, accepted the jurisdiction mentioned in said note, and that the action originated at Quebec.† *Thibodeau* v. *Danjou*, 6 Q. L. R. 351, S. C. 1880.

164. Motion for leave to appeal from a judgment dismissing a declinatory exception. The action was against an Insurance Co., by the *cessionaire* of a policy of insurance upon property in the district of Arthabaska. The application was taken in Victoriaville in said district by an agent of the Co. and the action was instituted there. By the exception the defendants contended that the action should have been brought at Quebec, where the policy was issued to the respondent. Appeal refused. *Tourigny* v. *Ottawa Agricultural Insurance Co.*, 3 L. N. 196, Q. B. 1880.

LIV. Suspension of by Death of Party.

165. An *action ex delicto*, which is joint and several against several persons, is not suspended as to the survivors by the suggestion of the death of one of the defendants, as such action may be brought against any one or more of the persons jointly and severally liable. *Allan et al. & McLagan*, 1 L. N. 4, Q. B. 1877.

* Confirmed unanimously in appeal. 25 L. C. J. 340.

† On application leave to appeal from such judgment was refused.

LVI. To Set Aside the Acceptance of a Succession.

166. When proceedings were had attacking the validity of an acceptance of a succession made by a tutor to minors with the advice of a family council—*Held*, that the acceptance could not be pronounced null in a case to which the minors were not parties. *Rolland & Michaud*, 9 R. L. 19, Q. B. 1876.

LVII. To Set Aside Deeds of Sale.

167. The notary need not be joined as a defendant in an action to set aside a notarial deed of sale as made in fraud of creditors. *Clement* v. *Cataford*, 8 R. L. 624, S. C. 1878.

LIX. Under Lessor and Lessee Act.

168. The power of the court to hear actions under the Lessor or Lessee Act in vacation will include a special demand to compel the landlord to secure to the tenant the peaceable enjoyment of the premises leased. *Attorney General* v. *Coté*, 3 Q. L. R. 235, S. C. 1877; 887 C. C. P.

LX. Union of.

169. After the hearing on the merits the plaintiff took attachments, both simple and in the hands of third parties, for the same debt as sued for in the first instance. The defendant moved to discharge the *delibéré*, with a view to having the two cases or proceedings united. Motion granted. *Watson* v. *Thompson*, 2 L. N. 142, S. C. 1879.

ACTS OF PARLIAMENT.

I. Constitutionality of.
II. Interpretation of.
III. Promulgation of.
IV. Repeal of.

I. Constitutionality of, *see* LEGISLATIVE AUTHORITY.

170. A section of an Act or Article of a Code which is unconstitutional in part may be good for the remainder. *Corbeille* v. *Corporation of the Village of St. Jean Baptiste*, 7 R. L. 616, C. C. 1876.

171. Appeal by certain butchers of the Municipality of St. Jean Baptiste from a judgment condemning them to fine, or in default imprisonment, for infraction of a by-law prohibiting the sale of fresh meat outside the public market. The penalty imposed by the by-law was in virtue of the 508th article of the Municipal Code, which says:—"To impose for each violation of any by-law of the Council a penalty in the shape of a fine not exceeding twenty dollars, or imprisonment not exceeding thirty days, or both together." The appeal was urged on the ground that the latter part of the clause, being unconstitutional, entailed the unconstitutionality of the whole, and therefore the by-law under which they were condemned was altogether illegal and null—*Held*, that the unconstitutionality of a part of an article of a statute does not involve the unconstitutionality of the whole, provided that the unconstitutional part may be rejected without injury to the sense. *Riendeau & Corporation of Village of St. Jean Baptiste*, C. C. 1877.

172. The exemption of salaries of public employees is a matter of public order, and therefore the legislature of the Province of Quebec has not the power to declare seizable the salaries of employees of the Federal Government.* *Evans & Hudon & Browne*, 22 L. C. J. 268, S. C. 1877.

173. The Dominion Controverted Elections Act, imposing on the Superior Court of the Province of Quebec the duty of trying election cases is constitutional. *Primeau & Massue*, 2 L. N. 38, & 23 L. C. J. 60, Q. B. 1878.

174. The Act of the Dominion Parliament known as the Dominion Controverted Elections Act of 1874, conferring and imposing upon the courts of the various Provinces the right and duty of trying petitions against the election of members of the House of Commons of Canada is constitutional. *Valin & Langlois*, 2 L. N. 364, & 3 S. C. Rep. 1, Su. Ct. 1879.

175. The provision of the Montreal City Charter Q. 37 Vic., cap. 51, sec. 123, authorizing the city of Montreal to make a by-law imposing a license tax on butchers keeping stalls or shops (in the city) for the sale of meat, fish, etc., elsewhere than on the public markets, is not *ultra vires* of the Provincial Legislature. *Angers, Attorney General* v. *City of Montreal*, 24 L. C. J. 259, & *Mallette* v. *City of Montreal*, 2 L. N. 370, & 24 L. C. J. 263, S. C. 1879.

176. But the Act of the Quebec Legislature, 41 Vic., cap. 27, in so far as it purports to authorize the city of Montreal to charge 10 per cent. interest on arrears of taxes is unconstitutional. *City of Montreal* v. *Perkins*, 2 L. N. 371, S. C. 1879.

177. By the Act of Canada 14 & 15 Vic., cap. 128, sec. 75, the city of Montreal was given the right to impose interest, increase, addition or penalty at the rate of ten per cent. on arrears of taxes and assessments. Subsequently to Confederation the Legislature of Quebec by the Act 37 Vic., cap. 51, repealed this provision, and substituted another empowering the said Corporation to impose interest at the rate of ten per cent. on such arrears. By a still later Act (41 Vic., cap. 27) the Legislature of Quebec changed the word interest to those of the original Canadian Act, *increase, addition or penalty* —*Held*, that both provisions relating to the imposition of interest either *eo nomine* or by the name of *increase, addition* or *penalty* were unconstitutional and *ultra vires* of the Quebec Legislature. *Ross* v. *Torrance & City of Montreal*, 2 L. N. 186, & 9 R. L. 565, S. C. 1879.

178. The Act of Quebec 39 Vic. cap. 7, intituled, "An Act to compel assurers to take out a license" is unconstitutional. *Angers*,

* The Quebec Act says: In future the salaries due and to become due of all public servants or employees in the Province of Quebec shall be liable to seizure in the proportions hereinafter set forth, etc. Q. 38 Vic., cap. 12, sec. 1.

Ield, that the unconstitu-
'an article of a statute does
nstitutionality of the whole,
econstitutional part may be
ry to the sense. *Riendeau*
llage of St. Jean Baptiste,

on of salaries of public
ter of public order, and
ture of the Province of
power to declare seizable
vees of the Federal Gov-
Tudon & Browne, 22 L. C.

n Controverted Elections
e Superior Court of the
ne duty of trying election
. *Primeau & Massue*, 2
J. 60, Q. B. 1878.

e Dominion Parliament
n Controverted Elections
g and imposing upon the
Provinces the right and
s against the election of
of Commons of Canada
n & Langlois, 2 L. N.
Su. Ct. 1879.

of the Montreal City
). 51, sec. 123, authoriz-
to make a by-law im-
butchers keeping stalls
r the sale of meat, fish,
the public markets, is
Provincial Legislature.
al v. *City of Montreal*,
tte v. *City of Montreal*,
J. 263, S. C. 1879.

e Quebec Legislature,
as it purports to author-
to charge 10 per cent.
es is unconstitutional.
kins, 2 L. N. 371,

ada 14 & 15 Vic., cap.
ontreal was given the
increase, addition or
per cent. on arrears
ts. Subsequently to
ture of Quebec by the
pealed this provision,
empowering the said
terest at the rate of
ars. By a still later
Legislature of Quebec
o those of the origi-
addition or penalty
ons relating to the
ner *eo nomine* or by
ion or *penalty* were
vires of the Quebec
nnee & City of Mon-
. 565, S. C. 1879.

c 39 Vic. cap. 7,
pel assurers to take
itutional. *Angers*,

future the salaries due
servants or employees
be liable to seizure in
th, etc. Q. 38 Vic., cap.

Attorney General, pro Regina v. *Queen Insurance Co.*, 21 L. C. J. 77, S. C., & 7 R. L. 545, 1 L. N. 3, 410 Q. B., & P. C., & 22 L. C. J. 307, P. C. 1878.

179. And the acts of the Provincial Legislatures, in so far as they invest the Lieutenant Governor with the authority of appointing to the rank or dignity of Queen's Counsel, which Her Majesty by herself or through Her representative, His Excellency the Governor General, has the right to confer, are unconstitutional. *Lenoir* v. *Ritchie*, 2 L. N. 373, Su. Ct. 1879.

180. The Act of the Parliament of Canada, 42 Vic., cap. 48, providing for the liquidation of Building Societies generally in the Province of Quebec is unconstitutional.* *McClanaghan & St. Ann's Mutual Building Society*, 3 L. N. 61, & 24 L. C. J. 162, Q. B. 1880.

181. The Act of the Province of Quebec 39 Vic., cap. 2, is unconstitutional, *ultra vires* and inoperative to transfer the property, etc., of the Montreal, Ottawa & Western Railway to the Quebec Government. *Bourgoin & The Montreal, Ottawa and Occidental Railway*, 3 L. N. 185, & 24 L. C. J. 193, P. C. 1880.

182. By 40 Vic., cap. 41, sec. 28, of the Parliament of Canada it is provided that judgments of the Court of Queen's Bench in matters of insolvency should be final—*Held*, that such Act was constitutional. *Cushing & Dupuy*, 24 L. C. J. 151, & 3 L. N. 171, P. C. 1880.

183. The Act of the Parliament of Canada, 41 Vic., cap. 16, known as "The Canada Temperance Act 1878," is within the legislative capacity of that body.† *City of Fredericton & The Queen*, 3 S. C. Rep. 505, Su. Ct. 1879.

184. The regulation of the traffic in intoxicating liquors is within the jurisdiction of the Parliament of Canada. *Covey Exp. & The Municipality of the County of Brome*, 21 L. C. J. 182, S. C. 1877.

185. And the License Act of Quebec, in so far as it pretends to restrain the sale of liquor, and especially in imposing as a penalty imprisonment with hard labor, is unconstitutional. *Poitras* v. *Corporation of Quebec*, 9 R. L. 531, S. C. 1879.

186. The Quebec License Act, in so far as it pretends to limit the powers of the assignees under the Insolvent Act in selling the estates of insolvents, is unconstitutional. *Coté* v. *Watson*, 3 Q. L. R. 157, S. C. 1877.

187. The Fire Insurance Policy Act, Revised Statute Ontario, cap. 162, is not *ultra vires*, and is applicable to insurance companies, whether foreign or incorporated by the Dominion Parliament, to carry on insurance business throughout Canada.‡ *Parsons* v. *Sundry Insurance Cos.*, 3 L. N. 326, Su. Ct. 1880.

188. And the Act in question prescribing conditions incidental to insurance companies contracting within the limits of the Province is not a regulation of trade and commerce within the meaning of those words in S. S. 2, sec. 9, B. N. A. Act. *Ib.*

189. The respondents, a Board for the management and administration of the Temporalities Fund of the Church of Scotland, was incorporated by an Act of the Legislature of Canada prior to Confederation, 22 Vic. cap. 66. In 1874 the various Presbyterian churches in Canada were united, and application was made almost simultaneously to the Legislatures of Ontario and Quebec for authority to give effect to this determination, and to enable the new body to deal with and control the property of the churches so united, or in other words with the funds administered by the Temporalities Board, respondents. Acts of the Provincial Legislatures of Quebec and Ontario were passed accordingly. All the property and money of the Temporalities Fund was situated or invested in the Province of Quebec—*Held*, in appeal by three judges out of five, that the Act of the Quebec Legislature vesting the property of the Board in the United Church was *ultra vires* and unconstitutional.* *Dobie & Board for the Management of the Temporalities Fund, &c.*, 3 L. N. 244, Q. B. 1880.

* Reversing S. C. 2, L. N. 418, & 19 R. L. 23.

† Before the Privy Council.

‡ Confirmed in Privy Council see 5, L. N. 25.

II. Interpretation of.

190. The 66th section of cap. 60 of the Quebec Statutes 36 Vic., entitled "Act to consolidate and amend the Act to incorporate the town of Levis, and the different Acts amending them," is directory only, and is intended only to provide a remedy for any injustice that would otherwise be suffered by any entry or omission in the valuation roll, and is not intended to entail the nullity of the roll in case of such entry or omission. *Grand Trunk Railway Co. & The Corporation of Levis*, 10 R. L. 612, Q. B. 1879.

191. General words in a statute do not repeal a special provision in a prior one, and therefore where a privilege has been given by law it can be taken away only by express words. *Mayor, etc., of Iberville & Jones*, 3 L. N. 277, Q. B. 1880.

III. Promulgation of.

192. A writ of attachment under the Insolvent Act, 1875, was taken out against the defendant, and delivered to the assignee to whom it was addressed on 1st April, before 3 p.m. At a quarter past three the Act was assented to which repealed the Insolvent Act. The writ was not served upon the defendant until between 5 and 6 the same evening—*Held*, that the statute having come into force on the 1st, its operation began in the morning and covered all acts done during that day. *Rickaby & Bell*, 3 L. N. 135 & 25 L. C. J. 91, S. C. 1880.

IV. Repeal of.

193. Where a provision of the Canadian Parliament prior to Confederation was repealed by an Act of the Quebec Legislature subsequently thereto, and another substituted therefor to the same effect though in different words—*Held*, that another Act of the Quebec Legislature, by which the former was repealed and the words

* Since confirmed by judgment of the Privy Council. See 5 L. N. 53.

of the Canadian Act substituted, had not the effect of restoring the Canadian Act. *Ross* v. *Torrance & City of Montreal*, 2 L. N. 186, S. C. 1879.

194. Action was brought under sec. 133 of the Insolvent Act of 1875 after repeal of that Act, and a demurrer based on the repeal was dismissed. *Darling* v. *McIntyre*, 3 L. N. 381, S. C. 1880.

195. The Insolvent Act, 1875, by sec. 140, made certain acts committed by an insolvent for the purpose of fraud punishable by indictment. The Act repealing the Insolvent Act, 1875, provided that "all proceedings under the Insolvent Act, 1875, and the amending Acts, in any case where the estate of an insolvent has been vested in an official assignee before the passing of this Act may be continued and completed thereunder, and the provisions of the said Acts hereby repealed shall continue to apply to such proceedings, and to every insolvent affected thereby, and to his estate and effects, and to all assignees and official assignees appointed or acting in respect thereof in the same manner and with the same effect as if this Act had not been passed."—*Held*, on an indictment, under sec. 140, commenced before the repealing Act, and sought to be continued after, that the indictment must be quashed, as the proviso of the repealing Act above quoted was not practically applicable to it.* *Regina & Jobin*, 3 L. N. 123, Q. B. 1880.

ADJUDICATAIRE.

I. Liability of, *see* SALE, Judicial.

ADMINISTRATION.

I. Of Minor's Estate, *see* ACCOUNT.
II. Of Property of Succession, *see* ACCOUNTS.

ADMINISTRATORS—*See* CURATORS, EXECUTORS, TUTORS.

I. Account of, *see* ACCOUNT.

II. Investments by.

196. Administrators, as defined by section one of the Act 33 Vic. cap. 19,† and including trustees, to be exempt from liability by reason of the investments made by them, saving always the case of fraud in making the same, must invest moneys held by them as such in Dominion or Provincial permanent stock or debentures, or in public securities of the United Kingdom, or of the United States of America, or in real estate in this Province valued in the municipal valuation roll at double the amount of the investment, except in the case of executors when they are authorized otherwise by the will, in the case of institutes and curators to a substitution when they are likewise otherwise authorized by the document creating the substitution, and in the case of trustees when they also are otherwise authorized by the document creating the trust. When, therefore, investments are made otherwise than as above provided, or than as ordered by the will appointing executors, or by the document creating a substitution or a trust, the administrators are obliged to indemnify the parties to whom they are accountable for losses caused by the depreciation of the securities invested in under pain of coercive imprisonment, subject to the provisions contained in the Code of Civil Procedure. In the case of fraud in making investments in the securities mentioned in section one administrators are responsible for the damage caused by their fraud under the like pain of coercive imprisonment. 42-43 Vic. cap. 30.

*31 Vic. cap. 1, sec. 7, 37thly. No offence committed and no penalty or forfeiture incurred, and no proceeding pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable when necessary to the repealing Act, and that where any penalty, forfeiture or punishment shall have been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal.

† In this Act the word "administrator" means and includes any institute in what-ever degree under a substitution howsoever created, and any executor under any will, and any tutor or curator having as such the possession or administration of property belonging to another, or held by him for the benefit of another, whether the will, instrument or *acte* constituting him such administrator have been made or have taken effect before or after the coming into force of this Act.

ADMIRALTY.

I. Powers of over British Vessel, *see* MERCHANT SHIPPING.

II. Rules of in cases of Collision, *see* MARITIME LAW.

ADMISSIONS—*See* EVIDENCE.

ADULTERY—*See* MARRIAGE.

ADVANCES.

I. Banks may make on the Security of Company Shares, *see* BANKS.

II. By Assignee in Insolvency, *see* INSOLVENCY.

III. On Warehouse Receipt, *see* WAREHOUSE RECEIPT.

IV. Priority of Hypothec for, *see* HYPOTHEC.

V. Right of Agent to Recover Money Advanced for Speculation on Margin, *see* GAMBLING TRANSACTION.

ADVERTISEMENTS.

I. In Official Gazette, *see* GAZETTE.
II. Summons by, *see* PROCEDURE.

ADVICE.

I. Of Family Council, *see* TUTORSHIP.
II. Of Legal Counsel no Bar to Presumption of Malice, *see* DAMAGES for Malicious Prosecution.

ADVOCATES.

I. Cannot be Witnesses, *see* ATTORNEYS AD LITEM.
II. Fees of.
III. Powers of.
IV. Remuneration.

II. Fees of.

197. An advocate is entitled to add to his action the fee usually chargeable for a lawyer's letter.* *Lighthall & Jackson*, 3 L. N. 37, C. C. 1879.

198. Plaintiff having demanded payment of his account from defendant without effect employed the services of an advocate who wrote him the ordinary letter and added $1.35 therefor. The defendant then sent to plaintiff $6.23, the bare amount of the debt, but sent nothing for the attorney's letter. Plaintiff then sued for $1.35, calling it a balance due on the account after deduction of the costs of the letter—*Held*, that the plaintiff had a right to recover the costs of the letter, but that $1.00 was a sufficient charge therefor. *Heroux* v. *Clement*, 10 R. L. 589, C. C. 1880.

199. In an action by an attorney against his client for professional services a *quantum meruit* was allowed over and above the taxed bill. *Desjardins* v. *Ducasse*, 2 L. N. 270, S. C. 1879.

200. In the Supreme Court advocates arguing their own case are not allowed fees. *Langlois & Valin*, 3 L. N. 336, Su. Ct. 1880.

201. During the progress of an action the client paid his attorneys $239.75 on account of costs. The case was won and carried to appeal, where the judgment was confirmed. The attorneys having been paid their costs by the losing party, the appellant brought action to recover his $239. The attorneys had had an unusual amount of labor in connection with the case, and there was evidence that they were to be paid some $50 extra, which, in fact, they had received and given a receipt for as in full. The action in the first instance was maintained, except as to the fifty dollars. In review this judgment was reversed, and the action was dismissed altogether, and in appeal the judgment of the first instance was restored, cost of appeals divided. *Larue & Loranger*, 2 L. N. 155, S. C. R., & 3 L. N. 284, Q. B. 1880.

*But see *contra*. Ibid.

III. Powers of.

202. Though an advocate can bind his client until disavowed by any proceeding in the cause, he cannot bind him without special authority by any agreement in the nature of a compromise. *King & Pinsonneault*, 22 L. C. J. 58, P. C. 1875.

IV. Remuneration of.

203. Defendant, an attorney, was sued for the amount of a promissory note and pleaded compensation by professional services. Defendant had been engaged in a case at the request of the plaintiff through the attorney of record. The plaintiff having won, the taxed costs were paid to the attorney of record by the losing party, and defendant got nothing—*Held*, that he was entitled to be paid by the plaintiff, and the plea of compensation was maintained. *Globensky & deMontigny*, 2 L. N. 178, S. C. 1879.

204. The defendant was engaged by the plaintiff to conduct a suit for him against his son for an alimentary allowance. The action was successful, and the plaintiff obtained judgment for an allowance the arrears of which, amounting to $566, the defendant took a transfer of, for his services, without informing the plaintiff of the amount. Some time subsequently he paid the plaintiff $100 out of it, as a favor, telling him at the same time that he was not bound to pay him anything. Action by plaintiff to recover the balance of the arrears, defendant having been paid his taxed costs by the losing party—*Held*, that to stipulate for a share of the proceeds of the suit, as defendant appeared to have done was maintenance, and could not be allowed, and that not having stipulated for any fixed sum the defendant had no right to recover anything but his taxed costs. *Dorion & Brown*, 2 L. N. 214, Q. B. 1879.

AFFIDAVIT.

I. Affidavit with a Plea does not Alter Burden of Proof.
II. Effect of Preliminary Affidavits.
III. For Attachment, *see* ATTACHMENT.
IV. For Capias, *see* CAPIAS.
V. For Requete Civile, *see* REQUETE CIVILE.
VI. In Insolvency, *see* INSOLVENCY.
VII. Of Death of a Person.
VIII. With Opposition, *see* OPPOSITION.

I. Affidavit with Plea does not Alter Burden of Proof.

205. Where a defendant to an action on a note pleads that the stamps on the note were

not placed there at the date of the note, and files an affidavit to that effect, the burden of proof is still on the defendant to show that that is the case. *National Insurance Co. & St. Cyr*, 5 Q. L. R. 258, S. C. 1879.

II. Effect of Preliminary Affidavit.

206. But in an action in revendication by default—*Held*, that the affidavit in which the writ issues makes *prima facie* proof against the defendant, and the court may condemn the defendant without other proof, although the action be based on a special agreement which gives to him the possession of the things revendicated. *Bergevin* v. *Vermillon*, 3 Q. L. R. 134, S. C. R. 1876.

207. But in a subsequent case of the same kind in the Superior Court, the defendant having failed to appear, the plaintiff proceeded *exparte* by default and submitted his case, with no other proof than the affidavit on which the writ had issued—*Held*, that affidavits to procure revendication, capias or attachment before judgment, are completely exhausted by the issue of the writ, and having served their purpose are of no value as proof in the cause. *Crehen* v. *Hagerty*, 3 Q. L. R. 322, S. C. 1877.

VII. Of Death of a Person.

208. An affidavit of the death of a person out of Lower Canada, purporting to be sworn before a foreign notary, does not make proof of its contents. *Quinn & Dumas*, 23 L. C. J. 182, Q. B. 1874.

— —

AFFREIGHTMENT—*See* DEMURRAGE.

I. Charter Party.
II. Liability for Freight.

I. Charter Party.

209. A charter party provided that the vessel was to receive cargo at Quebec, "on or before the 10th August next, or this charter is cancelled." The vessel arrived in port in ballast only on the morning of the 10th, and no ballast was discharged on that day. On the same afternoon the ship's agent notified the ship's charterer by protest that the ship was ready for loading, and demanded a cargo, which the latter refused to give, alleging that the said ship was not ready to receive cargo according to agreement—*Held*, that the charter party had become cancelled according to its terms, the ship not being ready to receive cargo or fulfil its obligations either literally, substantially or according to the usage of trade at Quebec. *Patterson* v. *Knight*, 4 Q. L. R. 187, S. C. 1878.

210. The appellants chartered the steamer Livorno from the Italian Lloyds Navigation Company for the voyage from Liverpool, where she was lying, to Montreal, and back to some port in the United Kingdom, or on the continent between Havre and Hamburgh. The ship was consigned to S., appellants' agent in Montreal.

S. rechartered the steamer in Montreal to R., G. & Co., at an advance of threepence sterling per quarter. R., G. & Co., for the consideration of $550.87 paid down, transferred by endorsement their rights in said charter party to respondent, and he was accepted by appellants in place of R., G. & Co., and respondent promised to pay appellants the freight at the rate of 9s. 3d. sterling per quarter to S. on the arrival of the ship at her port of destination. On certain misrepresentations of the captain, who was in charge of the vessel when first chartered, to appellants, and owing to some wrong-doing on his part, respondent suffered considerable damage. Respondent it seems paid the owners the original freight—that is 3d. less than R., G. & Co. promised to pay appellants, but he refused to pay the other 3d., saying that it was compensated by these damages. Appellants sued for the extra 3d. per quarter, and respondent set up his damages in compensation. The damages were proved to have been suffered, but it was contended that appellants were not liable, but the owners who placed the captain on board and who had control of the ship, and that the respondent knew that appellants were charterers and not owners. Question whether the charterers were owners of the ship *pro tempore*. By the Court: "I cannot see that there is the variance in the jurisprudence which Abbott insists on. It appears to me that Sergeant Shee's note to the 8th edition of Abbott, p. 45, clears up this supposed inconsistency. But it is unnecessary here to enter into the intricacies of these cases, further than to observe that if there is any particular difficulty, the decision must turn on the interpretation of the charter party. This rule is precisely what Pothier has laid down (Ch. Partie, Part 1, Sect. 5, No. 103). It is the lease of the ship or it is the lease of work—the obligation to carry goods; but Pothier says that this distinction is of no consequence in French practice as regards the master or the merchant, and he does not attempt to establish that this distinction has any practical effect as regards other parties. We need not therefore consider this distinction. But the difficulty raised in the English books, which do not, we must always keep in mind, lay down our law on the matter, motived the introduction of an absolute disposition of our Code, which if it be not absolutely the rule of the old law is now our rule of law, and it appears to me to be decisive that in the sub-lease of a ship—the sub-lessor is liable as if he were owner." 2408 C. C., *Stoddart & Gosset*, Q. B. 1877.

II. Liability for Freight.

211. Action by the master of the steamship "Colina" for freight of cattle shipped by defendant on board that vessel at Montreal for conveyance to Glasgow. The bill of lading contained a stipulation that freight would be due whether the cattle arrived or not. A storm arose in mid-ocean, and the cattle which were on deck having been knocked about until they were almost lifeless, were pushed overboard —*Held*, that the freighter was liable for the freight as if the cattle had been carried to their destination, on the ground that the contract

eamer in Montreal to R., G.
of threepence sterling per
o., for the consideration of
ansferred by endorsement
arter party to respondent,
y appellants in place of
pondent promised to pay
t at the rate of 9s. 3d.
S. on the arrival of the
destination. On certain
f the captain, who
the vessel when first
ts, and owing to some
art, respondent suffered
Respondent it seems
ginal freight—that is 3d.
promised to pay appel-
pay the other 3d., say-
sated by these damages.
he extra 3d. per quarter,
his damages in compen-
were proved to have
s contended that appel-
t the owners who placed
and who had control of
respondent knew that
ers and not owners.
arterers were owners of
By the Court: "I can-
e variance in the juris-
insists on. It appears
's note to the 8th edi-
ears up this supposed
s unnecessary here to
of these cases, further
here is any particular
must turn on the
ter party. This rule
r has laid down (Ch.
o. 103). It is the lease
se of work—the obli-
nt Pothier says that
onsequence in French
ster or the merchant,
to establish that this
ical effect as regards
not therefore consider
difficulty raised in the
not, we must always
ir law on the matter,
f an absolute disposi-
it be not absolutely
ow our rule of law,
decisive that in the
b-lessor is liable as
., *Stoddart & Gosset*,

HT.

er of the steamship
le shipped by defen-
t Montreal for con-
bill of lading con-
eight would be due
or not. A storm
cattle which were
d about until they
pushed overboard
was liable for the
een carried to their
that the contract

was to let certain space and not to deliver the cattle at the port of destination.* *Murray* v. *Bickerdike & Murray* v. *Head*, 3 L. N. 47, S. C. 1880.

AGE.

I. Of Deputy Prothonotary cannot be called in question in Order to Invalidate Writs signed by him, *see* WRITS.

AGENCY.

I. Action by Agent.
II. Action in name of Agent.
III. Action by Principal.
IV. At Elections, *see* ELECTION LAW.
V. Brokers.
Commission of.
Evidence in actions by.
VI. Commission of Agent.
VII. Factors.
Who are.
VIII. Liability of Agent.
IX. Liability of Corporation for Acts of Agent, *see* CORPORATION.
X. Liability of Officers of Company, *see* COMPANY.
XI. Liability of Principal.
XII. Lien of Agent.
XIII. Of Assignee in Insolvency.
XIV. Of Consorts, *see* CONSORTS.
XV. Powers of Agent, *see* INSURANCE.
XVI. Power of Attorney.
XVII. Proof of.
XVIII. Revocation of Authority.
XIX. Voluntary Agent, *see* ACTION QUANTUM MERUIT.
XX. What Constitutes.

I. Action by Agent.

212. Action to recover the price of books supplied by a Paris firm through their agent in Montreal. The agent had the control of the goods, but delivered bills and invoices in the name of the principal. Action in name of agent dismissed. *Dansereau & Keller*, 3 L. N. 240, S. C. 1880.

II. Action in name of Agent.

213. Action was brought against appellant for the balance of the price of books purchased by him from the respondent, acting as the agent of one Abel Pilon, a book dealer of Paris, France. It was in evidence that the subscription paper and the account rendered were both in the name of the principal—*Held*, reversing decision of the court below, that respondent was not a factor and had no right to sue in his own name. *Doutre & Dansereau*, 3 L. N. 22, Q. B. 1879.

III. Action by Principal.

214. Action for the price of coal purchased by defendants from T., M. & Co. Plea, that defendants never purchased from plaintiffs and knew nothing of them; that if T., M. & Co. were their agents as alleged, the agency had not been disclosed, and they were not liable—*Held*, that as T., M. & Co. did not engage *pour autrui* but for themselves, that the action must be dismissed.* *Canada Shipping Co.* v. *Hudon Cotton Co.*, 3 L. N. 170, S. C. 1880.

V. Brokers.

215. *Commission of.*—Action for $413.86 commission due to plaintiff for the half year beginning 15th December, 1879, for obtaining the security of his wife for defendant to the Government for the execution of a contract for the erection of a bridge over the Chaudière, at Ottawa—*Held*, that the formalities required by the Quebec Act 32 Vic. cap. 15, sec 14, authorizing the commissioner to enter into the contract, had not been complied with, and therefore the security had not been validly given and no commission earned. *Devlin & Becmer*, 3 L. N. 232, S. C. 1880.

216. Action on a written contract by which appellants agreed to give to respondent "and "no one else the whole and sole sale of as much "of our farm, situated at Longue Pointe, and "known as the Dillon farm, as will constitute "and make 100 lots of 10,000 square feet each; "the said property to be sold by him in lots for "the sum of $67,000, of which we will allow "him the sum of $7,000 for costs of commission "all expenses of surveying lots and bringing the "said property to sale, but the said sum of "$7,000 in *pro rata* rate at $70 per lot will be "paid by the purchasers out of their first payment made on their respective lots," &c. The respondent sold no lots, but on the 12th of June the appellants sold two lots, and the action was for $140, the stipulated commission on these lots—*Held*, that the respondent was something more than a mandataire, as he had an interest in the sale, and, having been to some trouble and expense in having plans made, &c., was entitled to his commission. *Dillon & Borthwick*, 3 L. N. 202, Q. B. 1880.

217. *Evidence in Action by.*—The respondent purchased for appellant 500 tierces of lard, which the latter refused to accept—*Held*, in an action for loss on resale and for commission, that though appellant admitted giving the order that parole evidence could not be admitted to

* Confirmed in Appeal, March 24, 1882.

Freight is payable upon the goods cast overboard for the preservation of the ship and of the remainder of the cargo, and the value of such goods is to be paid to the owner of them by contribution on general average. 2450 C. C.

Freight is not due upon goods lost by shipwreck, taken by pirates, or captured by a public enemy, or which, without the fault of the freighter, have wholly perished by a fortuitous event otherwise than as mentioned in the last preceding article. If the freight or any portion of it is paid in advance, the master is bound to return it unless there is an agreement to the contrary. 2451 C. C.

* Reversed in Appeal, March, 1882 (Dorion, C. J., & Ramsay, J., diss.), the majority of the court being of the opinion that the undisclosed principal had a right of action on the contract; and that, moreover, a tender by the plea of so much of the amount demanded was an acknowledgment of the right of the plaintiffs and a waiver of the plea in bar.

prove the purchase of the land, nor could the broker's notes avail for that purpose. *Trenholme & McLennan*, 3 L. N. 35, & 24 L. C. J. 305, Q. B. 1879.

VI. Commission of Agent.

218. Where an insurance agent, engaged at a salary, and a commission in addition of ten per cent. on the net balance, carried over on the 31st December of each year, after payment of all losses and expenses therein—*Held*, that he was not entitled to ten per cent. on claims unsettled on the 31st December, and that his account must be reduced in proportion. *Rawlings* v. *Citizens Insurance & Investment Co.*, 8 R. L. 398, Q. B. 1876.

VII. Factors.

219. *Who are.*—A person acting as agent in Montreal for a book-house in Paris, and taking subscriptions and rendering accounts in name of such house, is not a factor so as to sue in his own name. *Doutre & Dansereau*, 3 L. N. 22, Q. B. 1879.

VIII. Liability of Agent.

220. Where an adjudicataire at an assignee's sale of real estate added after his signature in the sale book the words "in trust"—*Held*, on petition for *folle enchère*, that as he had not within three days disclosed the name of his principal, if he had any, that he was personally liable. *Bénard, Dupuy & Bury*, 3 L. N. 93, S. C. 1880.

221. The defendant, brought and introduced to the law firm to which the plaintiffs at that time belonged, a person from the United States, who wished to institute an action against a person in Quebec. At the time of giving the instructions the principal gave money to the plaintiffs to cover disbursements. Subsequently the defendant called upon the plaintiffs on several occasions, to learn how the suit was progressing, and report to the principal in the case, who had returned to the United States, and with whom he had business transactions. On one occasion he paid money to plaintiffs on behalf of the principal in the United States. The action was taken, judgment obtained and execution issued, but nothing was realized. After waiting some time plaintiffs demanded payment of his bill of costs, which amounted to something over a hundred dollars. Defendant pleaded that he was in no way responsible, that he had only acted on behalf of the other, whom from the first, plaintiff had accepted as the principal in the matter. At the trial plaintiffs argued that, as representing a principal resident in a foreign country, defendant was liable under Art. 1738 C. C. Defendant replied that the article applied only to factors, who differed from ordinary agents, and cited *Crane & Nolan*, 19 L. C. J. 309—*Held*, that defendant did not come under the article in question, and action dismissed. *Doutre* v. *Ste. Marie*, S. C. 1877.

222. An agent who, in acting for his principal, causes damages to another, is directly and personally responsible to such injured party, even when executing in good faith the orders of his principal, if such orders are illegal. *Holton & Aitkins*, 3 Q. L. R. 289, Q. B. 1875.

223. The question was whether a letter, which had been signed by the defendant as President of the Montreal Omnibus Company, involved a personal guarantee. A *saisie-arrêt* was about to be placed on certain effects of the Company, when defendant interposed, and prevented the plaintiffs from issuing the *saisie-arrêt* by promising to have their claim settled. This promise was in the form of a letter to the attorneys of plaintiffs, and was intended to be signed by the president and secretary, but was signed only by the president. Subsequently the Company became insolvent, and a return of *nulla bona* was made. The defendant being sued on the letter of guarantee pleaded that he only gave the undertaking, in his capacity of president of the Company, that the plaintiffs should be paid out of the assets of the Company. By the court: It was difficult, however, to understand of what use the engagement was, unless it was to be interpreted as a personal engagement, seeing that the Omnibus Company were already liable by law for the debt. The terms of the letter, it was true, seemed to exclude all personal obligation, as it stated that the defendant was "acting as president," and he signed as president; and the document also appeared to be incomplete, because it was intended to be signed by both president and secretary, but was signed by the former only. The judgment of the court below dismissed the action on these grounds, but the Court of Review were of opinion to hold the guarantee personal, and, reversing the judgment, to condemn the defendant to pay $722.55. *Brown & Ker*, S. C. R. 1877.

224. The defendants, as agents of a firm of coal dealers, in Swansea, Wales, sold to the plaintiff a cargo of coals to be shipped by sailing vessel at a stated price. On action against them for breach of contract they set up their agency, and that the principals being well known, they were not liable—*Held*, in appeal, reversing the judgment of the court below, that an agent who contracts in his own name is personally responsible for a breach of the contract. *Evans* v. *McLea*, 2 L. N. 370, S. C. 1879, & 1 Q. B. R. 201, & 4 L. N. 76, 1881; 1715 C. C.

225. *Liability of.*—Where several persons, trustees of an insolvent estate, under a deed of composition, which gave them no power to draw or accept bills, signed promissory notes with the words "Trustees to estate C. D. Edwards," after their signatures—*Held*, that they were personally liable. *Brown et al.* v. *Archibald*, 1 L. N. 327, 22 L. C. J. 126, S. C. 1878, & 3 L. N. 43, & 24 L. C. J. 85, Q. B. 1879.

226. Action by one assignee in insolvency against another, to recover the amount of an undertaking in the following terms: "Dear "Sir,—Please place to the credit of the estate "N., V. & Co., the enclosed demand note for "$700, with the note of V. for same amount "as collateral. In consideration of this dis- "count I hereby promise to place you in funds "for the amount from the first sales of the "stock of castings now on hand. Yours, A. B. Stewart, Trustee—*Held*, following *Brown* v.

od faith the orders of his
ers are illegal. *Holton &*
89, Q. B. 1875.

as whether a letter, which
ie defendant as President
ibus Company, involved

A *saisie-arrêt* was about
n effects of the Company,
posed, and prevented the
the *saisie-arrêt* by pro
r claim settled. This
n of a letter to the attor-
vas intended to be signed
ecretary, but was signed
Subsequently the Com-
, and a return of *nulla*
lefendant being sued on
pleaded that he only
in his capacity of pre-
that the plaintiffs should
of the Company. By
ault, however, to under-
ngagement was, unless
as a personal engage-
nnibus Company were
the debt. The terms
, seemed to exclude all
stated that the defen-
sident," and he signed
cument also appeared
e it was intended to be
and secretary, but was
ly. The judgment of
d the action on these
t of Review were of
rantee personnl, and,
o condemn the defen-
own & Ker, S. C. R.

s agents of a firm of
, Wales, sold to the
be shipped by sailing
On action against
ict they set up their
rincipals being well
le—*Held*, in appeal,
he court below, that
n his own name is
a breach of the con-
2 L. N. 370, S. C.
L. N. 76, 1881; 1715

re several persons,
ate, under a deed of
em no power to draw
ssory notes with the
C. D. Edwards,"
d, that they were
et al. v. Archibald,
C. 1878, & 3 L. N.
879.

gnee in insolvency
the amount of an
ig terms: "Dear
redit of the estate
demand note for
for same amount
ation of this dis-
place you in funds
first sales of the
id. Yours, A. B.
owing *Brown* v.

Archibald, that the defendant was personally bound, not having disclosed that he signed for a principal or for an estate bound by his signature. *Court & Stewart*, 3 L. N. 414, S. C. 1880.

227. Action for work and labor done for a public officer about the building in which the office was situated. Plea that the Government should pay, and to it they should apply—*Held*, that as the plaintiff had contracted solely with the defendant that the defendant was liable. *View* v. *Sicotte*, 2 L. N. 270, S. C. 1879.

228. Action for demurrage, founded on a charter-party, executed at Newcastle, between the plaintiff, owners of the ship *James Dall*, and the Brockville Gas Co., of Ontario. The charter-party, after mentioning the number of lying days to be allowed for the discharge of the cargo, further provided, "the merchant to have the option of keeping the vessel ten days on demurrage over and above the said lying days, at six pounds per day;" and the bill of lading stipulated that the assignee thereof should pay freight for the coal therein mentioned, and all other conditions as per charter-party." The defendants, acting as the agent here of the Brockville Gas Co., of Brockville, Ontario, received from the said charter-party and bill of lading a large quantity of coal on which they paid freight, and in so receiving the coal they delayed the ship for four days beyond the lying days. The defendants contended that they presented the bill of lading as the agents of the Brockville Gaslight Co., and as such agents, to the knowledge of the master, obtained the cargo, and therefore could not be held personally liable—*Held*, that, notwithstanding, they were personally liable, on the ground that they were acting for a foreign principal.* *Thwaites* v. *Coulthurst*, 3 Q. L. R. 104, S. C. R. 1874.

XI. Liability of Principal.

229. An agent kept an account in a bank as the agent expressly of his principal, but on a new account being opened it was opened in his name as agent simply, without specifying a principal. On an action by the bank against the principal named in the first account it was proved that in the second account the agent had kept the funds and drawn on account of different principals—*Held*, that the defendant was not liable. *Metropolitan Bank* v. *Symes et vir*, 21 L. C. J. 201, S. C. 1876.

230. The plaintiffs, a firm of attorneys in Montreal, received instructions from an attorney in Ontario to take action on a judgment they had obtained in Ontario against a person in Quebec. They did so, and obtained judgment, but, failing to realize on it, sued the judgment creditor for the amount of their costs—*Held*, that, under the circumstances, defendant was not liable. *Keller* v. *Watson*, 2 L. N. 400, C. C. 1879.

* A factor whose principal resides in another country is personally liable to third persons with whom he contracts, whether the name of the principal be known or not. The principal is not liable on such contracts to the third parties unless it is proved that the credit was given to both principal and factor or to the principal alone. 1738 C. C.

XII. Lien of Agent.

231. An agent for a stranger has the right to refuse to deliver the effects in his charge until he has been indemnified for any trouble and expense he may have incurred in regard to them; and an agent resident in this country who acts and makes disbursements for another resident has the same right. *Downie & Barrie*, 9 R. L. 517, S. C. 1879.

232. The plaintiffs having imported a quantity of steel rails in the year 1871, entered into a contract with one H. at Montreal to forward the rails from Quebec to Hamilton; and, to enable him to receive them, they delivered to him the bills of lading of the different cargoes, the ocean freight of which was to be paid by H. H. arranged with the defendants to pay the ocean freight, to receive the rails, and then to ship them for conveyance to Hamilton. The defendants did so, having received the bill of lading for that purpose. At the end of the season there was due to defendants for their services and disbursements a balance of $1948.55, and they had in their hands 218 of the rails. H. died insolvent in November, 1871, and the plaintiffs having refused to pay the balance due to the defendants, they on their part refused to deliver the rails in their hands. On this action in revendication of the rails. Plaintiffs contended that defendants had contracted with and given credit to H., and had therefore no lien on the rails. They also contended that without a special contract to that effect, the defendants could not have any lien beyond what was due on the particular rails detained—*Held*, that they had a lien upon each portion of the goods in their possession for their general balance, as well as for charges arising on these particular goods. *Great Western Railway Co.* v. *Crawford*, 6 Q. L. R. 160, S. C. 1880.

XIII. Of Assignee in Insolvency.

233. An assignee, under the Insolvent Act of 1875, was held not to be an agent of the creditors individually so as to bind them for the costs of an action which he had caused to be continued in his quality. *Crepeau* v. *Glover*, 5 Q. L. R. 235, S. C. R. 179.

XV. Power of Agent.

234. An agent who has ceased to be such cannot bind his principal by his admissions so as to take a debt out of the operation of the law respecting the limitation of actions. *Pinsonneault & Desjardins*, 3 L. N. 29, & 24 L. C. J. 100, Q. B. 1879.

235. Where an agent of an insurance company, acting on instructions received by telegram, which by error in transmission was made to say *decide* to join in the settlement, instead of *decline* to, &c., had joined in the settlement—*Held*, that the company were bound by it. *Provincial Assurance Co. of Canada & Roy*, 10 R. L. 643, Q. B. 1879.

235. Where a president of a company endorsed notes with the name of the company in favor of a bank, which knew that the notes in question were given for the benefit of the person endorsing, and not on account of the company in whose name they were given—*Held*, that the company was not bound. *Mechanics Bank & Bramley*, 2 L. N. 389, Q. B. 1879.

But where an agent of an insurance company procured from his company a policy for a person to whom he was indebted for board, and, without the knowledge of such person, sent in a note to the company in the name of the insured in payment of the premium, which note he neglected to pay—*Held*, that the company was liable on the insurance. *Ottawa Agricultural Insurance Co. & Bouthillier*, 2 L. N. 394, Q. B. 1879.

XVI. Power of Attorney.

236. Where a written power of attorney is filed as evidence of the agent's authority in an action against the principal, the court cannot go outside of it, and therefore where the power only authorized the agent to mortgage—*Held*, that he had no power to sign promissory notes. *Serre dit St. Jean & Metropolitan Bank*, 21 L. C. J. 207, Q. B. 1876.

237. *Revocation of.*—In action to set aside a deed of sale of plaintiff made by another, under a power of attorney which had been revoked prior to the sale—*Held*, that as to third persons, ignorant of the revocation, the acts of the agent would bind both himself and his principal; but, in this case, there being clear evidence of bad faith on the part of the parties to the deed, the action would be maintained, and the deed set aside. * *Aylmer* v. *Maher et al.*, 1 L. N. 232, S. C. 1878; 1758 C. C.

238. On a contestation of claims at a meeting of creditors, under the Insolvent Act, 1875—*Held*, that a power of attorney by a president, cashier or manager of a Bank to a person not an employee of the Bank is invalid, in the absence of anything to show the power of those officers to grant the same. *Dinning in re & Samson*, 4 Q. L. R. 26, S. C. 1877.

XVII. Proof of.

239. Action to recover $348.20 for work and labor done, and materials furnished by plaintiff in the repair of a house belonging to defendant which had been burnt. The defence was that the work was not for the defendant nor authorized by him but was for one B. B. was the tenant, and after the fire called upon the defendant to restore the premises to proper condition, when the defendant told him to get it done and send him, the defendant, the account. He also repeated this authorization on a subsequent occasion. It was also proved that the house was insured by defendant, and he had received the insurance arising from the fire—*Held*, that the authorization was sufficiently proved, and that the defendant was liable. *Sadte dit Vadeboncœur & Bell*, 8 R. L. 535, Q. B. 1878.

240. As to what constitutes sufficient proof of agency to sell land or to bind the owner by promise of sale. *See Stuart & White*, 7 R. L. 523, Q. B. 1876.

* Confirmed in Appeal. See 4 L. N. 130.

XVIII. Revocation of Authority.

241. The appellant, residing in Ontario, in the fall of 1869, consigned thirty bales of hops to the defendant, a commission merchant in Montreal, for sale on commission. No sale having been effected, the appellant, in October, 1871, revoked the agent's authority, but was informed by him that he had just sold the hops to the respondent at five cents per pound, with option to accept or refuse the bargain within a week, which time had not then elapsed. The appellant took action of revendication and seized the hops, which were stored in the warehouse of the co-defendant. The action was dismissed in the Superior Court and the Court of Review on the ground of want of proof of property in plaintiff, and also on the ground that defendant had a right as agent for the sale of the hops to offer them for sale to respondent, and to enter into a contract with him concerning them, and such contract was binding on the principal. But *held* in Appeal, reversing this decision, that in the absence of a memorandum in writing, under the Statute of Frauds, the sale in question was not proved so as to defeat the right of the principal to recover. *Lynn & Nivin*, 23 L. C. J., 235, Q. B. 1874.

XX. What Constitutes.

242. Where a trader transferred his stock in trade to a creditor, with the understanding that the transfer would be at an end as soon as the creditor had been paid, and in the meantime continued the business in his own name as before, and bought goods in his own name, for the purposes of the business so transferred—*Held*, that in doing so he was the agent of the transferree, who was liable in an action for the price of the goods. *Vézina & Coté*, 3 Q. L. R. 32, C. C. 1876.

AGENT.

I. Indicted for Wrongful Conversion of Property under Power of Attorney, *see* CRIMINAL LAW.

AGGRAVATED ASSAULT.

I. Trial of, *see* CRIMINAL LAW, SUMMARY TRIAL.

AGGRAVATION.

I. A Libel in Pleading, *see* LIBEL.

AGREEMENT—*See* CONTRACTS.

I. Not to bid at Judicial Sale, not necessarily invalid, *see* SALE.

II. To procure the Withdrawal of a Criminal Prosecution are Illegal, *see* CONTRACTS.

ALDERMEN.

I. Qualification of, *see* MUNICIPAL CORPORATIONS.

ALIAS WRIT—*See* PROCEDURE.

ALIENATION.

I. Of Property in fraud of Creditors, *see* DONATION, SALE, TRANSFER.

II. Prohibition to alienate, *see* DONATION, SALE, &c.

ALIENS—*See* FOREIGNERS.

I. Having no domicile or permanent residence in the Province may be described by the surname only, provided they are served personally and otherwise sufficiently designated, *see* 9-42-43 Vic. Cap. 20.

ALIMENTS.

I. Allowance to Defendant under contrainte.

II. Exemption of.

III. Illegitimate Children.

IV. Liability of Children towards Parents.

V. Right of Wife to.

I. Allowance to defendant under contrainte par corps.

243. A person imprisoned under a judgment on a surety bond in appeal is not entitled to an alimentary allowance under 790 C.C.P. *Cramp & Cocquerean*, 3 L. N. 332, S. C. 1880.

II. Exemption of.

244. A question came up whether an alimentary allowance could be seized. The defendant had an alimentary allowance of $13 a month, and the plaintiff seized it for a sum due for rent. *Held*, that the allowance might be seized for a debt due for *aliments*, such as rent or lodging, but it would not be proper to allow the whole sum to be seized. The parties would, therefore, be sent to proof as to the proper proportion which should be allowed for rent. *Seers* v. ——, S. C. 1879.

245. Plaintiff having obtained judgment against the defendant, lodged an attachment in the hands of the garnishees, who were the tenants of the defendant. The defendant contested the attachment on the ground that the money seized was the rent of a house which he possessed under the will of his late father, L.B., of date 10th July, 1864, and under its provisions the bequest was for aliments, and could not be alienated or seized by his creditors. The plaintiff did not answer the contestation—*Held*, that the rent in question could not be attached under the terms of the bequest, which agreed with C. C.P. 558.* Contestation maintained. *Irwin & Boyer & McIver*, S.C. 1877.

III. Illegitimate Children.

246. The defendant, father of an illegitimate child, had been condemned to pay an alimentary pension for the support of the child until it attained 14 years of age. At the age of 17 the child, a girl, being of weak intellect and unable to support herself, the mother sued as tutrix for an alimentary pension of ten dollars, to begin 5 months prior to the institution of the action. Judgment went for the plaintiff, and in appeal the following reasons were urged: 1st, That the tutorship of the mother was not registered. 2nd, That appellant ought to be tutor and was willing to take charge of the child and to place her in an asylum; and 3rd, That in any case he could only be condemned to pay aliment from the institution of the action—*Held*, dismissing the appeal on all these points. *Poissant & Barrette*, 3 L. N. 12, Q. B. 1879.

IV. Liability of Children towards Parents.

247. The plaintiff, an old man upwards of eighty years of age, being destitute, sued his four children for alimentary allowance. On the evidence adduced they were condemned to pay him $10 a month in advance, and the costs of action, but as it was established that they were not able to pay severally more than two dollars and a half a month, they were not to be held liable for more than that amount. The attorney of plaintiff being unable by execution to realise his costs, took a rule against one of them, charging him with secreting his property, and asking that he be *contrainte par corps* to pay the amount of his costs, which was some $260. Defendant answered the motion for the rule that he was only liable for a fourth of the costs, and deposited that amount, including costs of seizures, in court—*Held*, that the deposit was sufficient inasmuch as the defendants could not be held jointly and severally for the costs of the action. *Crevier* v. *Crevier*, 9 R. L. 313, S. C. 1877.

V. Right of Wife to Alimentary Allowance.

248. Demand by a wife for alimentary allowance, and for permission to live apart from her husband, granted. *Hughes* v. *Rees*, 3 L. N. 220, & 24 L. C. J. 41, S. C. 1880.

ALLOWANCE.

I. To Defendant under Contrainte par Corps, *see* ALIMENTS.

* Alimentary allowance granted by a Court.

II. To Illegitimate Children, *see* ALIMENTS.

ALTERATION.

I. Of Bills and Notes, *see* BILLS OF EXCHANGE.

ALTERNATIVE OBLIGATION—*See* CONTRACT.

AMABLE COMPOSITEURS—*See* ARBITRATION.

AMENDMENT.

I. Costs of, *see* COSTS.
II. Of Affidavit with Requete Civile, *see* REQUETE CIVILE.
III. Of Bailiff's Return, *see* PROCEDURE Service.
IV. Of Declaration, *see* PLEADING.
V. Of Indictment, *see* CRIMINAL LAW.

AMEUBLISSEMENT.

I. Effect of Clause of in Marriage Contract, *see* MARRIAGE CONTRACTS, Renunciation.

ANIMALS.

I. Claim for Care of Prescribes in Five Years, *see* PRESCRIPTION.
II. Damages by, *see* DAMAGES.

ANSWERS—*See* EVIDENCE, Admissions.

ANSWER IN LAW—*See* PLEADING, PROCEDURE.

APPEAL.

I. After Desistement.
II. By Notary in Support of Deed.
III. Death of Party in.
IV. Delays in.
V. Discontinuance of.
VI. Effect of.
VII. Effect of Insolvency on, *see* INSOLVENCY.
VIII. Factums in.

IX. From Board of Municipal Delegates concerning Roads, *see* MUNICIPAL CORPORATIONS Roads.

X. From Judgments.

On Demurrer.
Interlocutory.
Ordering Partage.
Settling facts for Jury Trial.

XI. From Recorder's Court.
XII. From two Judgments at once.
XIII. Grounds of.
XIV. In Action to Annul Letters Patent.
XV. In Election Cases.
XVI. In Forma Pauperis.
XVII. In Insolvent Matters.
XVIII. In Municipal Matters.
XIX. Intervention in.
XX. Jurisdiction of Court of.
XXI. On Demurrer.
XXII. Payment of Costs of Interlocutory Judgment.
XXIII. Penalty in.
XXIV. Postponement of Hearing.
XXV. Privileged Cases in.
XXVI. Procedure in.
XXVII. Reason of Appeal.
XXVIII. Reprise d'instance.
XXIX. Requete Civile.
XXX. Return of Writ Instanter.
XXXI. Right of.
XXXII. Rule to Prevent.
XXXIII. Security in.
XXXIV. Sureties in.
XXXV. To Privy Council.
XXXVI. To Supreme Court.

I. After Desistement.

249. A party in whose favor an interlocutory judgment has been rendered may desist from such, even after a motion for leave to appeal has been granted, and without the consent of the opposite party, and in such case the appeal will be dismissed with costs against appellant from the filing of the desistement. *Nadeau & Pacaud*, 9 R. L. 678, Q. B. 1876.

II. By Notary in Support of Deed.

250. Where a deed was declared *faux* by a judgment of the Superior Court the notary before whom it was executed, and who was one of the witnesses in the suit, was allowed to appeal on becoming *cessionaire* of the debt. *Defoy & Forte*, 3 L. N. 36, Q. B. 1879.

III. Death of Party.

251. On a motion to dismiss, on the ground that the reasons had not been filed in time—*Held*, the death of a party who has not appeared in appeal does not interrupt the proceedings in appeal. *Hus & Millet*, 2 L. N. 229, Q. B. 1879.

IV. Delays in.

252. Motion to reject appeal granted, the

reasons not having been filed until the day before the opening of the term. *Larochelle & Reid*, 1 L. N. 279, Q. B. 1878.

253. Respondent moved to have it declared that appellant had lost his right of appeal, security not having been given within the time specified by the order. The court granted the motion, as there was a question of costs on the application for leave to appeal. *McCaffrey & Brunean*, 3 L. N. 298, Q. B. 1880.

254. Motion to dismiss an appeal because the reasons of appeal were not filed within the eight days prescribed by the Code. Motion rejected with costs. *Dionne & Ross*, 3 L. N. 299, Q. B. 1880; 1134 C. C. P.

255. Motion on the part of defendant in the Circuit Court to be allowed to file his petition in appeal six months after the proper time. It appeared that the appellant's attorney sent the record to another attorney in Quebec, intending he should file it for the term of September, 1877. The Quebec correspondent did not know what to do with it and kept it in his possession over the December term —*Held*, that the failure to produce the appeal was not that of the public officer, but of the appellant's attorney and that leave could not, under the circumstances, be granted. *Simard & Fraser*, 1 L. N. 130, Q. B. 1878.

256. Motion to have appeal declared, abandoned, the petition not having been filed within the twenty-five days Security was duly given, and the petitioner gave his petition to a bailiff, often employed in the office of the Circuit Court, to file, but who was not an officer of the Circuit Court. Instead of filing the petition in the Circuit Court, the bailiff forwarded it to the clerk of Appeal—*Held*, that the appeal would not be dismissed, but the appellant was condemned to pay the costs of the motion. *Ginmont & Methot*, 3 L. N. 196, Q. B. 1880.

V. Discontinuance of.

257. An appellant who has neglected to produce his reasons of appeal within the prescribed delay cannot obtain a discontinuance so as to deprive the respondent of his right to have the appeal dismissed with costs. *Miller & Fox*, 7 R. L. 570, Q. B. 1876.

VI. Effect of.

258. Where appeal was taken from a judgment maintaining a capias, but security given for costs only—*Held*, that this did not suspend the execution of the capias and the recourse against the bail. *Lajoie & Mullin et al.*, 21 L. C. J. 59, Q. B., & 9 R. L. 48, 1876.

259. The plaintiff having obtained judgment on the 30th April, issued a *saisie-arrêt* in the hands of the garnishee, returnable on the 30th May. On the 20th May the defendant took an appeal from the judgment, and on the 23rd security was given. Under these circumstances defendant claimed that he was entitled to *main levée* of the seizure—*Held*, that the appeal had the effect of fixing all the proceedings in the position they then were, and that consequently *main levée* could not be granted. *Desjardins* v. *Ouimet & Perrault*, 2 L. N. 194, S. C. 1879.

VII. Effect of Insolvency on.

260. A creditor has a right to sue and recover judgment against his debtor, notwithstanding that the estate of the debtor may have been placed in compulsory liquidation under the Insolvent Act, so long as the debtor has not been discharged under the Act; and, consequently, proceedings in appeal, to which the debtor is a party, cannot be suspended on the ground that the debtor has made an assignment under the Insolvent Act. *Archambault & Westcott*, 23 L. C. J. 292, Q. B. 1878.

VIII. Factum in.

261. A factum is not required in appeals from the Circuit Court unless it be specially ordered, and the Court will not make such order without some cause shown, and particularly on the part of defendant, the effect of such order being to create a delay. *Beaudet & Mahoney*, 1 L. N. 579, Q. B. 1878.

X. From Judgment.

262. *On demurrer.*—An appeal will lie from a judgment on a demurrer rejecting part of defendant's plea. *Huntingdon & White*, 2 L. N. 399, Q. B. 1879.

263. *Interlocutory.* — An appeal may be granted from an interlocutory judgment dismissing an exception to the form. *Board of Temporalities, &c.*, v. *Minister & C. of St. Andrew's Church*, 3 L. N. 379, Q. B. 1880.

264. Action was brought against the president and directors of the Levis and Kennebec R. R. for dammges for illegal seizure of debentures. Beaudette, one of the defendants, sued Reid, the London financial agent of the road, for having issued certain of these debentures in violation of the company's charter. R pleaded to the action *en garantie* among other things that the directors authorized the issue, and that Beaudette as one of a firm actually accepted a portion of the debentures as collateral security. The plaintiff *en garantie* demurred to the last part of the plea, and the demurrer was maintained. On motion leave was granted to defendant *en garantie* to appeal. *Surgeant* v. *Blanchet et al. & Beaudette & Reid*, 1 L. N. 114, Q. B. 1878.

265. Where a garnishee made his declaration in the district where he resided, which was not the district where the writ issued, and the Prothonotary having neglected to forward it in time, the garnishee was condemned to pay the debt personally, unless he made a new declaration, and paid all the costs of the *tierce saisie*, on motion leave to appeal was granted. *Gleason & Vancourtland*, 1 L. N. 115, Q. B. 1878.

266. *Ordering Partage.*—An appeal from a judgment ordering a partage must be brought within a year, and the Court of Appeal will not take cognizance of the judgment, but only of proceedings subsequent thereto, and made in pursuance of it. *Haggerty & Morris*, 8 R. L. 446, Q. B. 1876.

267. *Settling facts for jury trial.*—Motion for leave to appeal from an interlocutory judgment of the Superior Court, settling the facts for a

jury trial. Both parties were dissatisfied with the judgment, and the plaintiff declared in writing his willingness to desist from it—*Held*, granting the motion as to costs only, and sending the parties back to the Superior Court to have the facts settled. *Citizens Insurance Co. & Lajoie*, 3 L. N. 108, Q. B. 1880.

XI. From Recorder's Court.

268. On an appeal from a judgment of the Recorder in an assessment case, the court cannot hear evidence and give a final judgment on the merits. *Beaudry* v. *City of Montreal*, 1 L. N. 484, S. C. 1878.

XII. From Two Judgments at once.

269. The appellant filed two oppositions by one of which she claimed a share of the property seized by one title, by the other opposition she claimed the remainder of the property by another title. The two cases were conducted separately, and two judgments intervened rejecting the appellant's oppositions. The appellant took out one writ of appeal from both judgments. The respondent moved to reject the appeal. Motion dismissed but without costs. *Dionne* v. *Ross*, 3 L. N. 299, Q. B. 1880.

XIII. Grounds of, *see* Right of.

270. Questions not in the pleadings or record in the court below cannot form ground of or be used as an argument in appeal. *L'Union St. Joseph & Lapierre*, 4 S. C. Rep. 164, Su. Ct. 1879.

271. In a case of capias, held that the affidavit could not be attacked in appeal, on grounds which had not been raised in the first instance *Heyneman & Smith*, 21 L. C. J. 298, Q. B. 1877.

272. Motion for leave to appeal. Action commenced by a *saisie conservatoire*. Defendant met the affidavit by exception *a la forme*, which was dismissed, as not being the mode indicated by the Code, for attacking the affidavit. Motion for leave to appeal refused on the ground that the party moving had a more expeditious mode of proceeding than by exception to the form, and that therefore nothing but delay would result from granting the appeal. *Lebel & Pacaud*, 2 L. N. 202, Q. B. 1879.

273. Action for price of sale. Defendant pleaded by preliminary exception that there were two mortgages enregistered on the property, and asked suspension of the proceedings till this trouble was removed. The plaintiff produced two receipts, *sous seing privé*, and the court dismissed the exception, except as to costs, which plaintiff was condemned to pay to defendant. Defendant moved for leave to appeal. Appeal refused. *Perron & Belisle*, 1 L. N. 279, Q. B. 1878.

274. Appeal will not lie on the ground of irregularities in the Court of first instance which have not been mentioned in Review when the case was before that Court. *Scroggy & Gordon*, 2 L. N. 350, Q. B. 1879.

275. Appellants objected to a judgment on a promissory note, on the ground of want of authority in the Corporation, or in the Mayor and Secretary who had signed the note—*Held*, that as defendants had not pleaded they could not raise that question in appeal. *Corporation of Township of Grantham* v. *Couture*, 2 L. N. 350, Q. B. 1879.

XIV. In Actions to Annul Letters Patent.

276. Motion by respondent to reject the appeal because the writ was not issued within forty days after the judgment.* The action was in the name of the Attorney-General to annul letters patent. By Art. 1035 of the Code of Procedure it is provided that demands for annulling letters patent may be made by suits in the ordinary form, or by *scire facias*, upon information brought by Her Majesty's Attorney-General or Solicitor-General, &c. By Art. 1037 an appeal lies from the final judgment rendered upon such information, provided the writ of appeal issues within forty days from the rendering of the judgment. The writ of appeal issued after forty days, but in answer to that objection it was urged that the proceeding was not by information but by ordinary suit, and that the limit of forty days only applied when the proceeding began by information and *scire facias*—*Held*, that the delay for appeal in such cases was forty days, whether by information or by suit in the ordinary form, and, therefore, the appeal was too late. *Anger, Atty.-Gen., & Murray*, 3 L. N. 108, Q.B. 1880.

XV. In Election Cases.

277. On the 21st April, 1877, an election petition was filed in the Prothonotary's office at Murray Bay, district of Saguenay, against respondent. Respondent pleaded by preliminary objections that the election petition, notice of its presentation, and copy of the receipt and deposit had never been served upon him. Judgment was given, maintaining the preliminary objections and dismissing the petition with costs. Petitioners thereupon appealed to the Supreme Court, under 38 Vic. cap. 11. sec. 48—*Held*, that the judgment was not appealable, and that under that section an appeal will lie only from the decision of a judge who has tried the merits of such petition.† *Brassard & Langevin*, 2 S. C. Rep. 319, Su. Ct. 1878.

278. And the hearing of the preliminary ob-

---

* The information is served upon the person who holds or relies upon such letters patent, and is heard, tried and determined in the same manner as ordinary suits, 1036 C. C. P.

An appeal lies from the final judgment rendered upon such information, provided the writ of appeal issues within forty days from the rendering of the judgment, 1037 C. C. P.

† But by the Supreme Court Amendment Act of 1879, sec. 10, it is provided that "an appeal shall lie to the Supreme Court from the judgment rule, order or decision of any court or judge on any preliminary objection to an election petition, the allowance of which shall have been final and conclusive, and which shall have put an end to the petition, or which would, if allowed, have been final and conclusive and have put an end to the petition, provided always that an appeal in the last-mentioned case shall not operate as a stay of proceedings, or to delay the trial of the petition, unless the court or a judge of the court appealed from shall so order; and provided also that no appeals shall be allowed under this section in cases in litigation and now pending, except cases when the appeal has been allowed and duly filed.

gned the note—*Held*, that pleaded they could not appeal. *Corporation of m* v. *Couture*, 2 L. N. 350,

ANNUL LETTERS PATENT.

pondent to reject the ap- was not issued within judgment.* The action the Attorney-General By Art. 1035 of the provided that demands atent may be made by rm, or by *scire facias*, ught by Her Majesty's licitor-General, &c. By s from the final judg- h information, provided within forty days from gment. The writ of ap- ays, but in answer to ged that the proceeding but by ordinary suit, ty days only applied an by information and the delay for appeal in s, whether by informa- inary form, and, there- o late. *Anger, Atty.*- 108, Q.B. 1880.

ES.

il, 1877, an election Prothonotary's office of Saguenay, against leaded by preliminary n petition, notice of of the receipt and de- upon him. Judgment preliminary objections with costs. Petition- the Supreme Court, sec. 48—*Held*, that ppealable, and that al will lie only from has tried the merits d & *Langevin*, 2 S.

the preliminary ob-

n the person who holds and is heard, tried and as ordinary suits, 1036

dgment rendered upon rit of appeal issues ing of the judgment,

endment Act of 1879, peal shall lie to the rule, order or decision eliminary objection to of which shall have ch shall have put an if allowed, have been an end to the petition, n the last-mentioned ceedings, or to de- the court or a judge order; and provided under this section in except cases when y filed.

jections and the trial of the merits of the election petition are distinct acts of procedure. *Ib.*

279. There is no appeal from an order given in chambers by a judge of the Superior Court permitting a candidate at a federal election to examine the ballots. *Mackenzie & White*, 7 R. L. 218, Q.B. 1875.

280. There is no appeal to the Queen's Bench in controverted election cases. *Tuneau* v. *Massue*, 2 L. N. 38, & 23 L. C. J. 60, Q. B. 1878.

XVI. IN FORMA PAUPERIS.

281. The Court of Queen's Bench may grant leave to appeal to that court *in forma pauperis*. *Lagneau & Charbonneau*, 3 L. N. 308, Q. B. 1880.

XVII. IN INSOLVENT MATTERS.

282. No appeal can be instituted from a judgment rendered in a case under the Insolvent Act, 1875, after the expiration of eight days from the rendering of the judgment complained of. *Johnson & Leaf et al.*, 2 L. N. 226, & 23 L. C. J. 262, Q. B. 1879.

283. The term of eight days within which, under sec. 128 of the Insurance Act, 1875, proceedings in appeal or revision must be prosecuted, applies to judgments in Review as well as to those of the court of first instance. *Graftis* v. *Sleeper*, 1 L. N. 31, & 22 L. C. J. 76, Q. B. 1877.

284. An appeal lies from all orders or judgments concerning insolvent banks, but where such order or judgment is interlocutory leave must first be obtained. *Mechanics Bank & St. Jean & Wylie*, 2 L. N. 315, & 9 R. L. 659, Q. B. 1879; C. 39 Vic. cap. 31.

285 Appeal does not lie from any judgment of the Superior Court, under the Insolvent Act of 1875, which is not a final judgment. *Mackay & The St. Lawrence Salmon Fishing Co.*, 21 L. C. J. 76, Q. B. 1876.

XVIII. IN MUNICIPAL MATTERS.

286. Motion to reject an appeal which had been taken from the decision of a judge at Montreal, on a proceeding to have a by-law of the Corporation relating to butchers' stalls declared null. The proceeding was taken under Art. 997 of the Code of Civil Procedure, which authorizes the Attorney-General, when any corporation exceeds its powers, to prosecute the corporation on the part of the Crown. Article 1033 says that an appeal from any final judgment, rendered under the provisions of the chapter, lies to the Queen's Bench, "except in matters relating to municipal corporations and offices"—*Held*, that the article was clear and could admit of no doubt, except this: it had been contended that as the Statute prior to the Code contained the words "city and all municipal corporations," and the word city had been omitted in the Code, the appeal was not taken away for matters relating to a city corporation. The court was unanimous in saying that this argument could not prevail. Another argument was that it was the Attorney-General who was asking leave to appeal, and the Attorney-General could not be precluded from an appeal. But the answer to this was that it was not the Attorney-General at all—it was another party using his name. Even if it were considered the Attorney-General, as he was named in the chapter taking away the appeal, it would be questionable whether he is not precluded from appeal. *Attorney General & City of Montreal*, Q. B. 1876.

287. There is no appeal to the Circuit Court from a decision of the County Council sitting in revision of an assessment roll. *Meunier* v. *Corporation of the Co. of Levis*, 3 Q. L. R. 345, C. C. 1877.

288. An appeal lies from a judgment of the Circuit Court under Art. 970 c" the Municipal Code. *Montreal Cotton Co. & Corporation of Town of Salaberry of Valleyfield*, 2 L. N. 338, & 9 R. L. 551, Q. B. 1879.

289. Appeal lies to the Queen's Bench from a judgment of the Circuit Court, on a proceeding under Art. 100 of the Municipal Code. *Rolfe & Corporation of Township of Stoke*, 3 L. N. 69, & 24 L. C. J. 213, Q. B. 1880.

290. When a Municipal Council takes upon itself to revise the electoral lists, without any complaint having been produced, there is no appeal from such decision to a judge in chambers. *Coté exp.*, 4 Q. L. R. 98, S. C. 1878.

291. But when the Council has decided upon a complaint, even when such complaint has not been produced within the delay fixed by law, that is sufficient to give jurisdiction to a judge on appeal from such decision. *Ib.*

292. In an action to set aside a municipal assessment roll, appeal will lie from the Circuit Court to the Queen's Bench.* *Rolfe & Corporation of Township of Stoke*, 2 L. N. 103, & 24 L. C. J. 103, 213, Q. B. 1879.

XIX. INTERVENTION IN.

293. An intervention will lie in matters in appeal where sufficient cause is shown. *Mechanics Bank* v. *St. Jean & Wylie*, 2 L. N. 315 Q. B. 1879.

XX. JURISDICTION OF COURT OF.

294. The Court of Appeal has no jurisdiction to entertain an application for change of venue in a criminal matter. *Corwin exp.*, 2 L. N 364, Q. B. 1879.

XXI. ON DEMURRER.

295. Motion for leave to appeal from a judgment dismissing a plea on demurrer. The action was for damages for libel against the proprietor of the *Canadian*. The plea rejected set forth that appellant had not written the article, but that it was written by another on whom plaintiff had since avenged himself. Appeal refused on the ground that the judgment could be corrected on the merits if it

---

* Referring to the case of the Corporation of the County of Drummond & Corporation of the Parish of St. Guillaume (Dig. 87-608). Ramsay, J, said, in that case we allowed the appeal, but we sent the case back to the court below on account of irregularities.

appeared later that defendant had been deprived of a valid defence. *Desjardins & Hamilton*, 1 L. N. 590, Q. B. 1878.

XXII. Payment of Costs of Interlocutory Judgment in.

296. On a motion for new security in appeal, it was shown that the party moving had been in default, and had had the default removed subject to payment of costs, and no notice had been given that these costs had been paid—*Held*, that the motion would be discharged *quant à présent*. *Goff & Grand Trunk Railway & Perkins*, 2 L. N. 410, Q. B. 1879.

XXIII. Penalty in.

297. The penalty in a security bond on an appeal to the Supreme Court, which stipulates that the penalty should become due and payable in case the appellant failed to prosecute his appeal, and the judgment appealed from be affirmed, cannot be recovered when the appellant after giving security discontinues his appeal. *South Eastern Railway Co. & Lambkin*, 22 L. C. J. 224, S. C. 1877.

XXIV. Postponement of Hearing.

298. Application to have case postponed on account of the absence of one of the attorneys, granted on the understanding that it was not to be drawn into a precedent. *Citizens Insurance Co. & Grand Trunk Railway Co.*, 3 L. N. 198, Q. B. 1880.

XXV. Privileged Cases in.

299. The appellants applied to have their case heard by privilege, on the ground that the action had been dismissed *sauf recours* on a special pleading, and unless the appeal was decided during that term the action would be prescribed, and the appellants' recourse by another action be prescribed. Application refused. *Merchants Bank & Whitfield*, 3 L. N. 198, Q. B. 1880.

XXVI. Procedure in.

300. Motion on the part of respondent that the appeal be not heard until he can take proceedings in the Superior Court to reject from the record a document alleged to be *faux*, and that for this purpose the record be transmitted to the court below. Motion granted. *Marquis & Van Cortlandt*, 1 L. N. 590, Q. B. 1878.

301. Motion to remit papers to court below pending appeal in order to proceed with principal instance copies to be substituted in appeal. Motion rejected. *Mills* v. *Weare*, 2 L. N. 202, Q. B. 1879.

XXVII. Reasons of Appeal.

302. Where appeal was taken at the same time on the merits and from a judgment dismissing an exception to the form, one of the *considérants* on which the judgment of the court below was confirmed was that the reasons of appeal did not specially state that the judgment dismissing the exception to the form was erroneous. *Dunning & Girouard*, 9 R. L. 177, Q. B. 1877.

XXVIII. Reprise d'Instance.

303. An appellant under the Insolvent Act 1875, could not on the insolvency of the respondent demand that the assignee of the latter should take up the *instance*. *McKinnon & Thompson*, 23 L. C. J. 95, Q. B. 1878.

XXIX. Requête Civile.

304. *Semble*, that a requête civile may be brought in appeal in certain cases. *Hampson & Thompson*, 2 L. N. 206, Q. B. 1879.

XXX. Return of Writ Instanter.

305. Respondent imprisoned on capias, moved the immediate return of writ of appeal. Motion granted. *Metacomet National Bank & Paine*, 2 L. N. 410, Q. B. 1879.

XXXI. Right of.

306. An interlocutory judgment rejecting an inscription for enquête and merits as having been filed before articulations and answers, is a judgment from which an appeal will lie. *Bellay & Guay*, 4 Q. L. R. 91, Q. B. 1874.

307. And where there has been a desistement from such judgment, without a tender of costs, the Court of Appeals will condemn the respondent in the costs of both courts. *Ib.*

308. Respondents and one M. having been appointed commissioners in expropriation under 27-28 Vic. Cap. 60, made their valuation of certain land which had been expropriated. On petitions to the Superior Court, by certain contributories and the Corporation, appellants, the respondents were removed from office, on the ground that they had in their valuation adopted a principle which was so palpably erroneous that its adoption amounted to a want of diligence, which justified the court in ordering their removal. This decision was reversed by the Queen's Bench in appeal—*Held*, in Privy Council, that an appeal lay from the Superior Court to the Court of Queen's Bench from the above order of removal, which, having been made after proceedings usual in an ordinary suit, was to all intents and purposes a final judgment of the Superior Court within the meaning of the 1115th Art. of the Code of Procedure. *Mayor, &c., of Montreal & Brown et al.*, 2 L. R. 168, P. C. 1876.

309. Appeal will not lie from an *exparte* judgment, on the ground that the claim for which judgment had been rendered had been transferred prior to action brought, and no notice given of the transfer. *Stanley* v. *Honlon*, 21 L. C. J. 75, Q. B. 1876.

310. There is no appeal from a judgment partially confirmed by the Court of Review if the appellant only complains of the part confirmed. *Beauchêne & Lahaie*, 10 R. L. 115, Q. B. 1876.

firmed was that the reasons
ecinlly state that the judg-
exception to the form was
g & Girouard, 9 R. L. 177,

D'INSTANCE.

under the Insolvent Act
e insolvency of the respon
he assignee of the latter
instance. McKinnon &
. 95, Q. B. 1878.

IVILE.

requête civile may be
certain cases. *Hampson*
206, Q. B. 1879.

RIT INSTANTER.

prisoned on capias, moved
f writ of appeal. Motion
ational Bank & Paine, 2

judgment rejecting an
and merits as having
lations and answers, is
h an appeal will lie.
R. 91, Q. B. 1874.
has been a desistement
hout a tender of costs,
l condemn the respon-
courts. *Ib.*
one M. having been ap-
in expropriation under
ide their valuation of
been expropriated. On
Court, by certain con-
oration, appellants, the
ved from office, on
ad in their valuation
ich was so palpably
amounted to a want
ed the court in order-
decision was reversed
ppeal—*Held*, in Privy
ay from the Superior
een's Bench from the
which, having been
sual in an ordinary
nd purposes a final
r Court within the
. of the Code of Pro-
ntreal & Brown et al.,

e from an *exparte*
that the claim for
rendered had been
brought, and no
Stanley v. *Honlon*,

l from a judgment
Court of Review if
ns of the part con-
ale, 10 R. L. 115,

311. The amount demanded determines the right of appeal, and not the amount of the judgment appealed from. *Boudreau & Sulte*, 3 Q. L. R. 336, Q. B. 1877; *Grand Trunk Ry. & Godbout*, 3 Q. L. R. 346, Q. B. 1877.

312. There is no right of appeal from a judgment on proceedings concerning municipal affairs. *Daujoa & Marquis*, 3 Q. L. R. 335, Q. B. 1877.

313. Appeal lies to the Court of Queen's Bench from a judgment not contested homologating a report of distribution. *Shortis & Normand*, 3 Q. L. R. 382, Q. B. 1877.

314. And the recourse by opposition accorded to the creditor by Art. 761 of the Code of Procedure* does not take away the right of appeal. *Ib.*

315. Where in a report of collocation of the proceeds of the real estate of an insolvent, sold by the sheriff, the assignee was ranked for $308.80 fees and disbursements, and the report was homologated—*Held*, that the appellants, who were hypothecary creditors, had a right of appeal from the judgment of homologation, although they had not contested in the court below. *Shortis* v. *Normand*, 1 L. N. 86, Q. B. 1877.

316. An appeal will be allowed, in the discretion of the court, from a judgment rejecting a motion to dissolve an injunction, although the parties have disregarded the injunction and proceeded as though it had not issued. *Joly et al. & Macdonald*, 1 L. N. 448, Q. B. 1878.

317. On proceedings in prohibition taken against a judgment rendered by the Court of Quarter Sessions, for an infraction of the License Law, where the judgment of the Superior Court has been confirmed by the Court of Review, constituting chose jugée against the principal party, the magistrate who has contested the prohibition has not the right of appeal, although it was not he who inscribed in revision. *Doucet* v. *St. Amand*, 4 Q. L. R. 146, Q. B. 1878.

318. A judgment confirmed in Review is not susceptible of appeal, the provisions of Q. 37 Vic. cap. 6,† amending 36 Vic. cap. 12, applying to judgments rendered under Art. 823 of the Code of Procedure, as well as to other judgments rendered in review. *Metaeomet National Bank* v. *Paine*, 5 Q. L. R. 372, Q. B. 1879.

319. In an action of damages for specific slander, where the court below overruled a demurrer to a plea which set up the truth of the slander, and charged similar acts against the plaintiff on other occasions, leave to appeal from such judgment was refused. *Rouleau & Lortie*, 6 Q. L. R. 156, Q. B. 1880.

XXXII. RULE TO PREVENT.

320. A writ of compulsory liquidation issued against appellant at the instance of the Dominion Type Foundry. Some proceedings were had, and the writ was quashed on petition. Then a petition was presented by the respondent in the nature of a tierce opposition, complaining of this judgment, and another judge set aside the judgment complained of, thereby reviving the proceedings in insolvency. The delay for appealing from the judgment was allowed to elapse, and subsequently appellant filed a *fiat* in the office to obtain a writ of appeal. The respondent at once took a rule upon appellant to show cause why a writ should issue after the delay had elapsed and the rule was granted *nisi*—*Held*, that such a proceeding ought not to be adopted, unless a very clear case could be shown; that no appeal lay, and that the party was trying to get the appeal simply to frustrate the ends of justice. In such a case the court might interfere and stop the issue of the writ, and even punish the party for contempt. *Cotton & The Ontario Bank*, 22 L. C. J. 77, Q. B. 1877.

XXXIII. SECURITY IN.

322. A bond in appeal by an attorney at law is valid, notwithstanding the 6th Rule of Practice, and assuming that rule to be applicable to such a bond. *Fournier & Cannon*, 6 Q. L. R. 228, Q. B. 1861.

323. Motion to have an appeal dismissed because there was only one surety, and he had not justified—*Held*, that when there is only one surety he must justify on real estate. A new bail bond was offered and received, appellant paying costs of motion. *Marshall & Coffing*, 7 R. L. 575, Q. B. 1876.

324. Petition on the part of respondent, that the security furnished by appellant be rejected, and the appeal dismissed, the surety bond having been signed by the clerk by surprise, and before the interrogatories submitted to the sureties were complete. The clerk's affidavit was filed in support of the petition—*Held*, that as the bond was apparently executed with all the formalities of an authentic document it could not be set aside on affidavit. *Mallette & Lenoir*, 7 R. L. 576, Q. B. 1876.

325. The appellant having obtained leave to appeal to the P. C. filed a consent that the judgment should be executed, and at the same time a City of Montreal debenture was deposited as security for the costs of appeal—*Held*, that the attachment of such bond in execution of the judgment would not prevent the court from accepting it as security. *Jetté et al. & McNaughton*, 21 L. C. J. 192, Q. B. 1876.

326. A security bond in appeal, which has been duly signed by the prothonotary and

---

* Any party aggrieved by a judgment of distribution may seek redress by means of an appeal or a petition in revocation, if there are grounds for it, whether he has appeared in the suit or, his claim being mentioned in the certificate of hypotheca, he has not appeared. Any creditor mentioned in the registrar's certificate, who has not appeared in the cause, may, moreover, within fifteen days seek redress by means of an opposition to the judgment, 761 C. C. P.

† If the court or judge orders the defendant (in capias) to be discharged, the plaintiff may obtain a suspension of the order by declaring immediately that he intends to have the decision reviewed, and depositing the amount required by Art. 497. He may likewise appeal from the judgment in review, if he declares immediately his intention of doing so and causes the writ of appeal to be served within three judicial days from the rendering of the judgment in review. If the plaintiff fails to comply with these formalities, the defendant is discharged. 823 C. C. P.

No person who shall have inscribed in review, before three judges * * any cause in the Superior Court, and shall on such inscription have proceeded to judgment, shall be entitled to appeal to the Court of Queen's Bench from the judgment of the Superior Court sitting in review, if such judgment confirms that rendered in the first instance. Q. 37 Vic. cap. 6, sec. 1.

stamped, cannot be set aside on the ground tha it was executed by error and surprise. *Mallette & Lenoir*, 21 L. C. J. 84, Q. B. 1876.

327. An appellant will not be ordered to give new security because one of his sureties admits and declares that he was really insolvent at the time he signed the bond, although he then declared he was solvent. *Riddell & McArthur*, 22 L. C. J. 78, Q. B. 1877.

328. The Court of Queen's Bench cannot entertain a petition to have the security declared insufficient, on the ground that the respondent has discovered since the completion of the bond that the securities were really insufficient at the time the bond was signed. *Lapointe & Faulkner*, 22 L. C. J. 53, Q. B. 1877.

329. A judge of the Court of Queen's Bench has power in chambers to extend the delay for giving security on appeal to the Privy Council beyond the delay ordered by the court, whenever he is seized of the matter prior to the expiration of such delay, and on security being put in within such extended delay the respondents are estopped from executing the judgment appealed from. *The Mayor, &c., of Montreal & Hubert et al.*, 21 L. C. J. 85, Q. B. 1877.

330. In giving notice of security in appeal an additional day is not required for every five leagues distance. *Viola & Hamel & Gagnon & Hamel*, 4 Q. L. R. 52, Q. B. 1877.

331. When security in appeal is given for the costs only, the consent of the attorney of the party that the judgment of the court below be executed is sufficient. *Ib.*

332. For security in appeal, a single hypothecary surety is sufficient. *Ib.*

333. Appeal from the Circuit Court. Notice was given that security would be put in on a certain day, and the respondent appeared and required the sureties to justify. The sureties justified as required and no objection was offered. Now a motion was made, supported by a number of affidavits, alleging that at the time these sureties justified the party respondent thought they were both holders of real estate, and that he had since discovered that they are not holders of real estate; that they are insolvent, and he desired to force the appellant to give new security—*Held*, that the respondent was too late with his objection He alleged no new fact. He did not say that they had become insolvent since, but simply that he had been mistaken. If such an application were allowed it would lead to endless litigation. The court would have to order an *enquête* as to whether these facts were true. Motion rejected *Faulkner & Lapointe*, Q. B. 1877.

334. Under Insolvent Act, 1875, a respondent in appeal was held not liable to give security for costs on becoming insolvent. *McKinnon* v. *Thompson*, 23 L. C. J. 95, Q. B. 1878.

335. A security bond in appeal from the Circuit Court may be amended by supplying the description of the real estate on which the security justified, and which had been omitted in the bond. *Montreal Cotton Co. & Corporation of the Town of Salaberry of Valleyfield*, 24 L. C. J. 159, 2 L. N. 338, & 9 R. L. 551, Q. B. 1879.

336. Where the security, on an appeal from the Circuit Court, has not been put in within the delay required by Art. 1143 of the Code of Procedure,* the appeal will be dismissed. *Carter & Lalanne*, 24 L. C. J. 160, Q. B. 1879.

337. The security in appeal should be filed in the office of the prothonotary of the Superior Court, where the judgment appealed from was rendered, and not at the place where the court sits.† *McGreevey & Doucet*, 10 R. L. 535, Q. B. 1879.

338. And a security bond for $500, when the judgment appealed from exceeds $600, in capital, interest and costs, is insufficient, and will be rejected on motion even after the production of factums. *Ib.*

339. Petition by respondent to have the security rejected and new security ordered within a specific delay. Appellant not being able to find qualified security for her appeal, made over a certain property, which was mortgaged to the respondent for $10,000, and which was the very property in dispute, by a deed in which it was stipulated that they would neither sell nor mortgage the property, and that they would return it to her if she paid the judgment. One of the sureties swore that the properties were worth from $15,000 to $17,000, they pretended to buy them from appellant for $12,000. In the corporation books they were valued at $12,609. Neither the purchaser nor the vendor had the full title to them. New security ordered. *Robert & The Trust and Loan Co.*, 3 L. N. 378, Q. B. 1880.

340. Appeal dismissed, new security not having been put in within the delay ordered. *Morin & Homier*, 3 L. N. 392, Q. B. 1880.

341. Action against the appellant accompanied by capias. In the court below appellant had given security on the capias by transferring to the plaintiff *bailleur de fonds* claims to the amount of $4,344, The amount sued for was $1,450. The defendant, now appealing, prayed *acte* of the declaration that he had previously given security to an amount three times the amount sued for, and he renewed the offer of this security to avail as security for judgment and costs on the appeal. Security accepted on condition of proving the value of the hypothecs, and that it was sufficient for the purpose.‡ *O'Brien & McLynn*, 3 L. N. 143, S. C. 1880.

342. Where a motion was made to dismiss an appeal on the ground of insufficient security, the appellant was allowed fifteen days in which to increase the security. *Lacy & Drapeau*, 3 L .N. 194, Q. B. 1880.

343. But where an appellant, from the Circuit Court, applied to be allowed to give security after the expiry of the fifteen days—*Held*, that in such case the party must show not only that

---

* The party appealing must, within fifteen days after the rendering of the judgment, but without being bound to give notice, give good and sufficient sureties, who must justify their sufficiency to the satisfaction of the person receiving their security, that he will prosecute the appeal, will answer the condemnation, and pay the costs in the event of the judgment being confirmed.

† The security must be received before one of the judges or the prothonotary of the court in which the judgment was rendered, and such judge or prothonotary may swear the sureties, and ask them any pertinent questions with respect to their sufficiency. 1125 C. C. P.

‡ When a person cannot find surety he may in lieu thereof deposit some sufficient pledge, 1963 C. C.

the failure to give security in time was due to no fault attributable to him, but that he persisted in his intention to appeal at the earlies, opportunity. *Duquette & Brochu*, 3 L. N. 195 Q. B. 1880.

XXXIV. Sureties in.

344. Where the insolvency of a surety in appeal was alleged, and a new one demanded, the surety was ordered to be called in to be examined, and, on his failing to appear, a new one was ordered. *Wright & Foster & Fish*, 2 L. N. 394, Q. B. 1879.

345. *Action on Bond.* Action on surety bond in appeal. Plea by one of the sureties that he was insolvent, and the plaintiff ought to have had another named in his stead, and also that the appellant was insolvent, and the assignee to his estate ought to have been called in —*Held*, dismissing both pleas. *Fuller* v. *Farquhar*, 2 L. N. 142, S. C. 1879.

346. Where leave to appeal to the Supreme Court from a judgment of the Court of Review was allowed, and sureties bonds were entered into, but the appeal was dropped—*Held*, that the sureties were not liable. *Canadian Meat and Produce Co.* v. *Wiseman*, 3 L. N. 85, S. C. 1880.

347. A new surety may be substituted for one whose real estate is proved to be of a value less than the amount of the bond. *Morin & Homier*, 3 L. N. 309, Q. B. 1880.

348. Where a surety in appeal was proved to be insolvent he was ordered to be replaced by another. *Ouimet & Desjardins*, 3 L. N. 108, Q. B. 1880.*

349. Where sureties in a case in appeal from a judgment which was confirmed tendered the costs, with a condition that the money should be returned in the event of the Privy Council granting a special application to appeal, and the judgment being reversed on such appeal—*Held*, that they had no right to annex such a condition and they were condemned to pay the costs absolutely. *Carter* v. *Ford*, 3 L. N. 412, S. C. 1880

XXXV. To Privy Council.

350. A motion was made by the defendants in this case for leave to appeal to the Priv Council, and was resisted on the ground that the amount was not enough to entitle the party to his appeal. The action was for $2,000, and the judgment was for $1,500, so that neither the amount claimed by the action, nor the amount of the judgment, would give the right to go to the Privy Council the defendant, however, claimed that the future interest would make up the amount. But this future interest was not given by the judgment, so that there was no pretence for saying that it could give the right of appeal. In the case of Richer & Voyer the appeal had been refused by this Court because the principal and interest demanded up to the time of the action did not amount to $2,000. An application was made to the Privy Council, and thereupon, not reversing the decision here, but exercising the

* For remarks of Ramsay, J., concerning the imprisonment of sureties in appeal, see *Ib.*

discretion which they have, leave to appeal was granted. But that case even differed from the present. Motion for leave to appeal rejected. *Pacaud & Queen Insurance Co.*, Q. B. 1876.

351. The right of appeal in controverted election cases having been taken away by the Controverted Elections Act of Quebec, the prerogative right to admit an appeal from such decisions to Her Majesty in Privy Council does not exist. *Landry* v. *Theberge*, 3 Q. L. R. 202, P. C. 1876.

352. Petitioner having been declared duly elected a member of the Legislative Assembly of Quebec his election was afterwards, on petition, declared null, under the Quebec Controverted Elections Act, 1875, and himself declared guilty of corrupt practices, both personally and by agents. He then applied for special leave to appeal to Her Majesty in Council—*Held*, that although the prerogative of the Crown cannot be taken away except by express words, and the 90th section of the above Act, providing that such judgment shall not be susceptible of appeal, does, not mention either the Crown or its prerogatives yet the fair construction of the above Act and previous legislation is that it was the intention of the Legislature, under said Act, which was assented to by the Crown, to create a tribunal for the purpose of trying election petitions in a manner which should make its decision final for all purposes, and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative. Application refused. *Theberge & Landry*, 2 L. R. 102, P. C. 1876.

353. An appeal does not lie to the Privy Council from a judgment of the Court of Queen's Bench ordering a new trial. *South Eastern Railway Co.* v. *Lambkin*, 22 L. C. J. 21, Q. B. 1877.

354. A judgment, setting aside the verdict of a special jury, and ordering a new trial, does not belong to that class of interlocutory judgments from which no appeal is allowed to the Privy Council, and Her Majesty will grant an appeal from such judgments if the Queen's Bench refuses to allow it. *Lambkin & South Eastern Railway Co.*, 21 L. C. J. 325, & 1 L. N. 52, P. C. 1877.

355. Leave to appeal to the Privy Council from a judgment of the Court of Queen's Bench will be granted, although the opposite party has already obtained leave to appeal to the Supreme Court of Canada. *City of Montreal & Devlin*, 1 L. N. 151, Q. B. 1878.

356. A motion was made on the part of the respondent to be allowed to appeal to the Privy Council, on the ground that the judgment bound the future rights of the bar—*Held*, that the Court had no power to grant leave to appeal beyond the cases mentioned in Art 1178 C. C. P. This case was not within any of them. It bound no future rights of respondent, and the bar was not a party. The only remedy was for respondent to apply to the Privy Council for special leave to appeal. *O'Farrell & Brassard*, 1 L. N. 115, Q. B. 1878.

357. On application for leave to appeal to the Privy Council, from a judgment o fthe Court of Queen's Bench—*Held*, that such leave would be granted, although the opposite party had already obtained leave to appeal from the same judgment to the Supreme Court of Canada.

City of Montreal & Devlin, 22 L. C. J. 136, Q. B. 1878.

358. There is no appeal in matters of prohibition to H. M. in Privy Council. *O'Farrell & Brassard*, 4 Q. L. R. 214, Q. B. 1878.

359. On an injunction to restrain the Government of Quebec from interfering with respondent in his possession of a railroad—*Held*, that appeal would lie from the Queen's Bench to the Privy Council, *Joly & Macdonald*, 2 L. N. 104, Q. B. 1879.

360. In a contested election case the constitutionality of the Dominion Contested Elections Act, 1874, was called in question. The courts of the Province of Quebec, as also the Supreme Court of Canada, after able and exhaustive arguments, decided in favor ofthe constitutionality, and there being nothing to show that the judges of the Dominion would refuse to act in accordance with the judgments of those courts, leave to appeal to the Privy Council was refused. *Valin & Langlois*, 3 L. N. 38, P. C. 1879.

361. Defendant moved for leave to appeal to the Privy Council, from a judgment rejecting a petition to quash a capias. Leave granted. *Goldring* v. *Hochelaga Bank*, 2 L. N. 232, Q. B. 1879.

362. In insolvency cases, under the insolvent Act 1875 and amendments, no appeal lies to the Privy Council since the passing of the Dominion Statue, 40 Vic. cap 41. *Renny & Moat*, 2 L. N. 226, & 23 L. C. J. 262, Q. B. 1879.

363. On an application for leave to appeal to the Privy Council—*Held*, that the interest could not be added to the principal demanded in order to make the amount sufficient to give a right of appeal to the Privy Council. *Stanton* v. *Home Insurance Co.*, 2 L. N. 314, Q. B. 1879.

364. Where appellant neglected to apply for leave to appeal to the Privy Council during the same term, his lawyer being absent when judgment was rendered, but was allowed to put in security for such appeal during the fifteen days after judgment—*Held*, dismissing a motion to that effect, that the record would not be remitted to the court below for execution. *Brewster & Lamb*, 3 L. N. 109, Q. B. 1880.

365. By 40 Vic. cap. 41, sec. 28 of the Parliament of Canada, it is provided that judgments of the Court of Queen's Bench in matters of insolvency shall be final. Under this provision the Court of Queen's Bench refused leave to appeal from a judgment of that court on a petition in insolvency to the Privy Council. On petition to Her Majesty for special leave to appeal—*Held*, that the Act in question was within the powers of the Dominion Parliament, and that under it the Queen's Bench was justified in refusing leave to appeal further, but that this did not interfere with the prerogative of the Queen to allow an appeal to herself in Privy Council, which, in the present instance, would be allowed. *Cushing & Dupuy*, 24 L. C. J. 151, & 3 L. N. 171, P. C. 1880.

366. Application on behalf of appellant for leave to appeal to the Privy Council. The judgment was for $2985.83, and was susceptible of appeal to the Privy Council, but in consequence of the accidental detention of he counsel specially charged with the case he was not present at the rendering of the judgment, and no motion for leave to appeal to the Privy Council was presented before the court adjourned. Indeed, by error, his partner filed a motion for distraction of costs. The petitioner offered forthwith to enter security for an appeal to Her Majesty in Privy Council, and concluded as follows: "Wherefore your petitioner prays that Your Honor will permit him to enter his security in appeal to Her Majesty in Privy Council, and, further, order that this petition do stand as a rule for the first day of the next term of said Court of Queen's Bench, and that all further proceedings in this cause be stayed until after the hearing and determination of the rule." Ordered that the petition be allowed as to the offer of security, remainder rejected, with reserve of all rights to respondent. *Brewster & Lamb*, 3 L. N. 75, Q. B. 1880.

367. Where a judgment of the Superior Court had been confirmed by the Court of Appeal, special leave to appeal to the Privy Council was refused, there being no miscarriage in point of law or gross miscarriage on the facts apparent. *Molson & Carter*, 3 L. N. 407, P. C. 1880.

368. An appeal lies to the Privy Council from a judgment of the Queen's Bench dissolving an injunction where the matter in dispute exceeds £500 stg. *Dobie & Board of Temporalities, etc.*, 3 L. N. 308, Q. B. 1880.

369. But an appeal will not be granted to the Privy Council from a judgment of the Queen's Bench maintaining an action to recover an amount of assessments illegally exacted, where the matter in dispute does not exceed £500 stg., and the fact that the roll under which the assessments were collected might exist for three years does not bring the case under Art. 1178 C. C. P.*, especially where the total amount for the three years would be under £500 stg. *Lussier & Corporation of Hochelaga*, 3 L. N. 309, Q. B. 1880.

370. And the Court of Queen's Bench will refuse leave to appeal to the Privy Council from a judgment of the Queen's Bench rejecting an appeal to that court for want of jurisdiction. *Augers, Attorney General, & Murray*, 3 L. N. 308, Q. B. 1880.

XXXVI. To Supreme Court.

371. Motion for leave to appeal to Supreme Court, after motion made to appeal to Privy Council allowed. *Caverhill & Robillard*, 7 R. L. 575, Q. B. 1876.

372. The Court of Queen's Bench has a discretionary power to allow an appeal to the Supreme Court, after the delay mentioned in

---

* An appeal lies to Her Majesty in her Privy Council from final judgments rendered in appeal or error by the Court of Queen's Bench.

1. In all cases where the matter in dispute relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Maje.

2. In cases concerning titles to lands or tenements, annual rents and other matters, by which the rights in future of parties may be affected.

3. In all other cases wherein the matter in dispute exceeds the sum or value of five hundred pounds sterling.

the statute has expired.* *Caverhill & Robillard*, 21 L. C. J. 74, Q. B. 1876.

373. The judges of the Supreme Court being equally divided and the decision of the court below affirmed, the successful party was refused the costs of appeal. *Liverpool & London & Globe Insurance Co.* v. *Wyld et al.*, 1 S. C. Rep. 605, Su. Ct. 1877.

374. An appeal lies from the Supreme Court of Nova Scotia to the Supreme Court of Canada. *Lenoir & Ritchie*, 2 L. N. 373, Su. Ct. 1879.

375. The right of appeal to the Supreme Court is governed by the amount sued for not by the amount of the judgment.† *Sheridan & The Ottawa Agricultural Insurance Co.* 2 L. N. 266, S. C. 1879.

* Every appeal from the judgment of a court or judge whereby an election petition has been decided, shall be brought within eight days from the rendering thereof; and every other appeal shall be brought within thirty days from the signing or entry or pronouncing of the judgment appealed from. C. 38 V. c. 11, s. 25.

Provided always that the Court proposed to be appealed from, or any judge thereof, may allow an appeal under special circumstances, except in the case of an election petition, notwithstanding that the same may not be brought within the time hereinbefore prescribed in that respect; but in such case the court or judge shall impose such terms as to security or otherwise as shall seem proper under the circumstances, Ib. sec. 26.

† Subject to the limitations and provisions hereinafter made, an appeal shall lie to the Supreme Court from all final judgments of the highest court of final resort, whether such court be a court of appeal or of original jurisdiction, now or hereafter established in any Province of Canada, in cases in which the court of original jurisdiction is a Superior Court: Provided that no appeal shall be allowed from any judgment rendered to the Province of Quebec in any case wherein the sum or value of the matter in dispute does not amount to two thousand dollars, and the right to appeal in civil cases, given by this Act, shall be understood to be given in such cases only as are mentioned in this section, except exchequer cases and cases of mandamus, habeus corpus or municipal by-laws as hereinafter provided. C. 38 Vic 11, s. 17.

An appeal shall also lie directly to the Supreme Court from the judgment of the Court of original jurisdiction by consent of parties. *Ib.*, s. 27.

By the Amending Act C. 42 V. c. 39, it is provided that —No appeal shall lie from any order made in any action, suit, cause, matter or other judicial proceeding, which shall have been made in the exercise of the judicial discretion of the court or judge making the same; but this exception shall not include decrees and decretal orders in suits, causes, matters or other judicial proceedings in the nature of suits or proceedings in Equity instituted in any Superior Court. Sec 2.

An appeal shall lie from final judgments only in actions, suits, causes, matters and other judicial proceedings originally instituted in the Superior Court of the Province of Quebec. Sec 3.

Except as hereinafter provided for, no appeal shall lie to the Supreme Court but from the highest court of last resort having jurisdiction in the Province in which the action, suit, cause matter, or other judicial proceeding was originally instituted, whether the judgment or decision in such action, suit, cause, matter or other judicial proceeding may or may not have been a proper subject of appeal to such highest court of last resort. Sec. 5.

No appeal shall be allowed from any judgment rendered in the Province of Quebec, in any action, suit; cause, matter or other judicial proceeding wherein the matter in controversy does not amount to the sum or value of two thousand dollars, unless such matter, if less than that amount, involves the question of the validity of an Act of the Parliament of Canada, or of the Legislature of any of the Provinces of Canada or of an ordinance or Act of any of the Councils or Legislative bodies of any of the territories or districts of Canada, or relates to any fee of office, duty, rent revenue, or any sum of money payable to Her Majesty or to any title to lands or tenements, annual rents, or such like matters or things where the rights in future might be bound: Provided that such appeals shall be from the Courts of Queen's Bench only. Sec. 8.

The words "final judgment" in this Act contained, mean any judgment, rule, order or decision whereby the action, suit, cause, matter or other judicial proceeding is finally determined and concluded. Sec. 9.

376. An appeal lies directly to the Supreme Court from a judgment of the Superior Court, sitting in Review, in cases not under $2000 in amount where the judgment having been confirmed in Review against the party inscribing, no appeal lies to the Court of Queen's Bench. *Abbott* v. *Macdonald*, 21 L. C. J. 31., S. C. R. 1877.

377. The following certificate was filed with the printed case as complying with the Supreme Court rules: "We, the undersigned joint Prothonotory for the Superior Court of Lower Canada, now the Province of Quebec, do hereby certify that the said defendant has deposited in our office, on the twentieth day of November last, the sum of five hundred dollars, as security in appeal in this case before the Supreme Court according to sec. 31 of the Supreme Court Act, passed in the 38th year of Her Majesty, chapter second. Montreal, 17th January, 1878, Sgd.—*Held*, on motion to quash appeal, that the deposit of the sum of five hundred dollars in the hands of the Prothonotary of the Court below, made by appellant without a certificate that it was made to the satisfaction of the Court appealed from or any of its judges was nugatory and ineffectual as security for the costs of appeal. *Macdonald & Abbott*, 3 S. C. Rep. 278, Su. Ct. 1879.

378. No appeal lies to the Supreme Court from a final judgment of the Court of Queen's Bench in a proceeding under the Insolvent Act of 1875 since the passing of the Dominion Statute 40 Vic. cap 27, *Borrowman & Angus*, 2 L. N. 131, & 23 L. C. J. 59, Q. B. 1879.

379. On a motion to quash the appeal on behalf of the respondent, on the ground that the appellant had not, within three days after the registrar of the court had set down the matter of the petition for hearing, given notice in writing to the respondent or his attorney or agent of such setting down, nor applied to and obtained from the judge who tried the petition further time for giving such notice as required by the 48th sec. of the Supreme and Exchequer Court Act*—*Held*, that this provision in the statute was imperative; that the giving of such notice was a condition precedent to the exercise of any jurisdiction by the Supreme Court to hear the appeal; that the appellant having failed to comply with the statute, the court could not grant relief under rules 56 or 69, and that therefore the appeal could not then be heard, but must be struck off the list of appeals with costs of the motion. *Wheeler & Gibbs*, 3 S. C. Rep. 374, Su. Ct. 1879.

* When the Supreme Court is organized, and in the exercise of its appellate jurisdiction, the thirty-third, thirty-fourth and thirty-fifth sections of the Act passed in the thirty-seventh year of H.M.'s reign, and intituled "*An Act to make better provision for the trial of Controverted Elections of members of the House of Commons, and respecting matters connected therewith*," shall be repealed, except as hereinafter provided, with respect to the proceedings then pending; and thereafter any party to an election petition, under the said Act, who may be dissatisfied with the decision of the judge who has tried such petition, on any question of law or of fact, and desires to appeal against the same, may within eight days from the day on which the judge has given his decision, deposit with the clerk or other proper officer of the court (of which the judge is a member), for receiving moneys paid into such court, at the place where the petition was tried if in the Province of Quebec, and at the chief office of the court in any other Province, the

380. Subsequent to this judgment appellant applied to the judge who tried the petition to extend the time for giving the notice, whereupon the judge granted the application and made an order "extending the time for giving the prescribed notice till the 10th day of December then next." The case was again set down by the registrar for hearing by the Supreme Court at the February session following, being the nearest convenient time, and notice of such setting down was duly given within the time mentioned in the order. Respondent thereupon moved to dismiss the appeal on the ground that appellant unduly delayed to prosecute his appeal, or failed to bring the same on for hearing at the next session, and that the judge who tried the petition had no power to extend the time for giving such notice after the three days from the first setting down of the case for hearing by the registrar of this court—*Held*, that the power of the judge who tried the petition to make an order extending the time for giving such notice, is a general and exclusive power to be exercised according to a sound discretion, and the judge having made such an order in the case the appeal came properly before the court for hearing. *Ib.*

381. Appeal from a judgment of the Superior Court, Rimouski, adjudging appellant to pay costs—*Held*, that the appeal in cases of mandamus under sec. 23* of the Supreme and Exchequer Court Acts is restricted by the application of sec. 11 to decisions of "the highest court of final resort" in the Province, and that an appeal will not lie from any court in the Province of Quebec but the Court of Queen's Bench.† *Danjou & Marquis*, 3 S. C. Rep. 251, Su. Ct. 1879; & *Macdonald & Abbott*, 3 S. C. Rep. 279, Su. Ct 1879; & *Beamish & Kaulbach*, 3 S. C. Rep. 704, Su. Ct. 1879.

382. In an action instituted in the Superior Court by the appellant against the respondents, three of the defendants severally demurred to the action, except as regards two lots of land in which they acknowledged defendant had an undivided share. The Superior Court sustained the demurrer, and, on appeal, the Court of Queen's Bench, in appeal, affirmed the judgment. The appellant thereupon appealed to the Supreme Court, and moved to quash the appeal, on the ground that the Superior Cour had no jurisdiction—*Held*, that as the judgment of the Court of Queen's Bench, the highest court of last resort having jurisdiction in the Province, finally determined and put an end to the appeal, which was a judicial proceeding within the meaning of sec. 9 of the Supreme Court Amendment Act of 1879,‡ such judgment was one from which an appeal would lie to the Supreme Court of Canada, and though an appeal cannot be taken from a court of first instance directly to the Supreme Court until there is a final judgment, yet whenever a Provincial Court of appeal has jurisdiction, the Supreme Court can entertain an appeal from its judgment, finally disposing of the appeal, the case being in other respects a proper subject of appeal. *Chevallier & Cuvillier*, 4 S. C. Rep. 605, Su. Ct. 1879.

383. Appellant sued respondent before the Superior Court at Arthabaska in an action of $10,000 damages for verbal slander. The judgment of the Superior Court awarded to appellants $1,000 for special and vindictive damages. Respondent appealed to the Queen's Bench, and the amount of damages was reduced to $500, and costs of appeal against appellant, who thereupon appealed to the Supreme Court—*Held*, that he was entitled to his appeal, as, in determining the amount of the matter in controversy between the parties, the proper course was to look at the amount for which the declaration concludes and not the amount of the judgment.§ *Levi & Reed*, Su. Ct. 1881.

384. And *held*, further, that where, in an action of damages, a judge tries the case without a jury, and is not shewn to have acted upon a wrong principle in assessing the quantum of damages, this court, as an appellate court, will

sum of one hundred dollars as security for costs, and a further sum of ten dollars as a fee for making up and transmitting the record; and thereupon the clerk, or other proper officer of the court shall make up and transmit the record in the case to the registrar of the Supreme Court, who shall set down the matter of the said petition for hearing by the said court at the nearest convenient time, and according to any rules made in that behalf under this Act, *and the party so appealing shall thereupon, within three days, or such further time as the judge who tried the petition may allow, give to the other parties to the said petition affected by the appeal, or the respective attorneys or agents by whom such parties were represented at the trial of the petition, notice in writing that the matter of the petition has been so set down for hearing in appeal as aforesaid,* in and by which notice the said party so appealing may, if he desires, limit the subject of the said appeal to any special and defined question or questions; and the appeal shall thereupon be heard and determined by the Supreme Court, which shall pronounce such judgment upon questions of law or of fact, or both, as in the opinion of the said court ought to have been given by the judge whose decision is appealed from; and the Supreme Court may make such order as to the money deposited as aforesaid, and as to the costs of the appeal, as it may think just; and in case it appears to the court that any evidence duly tendered at the trial was improperly rejected, the court may cause the witness to be examined before the court or a judge thereof or upon commission, and the registrar shall certify to the speaker of the House of Commons the judgment and decision of the court upon the several questions, as well of fact as of law, upon which the judge appealed from might otherwise have determined and certified his decision in pursuance of the said Act in the same manner as the said judge should otherwise have done, and with the same effect, and the judgment and decision of the Supreme Court shall be final to all intents and purposes. C. 38 V. c. 11, s. 48.

By the amending Act 42 Vic. cap. 39, it is provided that an appeal shall lie to the Supreme Court from the judgment, rule, order or decision of any court or judge on any preliminary objection to an election petition, the allowance of which shall have been final and conclusive, and have put an end to the petition; provided always that an appeal in the last mentioned case shall not operate as a stay of proceedings, or to delay the trial of the petition, unless the court or a judge of the court appealed from shall so order; and provided also that no appeals shall be allowed under this section in cases in litigation, and now pending, except cases when the appeal has been allowed and duly filed. Sec. 10.

* An appeal shall lie to the Supreme Court in any case of proceedings for or upon a writ of habeas corpus, not arising out of a criminal charge, and in any case of proceedings for or upon a writ of mandamus, and in any case in which a by-law of a Municipal Corporation has been quashed by rule of court, or the rule for quashing it has been refused after argument. C. 38 Vic. c. 11, s. 23.

† Query by Supreme Court reporters: Can the Dominion Parliament give an appeal in a case in which the Legislature of the Province has expressly denied it?

‡ Vide note, p. 73. *Supra.*

§ Joyce & Hart reviewed.

not interfere with the discretion such judge has exercised in determining the amount to be awarded. *Ib.*

APPEARANCE—*See* PROCEDURE.

APPRENTICES—*See* MASTER AND SERVANT.

APPROPRIATION.

I. In Building Societies, *see* BUILDING SOCIETIES.

ARBITRATION.

I. Award.
II. In matters of Expropriation for Railways, *see* RAILWAYS.
III. Irregularities in.
IV. Power of Arbitrators.
V. Power of Court to appoint Arbitrators.
VI. Revocation of Power of Arbitrator.

I. Award.

385. An award of arbitrators may be good in part and bad in part, but only in cases where the subject appears clearly capable of being separated, where for instance the arbitrator exceeds his authority on one subject or proceeds to another as to which he has no power to make an award. *Gray* v. *Fradet*, 5 Q. L. R. 226, S. C. 1879.

III. Irregularities in.

386. The defendant moved to reject an award made by a person appointed sole arbitrator and *amiable compositeur* on the ground that it did not state that the parties had been heard before him, or had had an opportunity allowed them to urge their respective pretensions—*Held*, that the defect was fatal, and the motion to reject the award was granted.* *Farmer* v. *O'Neil*, 1 L. N. 220, & 22 L. C. J. 76, S. C. 1878.

IV. Powers of Arbitrarors.

387. Aetion on an award of arbitration. By agreement of 31st August, 1877, two *amiable compositeurs* were named and instructed to name a third in ease of difference of opinion. It made the award of the two or of one of the two with a third binding; and said specially that they could proceed without other proof than that which would be before them, and in the absence of the parties if they neglected or refused to be present and to offer proof when called upon to do so. The defendant informed one of the arbitrators that he had proof to make, but was not informed of a time or place where he could offer such proof. One of the arbitrators called in a third, and, without having heard either the other arbitrator or the parties, proceeded with the one who called him in, and in the absence of the other, to render the award the confirmation of which was now sought by the action. Award in consequence declared null and action dismissed. *Breakey & Carter*, 4 Q. L. R. 332, S. C. 1878.

V. Power of Court to appoint Arbitrators.

388. The power of the Court to appoint arbitrators under article 341 of the Code of Procedure* is not confined to matters arising out of the relationship between the parties. *Robert & Robert*, 21 L. C. J. 18, Q. B. 1876.

VI. Revocation of Power of Arbitrator.

389. Plaintiff did work about the building of a convent at St. Laurent. There was a dispute as to the price and the value of the work. In February, 1874, the parties came together and resolved to refer the matter to *amiable compositeurs*, who were to make a report as soon as possible. After the arbitrators had taken up the matter the defendants' arbitrator refused to go on and made a *deportement*. The other two, after notifications to him, went on without him and made a report, although the defendants previously notified them that they revoked the submission. Plaintiff then sued for the amount of the award. Defendants' plea was that the award was *ultra vires*, null and void—*Held*, that the award was a nullity, and the action must be dismissed, as the defendants had revoked the submission before the report was made, which they had a right to do.† *Metivier* v. *La Communauté des Sœurs de Ste. Croix*, 7 R. L. 388, S. C. 1875.

ARCHITECTS — *See* BUILDERS, CONTRACTORS.

I. Remuneration of.

390. The value of an architect's services may be proved by verbal testimony. *Roy* v. *Huot*, 2 L. N. 347, S. C. 1879.

---

* The arbitrators must hear the parties and their proofs respectively, or establish a default against them and decide according to the rules of law; unless by the submission they have been exempted from doing so, or unless they have been named as mediators. The witnesses to be examined before the arbitrators may be sworn before the prothonotary or the clerk of the Circuit Court of the locality, or before a commissioner of the Superior Court, 1346, C. C. P.

* The Court may of its own motion, or upon application of one of the parties, refer to the decision of arbitrators any case of dispute between relations concerning partitions or other matters of fact which it is difficult for the Court to appreciate, and also any other case if the parties consent to it. 341 C. C. P.

† During the delay fixed by the submission the appointment of the arbitrators cannot be revoked except with the consent of all the parties. If the delay is not fixed, either of the parties may revoke the submission when he pleases. 1347 C. C. P.

ARCHIVES.

I. Production of as Evidence, *see* CORPORATIONS.

ARPENTEURS—*See* SURVEYORS.

I. In action en bornage, *see* ACTION.

ARREARS.

I. Of Charges in Donation, *see* DONATION.
II. Of Interest, *see* INTEREST, PRESCRIPTION.
III. Of Taxes, *see* TAXES.
IV. Registration of, *see* REGISTRATION

ARREST—*See* IMPRISONMENT.

I. Damages for, when Illegal, *see* DAMAGES.
II. Of Judgment, *see* JURY in Civil Cases
III. Under Capias, *see* CAPIAS.

ARSON—*See* CRIMINAL LAW.

ARTICULATION OF FACTS—*See* PROCEDURE.

ASCENDANT DONATEUR.

I. Liability of, *see* SUCCESSION.

ASSAULT.

I. Conviction for, a bar to Civil Action.
II. Damages for, *see* DAMAGES.
III. What is.

I. Conviction for, a bar to Civil Action.

391. In an action of damages for assault, for which the defendant had already been fined in the Recorder's Court—*Held*, that a conviction may be pleaded in bar of any other proceeding, civil or criminal, for the same cause.* *Callahan & Vincent*, 3 L. N. 154, S. C. R. 1880.

* If any person against whom any such complaint as in either of the last two preceding sections mentioned has been preferred by or on behalf of the party aggrieved has obtained such certificate of acquittal) or having been convicted has paid the whole amount adjudged to be paid, or has suffered the imprisonment or imprisonment with hard labor awarded, in every such case he shall be released from all further and other procedure, civil or criminal, for the same cause. C 32-33 V., c 20, s. 45.
Defendant may testify. On the summary or other trial of any person upon any complaint, information or indictment for common assault the defendant shall be a competent witness for the prosecution on his own behalf. C. 43 Vic., cap. 37, sec. 2.

392. But must be pleaded in order to avail. *Simard v. Marsan*, 2 L. N. 333, S. C. 1880.

III. What is.

393. Carrying away the windows of a dwelling house and leaving the occupants exposed to the weather is an assault. *Dubuc & City of Montreal*, 2 L. N. 334, S. C. 1879.

ASSEMBLÉE DE PARENTS—*See* FAMILY COUNCIL.

ASSESSMENT ROLL—*See* MUNICIPAL CORPORATIONS.

ASSESSMENTS—*See* MUNICIPAL CORPORATIONS.

I. For Churches, *see* CHURCHES.

ASSESSORS.

I. Opinion of in Maritime Case may be set aside, *see* MARITIME LAW.

ASSETS.

I. Of Community, *see* MARRIAGE CONTRACTS.
II. Of Insolvent Estate, *see* INSOLVENCY.

ASSIGNEE.

I. In Insolvency not an Agent of the Creditors Personally, *see* AGENCY.

ASSIGNEES.

I. Bill of, *see* REVIEW, Grounds of.

ASSIGNMENT.

I. In Insolvency, *see* INSOLVENCY.
II. In trust for Creditors, *see* TRUSTEES.

On any such trial the wife or husband of the defendant shall be a competent witness on behalf of the defendant. Ib.
Where another crime is charged, and the Court having power to try the same is of opinion at the close of the evidence for the prosecution that the only case apparently made out is one for common assault the defendant shall be a competent witness for the prosecution or on his own behalf, and his wife, or her husband if the defendant be a woman, shall be a competent witness on behalf of the defendant in respect of the charge of common assault: provided that this section shall only apply to cases tried without a jury. Ib.
Except as in the next preceding section, this Act shall not apply to any prosecution where any other crime than common assault is charged in the information or indictment. Ib.

ASSOCIATIONS.

I. Illegal, *see* ORANGE ASSOCIATIONS.

ASSURANCE—*See* INSURANCE.

"ATALAYA" THE.

I. Detention of, *see* FOREIGN ENLISTMENT ACT.

ATERMOIEMENT.

I. Effect of Deed of, *see* OBLIGATIONS Novation.

ATTACHMENT.

I. Before Judgment.
Affidavit for.
Contestation of.
Grounds of.
Of Immoveables.
II. By Garnishment.
Contestation of Garnishee's Declaration.
Declaration of Garnishee.
Delay to declare.
Effect of.
Grounds of.
Of Debts not yet due.
Of Salary of Public Officers.
III. Conservatory.
IV. In Revendication.
Affidavit for.
Grounds of.
Must state value.
Nature of.
V. Liability for Illegal Issue of Writs of.
VI. Of Bond in Appeal, *see* APPEAL.
VII. Of Usufruct of Moveables.
VIII. Par Droit de Suite.

I. Before Judgment.

394. *Affidavit for.*—In an affidavit for attachment before judgment the words "may lose his debt or sustain damage" held, sufficient. *Anderson* v. *Brusgaard*, 3 Q. L. R. 287, C. C. 1877.

395. The omission to allege in an affidavit for *saisie arrêt* before judgment, that the defendant is secreting his property, or (in the case of a trader alleged to be insolvent) that he still carries on business, is fatal. *Osborne* v. *Nitsch & Nitsch*, 21 L. C. J. 252, S. C. 1877; 834 C. C. P.

396. An affidavit in which the plaintiff swears that the defendant is secreting or is about to secrete his estate, debts and effects, with intent to defraud his creditors, *or* the plaintiff in particular, is sufficient. *Plante* v. *Carrier*, 5 Q. L. R. 350, S. C. 1879.

397. On a motion to quash an attachment—*Held*, following *Hurtubuise & Bourret*, that in an affidavit for attachment it is not necessary to state the date of the debt, nor the place at which it was contracted. *L'Heureux* v. *Martineau*, 6 Q. L. R. 275, S. C. 1880.

398. And the allegations of the affidavit under art. 834* of the Code of Procedure, as to the grounds of the plaintiff's belief, that the defendant is immediately about to secrete his property, may be stated according to form 45, of the same Code, although that form is given in connection with another article. *Ib.*

Form of Affidavit for Attachment before Judgment.

A. B., said Plaintiff (or agent of said Plaintiff) being duly sworn on the Holy Evangelists, doth depose and say:—That heretofore, to wit, at Montreal, in the District of Montreal, on the day of eighteen hundred and seventy the said Defendant was, and still is, well and truly and personally indebted to said Plaintiff in a sum exceeding five dollars currency, to wit in the sum of dollars and cents currency, being as and for (*state briefly date, place and cause of debt.*)

That deponent is credibly informed, hath every reason to believe, and doth verily and in his conscience believe, that said Defendant is now immediately about to leave the Province of Quebec, and is secreting and making away with, or is about to secrete and make away with estate, monies, credits, debts and effects, with intent to defraud creditors in general and the Plaintiff in particular; that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors or make an assignment to them or for their benefit, and that he still carries on his business; and deponent verily believes that without the benefit of a writ of attachment, *saisie arrêt* before judgment, said Plaintiff will be deprived of remedy, will lose debt and sustain great loss and damage, and deponent hath signed.

Sworn, taken and acknowledged before at Montreal, this day of eighteen hundred and

399. *Contestation of.*—Where the contestation of an attachment before judgment consists merely in vague and general allegations of irregularity in the affidavit, without specifying any particular irregularity, it will be dismissed. *Hotte* v. *Currie*, 22 L. C. J. 34, S. C. 1877.

400. *Grounds of.*—Respondent, who kept a hotel at Quebec, was indebted to the appellants in the sum of $361.19, for provisions and groceries used in the hotel. In settlement of

* A creditor has a right before obtaining judgment to attach the goods and effects of his debtor: 1. In the case of the *dernier equipeur*. 2. In all cases where as plaintiff he produces an affidavit establishing that the defendant is personally indebted to him in a sum exceeding five dollars, that the defendant absconds or is about immediately to leave the province, or is secreting (or is about to secrete) his property, with the intent to defraud his creditors, and the plaintiff in particular, or that defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors, or to make an assignment to them or for their benefit, and that he still carries on his business, and in either case that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage.

this account he gave to appellants two promissory notes, one for $152.67, due 7th May, 1877, the other for $208.52, due 9th July, 1877. Appellants having learned that respondent had sold a great part of the furniture of the hotel, and that on the 30th April and 1st May he intended selling the rest without providing for the notes in the hands of appellants, the latter took out seizures before judgment to seize what they could find belonging to respondent in the hands of others. Respondent petitioned to quash the attachment, on the ground that he was selling off his furniture and paying his creditors with the proceeds, and that there was abundance for that purpose—*Held*, that the circumstances were not sufficient to justify the attachment, and consequently quashed. *Primeau & Trudeau*, 8 R. L. 566, Q. B. 1878.

401. Where a person, being about to change his residence from the city to a country place just outside, advertised his household furniture for sale, and a creditor hearing of it took an attachment before judgment, which was dismissed—*Held*, that the debtor was entitled to damages for illegal attachment which were assessed at $20. *Perry* v. *Pell*, 2 L. N. 405, S. C. 1879.

402. *Saisie Arrêt avant Jugement*, founded on two bills of exchange amounting to $15,610.75. The head of the firm of defendants resided in Germany, and had for some time been insolvent. In consequence of his insolvency, the defendants had also for some time been in liquidation, and had been in the habit of making remittances to him from time to time, the last of such remittances having been made shortly before the institution of the action. It was proved also that the partner in Germany directed the managing partner in Quebec not to pay the plaintiffs' claim, and the managing partner told the agent of the plaintiffs that although it was doubtless a hard case that he intended to follow the instructions of his partners, and when asked to make an offer without prejudice, he said he could not in any case pay the claim or make any offer as requested, and on being further pressed told the agent that he had given him an answer already, and if he thought he had a good case to go on with it; and when he was threatened with an attachment, said that the plaintiff could not get an attachment before judgment—*Held*, to constitute secretion and to justify the attachment. *Meier & Beling*, 5 Q. L. R. 153, S. C. R., & 274, Q. B. 1879.

403. The defendant, in 1875, gave the plaintiff an obligation for $100, with interest at 8 per cent., upon which he gave her a first mortgage duly registered upon a farm, which he had purchased at sheriff's sale for $1,320. The evidence showed that the farm so purshased had somewhat decreased in value, but even the plaintiff's witnesses acknowledged that it was worth more than five times the amount of the plaintiff's claim. The defendant owed another sum of $375, for which he sold his farm with right of redemption, which had expired by lapse of time, and he further owed a couple of small debts amounting together to $41. The defendant, having a large family, it was decided that the father and four daughters should go to the States and try to earn money to pay off the incumbrances on his farm, and that the sons should remain to work upon a lot of land belonging to one of them in the township of Bulstrode. With a view to their leaving, in order to pay travelling expenses, defendant advertised his moveable property, of the value of about $200, for sale by auction, and thereupon the plaintiff sued out a *saisie arrêt* before judgment, making the usual affidavit for that purpose. The defendant proved that he had always borne a good character, was much more than solvent, had always met his engagements, and that the action in question was the first that had ever been instituted against him—*Held*, that there was no evidence of fraudulent intent on the part of the defendant, that the plaintiff's claim was perfectly secured, and that her *saisie arrêt* was entirely unfounded. *Lagacé* v. *Ayotte*, 5 Q. L. R. 240, S. C. R., & 6 Q. L. R. 88, Q. B. 1880.

404. *Of Immoveables.*—Immoveables may be seized under a writ of *saisie arrêt* before judgment.* *Corbeil* v. *Charbonneau*, 3 L. N. 381, S. C. 1880.

II. By Garnishment.

405. *Contestation of Garnishee's Declaration.*—A sale and transfer in fraud of creditors may be attacked by a creditor on the contestation of the transferree's declaration. *Kane & Racine*, 3 L. N. 66, & 24 L. C. J. 216, Q. B. 1880.

406. Contestation of declaration dismissed but without costs owing to the imperfections and vagueness of the declaration. *Catellier & Cassant & Heaton*, 2 L. N. 348, S. C. 1879.

407. A garnishee is not a party in a case until his declaration is contested. *Bachand* v. *Bisson & Trudeau*, 2 L. N. 324, S. C. 1879.

408. Where a garnishee made his declaration in a different district from that in which the writ issued, and the prothonotary neglected to forward the declaration in time, the garnishee was condemned to pay the debt personally, unless he made a new declara ion and paid all the costs of the *tierce saisie*.† *Gleason & Van Courtland*, 1 L. N. 115, Q. B. 1878.

409. *Declaration of Garnishee.*—A *tiers saisi* called to declare what he owes is bound to declare what he owes both personally and in his quality of universal usufructuary legatee. *Hudon* v. *Painchaud & Rivard*, 3 L. N. 414, & 24 L. C. J. 168, Q. B. 1880.

410. And a judge at hearing is bound to revise a decision maintaining an objection made by the *tiers saisi* to declare what he owes personally to an universal legatee. *Ib.*

411. *Delay to Declare.*—A *tiers saisi* who has not made his declaration within the delay prescribed by law may do so afterwards, even after judgment has been rendered, on payment not of all the costs incurred on the saisie, but of those occasioned by the default only. *Beaudoin* v. *Duchaine & Bellefleur*, 8 R. L. 663, C. C. 1876.

---

* See note. p. 82 *Supra.*

† Leave to appeal from this judgment was granted, with what result is not reported.

412.—*Effect of.*—Action for $25,000. Plea, by dilatory exception, that an attachment had been lodged in the hands of defendant for the same sum, to which attachment plaintiff was a party, and defendant prayed that all proceedings be stayed until a decision on the merits of the attachment—*Held*, maintaining the exception. *O'Halloran & Barlow*, 3 L. N. 171, S. C. 1880.

413. A creditor whose claim has been attached in garnishment by one to whom he owes money may, notwithstanding, sue and obtain judgment against his debtor, but in such case the court will order that the judgment be served upon the plaintiff and on the *tiers saisi* 15 days before its execution. *Crebassa* v. *Cie. de Chemin de Fer de Sud Est*, 8 R. L. 722, C. C. 1878.

414. The existence of a previous *saisie arrêt* in the hands of the defendants as garnishees does not prevent the plaintiff (defendant in a previous suit) from seizing moneys due to defendants in the hands of other garnishees. *Mackay* v. *Routh & The Bank of Montreal*, 1 L. N. 161, & 22 L. C. J. 22, S. C., and 1 L. N. 266, S. C. R. 1878.

415. An attachment by garnishment is not dissolved by an appeal from the judgment under which the attachment is made. *Desjardins & Ouimet & Ferrault*, 2 L. N. 194, S. C. 1879.

416. Contestation of an opposition by an assignee. The question was whether a *saisie-arrêt*, attaching monies due by the insolvent, was superior to the assignee's claim—*Held*, that the *saisie-arrêt* amounted to nothing until the seizing party got judgment; then he would have a vested right with which other people could not interfere. Here the contesting party got his judgment only after the insolvency had taken place, and the assignment prevented him from acquiring any rights whatever. Opposition of assignee maintained, and contestation dismissed. *Lapierre* v. *Tessier & Farmer*, S. C. 1879.

417. The plaintiff was a judgment creditor of defendant in his quality of curator to the vacant succession of the late A. D., and lodged an attachment in garnishment in the hands of the Guarantee Co. The Company declared that they had in their hands a sum of $570.24 belonging to the succession, but that they held it as a special security to secure them against any claims which might be brought against them under certain bonds given by them to the Queen, whereby they guaranteed the good conduct of the said A. D. The declaration on contestation was maintained. *McNichols* v. *Badeau & Canada Guarantee Co.*, 3 L. N. 133, S. C. 1880.

418. *Grounds of.*—A judgment creditor issued an attachment in garnishee against one to whom his debtor had sold a property alleging fraud and fraudulent connivance, and asking that the sale be set aside, and that the garnishee be condemned personally—*Held*, that he had only the right to have the sale declared void in order to restore to defendant possession of his property, but could not at the same time ask for a personal condemnation against the garnishee. *La Banque d'Echange du Canada* v. *Massé*, 2 L. N. 192, S. C. R. 1879.

419. *Right to.*—Where a defendant came in and contested a writ of *saisie-arrêt en main tierce*, issued by plaintiff, on the ground that writs of *saisie-arrêt* had been served on him by creditors of the plaintiff—*Held*, that this was no reason why plaintiff should not issue his writ, and the contestation was dismissed. *Cadieux* v. *Canadian Mutual Fire Insurance Co.*, 1 L. N. 340, S. C. 1878.

420. *Of Debts not yet due.*—Attachment in the hands of the Société de Construction, garnishees, on the 11th of March, of a debt not due by them to defendant until the next day—*Held*, that as at the moment of the attachment the garnishee owed nothing to defendant, that the attachment was invalid and the declaration of the garnishee was maintained. *Molsons' Bank* v. *Lionais & La Société de Construction Mutuelle des Artisans*, 3 L. N. 116, & 24 L. C. J. 176, S. C. R. 1880.

421. *Of Salary of Public Officers.*—An attachment against the defendant, an employee of the Quebec Government was issued under the provisions of Q. 38 Vic., cap. 12. The head of the department in which the defendant was employed declared that there was nothing due to the defendant at the time of the attachment, but that he was in receipt of a salary of $129.34 per month. The plaintiff thereupon moved that the attachment be continued, and that the *tiers saisi*, the provincial secretary, should be held to make a further declaration on the fifteenth of October then next, and on the fifteenth of each of the months of November, December and January, then next, and on every following month so long as the defendant remained in the employment of the Government, and until the plaintiff's claim should be paid—*Held*, that as there was no one upon whom an order binding as a judgment could be made, the court would simply declare that the seizable part of defendant's salary, so long as he should continue to be employed as a public officer, might be paid to the plaintiff until his claim was discharged. *Burke* v. *Colfer & Paquet*, 6 Q. L. R. 349, S.C. 1880.

III. Conservatory, *see* PRIVILEGE OF VENDOR.

422. A person who conveys timber down a river according to agreement has a right to a conservatory attachment on said timber, until his charges for conveyance are paid. *Trudel* v. *Trahan*, 7 R. L. 177, S. C. 1874.

423. Where goods were seized by an attachment in revendication, and it was prayed that in case the revendication did not lie that the attachment might avail as a conservatory process, judgment went accordingly. *Henderson & Tremblay*, 21 L. C. J. 24, Q. B. 1876.

424. The holder of railway bonds, constituting a privileged claim on the moveable property of the Company, may, for the protection of his rights, proceed against such property by an attachment in revendication in the nature of a *saisie conservatoire*. *Wyatt* v. *Senécal et al.*, 1 L. N. 98, & 4 Q. L. R. 76, S. C. 1878.

IV. In Revendication, *see* TRANSFER, Fraudulent.

425. *Affidavit in.*—In an action in revendication by default the affidavit on which the writ

issued makes *prima facie* proof against the defendant, and the court may condemn the defendant without other proof, although the action be based on a special agreement which gives to him the possession of the things revendicated. *Bergevin* v. *Vermillon*, 3 Q. L. R. 134, S. C. R. 1876

426. *Grounds of.*—The appellants in the month of July borrowed from the firm of B., M. & Co. 25,000 bushels of corn, which was awarded to them at the rate of 70 cents per bushel, amounting to $17,560.88, which was paid to them. It seemed that such loans are common with grain dealers, and if the corn is returned within a reasonable time the money is paid back, not always at once, but generally within three days, as witnesses say. On the 21st of July, 1874, appellants returned the corn to B., M. & Co., by giving them orders for it, then on the way to Montreal in the "Wando" and "Milwaukee" barges, into which the corn had been transhipped at Kingston. To fill contract made some days before, by B., M. & Co., to deliver to D. B. & Co. 25,000 bushels of corn, B., M. & Co., on the 21st and 22nd of July, 1874, delivered to them, as part of this quantity, out of the "Milwaukee" and "Wando" 12,648 53-56 bushels of corn, and these orders were transferred to J. M. B., and by him put into "The Aphrodite," of which the respondent was the captain, to be taken to Europe. This was mixed with a larger quantity of corn in the vessel, and was undistinguishable from the rest. Action in revendication of 12,648 53-56 bushels of corn. Respondent, master of the ship "Aphrodite," pleaded that the corn did not belong to appellants, but to J. M. B., from whom he had received it, and to whom, or to whose order, he was bound to deliver it. Besides this, he also pleaded the general issue. The first plea was demurred to, as an *exception d'autruis*. The demurrer was dismissed and parties went to proof, and finally the action was dismissed—*Held*, that to entitle the seller to revendicate, three things must exist: 1. The sale must not have been made on credit. 2. The thing must be entire and in the same condition. 3. The thing must not have passed into the hands of a third party who has paid for it. None of these conditions existed here. It was said that the respondent had no interest to urge the rights of third parties. He might have called in B., or B. might have intervened. Respondent, however, had a right to vindicate his lawful possession, and the appellants to maintain their action should have shown their title, and it should appear that respondent's right of possession was not sustained. The facts showed that he held the corn for B, who had legally purchased it and paid for it, from B. & Co., who had acquired it of B., M. & Co., who were in a position to sell it. Action bad on this ground. The judgment was also based upon want of identification. It was necessary to decide whether this was necessary in the case of an article like corn, when the quantity existed with the larger quantity. Judgment confirmed, because appellants had no right of action under the circumstances. *Borrowman & Bass*, Q. B. 1876.

427. The unpaid vendor of goods has a right of revendication, notwithstanding the 82nd section of the Insolvent Act of 1875.* *Hatchette et al. & Gooderham et al.*, 21 L. C. J. 165, S. C. 1877.

428. Revendication will lie by a judicial guardian to recover possession of property placed in his charge. *Moisan & Roche*, 1 L. N. 33, & *Gilbert & Coindet*, 1 L. N. 42, Q. B. 1877.

429. But where a merchant of Leeds, Eng., sought to revendicate goods sold and sent to Montreal, where they had been deposited, and were still lying in the Custom House, on the ground that the buyer had in the meantime become insolvent—*Held*, maintaining the petition of plaintiff, that there had been no delivery in terms of Art. 1493 of the Civil Code,† *Thompson & Greenwood*, 9 R. L. 379, S. C. 1877.

430. Action to revendicate a carriage. Defendant denied that she ever had possession, and said that her husband deceased had bought or leased the carriage from plaintiff, who had taken out a revendication against him and had obtained judgment; that the carriage was portion of his succession and in the legal possession of his heirs—*Held*, that as defendant had the physical possession of the carriage that that was sufficient. *Normandeau* v. *Bougie*, 3 L. N. 133, S. C. 1880.

431. *Must state value.*—Semble that an attachment in revendication which sets up no value is null for want of jurisdiction. *Prime & Perkins*, 2 L. N. 256, & 23 L. C. J. 250, S. C. R. 1879.

432. *Nature of.*—An attachment in revendication is a real action, whether of moveables or immoveables, and should be brought in the place where the property seized is situated. *Ethier* v. *Dandurand*, 2 L. N. 158, S. C. 1879.

V. Liability for Illegal Issue of Writs of.

433. The prothonotary is not liable in damages for the issue of a writ of *saisie-arrêt* before judgment, unless it is proved that he acted in bad faith. *McLennan & Hubert*, 23 L. C. J. 273, Q. B. 1874.

VII. Of Usufruct of Moveables.

434. The usufruct of furniture and things which without being actually consumed deteriorate by usage, and which are held in usufruct, cannot be seized and sold by the creditors of the usufructuary. *Bertrand & Pepin*, 6 Q. L. R. 352, C. C. 1880.

VIII. Par droit de Suite.

435. Where an attachment of goods *par droit de suite* is in the hands of a person claiming to have purchased them, and not in the hands of a new lessor, service on the *mis en cause* is unnecessary. *Wilson & Rafter*, 2 L. N. 211, Q. B. 1879.

---

* Now repealed.

† The obligation of the seller to deliver is satisfied when he puts the buyer in actual possession of the thing, or consents to such possession being taken by him, and all hindrances thereto are removed. 1493 C. C.

ATTESTATION.

I. Of Claims in Insolvency, *see* INSOLVENCY.
II. Of Wills, *see* WILLS.

ATTORNEY—*See* AGENCY.

ATTORNEYS AD LITEM—*See* ADVOCATES.

I Are not liable for Bailiff's Services.
II. Authorization of.
III. Cannot recover Costs while Action pending.
IV. Death of.
V. Disavowal of, *see* DISAVOWAL.
VI. Election of Domicile.
VII. Evidence of.
VIII. Fees of.
IX. Liability of.
X. Substitution of.
XI. Withdrawal of.

I. Are not liable for Bailiff's Services.

436. Unless there is an agreement to that effect, or the attorney has received the money from his client, he is not liable personally to the bailiff for his fees for services. *Gelinas* v. *Dumont*, 10 R. L. 229, C. C. 1880. *Theroux* v. *Pacaud*, 6 Q. L. R. 14, S. C. R. 1879.

II. Authorization of.

437. Where a proceeding by a foreign plaintiff is begun by the plaintiff's affidavit no power of attorney is necessary. *McLaren* v. *Hall*, 2 L. N. 178, S. C. 1879.

438. Action by two attorneys to recover their costs and expenses in connection with the filing of an opposition to the seizure of the defendant's effects. An attempt was made by the plaintiff to prove the *mandat* by parole, which was not allowed by the court. The defendant was then examined as a witness, and admitted that he had authorized his brother-in-law to resist the seizure under a judgment rendered against the defendant. *Mandat* as given by the brother-in-law held to be proved, and judgment accordingly. *Longpré* v. *Pattenaude*, 7 R. L. 246, S. C. 1875.

439. Where the plaintiffs, an insurance company, described themselves as "a body corporate and politic" duly incorporated according to law, and having its head office and principal place of business in New York, in the State of New York, one of the United States of America, and having an office and doing business in the City and District of Montreal—*Held*, that they were obliged to file a power of attorney under Art. 120 C. C. P. *The Globe Mutual Life Insurance Co.* v. *The Sun Mutual Life Insurance Co.*, 1 L. N. 139, & 22 L. C. J. 38, S. C. 1878.

440. The mandate of an attorney *ad litem* ends with the judgment, and unless subsequently renewed a service on them will not bind the principal. *Booth* v. *Lacroix et al. & Rolland & Dupuy*, 21 L. C. J. 307, S. C. 1877.

III. Cannot recover Costs while Action pending.

441. An attorney *ad litem* cannot recover from a client his costs in suits which are still pending and undecided. *Molony* v. *Fitzgerald*, 3 Q. L. R. 381, C. C. 1877.

IV. Death of,

442. The death of one of plaintiff's attorneys does not invalidate proceedings had in the case as if both were still such attorneys. *Morin* v. *Henderson*, 21 L. C. J. 83, S. C. 1876.

VI. Election of Domicile.

443. Where an attorney has made no election of domicile, service upon him is properly made at the prothonotary's office. *Robertson & Marlow & Fairrer*, 2 L. N. 181, S. C. 1879.

VII. Evidence of.

444. The attorney of record, even in a non-commercial case, may be heard as a witness on behalf of his client if parole evidence be admissible. *Rev. Dames Ursulines* v. *Egan*, 6 Q. L. R. 38, C. C. 1879.

445. But in another case held that an advocate employed as attorney *ad litem* in a cause cannot testify as a witness in it. *Boisvert & Bernier*, 9 R. L. 509, S. C. 1878.

446. And in appeal, said to be a great abuse for lawyers to give evidence in their own cases whenever it can be avoided. *Molson & Carter*, 3 L. N. 258, Q. B. 1880.

VIII. Fees of.

447. The formality of a judgment is not necessary to give the attorney *ad litem* a right to recover his just fees and disbursements against his client, if the proof and the circumstances establish that there has been a settlement out of court and that the litigation is at an end. *O'Farrell* v. *Reciprocity Mining Co* 4 Q. L. R. 198, S. C. R. 1869.

448. The fee for rehearing will be allowed when the *delibéré* is discharged without the fault of the attorneys and a rehearing ordered. *Grosleau & Quebec N. S. T. Road Trustees*, 4 Q. L. R. 203, S. C. 1878.

449. The attorney of an incidental defendant, upon an incidental demand brought by the plaintiff under Art. 149 of the Code of Procedure for the addition of new grounds of action and dismissed upon a demurrer of the incidental defendant, has no right to fees. *Bougé* v. *Bonnet*, 5 Q. L. R. 72, 1879.

450. Where an attorney in Quebec receives instructions from an attorney in Ontario to take action, and does so, he cannot come upon the client of his correspondent for his fees and costs. *Keller & Watson*, 2 L. N. 400, C. C. 1879.

IX. Liability of.

451. Professional attorneys who carry on business under a firm name are jointly and severally liable for moneys collected by the

firm. *Ouimet & Bergevin*, 22 L. C. J. 265, Q. B. 1878.

X. Substitution of.

452. It is not necessary that two attorneys, members of a legal firm of three, should file a substitution because one of them ceases to be a member of the firm, as the proceedings signed by two of the partners is sufficient without such a substitution. *Dawson & McDonald*, 10 R. L. 640, Q. B. 1879.

453. A motion for leave to appeal may be signed by one of the attorneys who appear of record in the court below without a substitution. *Board of Temporalities, etc.*, v. *Minister, &c., of St. Andrews Church*, 3 L. N. 399, Q. B. 1880.

XI. Withdrawal of.

454. It is in the discretion of the court to allow an attorney *ad litem* to withdraw from the case, on giving notice to the adverse party and his own client. *Archambault & Westcott*, 23 L. C. J. 293, Q. B. 1878.

ATTORNEY GENERAL.

I. Proceedings against Corporations brought in name of, *see* CORPORATIONS.

AUCTION.

I. Right to be present at.

455. A person attending an auction cannot be expelled without proper motives, and it is on the auctioneer to prove such motives. *Martineau & Marleau*, 9 R. L. 530, S. C. 1879.

II. Sales by, under Dominion Insolvent Act, cannot be taxed under the License Act of Quebec, *see* LEGISLATIVE AUTHORITY.

AUCTIONEER.

I. Liability of, *see* SALE.

AUTHENTIC ACTES—*See* DEEDS.

AUTHORITY.

I. Of Dominion and Local Legislatures respectively, *see* LEGISLATIVE AUTHORITY.

AUTHORIZATION.

I. Of Attorney, *see* AGENCY.
II. Of Attorneys ad Litem, *see* ATTORNEYS AD LITEM.
III. Of Married Women, *see* MARRIAGE.

AVEU JUDICIAIRE—*See* EVIDENCE Admissions.

AVIS DE PARENS—*See* FAMILY COUNCIL.

AVOWAL—*See* AVEU.

AWARD.

I. In Arbitration, *see* ARBITRATION.

B.

SUMMARY OF TITLES.

	Page.
BAGGAGE	95
BAIL	95
BAILEE RECEIPT	95
BAILIFFS	95
BAILLEUR DE FONDS CLAIM	96
BAILMENTS	96
BALLOTS	97
BANKRUPTCY	97
BANKS	97
BANK SHARES	104
BAPTISM	104
BAR	104
BARGAIN AND SALE	105
BARTER	105
BASTARDS	105
BEACHES	105
BENEFICIARY	105
BENEFIT SOCIETIES	105
BEQUESTS	106
BETTING	106
BIDDING	106
BILAN	107
BILL OF LADING	107
BILL OF PARTICULARS	107
BILLS OF EXCHANGE, &c.	107
BIRTH	118
BOARDING HOUSEKEEPER	118
BOARD OF DIRECTORS	119
BOARD OF TRADE	119
BOATS	119
BODILY FEAR	119
BOND	119
BONDS	119
BONDHOLDERS	119
BONDSMEN	119
BONS	119
BOOKS	119
BOOK DEBTS	120
BORNAGE	120
BORROWING	120
BOTTOMRY AND RESPONDENTIA	120
BOUNDARIES	120
BREACH	120
BREAD	121
BRIBERY	121
BRIDGES	121
BRITISH NORTH AMERICA ACT	122
BROKERS	122
BUILDERS	123
BUILDING AND JURY FUND.	124
BUILDING SOCIETIES	124
BURIAL	126
BUSINESS	126
BUTCHERS	126
BYE-LAWS	126

BAGGAGE.

I. Liability for, *see* CARRIERS.

BAIL—*See* CRIMINAL LAW.

I. In Case of Capias, *see* CAPIAS.
II. Wife cannot be for Husband, *see* MARRIAGE.

BAILEE RECEIPT—*See* BAILMENTS.

BAILIFFS.

I. Fees of.
II. Jurisdiction of.
III. Liability of.
IV. May be Witnesses.
V. Powers of.
VI. Right of Action against Attorneys for fees.
VII. Status of.

I. Fees of.

1. A bailiff not residing in the chef-lieu of his district is not entitled to charge for travel from his residence to the Court house and back to the place of service, the latter being between his residence and the Court house. *La liste electorale de la Paroisse de Berthier in re & Ralston*, 8 R. L. 748, S. C. 1878.

II. Jurisdiction of.

2. A bailiff does not cease to have the right to act in the district in which he was first appointed by removing to another and acting there. *Cie du Chemin de fer de Laurentides* v. *Gauthier*, 3 L. N. 243, & 24 L. C. J. 174, S. black C. 1880.

III. Liability of.

3. Where a bailiff, resident in another district, and charged with the execution there of a writ issued in the district of Montreal, fails to comply with the exigencies of the writ, he is liable to imprisonment in the district of Montreal. *Gnaedinger & Derouin*, 21 L. C. J. 220, S. C. 1877.

4. Where a bailiff, by irregularities in his return, gives rise to an exception to the form, he is liable for the loss occasioned thereby. *Major* v. *Chartrand*, 21 L. C. J. 303, C. C. 1877.

IV. May be Witnesses.

5. A bailiff who has acted in a case may be examined as a witness, provided that it is not to prove conversations had or admissions made at the time of service.* *Garneau* v. *Courchêne*, 6 Q. L. R. 34, C. C. 1879.

* No bailiff who has served the writ of summons in any suit or action can be a witness in support of the plaintiff's demand except in respect of such service. 262 C.C.P.

V. Powers of.

6. Bailiffs are officers of the Superior Court for judicial matters, and outside of that their certificate of return proves nothing. *DeBellefeuille*, v. *Piché*, 2 L. N. 115, & 23 L. C. J. 314, S. C. 1879.

VI. Right of Action against Attorneys for fees.

7. Unless there is an agreement to that effect, or the attorney has received the money from his client, he is not liable personally to the bailiff for his fees for services. *Gelinas* v. *Dumont*, 10 R. L. 229, C. C. 1880.

8. Action against an attorney for balance of an account for bailiff's fees for services. Defendant pleaded a special agreement that plaintiff should have no right to look to defendant until and unless defendant himself had received the fees; that defendant had fully paid all that plaintiff was entitled to receive for the said services. Concerning the alleged agreement the plaintiff denied that he agreed to it, but admitted that in practice he observed it in order to obtain the defendant's practice. The joint prothonotary proved that according to the records in his custody the plaintiff performed the services mentioned in certain schedules, amounting according to the tariff, to somewhat more than the amount for which credit was given—*Held*, that the proof thus adduced was insufficient. That admitting that an attorney is personally liable for the fees of the latter, it does not therefore follow that a bailiff who has performed services in a case can hold the attorney of record, merely as such, liable for the bailiff's fees without proof of any kind that the bailiff had been employed by the attorney. *Theroux* v. *Pacaud*, 6 Q. L. R. 14, S. C. R. 1879.

VII. Status of.

9. A bailiff is not a public officer in the sense of Art. 22 of the Code of Procedure so as to entitle him to a month's notice of action. *Major* v. *Chartrand*, 21 L. C. J. 303, C. C. 1877, & *Major* v. *Boucher*, 21 L. C. J. 304, C. C. 1877.

BAILLEUR DE FONDS CLAIM.

I. May be ground of Capias, *see* CAPIAS
II. Registration of, *see* REGISTRATION.

BAILMENTS—*See* DEPOSIT.

I. Bailee Receipt.
II. Hotel Keepers.
Liability of.
III. Liability of Bailee.
IV. Proof of Deposit.

I. Bailee Receipt.

10. The plaintiffs attached in revendication certain goods which they had received as collateral security for a draft which they had discounted and had intrusted to one Parker, the acceptor of the draft, since insolvent, for sale,

taking from him the following bailee receipt: "Received from the Merchants Bank of Canada B. L. for 1,284 hams, 100 shoulders and 10 pieces of bacon, and I hereby undertake to sell the property therein specified for account of the bank, and collect the proceeds of the sale or sales thereof, and deposit the same in the said bank at Montreal to the credit of acceptance 2,414, due July 11th, hereby acknowledging myself to be bailee of said property for said bank"—*Held*, that the bank did not lose control of the goods, and on the bailee becoming insolvent had a right to revendicate them as pledged for the amount of the acceptance. *Merchants Bank* v. *McGrail*, 1 L. N. 231, & 22 L. C. J. 148, S. C. R. 1878.

II. HOTELKEEPERS.

11. *Liability of.*—A traveller brought action for the loss of a pocket book containing money and valuables, which had been stolen from his bedroom in a hotel while he slept. The hotelkeeper pleaded non-liability, in that he had taken all precaution incumbent upon him, that he had provided the doors with good locks and bolts, and placed a notice in the room warning the occupant to lock his room, and stating, moreover, that he would not be responsible for anything that was not deposited in the safe at the office. *Held*, confirming the judgment of the court below, that notwithstanding these precautions he was bound to prove that the theft had not been committed by some person belonging to the hotel, and that failing to do this the plaintiff was entitled to recover. *Geriken & Grannis*, 21 L. C. J. 265, Q. B. 1876.

12. And *held*, also, that the oath of the traveller in such cases was sufficient not only to establish the value but the fact of the loss. *Ib.*

III. LIABILITY OF BAILEE, *see* PLEDGE.

13. A person who takes a horse to pasture is liable for injury to the horse by accident, such as having its leg broken, unless he can prove that he was no way in fault. *Bélanger* v. *Quiner*, 9 R. L. 530, S. C. 1879.

IV. PROOF OF DEPOSIT.

14. Action to recover the value of a horse which had been placed in defendant's charge to be pastured, and which he said he had given to one Decelles, an employee of the plaintiff, by authority of the latter. Decelles had come for the horse, received delivery of him, and then ran off to the States—*Held*, that neither the *depot* nor the restitution were provable by witnesses, and the *aveu* of the defendant should not be divided against him. *Johnson* v. *Longlin*, 3 L. N. 96, & 24 L. C. J. 292, C. C. 1880.

BALLOTS.

COUNTING OF, *see* ELECTION LAW.

BANKRUPTCY—*See* INSOLVENCY.

BANKS—*See* COMPANIES, CORPORATIONS.

I. APPEAL BY IN INSOLVENCY.

II. CONTRACTS BY RESOLUTION OF BOARD.

III. FALSE RETURNS.

Indictment for, see CRIMINAL LAW.

IV. INSOLVENCY OF.

V. LETTERS OF CREDIT.

VI. LIABILITY OF.

On stock held as collateral security for interest on deposit.

VII. LIEN OF UNDER BAILEE RECEIPT, *see* BAILMENTS.

VIII. LOANS AND DEPOSITS.

IX. OVER DRAFTS.

X. POWERS OF.

May advance money on security of goods.

May advance money on security of shares.

XI. RIGHTS OF WITH REGARD TO DEPOSITS.

XII. TRANSFER OF SHARES.

I. APPEAL IN MATTERS OF INSOLVENCY.

15. Where a bank is insolvent, or it is sought to put it into insolvency, an appeal lies from every order or judgment of the court or a judge, but where such order or judgment is an interlocutory one, leave must first be obtained in the usual manner. *Mechanics Bank* v. *St. Jean & Wylie*, 2 L. N. 315, Q. B. 1879; C. 39 Vic. Cap. 31.*

II. CONTRACTS CREATED BY RESOLUTION OF THE BOARD.

16. Action to compel the defendants, the Bank of Toronto, to complete a deed in conformity with a resolution of the board of directors. The deed was to grant delay to plaintiff to pay a debt due from him to the bank on certain conditions—*Held*, that as the resolution had never been formally communicated to plaintiff nor accepted by him, it gave him no right of action. *Girard* v. *Bank of Toronto*, 2 L. N. 406, S. C., & 3 L. N. 115, S. C. R. 1879-80.

III. FALSE RETURNS.

17. On an indictment for making false bank statements, under the Banking Act of 1871†—*Held*, on a reserved case to the full bench, that the instruction to the jury that willful intent to make a false return may be inferred by the jury from all the circumstances of the case proved to their satisfaction was correct. *Regina* v. *Hincks*, 2 L. N. 422, & 24 L. C. J. 116, Q. B. 1879.

---

*The appeal provided for by the 128th section of the said (Insolvent) Act shall extend to all orders, judgments or decisions of the judge. If the appeal is from an interlocutory judgment, it must first be allowed by the Court of Queen's Bench, upon a motion supported by such portions of the record as may be necessary to decide whether the judgment in question is susceptible of appeal, and falls within one of the cases specified in Art. 1116. 1119 C.C.P.

† The making of any willfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank, shall, unless it amounts to a higher offence, be a misdemeanor; and any and every president, vice-president, director, principal, partner *en commandite*, auditor, manager, cashier or other officer of the bank, preparing, signing, approving or concurring in such statement, return, report or document, or using the same with intent to deceive or mislead any party, shall be held to have willfully made such false statement, and shall further be responsible for all damages sustained by such party in consequence thereof. C. 34 V., C. 5, S. 62.

By C. 43 V., C. 22, a new statement is substituted for the one previously required, and new rules enacted with regard to it.

IV. Insolvency of.

18. On the 26th of August a demand for a writ of attachment, under the Insolvent Act 1875, against the Mechanics Bank, was presented to a judge in Chambers. The bank asked for a provisional order giving them notice of the demand. This order was given the same day notifying the bank of the hearing on the merits of a demand for a writ of attachment for the 29th August. The notice was served the 26th, and the 29th the parties appeared, when the bank opposed the demand for a writ of attachment for the following reasons: Because the demand for a writ could not be made before the 27th August, seeing that the bank had suspended payment the 28th May, and the 90 days granted to the bank under the provisions of the Act only expired the 26th August; Because the order of the judge which was written on the demand had been given without the notice required by law; Because the affidavit of the intervenants was dated the 26th, before the expiration of the 90 days—*Held*, that the bank having suspended payment on the 28th May, as admitted in the preliminary answer of the bank, the 28th must count as the first of the 90 days during which the bank could remain in suspension according to the terms of 39 Vic. cap. 31, sec 2* and therefore the 25th August was the 90th day, and the demand was rightly made on the 26th. *Mechanics Bank & St. Jean et al.*, 9 R. L. 555, S. C. 1879.

19. And there was no notice of the order of the judge necessary. *Ib.*

20. And that the creditors of the bank, being in a better position than the judge to decide what should be done, the court before deciding as to the issue of a writ appointed an assignee with instructions to call a meeting of the creditors of the bank, in order that they might adopt such resolutions as they deemed best and submit them to the judge according to the terms of sub-sec. 5 of sec. 147 of the Insolvent Act 1875.† *Ib.*

V. Letters of Credit.

21. Verdict of jury set aside as to measure of damages suffered by cancellation of letters of credit and new trial ordered.‡ *Bank of Toronto & Ansell*, 7 R. L. 262, Q. B. 1875.

VI. Liability of.

22. Action on a deposit account kept by the plaintiff in the defendant's bank for the sum of $1,732.18, which had been charged against the plaintiff in his pass-book and in the bank ledger, but which he declared he had never withdrawn. The plaintiff, before bringing his action, had

called on the plaintiffs to produce the cheque, but this they had failed to do, although by their plea they alleged that all the plaintiff's cheques had been returned to them. Defendants, in fact, admitted that the cheque had been mislaid, but sought to prove by evidence that the cheque was drawn by plaintiff and paid by themselves. It was certain that it had been paid, and the evidence as to the mode of paying it was as follows, viz:—"The clerk to whom "the disputed cheque was presented, and by "whom it was accepted, says: A few days "before the 16th of January, a low-sized man, "whom I did not know, presented the cheque. "I ascertained that there were no funds to "pay it. I submitted it to Mr. H., and he "told me to tell the man to present it again, as "he presumed it would then be all right. I "told this to the man. He replied that it was "strange, as the plaintiff had written to him "or told him that there were sufficient funds. "A day or two afterwards, a deposit was made "to the credit of the plaintiff, and two days after "the same person returned with the cheque, "and said, 'I suppose it is all right.' I said, "'Yes.'" The witness also said he knew the plaintiff's signature, and was positive that it was his writing at the foot of the cheque, and being now examined for the defendants, said he was not sure if he had ever before seen the person who presented the cheque, but thought he was familiar with him. The clerk who paid the cheque saw nothing to distinguish the signature from the ordinary signature of the plaintiff, and besides, while, in his examination for the plaintiff, he said that he did not know the person who presented the cheque, in his second he said he was not sure, but thought the person familiar to him. The court would have deemed that evidence sufficient to establish the genuineness of the cheque, if it remained, as now, uncontradicted, and if the cheque made part of the record. But the defendants, by their negligence in losing the cheque, had made it impossible to contradict their evidence, and it was, therefore, incumbent on them to make it morally certain that even if the cheque were in the record their evidence could not be contradicted. This they had failed to do, though there were circumstances which confirmed the parole evidence. Thus the pass book was sent to plaintiff on the 27th July, 1871, and showed a balance of only $4.44, whereas, according to his pretension, the balance should have been $1,736.62; and on the 3rd August, 1871, the defendants wrote to him that his account was overdrawn, and that if there were any error he should let them know, when, according to his pretension, there should have been a balance of $1,719.62 in his favor. They also again drew attention to the state of his account on the 30th August, and it was strange that plaintiff did not answer these letters, nor complain for several months afterwards though the disputed cheque was dated 16th January, 1871. But when he saw the pass book, and that it had not been balanced for seventeen months, during which time plaintiff had made deposits to the amount of $12,637, this oversight did not appear so unaccountable as at first. His conduct was, at all events, most careless; but the defendants were chargeable with grave care-

* No application for a writ of attachment against and no assignment of the estate shall be made until after the bank has, whether before or since the passing of this Act, become insolvent by suspension of payment for ninety days under the provisions of the 37th section of an "Act relating to Banks and Banking," passed in the 34th year of Her Majesty's reign, chap. five.

† The resolutions so adopted shall be submitted to the judge at the time and place appointed at the meeting and at least 48 hours notice shall be given by the Official Assignee to the Company of the time and place so fixed.

‡ 1 Dig. p. 143, Art. 39.

lessness, and he did not think the plaintiff ought to be made answerable for the cheque they had mislaid. He did not pronounce that the cheque was forged, but that he could not on the evidence declare it genuine, and therefore must give judgment for plaintiff, saving their recourse to defendants if they should find the cheque. *Fournier & Union Bank*, S. C. 1873.

23. *On stock held as collateral security.*—Among the assets of an insolvent were 150 shares of stock in the Company, appellants. These were sold by tender, and were purchased by a firm who requested to have them transferred to the respondents, the Molsons Bank, as collateral security for money advanced. On a call of ten per cent. being made the bank replied that they held the stock only as collateral security.—*Held*, that they were not liable. *Railway & Newspaper Advertising Co.* v. *Molsons Bank*, 2 L. N. 207, Q. B. 1879.

24. *For interest on deposit.*—A bank is not liable to pay interest on money for which it has accepted and certified cheques. *Wilson & La Banque Ville Marie*, 3 L. N. 71, S. C. 1880.

VIII. Loans and Deposits.

25. On an indictment for making false returns —*Held*, that the giving of deposit receipts, payable on time for money loaned, did not alter the nature of the transaction, and consequently such loans were not properly classified under the head of "other deposits payable after notice or on a fixed day." *Regina v. Hincks*, 2 L. N. 421, & 24 L. C. J. 116, Q.B. 1879.

IX. Over Drafts.

26. In a bank statement, under the Banking Act of 1871, an over draft cannot be considered current, and the classification of over drafts under the heading of "notes and bills discounted and current" was held to be illegal. *Regina* v *Hincks*, 2 L. N. 422, & 24 L. C. J. 116, Q. B 1879.

X. Powers of.

27. *May Guarantee Purchase of Goods.*—Where a bank which, wishing to guarantee a purchase of goods, telegraphs to the sellers in in these terms: "Starkey Bros., Huddersfield, England. If you send to the Molsons Bank, Montreal, goods to the amount of about £1,000, purchased by K. & Co., about the 1st July, sending us the bills of lading and documents in time, we will guarantee the collection," sending their address for the same, it does not violate the provisions of the Banking Act, 34 Vic. cap. 5, s. 40,* 46 & 47. *La Banque Molson* v. *Kennedy*, 10 R. L. 110, S. C. 1879.

* The bank shall not, either directly or indirectly, lend money or make advances upon the security, mortgage or hypothecation of any lands or tenements, or of any ships or other vessels, nor upon the security or pledge of any share or shares of the capital stock of the bank, or of any goods, wares or merchandize, except as authorized in this Act, nor shall the bank, either directly or indirectly, deal in the buying or selling, or bartering of goods, wares or merchandize, or engage or be engaged in any trade whatever, except as a dealer in gold or silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and in such trade generally as appertains to the business of banking.

28. *To Advance Money on the Security of Shares in Joint Stock Companies.*—The defendants held a large number of shares of the capital stock of the Montreal City Passenger Railway Co. as security for advances which they had made to plaintiff, and had notified him that they were about to sell them, plaintiff being in default to repay the advances. The action was by way of injunction to prevent the sale on the ground, *inter alia*, that the bank had no power to advance money on the security of shares in an incorporated trading company, under C. 34 Vic. cap. 5, sec. 51*—*Held*, that the bank had the power, and action dismissed. *Geddes & La Banque Jacques Cartier*, 24 L. C. J. 135, S. C. 1878.

Sections 46 and 47 of the same statute are repealed and replaced by the following: La banque pourra acquérir et posséder tout reçu d'entrepôt, ou connaissement comme sureté collatérale pour le paiement de toute dette encourue en sa faveur dans la course de ses opérations de banque; et le reçu d'entrepôt ou connaissement ainsi acquis aura l'effet de transférer à la banque à compter de la date de son acquisition tout droit de titre de son dernier détenteur ou propriétaire ou de la personne de qui ces articles, denrées et marchandises ont été reçus ou acquis par la banque, si le reçu d'entrepôt, ou le connaissement est fait directement en faveur de la banque au lieu de l'etre en faveur du dernier détenteur ou propriétaire de ces articles, denrées et marchandises, et si le dernier détenteur de tel reçu d'entrepôt ou connaissement est l'agent du propriétaire des articles, denrées et marchandises y mentionnés dans le sens du 59 Chap. des Statuts Refondus de la ci-devant Province du Canada reproduit dans l'annexe A du present acte (lequel relativement à cette signification s'appliquera à toutes les Provinces du Canada) alors la banque sera investie de tous les droits et titres de leur propriétaire sujet à son droit de se les faire rétrocéder si la dette en garantie de laquelle la banque les possède est payée, pourvu toujours que la banque ne pourra acquérir ou posséder aucun reçu d'entrepôt ou connaissement pour garantir le paiement d'aucun billet, effet de commerce, ou dette, à moins que ce billet ou cet effet de commerce n'ait été négocié, ou que cette dette n'ait été contractée à l'époque de son acquisition par la banque ou avec l'entente que ce reçu d'entrepôt ou ce connaissement serait transporté à la banque, mais ce billet, cet effet de commerce ou cette dette pourront être renouvelés ou l'époque de leurs paiements pourront être prorogées sans affecter cette garantie. Et lors de l'expédition de quelques effets, denrées et marchandises pour lesquels la banque possède un reçu d'entrepôt elle pourra remettre ce reçu et recevoir en échange un connaissement; ou lors de la réception de quelques articles, denrées et marchandises pour lesquels elle possède un connaissement elle pourra remettre ce connaissement, emmagasiner ces articles, denrées et marchandises et y prendre un reçu d'entrepôt ou les expédier en tout ou en partie et en prendre un autre connaissement. c. 43 Vic. cap. 22 Sec 7.

Si quelque personne donnant un reçu d'entrepôt ou un connaissement est engagée dans la profession comme son industrie ostensible de gardien de cour, de chantier, de quai, ou de hâvre, ou de garde magasin, meunier, propriétaire de scierie, malteur, fabricant de bois, propriétaire de quai, patron de navire, ou voiturier par terre ou par eau, saleur, ou embarilleur de viande, tanneur, commerçant de laine, ou acheteur de produits agricoles, et est en même temps propriétaire des articles, denrées et marchandises mentionnés dans tel reçu d'entrepôt ou connaissement, tout tel reçu d'entrepôt ou connaissement et les droits et titres de la banque à tel reçu ou connaissement et aux articles, denrées et marchandises y mentionnés seront aussi valides et effectifs que si tel propriétaire et la personne donnant tel reçu d'entrepôt ou connaissement etaient deux personnes distinctes, Ib.

* The bank shall not make loans or grant discounts on the security of its own stock, but shall have a privilege lien for any over-due debt on the shares and unpaid dividends of the debtor thereof, and may decline to allow any transfer of the shares of such debtor until such debt is paid, and if such debt is not paid when due the bank may sell such shares after notice has been given to the holder thereof of the intention of the bank to sell the same, by mailing such notice in the Post office to the last known address of such holder, at least thirty days

29. But in a subsequent case arising out of similar transactions—*Held*, that the bank had not the power to lend money on the security of shares of the capital stock of incorporated companies, and especially since the amending Act C. 42 Vic. cap. 45, sec. 2, which struck out the words "the shares of the capital stock of any other bank,"* which made it clear that the power to lend on the stock of other banks did not and was not intended to include the stock of joint stock trading companies. *Bank of Montreal & Geddes*, 3 L. N. 146, S. C. 1880.

XI. Rights of with Regard to Deposits.

30. Action for $700, amount of a cheque presented by plaintiff, and which the bank refused to pay, alleging no funds. It appeared there were funds sufficient nominally to the credit of the drawer, but the bank held the drawer's note for a still larger amount payable on demand, and, the drawer's credit not being very good, thought it prudent to hold on to the deposit—*Held*, that a plea of want of privity of contract would not hold, but as a matter of fact the drawer under the circumstances had no funds in the bank, and the bank were perfectly justified in refusing payment of the cheque. *Marler* v. *Molsons Bank*, 2 L. N. 166, & 23 L. C. J. 293, S. C. 1879.

XII. Transfer of Shares.

31. J. L. made in favor of his son, a boy of about seven years of age, a document purporting to be a transfer of ten shares of bank stock; the document, which was regularly entered on the bank's books, was in substance as follows: This indenture made the 7th of June, 1875, between J. L. of the first part, and J. L. in trust for his son P. L. of the second part, and the Union Bank of the third part, witnesseth that for value received the party of the first part doth by these presents sell and assign to the said party of the second part ten shares of the capital stock of the Union Bank. And whereas the said party of the second part hath, with the approval of the Board of Directors of he said bank, become the purchaser of the said ten shares," etc. Then followed a covenant on the part of the purchaser to observe all his obligations under the by-laws of the bank, and the deed was signed by "J. L.; J. L. in trust for son P. L.; for the Union Bank, J. J. L., assistant cashier." Two dividends were paid to J. L. in trust for his son, and the bank then refusing to pay further, the plaintiff was appointed tutor to the minor, and brought suit to be declared proprietor of the said shares—*Held*, that the transfer or donation so attempted to be made was null and void for want of legal acceptance. *Walsh* v. *Union Bank*, 5 Q. L. R. 289, S. C. 1879.

prior to such sale; and upon such sale being made the president, vice president, manager or cashier, shall execute a transfer of such shares to the purchaser thereof in the usual transfer book of the bank, which transfer shall vest in such purchaser all the rights in or to such shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer executing such transfer; and nothing in this Act contained shall prevent the bank from acquiring and holding as collateral security for any advance by or debt to the bank or for any credit or liability incurred by the bank, to or on behalf of any person (and either at the time of such advance by or the contracting of such debt to the bank or the opening of such credit, or the incurring of such liability by the bank), *the shares of the capital stock of any other bank*, the bonds or debentures of municipal or other corporations or Dominion, Provincial, British or foreign public securities and *such stock*, bonds or debentures or securities may, in case of default to pay the debt for securing which they were so acquired and held, be dealt with, sold and conveyed in like manner, and subject to the same restrictions as are herein provided in respect of the stock of the bank on which it has acquired a lien under this Act.

*See words in italics in note Supra and C. 43 Vic. cap. 22, sec. 8, which re-enacts said sec. 51, with the words in question omitted.

BANKS.

I. Of Rivers, *see* RIVERS.

BANK SHARES.

I. Seizure of, *see* EXECUTION.

BAPTISM.

Proof of, *see* ACTION en paternité.

BAR.

I. Offences Derogatory to.

32. The appellant, an attorney and advocate, practising in the district of Quebec, was proceeded against before the council of the section of the Bar for said district on the following accusations: 1. "*D'avoir le dit John O'Farrell* "*le ou vers le 26me jour de mai dernier été* "*nommé et assermenté comme constable à St.* "*Etienne de la Malbaie laquelle charge il* "*accepta volontairement dans une poursuite ou* "*lui, le dit John O'Farrell agissait pour le* "*plaignant, en sa qualité d'avocat et de pro-* "*cureur, cumulant ainsi dans la même pour-* "*suite les fonctions d'avocat et de constable, et* "*d'avoir dans le nuit du vingt-six ou vingt-* "*sept mai aussi dernier accompagné d'une* "*douzaine d'hommes arreté comme constable* "*susdit en la paroisse de Ste. Agnes un nommé* "*Joseph Guay, cultivateur du dit lieu.* 2. "*D'avoir le dit John O'Farrell dans la nuit du* "*vingt-deux ou vingt-trois juin dernier accom-* "*pagné l'huissier chargé d'arréter un nommé* "*Alexander Murray dit Brunoche, cultivateur* "*de Ste. Agnes, et d'avoir assisté et aidé à faire* "*la dite arrestation.*" The council of the Bar found these charges proved, and that they were infractions of discipline and derogatory to the honor of the Bar, but *held*, reversing this decision and the decision of the Superior Court in Review, that the charges in the absence of any by-law did not disclose any offence.* *O'Farrell & Brossard*, 3 Q. L. R. 33, S. C. R., & 1 L. N. 32, Q. B. 1877.

* By the new Bar Act, Q. 44-45 V. c. 27, the Councils of sections are given the power to decide, in the absence of a by-law, whether an Act complained of is or is not derogatory to the honor, dignity and discipline of the Bar. Section 25 enacts that the Council of each section shall have power with regard to the members of the Section, 1. To pronounce through the Batonnier, as the

BARGAIN AND SALE—*See* CONTRACTS, SALE.

BARTER.

I. Warranty in, *see* WARRANTY.

BASTARDS—*See* ILLEGITIMATE CHILDREN.

BEACHES—*See* RIVER BEACHES.

BENEFICIARY.

I. Obligations of under Deed of Donation, *see* DONATION.

BENEFIT SOCIETIES.

I. Expulsion of Members.

33. Respondent was expelled from membership in the Society appellant for being in default to pay six months contributions. Art. 20 of the Society's by-laws provided that "when a "member shall have neglected during six "months to pay his contributions or the entire "amount of his entrance fee, the society may "erase his name from the list of members, and "he shall then no longer form part of the "society; for that purpose at every general "and regular meeting it is the duty of the "collector treasurers to make known the "names of those who are indebted in six "months contributions or in a balance of their "entrance fee, and then any one may move "that such members be struck off from the "list of members of the Society." Respondent thereupon brought suit in the shape of a petition, praying that a writ of mandamus should issue enjoining the company to reinstate him in his rights and privileges as a member of the Society, on the ground that he had not been put *en demeure* in any way, and that no statement or notice had been given him of the amount of his indebtedness; on the ground that many other members of the Society were in arrears for similar periods, and that it was not competent for the Society to make any distinction among those in arrears; on the ground that no motion to that end was made at any regular meeting. In Queen's Bench in appeal it was held that respondent should have had "prior notice" of the proceedings to be taken with a view to his expulsion. But in Supreme Court—*Held*, reversing the judgment in appeal, and maintaining the pretensions of the Society, that as respondent did not raise by his pleadings the want of "prior notice," or make it a part of his case in the court below, that he could not do so in appeal. *L'Union St. Joseph de Montréal* v. *Lapierre*, 4 S. C. Rep. 164, Su. Ct. 1879.*

II. Powers of Majority of.

34. And where a majority of the members o a Benefit Society decided to leave the jurisdic tion to which they belonged and to join another branch of the same order under another name, and to carry with them the money and property of the Society—*Held*, in appeal (maintaining the judgment of the Court of Review, which reversed that of the court of first instance), that the minority which remained could not maintain an action against the trustees to recover the money of the Society. *Court Mount Royal & Boulton*, Q. B. 1881.

importance of the case may require, a censure or reprimand against any member guilty of any breach of discipline, or of any act derogatory to the honor or dignity of the Bar, of exercising or of having exercised any calling or trade, of being engaged in any industry or of carrying on any business or holding any office inconsistent with the dignity of a member of the Bar, and to deprive such member of the right of voting at or of the right of attending the meeting of the section for any term whatsoever in the discretion of the Council, not exceeding five years, and may also, according to the gravity of the offence, punish such member by suspending him from his functions for any period whatsoever in the discretion of the said Council, and may deprive him forever of the right of practising the profession of advocate.

In the absence of a by-law of the general council applicable to a particular case, the said council of the section shall, to the exclusion of every other court, decide definitely whether the act complained of is derogatory to the honor, dignity and discipline of the Bar, and the calling, trade or industry, business or office is inconsistent with the dignity of the profession, subject only to appeal to the general council as hereinafter provided. 2. To condemn either party to costs, or to apportion the same at discretion. 3. To prevent, reconcile and settle all differences between members of the section concerning professional matters or between advocate and client.

(Subsequent to the passage of this Act the general council of the Bar met and adopted rules defining certain acts as inconsistent with the honor, dignity and discipline of the Bar. These rules will be found in the 4th Legal News, p. 377.)

BEQUESTS—*See* ALIMENTS, LEGACIES, WILLS.

BETTING.

I. Action on Bets, *see* ACTION.

35. No action lies in law for the recovery of a bet made on a batteau race, as it does not come within the exception in Art. 1927 of the Civil Code.† *Wagner* v. *L'Hastie*, 3 Q.L.R. 373, S. C. 1877.

BIDDING—*See* SALE.

I. Agreement not to bid at Judicial Sale not necessarily illegal, *see* SALE.

* Overruling Q. B., 21 L.C.J. 332, & 1 L. N. 40.

† The denial of the right of action declared in the preceding article is subject to exception in favor of exercises for promoting skill in the use of arms and of horse and foot and races and other lawful games which require bodily activity and address. Nevertheless the court may, in its discretion, reject the action when the sum demanded appears to be exorbitant. 1928 C.C.

BILAN.

I. Effect of Filing, *see* CAPIAS.

BILL OF LADING—*See* CARRIERS.

BILL OF PARTICULARS.

I. To be filed in Election Cases. *See* ELECTION LAW.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. Accommodation Notes.
II. Action on.
By non-holder.
By third holder.
Where brought.
III. Alteration of.
IV. Bons.
V. By Building Societies.
VI. By Corporation.
VII. By Insolvent in Payment of Composition.
VIII. By Married Women.
IX. By Municipal Corporations.
X. Cheques.
XI. Consideration.
Illegal.
Want of.
XII. Discharge of Endorser.
XIII. Endorsation.
XIV. Evidence of Endorser.
XV. Given on the verge of Insolvency.
XVI. Given to obtain Composition.
XVII. Liability on.
For forged drafts.
Of Agent, see AGENCY.
Of Drawee.
Of Partners after Dissolution, see PARTNERSHIP.
XVIII. Nature of.
XIX. Negotiable Instruments.
XX. Pleading Denial of Signature.
XXI. Prescription of.
XXII. Presentation for Payment.
When Payable on demand.
XXIII. Promissory Notes.
What are.
XXIV. Proof of Signature.
XXV. Ranking on in Insolvency, *see* INSOLVENCY.
XXVI. Returned to Maker by mistake.
XXVII. Right of Action on.
XXVIII. Signed in Ignorance for more than is due, *see* ACTION EN REPETITION.
XXIX. Stamps.
XXX. Warranty of.

I. Accommodation Notes.

36. Action on a note made by defendant to the order of another, and endorsed by that other to plaintiff. Plea, that defendant had received no consideration, but had given the note for the accommodation of the endorsee, who was interested with plaintiff in certain real estate transactions, and that plaintiff knew that the note was an accommodation note—*Held*, that the fact that the plaintiff knew that this was an accommodation note could not affect his right to collect the amount from the maker, he having given value for it. *Beique & Bury*, 3 L. N. 160, S. C. 1880.

II. Action on.

37. The holder of two overdue notes against the same person may sue on them separately. *Latiberté* v. *Chenard*, 6 Q. L. R. 12, S. C. 1879.

38. *By non-holder.*—An action founded on a promissory note not filed will be dismissed. *Hudon & Girouard*, 21 L. C. J. 15, Q. B. 1875.

39. But in another case action was brought by an endorser of a promissory note who had discounted it to compel the maker to furnish a *quittance* to the plaintiff, who alleged fear of trouble, or pay the amount. Plea, that the note was not in plaintiff's possession, and that he had no right of action as guarantee or surety for the payment of the note, which being a negotiable instrument was not subject to the rules governing the contract of suretyship—*Held*, maintaining the action.* *Desbarats* v. *Hamilton*, 2 L. N. 279, S. C. 1879; 1953 C. C.

40. *By third holder.*—Action on a note by an innocent holder for value before maturity—*Held*, dismissing a plea of nullity *ab initio*, that the plaintiff held free from all such objections. *Girouard* v. *Guindon*, 2 L. N. 270, S. C. 1879.

41. *Where brought.*—The defendants, residing in St. Hyacinthe, were sued in Montreal on notes dated at St. Hyacinthe, where the debt was contracted, but payable in Montreal—*Held*, maintaining a declinatory exception, that the action should have been brought in St. Hyacinthe. *Mulholland* v. *Co. de Fonderie A. Chagnon et al.*, 21 L. C. J. 114, S. C. 1877.

42. On a note dated at Montreal and payable there, but really made at Sorel—*Held*, that the cause of action arose at Sorel. *National Insurance Co.* v. *Cartier*, 22 L. C. J. 336, C. C. 1878.

43. The right of action on notes signed in the country in blank, for goods sold there by a commercial traveller, but filled up and made payable in Montreal, is in Montreal. *Gnaedinger & Bertraud*, 2 L. N. 377, & 24 L. C. J. 411, S. C. 1879.

44. Action in Quebec on note made in Ontario, where also defendant was served—*Held* good. *Cuddy* v. *Cassidy*, 2 L. N. 346, S. C. 1879.

III. Alteration of.

45. The appeal was from a judgment dismissing an action as to one of the promissory notes sued on, which was endorsed by the respondent. The grounds of the judgment were that at the time of the endorsement the note in question was dated 5th March, 1877, and

* The surety who has bound himself with the consent of the debtor may even before paying proceed against the latter to be indemnified: 1. When he is sued for the payment; 2. When the debtor becomes bankrupt or insolvent; 3. When the debtor has obliged himself to effect his discharge within a certain time. When the debt becomes payable by the expiration of the stipulated term without regard to the delay given by the creditor to the debtor without the consent of the surety. 1953 C. C.

it was subsequently altered to 9th April, 1877, without the knowledge of the respondent. The judgment was unanimously confirmed. *La Banque Ville Marie* v. *Primeau*, Q. B. 1880

IV. Bons.

46. An action on an unstamped *bon* will be dismissed with costs, even although the defendant has not specially pleaded that the bon was not stamped. (Stamp duties now repealed see *infra*, p. 117.) *Hudon & Girouard*, 21 L. C. J. 15, Q. B. 1875.

V. By Building Societies.

47. Action by plaintiff in the capacity of executor to the will of the late J. B. for the recovery of $1,000, loaned by said J. B. to respondent with interest at eight per cent. The plea admitted the loan, but alleged that it had given a promissory note of like amount as collateral security, and had tendered the amount of the loan on condition of getting back the note or getting security against it—*Held*, that such a note was not negotiable, and did not fall within the terms of 2316 C. C. **Cooley* v. *Dominion Building Society*, 24 L. C. J. 111, Q. B. 1878.

48. A negotiable promissory note made by a Building Society or other corporate body not specially authorized by its charter to make promissory notes is a promise held out to the public that it will pay the amount to the order of the person named therein, and will be held good as an acknowledgment of indebtedness, and the endorsee of such note may recover the amount from the corporation on the mere production of the note in the absence of a plea specially denying the existence of the debt or the authority of the officers to make the note. *La Société de Construction du Canada & La Banque Nationale*, 3 L. N. 130, & 24 L. C. J. 226, Q. B. 1880.

VI. By Corporation.

49. A promissory note given by a municipal corporation in discharge of a debt, and which had passed into the hands of a third person, was held good, and the answer of the Corporation to a *saisie-arrêt* in their hands that they owed nothing to the payee of the note was maintained. *Ledoux* v. *Picotte & The Municipality of Mile End*, 2 L. N. 37, S. C. 1878.

50. And in another case *held* that a corporation cannot appeal from an *exparte* judgment on a promissory note signed by its mayor and secretary on the ground of want of authority in the makers of the note. *Corporation of Grantham* v. *Couture*, 2 L. N. 350, & 10 R. L. 186, Q. B. 1879.

51. Action on two promissory notes made by one of the defendants in favor of the other, a company, and by it endorsed by its president. The company pleaded that it was a corporation, etc., and could only bind itself in that manner by the signatures of the president, vice-president and treasurer. The other defendant summoned the company *en garantie* as having signed for their accommodation simply. Action dismissed as to both and demand *en garantie* maintained. *Mechanics Bank & Bramley*, 2 L. N. 389, Q. B. 1879.

VII. By Insolvent in Payment of Composition not void because Secured.

52. Where action was brought on a composition note given by an insolvent, and endorsed as security by the defendant contesting, and the defendant pleaded that in obtaining security the plaintiffs acted fraudulently and collusively with the insolvent, and beyond what was contained in the deed of composition, and that they signed the deed of composition upon the express condition previously agreed upon secretly between them and the insolvents that their claim would be secured—*Held*, that action could be maintained on the note notwithstanding. *Bank of Montreal* v. *Audette*, 4 Q. L. R. 254, S. C. 1878.

53. The endorsers of composition notes for an insolvent remain liable thereon though the discharge of the insolvent may have been annulled by the Court, and though the insolvent may have given other notes by way of preference to some of his creditors. *Marchand & Wilkes*, 3 L. N. 318, Q. B. 1880.

54. Where a debtor, settling with creditors for fifty cents secured privately, gave some of them unsecured notes for the balance to obtain their assent to the composition—*Held*, that the endorser of the composition notes was freed from liability. *Arpin & Poulin*, 1 L. N. 290, & 22 L. C. J. 331, Q. B. 1878.

VIII. By Married Women.

55. The authorization of a married woman to make a promissory note is sufficiently proved by the endorsement of her husband. *Johnston* v. *Scott*, 3 L. N. 171, S. C. 1880.

56. A wife separate as to property is not liable on a promissory note given for a debt of her husband. *Scanlin* v. *St. Pierre*, 10 R. L. 52, S. C. 1879.

IX. By Municipal Corporation.

57. Where a contestation arose on the declaration of a *tiers saisi* as to the validity of a promissory note which the *tiers saisi*, a municipal corporation, urged that it had given in settlement—*Held*, that as the note was not given to raise money but to pay a debt, and as it had passed into the hands of a third party, and plaintiff was not in a position to offer it back, that the claim of defendant was discharged and plaintiff could not recover. *Ledoux* v. *Picotte & Municipality of Mile End.* 2 L. N. 37, S. C. 1878.

58. But in another case in which a municipal corporation had allowed judgment to be taken *ex parte* on a promissory note signed by its Mayor and Secretary-Treasurer and then appealed on the ground that the note was null for want of authorization in the signers, the appeal was dismissed on the ground that the note being apparently regular, and the appellant having failed to object to the want of authority in the Court below, could not object

* Payment of a lost bill of exchange may be recovered upon the holder making due proof of the loss, and also if the bill be negotiable on giving security to the parties liable according to discretion of the court. 2316 C. C.

in appeal. *Corporation of Grantham & Couture*, 10 R. L. 186, & 2 L. N. 350, Q. B. 1879.

59. The secretary-treasurer of a municipal corporation has no power to sign notes and accept drafts. *Martin* v. *Corporation of City of Hull*, 9 R. L. 512, & 10 R. L. 232, S. C. 1878.

X. CHEQUES, *see* BANKS, LIABILITY OF.

60. In an action on a cheque said to have been given as collateral for a note, the defendants said that the cheque was not presented and protested with diligence for non-payment, and recourse on it was lost. It was dated the 30th May, 1877, and not presented till the 6th June When the cheque was given it was stipulated that it was not to be presented immediately, but only on the following day, and it was not proved that there were any funds in the bank to meet the cheque on any of the days in question. It was admitted that the cheque was not good on the day of its date, and *held* not unreasonable to require of the payee in the present case to show that the cheque would have been good at a subsequent date before protest. *Marler & Stewart*, S. C. R. 1878.

XI. CONSIDERATION.

61. *Illegal.*—Action on a note. The defendant pleaded illegal consideration and violation of the clauses of the Insolvent Act; that the note had been given to the plaintiff at the request of the brother of the plaintiff, who was an insolvent, and who sought in this way to give his brother, the plaintiff, a preference over his other creditors. The amount of the note was a debt due by defendant to the insolvent and transferred to the plaintiff. *Held*, that the judgment which overruled the plea should be confirmed. There was no proper evidence of the assignment under the Insolvent Act in order to bring the case within the operation of the Insolvent Act. The vague testimony of two witnesses would not do. The assignment should be proved by documentary evidence. Apart from this, the objection did not come from a creditor, and this was a fatal objection to the pretension of the defendant. He was condemned to pay a debt which he admitted he owed to the insolvent over what he agreed to pay to the plaintiff. If there was anything wrong in this those interested should complain, namely, the creditors. *Reynolds & Kyte*, S. C. R. 1877.

62. *Want of.*—Action was to recover the sum of $366.78, amount of a bon. The defendant pleaded want of consideration, and that the bon was given by him on the fraudulent representations of the plaintiff, and as a mere form. The note was given in acknowledgment of a purchase of goods made by defendant from plaintiff, who was selling the insolvent stock of one R., an insolvent. The defendant contended that he was to be paid a sum of $500, which he had advanced R.; that it was to be returned to him out of the proceeds of the sale by plaintiff. It was admitted, however, that plaintiff was to be paid along with his associate D. in preference to the defendant. By the Court: It may be that the defendant is entitled to an amount from the plaintiff, but on the issues I cannot hold that the note is without consideration by the defendant. Judgment will go against him. *Bell & Prévost*, S. C. 1879.

XII. DISCHARGE OF ENDORSER.

63. By granting delay to the maker and first endorser of a note without the consent of the second endorser the holder's recourse against such second endorser is lost. *Desrosiers* v. *Guerin*, 21 L. C. J. 96, S. C. 1876; 1961 C. C.

64. The plaintiff sued the defendant as endorser of a promissory note at three months, dated 10th January, 1876, and made by one B., payable to his own order, and endorsed by him to the defendant, who was alleged to have then endorsed it to the plaintiff. The plea was that the defendant's name was signed as an accommodation to B. (who was his son-in-law and a debtor of J. & G. L.), who refused to take it without an endorser. That B. paid it over to L., who were his creditors, with defendant's accommodation endorsement on it, but not endorsed by the plaintiff; and at maturity, it was renewed by another note without the defendant's endorsement, and made by B., payable directly to L. That L., instead of giving up the first note, kept it in their possession, and B. made several payments on account of it which were credited on the second note which had been given in renewal, and the plaintiff only got possession of the first note now sued on after its maturity,—B. having in the meantime gone into insolvency. By the Court: Under this state of facts, the question is whether W., the endorser, is liable to the plaintiff. I am of opinion that he is not. The plaintiff either is *bonâ fide* holder, or he is not; I cannot quite make out from the evidence whether he put his name on the first note before or after maturity; but it is immaterial to the result; in either case he has no action; for even if he acquired the note in good faith, before maturity, he gave delay to the maker, which was prejudicial to the rights of the endorser, W. The latter may have been willing to endorse for his son-in-law in January; but may also have had very good reasons for not endorsing for him in April. The facts being proved that B. was the debtor, defendant the surety, and L. the creditor, C. has no further rights than L., and L. took another note without defendant's endorsement, and gave delay to the principal debtor. Therefore there was a novation which discharged the surety. Action dismissed with costs. (*St. Aubin* v. *Fortin*, 3 Rev. de Jur. 293.) *Carslake & Wyatt*, S. C. 1877.

XIII. ENDORSATION.

65. Action to have defendant held personally liable on a promissory note, and to have the words "without recourse" struck from his endorsement. Declaration that defendant requested plaintiff to lend him $86, promising to give him the note of another with his own endorsement for $100 for the accommodation. That plaintiff consented and drew a note which he gave to defendant to procure the necessary signature, which he did, and brought it back to plaintiff, and while the money was being counted defendant took the note, ostensibly to endorse it, but handed it back without endorsement. Plaintiff without looking at it put it away. That plaintiff in discovering the fraud sent for defendant, who came and endorsed it, but wrote over his signature the words "without recourse

against me." Evidence of the maker that when defendant asked him to sign he promised to take it up himself. Judgment for plaintiff. *Gauthier* v. *Picard*, 2 L. N. 163, S. C. 1879.

66. Action on four notes against the sureties of an insolvent firm which had entered into a composition of thirty-five cents in the dollar. The composition was carried out by the notes endorsed by the defendants being delivered to the assignee for the benefit of the parties concerned, but the bank not having filed a claim in time their claim was included in the notes given for the claim of the endorser, who was also insolvent. They now sought to get the benefit of the endorsement *pro tanto* on the notes of the endorser. The defendants pleaded that there was no *lien de droit* between them and plaintiff, and that their endorsement was only in favor of the endorser who had no claim—*Held*, that the Bank was entitled to recover.* *Bank of Montreal* v. *McLachlan*, 3 L. N. 231, S. C. 1880.

XIV. Evidence of Endorser.

67. The evidence of an endorser of a note is admissible to prove that the signature of another endorser of the same note is genuine. *McLeod & Eastern Townships Bank*, 2 L. N. 239, Q. B. 1879.

XV. Given on the verge of Insolvency.

68. Claim on a note made by the insolvent in favor of her brother seven days before she was put into insolvency. The claimant proved consideration given for the note, namely, goods sold —*Held*, that as the note was given under suspicious circumstances the contestation would be dismissed but without costs. *Garon & Globensky*, 3 L. N. 182, S. C. 1880.

XVI. Given to obtain Composition.

69. A note given to a creditor to induce him to sign a deed of composition, or a note given in renewal of such note, is null, and the nullity may be pleaded by the maker to an action by the creditor. *McDonald* v. *Senez*, 21 L. C. J. 290, S. C. 1877.

70. And a note given either by the insolvent or by a creditor to induce the payee to consent to the insolvent's discharge is null. *Decelles* v. *Bertrand*, 21 L. C. J. 291, S. C. R. 1877.

XVII. Liability on.

71. Action on promissory note. Plea, that plaintiff and defendant, together with others, were associated for the purpose of making a tender to Government for the lease of a railway, and that a deposit of $1,000 was required to be made with their tender, and they were to contribute $200 apiece, but that defendant not having the ready money gave the note now sued on to plaintiff to represent his share. That they all agreed among themselves that any of them might retire from the scheme before the acceptance of their tender. That the tender was not accepted, and the whole of the money was returned by the Government. That defendant retired from the scheme before the matter was decided—*Held*, that he was nevertheless liable. *Falardeau* v. *Smith*, 2 L. N. 162, S. C. 1874.

72. *For Forged Drafts.*—The appellants, at Quebec, made a draft upon their branch at Montreal for $25, without advice to the branch of the fact. The holder altered the amount of the draft to $5,000, and deposited it to his own credit in his banking account with respondents. Respondents presented it without delay, and it was paid by the branch at Montreal without objection. The respondents then paid part of the proceeds to the depositor. Six days afterwards appellants discovered the fraud and demanded back the amount of the forgery—*Held*, that they could not recover. *Union Bank of Lower Canada & Ontario Bank*, 2 L. N. 132, & 23 L. C. J. 66, S. C.; & 3 L. N. 386, & 24 L. C. J. 309, Q. B. 1880.

73. *Of Drawee.*—A firm in Montreal drew on a firm in Toronto on the faith of a telegram from the drawees that they might do so in order to retire a previous draft coming due. The plaintiffs discounted it, the first draft was retired, and the drawees then refused to accept—*Held*, in accordance with Torrance & Bank of British North America (17 L. C. J. 185 & I Dig. p. 152, Art. 88), that the drawees were liable. *The Molsons Bank* v. *Seymour et al.*, 21 L. C. J. 82, S. C. 1877, & 23 L. C. J. 57, Q. B. 1878.

XVIII. Nature of.

74. A note or bon is property within the meaning of Art. 68 of the Code of Procedure. *Poirier* v. *Lareau*, 21 L. C. J. 48, Q. B. 1876.

XIX. Negotiable Instruments.

75. Municipal debentures issued by authority of Cap. 25 of the Con. Stat. Low. Can. are negotiable securities, and pass from hand to hand by mere delivery, and the holder may declare upon them as promissory notes. *Eastern Townships Bank & Municipality of Compton*, 7 R. L. 446, S. C. 1871.

XX. Pleading Denial of Signature.

76. Motion by defendant to be allowed to file pleas to an action on a note after foreclosure. One was founded on an affidavit charging that the signature to the note was not the signature of defendant—*Held*, that the allegation of forgery was not made in the terms required by the Code,* and therefore the application could not be granted. *Milloy* v. *Farmer*, 2 L. N. 182, S. C. 1879.

---

* Confirmed in appeal, March 22, 1882.

* Every denial of a signature to a bill of exchange, promissory note or other private writing or document, upon which any claim is founded, must be accompanied with an affidavit of the party making the denial, or of some person acting as his agent or clerk, and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other on the document is forged, or, in the case of a promissory note or bill of exchange that the necessary protest, notice and service have not been regularly made, stating in what the irregularity consists, without prejudice to the recourse of such party by improbation. 145 C. C. P.

XXI. Prescription of.

77. The prescription of bills and notes may be interrupted in the manner described in Art. 2227 of the Civil Code.* *Walker & Sweet*, 21 L. C. J. 29, Q. B. 1876.

78. But in another case—*Held*, that where a note has been prescribed by the lapse of five the debt cannot be recovered, although the defendant may have acknowledged, in the presence of a witness, *after prescription* accrued, that he was still indebted to plaintiff in the amount of the note, and promised to pay it. *Fisel & Fournier*, 1 L. N. 589, C. C. 1878.

XXII. Presentation for Payment.

79. In an action on a promissory note—*Held*, that the demand of payment made by any one without showing the note or even having it in possession is sufficient. *Marcotte* v. *Falardeau*, 6 Q. L. R. 296, C. C. 1880.

80. Plaintiff purchased a note made by defendant immediately after its maturity. The note was payable generally. Five months afterwards he sued on it. Defendant pleaded want of presentation, and proved that at the time of its maturity he had the money to pay for it—*Held*, that under art. 1152 of the Civil Code,† the plaintiff, in order to be entitled to the costs of the action, should have presented the note for payment at the domicile of the defendant. *Mineault* v. *Lajoie*, 9 R. L. 382, C. C. 1877.

81. *When payable on demand.*—The defendant in an action on a note payable on demand, but of which no demand had been made, deposited the amount of the note in court without costs, and then demurred to the action on the ground of want of presentment. The demurrer was dismissed but on the merits—*Held*, that as no demand had been made, the defendant was not in default at the time of action brought, and the plaintiff should therefore pay costs. *Archer* v. *Lortie*, 3 Q. L. R. 159, S. C. R. 1877.

XXIII. Promissory Notes.

82. *What are.*—A note given by a Building Society as collateral security for an advance to the society is not an ordinary negotiable note, and if lost the holder is not compelled to give security before he can exact repayment of the advance. *Cooley & The Dominion Building Society*, 1 L. N. 495, Q. B. 1878.

* Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs. 2227 C. C.

† Payment must be made in the place expressedly or impliedly indicated by the obligation. If no place be so indicated the payment, when it is of a certain specific thing, must be made at the place where the contract was at the time of contracting the obligation. In all other cases payment must be made at the domicile of the debtor, subject nevertheless to the rules provided under the titles relating to particular contracts. 1152 C. C.

If the bill be payable generally presentment is made to the drawee or acceptor, as the case may be, either personally or at his residence or office or usual place of business, or if by reason of his absence and not having aknown residence or office, or place of business, or of his death, such presentment cannot be so made, it may be made at his last known residence or office or usual place of business where the acceptance, or, if there be no acceptance, where the bill bears date. 2308 C. C.

XXIV. Proof of Signature.

83. Action against respondent as the endorser of a promissory note for $116. Before the maturity of the note the payee absconded and his estate was put into insolvency. Respondent denied his signature, and pleaded forgery in the usual manner. A large amount of evidence was adduced as to the dates and circumstances of the signing; but the principal evidence bearing upon the case was made up of comparison of signatures. Six witnesses were examined, who compare the signature "Benoit Ponton," endorsed upon the note sued upon, with genuine signatures of respondent, and they believed the person who wrote the genuine signatures wrote the signature endorsed upon the note in question. None of them spoke from knowledge of respondent's handwriting—*Held*, that by articles 2340 and 2341 C. C., English rules of evidence are made to apply to promissory notes, according to the state of the English law in 1849. In this particular, as to proof of writings by comparison, the law in England has undergone an important change since 1849. By Lord Brougham's Common Law and Procedure Act, 17 and 18 Vic. c. 125, p. 127, it is enacted as follows:—"Comparison of a disputed writing with anything proved to the satisfaction of the judge to be genuine, may be proved by witnesses, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness of the writing in dispute." That the question was definitely settled in the case of Doe vs. Luckermore, in 1836, 5 A. and E. Rep. 703, where a judgment ruling out evidence by comparison of signatures stood confirmed, the court being equally divided—The principle was recognized also in the Privy Council in the case of Devine vs. Wilson (10 Moore, P. C. Rep., 502). That under these circumstances the judgment of the Court of Review, dismissing the action for want of proof of signature, must be confirmed, notwithstanding the proof by comparison was received without objection at the trial. *Paige & Ponton*, Q. B. 1877.

XXVI. Returned to Maker by Mistake.

84. Pending a suit on a note, the note was returned, as the plaintiff pretended, by mistake to the defendant. The defendant set it up as paid—*Held*, that possession of the note by defendant was only a presumption of payment, which could be destroyed by parole evidence to the contrary. Judgment for plaintiff confirmed in appeal. *Grenier & Pothier*, 1 L. N. 33, & 3 Q. L. R. 377, Q. B. 1877.

XXVII. Right of Action on.

85. Action was to recover $225, amount of a promissory note made by defendant in favor of plaintiff. The defendant pleaded, 1st. That the plaintiff was not holder for value, but is a *prête-nom* of the Ætna Insurance Company. 2nd. That the consideration of the note was the first annual premium on a life policy for $5,000, and that the annual premiums were not to exceed that amount; that the policy offered was at an annual premium of $315—*Held*, that

the burden of proof was upon the defendant that there was want of consideration. There was no difficulty in plaintiff suing in his own name, though trustee for another. Mills vs. Philbin, 3 Rev. de Leg. 253. There were two witnesses in the case, one who proved for plaintiff that the policy offered and refused by defendant was on the usual terms of the office of plaintiff. The other witness was the plaintiff examined for defendant. He certainly does not make out the case of the defendant. The undertaking of plaintiff was to furnish the policy, and he did so. The Court could not adopt the proposition of defendant that plaintiff should have produced the written application, signed by defendant, for the policy. It was for defendant to produce it or prove it in the usual way. Probably the production of the application would not have helped defendant, and he therefore abstained from asking for it. Judgment confirmed. *Alexander & Taylor*, S. C. R. 1880.

XXIX. Stamps.

86. The stamps on a bill or note may be affixed by any one, provided they are so affixed at the time and to the amount required by law, and are regularly effaced.* *Delbar* v. *Landa*, 22 L. C. J. 46, S. C. 1877.

87. Action on a note on which the stamps were affixed at the proper time, but not cancelled. Motion by plaintiff to be allowed to affix double stamps and cancel. Motion granted, plaintiff to pay costs up to plea filed. *Falardeau* v. *Smith*, 2 L. N. 162, S. C. 1879.

88. The plaintiff having obtained judgment in vacation before the prothonotary on a promissory note for the sum of $300, the defendant filed opposition to the judgment, alleging among other things that the note in question had not been legally stamped; that a stamp to the amount of nine cents only had been placed upon it after it was made, but that no stamps had been placed on it by either of the parties at the time it was made. At enquête the plaintiff declared that he had no evidence to make, and the defendant pretended that the affidavit filed with the plea threw the burden of proof on the plaintiff to show when the stamps were affixed—*Held*, that the burden of proof was on the defendant. *National Insurance Co.* v. *St. Cyr*, 5 Q. L. R. 258, S. C. 1879.

89. Where the figures written on the stamps affixed to a promissory note indicate the month and year, but not the day that such stamps were affixed, that is not a giving of the date of the stamping within the meaning of the statute, and an action on such note will be dismissed. *Dufresne & Duplessis*, 5 Q. L. R. 389, S. C. R. 1879.

90. And a confession of judgment on a promissory note not duly stamped cannot be taken advantage of by the party in whose favor it is made. *Ib.*

91. Motion to affix stamps in appeal. After the judgment in the court below, it was discovered that the note on which the action was brought was insufficiently and the stamps incorrectly cancelled. Motion granted. *Cimon & Thompson*, 3 L. N. 194, Q. B. 1880.

92. Where the stamps on a note were cancelled by the initials of the maker, but written by another—*Held*, good. *Fauvre & Brien*, 3 L. N. 213, S. C. 1880.

93. A party to a note will, if in good faith, be allowed to affix double stamps even when the matter is in appeal. *La Société de Construction du Canada & La Banque Nationale*, 3 L. N. 130, & 24 L. C. J. 226, Q. B. 1880.

94. In an action on a note brought by the drawee the plaintiff will not be allowed to complete the note by affixing double stamps. *Lepage & Brossard*, 6 Q. L. R. 194, C. C. 1880.

XXX. Warranty of.

95. The declaration set up that at Dunham in the month of August, 1875, the defendant requested plaintiff to sell him a certain colt, which he did, the price agreed upon being $100. The defendant being the holder of a promissory note not then due, made in favor of bearer for $100, offered the same in payment; that plaintiff refused to take the note and persisted in his refusal until he was assured by defendant that it was as "good as gold," when he accepted it. The note proved to be worthless, and plaintiff, after offering it back, deposited it in court and sued for the price. Plea, that the transaction was an exchange of the note for the colt (which was disproved), and that there was no guarantee, and that in any case plaintiff could only obtain a rescission of the contract and recover the colt—*Held*, that as defendant knew when he passed the note to plaintiff that it was of no value, that he would be condemned to pay the amount with interest and costs. *Millar* v. *Dandelin*, 24 L. C. J. 208, S. C. R. 1880.

BIRTH.

I. Of Children does not affect Donation, *see* DONATION.

BOARDING HOUSE KEEPER.

I. Privilege of, *see* PRIVILEGE.
II. Rights of, *see* HOTEL KEEPERS.

---

* The repeal of the stamp duties on commercial paper by an Act just passed renders these decisions comparatively worthless, except as regards actions on notes made and executed prior to the repeal. The repealing Act is as follows: No duty shall be payable on any promissory note, draft or bill of exchange made, drawn or accepted in Canada after the fourth day of March, in the present year 1882, and from and after the said day the Act passed in the 42nd year of Her Majesty's reign, and intituled "An Act to amend and consolidate the laws respecting duties imposed on promissory notes and bills of exchange," shall be repealed. Provided always that all acts or enactments repealed by the said Act shall remain repealed, and that all things lawfully done, and all rights acquired under the said Act, or any Act repealed by it, shall remain valid, and all penalties incurred under them or any of them may be enforced and recovered, and all proceedings commenced under them or any of them may be continued and completed as if this Act had not been passed: And provided also that all unused stamps lawfully issued under the said Acts or any of them for the payment of any duty hereby repealed shall after the said day, and until the thirtieth day of June, 1882, be received at their face value in payment of any money payable to Her Majesty for the public uses of Canada, or in exchange for postage stamps of like value.

BOARD OF DIRECTORS.

I. Contracts by Resolution of, *see* BANKS.

BOARD OF TRADE.

I. Powers of.

96. Question concerning the tariff of charges for placing timber in booms at Quebec, preparing it for exportation and delivering it on board the vessels. The Board of Trade for upwards of forty years had been in the habit of fixing this tariff—*Held*, that although there was nothing legally binding about the tariff so fixed, there was a presumption that it was fair and reasonable. *Stevenson & Burstall*, 8 R. L. 190, Q. B. 1877.

BOATS—*See* MARITIME LAW, MERCHANT SHIPPING, &c.

I. Salvage of, *see* BOTTOMRY AND RESPONDENTIA.

BODILY FEAR.

I. Death caused by, will Support Indictment for Manslaughter, *see* CRIMINAL LAW.

BOND.

I. In Appeal, *see* APPEAL.

BONDS.

I. Of Municipality are Negotiable, *see* MUNICIPAL CORPORATIONS.

BONDHOLDERS.

I. In Railways, *see* RAILWAYS.

BONDSMEN—*See* SURETYSHIP.

I. In Cases of Capias, *see* CAPIAS.

BONS.

I. Stamps on, *see* BILLS, &c., Bons.

BOOKS.

I. Corporation may be Compelled to Produce, *see* CORPORATION.
II. Penalty for Refusing Inspection of, *see* COMPANIES.

BOOK DEBTS.

I. Sale of under Insolvent Act, *see* INSOLVENCY.

BORNAGE—*See* ACTION.

I. Necessity for, *see* BOUNDARIES.

BORROWING.

I. Powers of Corporation, *see* MUNICIPAL CORPORATION.

BOTTOMRY AND RESPONDENTIA.

I. Agreement for Salvage.

97. Action on an agreement as follows:

S. S. Nettlesworth, 19th July.

I hereby promise to pay, as per agreement, the sum of £800 to tow the steamship Lake Champlain into Gaspé Harbor. Wm. Stewart.

Master S. S. Lake Champlain.

The steamer was towed, and the agreement was ratified by a subsequent document certifying that the work had been done. The vessel was stranded about fifty miles from Gaspé and had a valuable cargo. There were also passengers on board. If bad weather had come on the vessel would probably have been a total wreck. Defendant pleaded that he had contracted under duress, and that the amount should be reduced to £400—*Held* that the £400 would have been, under the circumstances, a fair remuneration; but that, seeing the ratification, judgment must go for the amount of the agreement. *Brewis* v. *Stewart*, 3 L. N. 99, S. C. 1880.

BOUNDARIES—*See* ACTION en Bornage.

I. Must be Settled by Action en Bornage and not by Petitory Action, *see* ACTION Petitory.

II. Necessity of Bornage.

98. In an action for encroachment on a lot of land by building beyond the line of division between it and the adjoining lot—*Held*, reversing the judgment of the Court below, that where the encroachment is clearly proved judgment may be rendered accordingly, without the necessity of a legal bornage. *Levesque & McCready*, 21 L. C. J. 70, 1876.

BREACH.

I. Of Contract, *see* CONTRACT.
II. Of Partnership Agreement, *see* PARTNERSHIP.

BREAD.

I. Liability of Wife for, *see* MARRIAGE.

BRIBERY.

I. At Elections, *see* ELECTION LAW.

BRIDGES.

I. Taxation of.

99. *Per Curiam.*—This proceeding is taken by a rate-payer of a municipality to set aside an order or resolution of the Municipal Council, and an assessment made under it. The remedy is given by section 100 of the Municipal Code. An order or resolution was passed on the 6th of September, 1875, that eighty cents in the hundred dollars should be levied on the taxable real estate of the municipality, and notice was addressed to the petitioner on the 15th of September to pay this tax on his share of a toll-bridge across the Richelieu, built under the provisions of the statute 8 Vic., c. 90, and assessed under the assessment roll made by the Secretary-Treasurer in obedience to the order of the Council. The conclusion of the demand is that the order and the assessment roll, in so far as the bridge is concerned, be set aside as illegal; and the only question presented is whether the bridge is taxable real estate. Now, the order or resolution of itself says nothing about the bridge at all; and it could not be contended that the Council had not power to tax real estate—which is all that it has done by the resolution; therefore it is only the application or execution of this power by the officer who assessed the bridge that is now in question; and his assessment of it may be annulled under the 100th section, in the same manner that a by-law might be. Assuming the property to be real estate, it is the assessment roll that says it is taxable as such; therefore there are two questions: first, whether it is real estate; and, second, whether it is taxable. As to the first point, the nature of Mr. Yule's estate or interest in this bridge is entirely distinct from the nature of the thing itself. If Mr. Yule were merely the annual lessee the bridge itself and the toll-house would not cease to be what they are by law, whether it be real or personal estate; and the one description or the other must necessarily belong to them, irrespective of the tenure by which they are held or used. It was said at the bar that this bridge was not real estate at all, but that proposition, I think, cannot be seriously entertained, and in reality it was not supported by argument, for all that was said on the subject tended only to show that it was not taxable real estate, which is a very different thing, for the law makes exceptions in giving power to tax real estate. By Art. 708 of the Municipal Code all lands or real estate are taxable by municipalities except those mentioned in Art. 712; and the latter section exemits—1st, property belonging to Her Majesty or held in trust for her use, and property owned by municipal corporations; and, 2nd, property owned by or occupied for the use of the Federal or Provincial Governments; and the only remaining question is whether this bridge comes within any of these exemptions. Now it certainly appears to me that this bridge never belonged to Her Majesty, does not now belong to her, and never can belong to her, under the express terms of the Statute 8 Vic., c. 90, unless she pays for it, and the person she is to pay is he who got permission to build it—and that is petitioner. He must, therefore, be the owner. Neither is it held in trust for Her Majesty. There are no trusts created by the Act at all. It may be said, no doubt, that the bed of the river belongs to Her Majesty, and so it does; and therefore it was necessary to grant leave by law to use it to build a bridge on; but the person who got the grant and used it, and built a bridge and toll-house cannot reasonably contend that because Her Majesty has parted with the property in the river bed, and devoted it exclusively for a time to these structures, under certain conditions, the structures themselves belong to the Crown; nor can he maintain that they are not real estate. The other exemptions were not urged as applicable to this case; therefore the bridge and toll-house are held to be real estate, and not to be exempted; and the petition is dismissed with costs. *Yule* v. *Corporation of Chambly*, S. C. 1874.

BRITISH NORTH AMERICA ACT,

I. Division of Legislative Authority under—*See* LEGISLATIVE AUTHORITY.

BROKERS—*See* AGENCY.

I. Action of Damages for Malicious Prosecution of, *see* DAMAGES.
II. Commission of.
III. Duties and Liabilities of.
IV. Evidence in Action by.

II. Commission of.

100. The plaintiff, a broker, sued for a commission of one per cent. on the amount of a loan which he had undertaken to get for the estate and succession represented by the defendants, but which he had failed to obtain. *Held*, that he had no claim. *Campbell* v. *Chabot*, 2 L. N. 248, S. C. 1879.

101. Where a broker agreed to solicit subscriptions for stock at a rate of commission agreed upon, with a stipulation in these words: *Cette commission sera payable après le 1re versement*, and a call was made but not paid, and the scheme fell through—*Held*, that he was entitled to his commission as soon as the call was made. *Hubert & Barthe*, 2 L. N. 227, Q. B. 1879.

102. And where plaintiff had entered into a contract with defendant by which the latter

agreed to give him the sale of certain lands be longing to him at Longue Pointe, and to allow him so much as commission per lot, and brought action for commission on lots sold by defendant, he having sold none himself under the contract—*Held*, that the respondent (plaintiff) was something more than a mandataire as he had an interest in the sale, and having been to some trouble and expense in having plans made, etc., was entitled to his commission. *Dillon & Bortwick*, 3 L. N. 202, Q. B. 1880.

103. But where commission was claimed by plaintiff for having obtained the security of his wife on a contract which defendant was entering into with the government—*Held* that as the formalities provided by the Act authorizing the commissioner to enter into the contract had not been complied with, the security had not been validly given and no commission earned. *Devlin & Beemer*, 3 L. N. 232, S. C. 1880.

III. Duties and Liabilities of.

104. Where shares are purchased on which calls are pending they cannot be transferred until such calls are paid, and the brokers purchasing are not liable for failure to transfer. *Farrell* v. *Ritchie*, 1 L. N. 76, S. C. 1877.

IV. Evidence in Action by.

105. Respondent purchased for appellant 500 tierces of lard, which the latter refused to accept—*Held*, in an action for loss on resale and for commission, that though appellant admitted giving the order, that parole evidence could not be admitted to prove the purchase of the lard, nor could the brokers' notes avail for that purpose. *Trenholme & McLennan*, 3 L. N. 35, & 24 L. C. J. 305, Q. B. 1879.

BUILDERS—*See* ARCHITECTS.

I. Extra Work.

106. Action was brought by appellant, a builder for extra work done under a contract—*Held*, reversing the judgment of the court below,* that the admission of the defendant would bind him notwithstanding art. 1690 of the Civil Code† *Beckham* v. *Farmer*, 1 L. N. 116, Q. B. 1878.

II. Liability of.

107. A builder is liable for damages occasioned to his work by frost, if he agreed to execute the work at a season when it was liable to injury from that cause. *St. Louis* v. *Shaw*, 1 L. N. 65, S. C. R. 1877.

108. In an action against the contractor of the St. Patrick's Hall and his surety for damages occasioned by the falling of the roof of the hall, the plea was that the contractor was not a builder by profession, that the iron supplied by him was good, and that under the contract entered into he was bound to follow the instructions given him by the architect, and was not responsible for the design. In appeal the judgment maintaining the plea was confirmed.* *St. Patrick's Hall Association* v. *Gilbert*, 1 L. N. 116, & 23 L. C. J. 1, Q. B. 1878.

* 21 L. C. J. 164, & 7 R. L. 623.

* When an architect or builder undertakes the construction of a building or other works by contract, upon a plan and specifications at a fixed price, he cannot claim any additional sum upon the ground of a change from the plan and specifications or of an increase in the labor and materials, unless such change or increase is authorized in writing, and the price of them is agreed upon with the proprietor. 1690 C. C.

BUILDING AND JURY FUND—*See* INSOLVENCY.

BUILDING SOCIETIES—*See* LOTTERY.

I. Cannot be Compelled to show the Minutes of the Directors.
II. Note given by.
III. Powers of Dominion Parliament with Regard to.
IV. Rights of Shareholders.
V. Rules of.
VI. Security for Appropriation.

I. Cannot be Compelled to Show the Minutes of the Directors.

109. Information by a member of "La Société de Construction Mutuelle," a body politic and corporate, praying that a writ of mandamus should issue out of this court directed to Robert Laroche, secretary-treasurer of the said body politic and corporate, and custodian in possession of the books, records and documents of the said corporation, enjoining him as such secretary-treasurer to suffer the complainant, a member thereof, to inspect and examine the books of the said society, wherein are contained and recorded the rules and regulations for the management of the said society, and the transactions of the directors thereof—*Held*, that a member of an incorporated building society is not entitled to demand an inspection of the minutes kept by the directors of the association, unless there be parliamentary direction to that effect, or he show that he has an interest or is under the influence of a lawful motive in demanding the inspection. *Langelier & Laroche*, 3 Q. L. R. 239, S. C. 1877.

110. And even if he had, the fact of taking three days to consider and take advice before complying with the demand is not a refusal sufficient to justify or resort to the remedy by mandamus. *Ib.*

II. Note given by.

111. A promissory note given by a building society as collateral security for a loan is not negotiable, and does not entitle the defendant to security. *Cooley & Dominion Building Society*, 24 L. C. J. 111, Q. B. 1878.

* Vide Art. 667, p. 287, Digest. Vol. I.

III. Powers of Dominion Parliament with Regard to.

112. On an injunction—*Held*, that an Act assuming to provide for the liquidation of building societies generally in the Province of Quebec is *ultra vires* of the Parliament of Canada, and therefore the Act of the Parliament of Canada, 42 Vic. cap. 48, is unconstitutional and void.* *McClanaghan & St. Ann's Mutual Building Society*, 3 L. N. 61, & 24 L. C. J. 162, Q. B. 1880.

IV. Rights of Shareholders.

113. A shareholder in a building society who has approved of an arrangement with a creditor of the society whereby the creditor is granted delay, on condition that the society should not sell its real estate, waives thereby his right to bring the real estate of the society to sale in satisfaction of his claim as a shareholder. *Champoux* v. *Lapierre*, 3 L. N. 302, Q. B. 1880.

V. Rules of.

114. The plaintiff claimed under a rule of a building society, which had been changed and substituted prior to his becoming a member, but which it was shown was substituted by one adopted at a meeting irregularly called—*Held*, that as it was not shown that he was aware of the new rule at the time he invested, that he would not be bound by it. *Prévost & Société Canadienne Française de Construction de Montréal*, 2 L. N. 412, S. C. 1879.

* And *semble* that the Act of the Parliament of Canada 40 Vic. Cap. 50 is also void.

By the Acts 42-43 Vic. Caps. 32 and 33, the Quebec Legislature has provided for the winding up and liquidation of the affairs of building societies in the Province.

And by Q. 41 Vic. Cap. 20, amending sec. 23 of cap. 69, of the Consolidated Statutes of Lower Canada, it is enacted that—Any building society carrying on business only in the Province of Quebec may also, on the authority of the unanimous vote of the appropriation stockholders, given at a similar meeting, and of the majority of votes given at such meeting by all the other members of said society, order the transformation of appropriation shares into permanent shares of the society, and determine upon what conditions and at what date such transformation shall take place.

VI. Security for Appropriation.

115. The defendants, a building society, refused to pay over an appropriation which had been made in favor of plaintiff, and the condition of which as to security he claimed to have fulfilled. The society pleaded that the security was insufficient, inasmuch as the security offered was in a part of the city in which, as they alleged, they did not wish to extend their risks. The rules of the society provided in one place that the security must be to the satisfaction of the Board as well as of the valuator, and in another place that all property in Montreal was available as security, if sufficient—*Held*, that the society could not object to the security on the ground they urged, and that the plaintiff was entitled to his appropriation. *Canada Mutual Building Society of Montreal & O'Brien*, 3 L. N. 58, Q. B. 1880.

BURIAL—*See* CEMETERIES.

I. Certificate of, *see* CERTIFICATE OF BURIAL.

BUSINESS.

I. Good-will of, *see* GOOD-WILL.

BUTCHERS.

I. Power of Local Legislature to Authorize Tax on, *see* ACTS OF PARLIAMENT.

BYE-LAWS—*See* MUNICIPAL CORPORATIONS.

I. Action to Annul, *see* MUNICIPAL CORPORATIONS.

C.

SUMMARY OF TITLES.

	Page
CADASTRE	129
CAHIER DES CHARGES	130
CALLS	130
CANADA GAZETTE	130
CANDIDATES	130
CANVASSERS	130
CAPIAS	130
CAPITAL	143
CARE	143
CARGO	143
CARRIAGE	143
CARRIERS	143
CAS FORTUIT	145
CASHIER	145
CATHOLICS	145
CATTLE	145
CAUTIONNEMENT	145
CEMETERIES	145
CENS ET RENTES	147
CENSITAIRES	147
CEPTIFICATE	147
CERTIFICATE OF BURIAL	147
CERTIORARI	147
CESSIO BONORUM	150
CHALLENGE	150
CHAMBERS	151
CHANGE	151
CHARACTER	151
CHARTER	151
CHARTER PARTY	151
CHEATING	151
CHEQUES	151
CHILDREN	151
CHOSE JUGÉE	151
CHURCH DUES	151
CHURCHES	151
CHURCH FABRIQUES	152
CHURCH OF SCOTLAND	156
CHURCH PEWS	156
CIRCUIT COURT	156
CITY ATTORNEY	156
CITY OF MONTREAL	156
CIVIL STATUS	156
CLAIMS	157
CLERGY	157
CLERGYMEN	157
CLERK OF THE CROWN	158
CLERKS	158
COERCIVE IMPRISONMENT	158
COHABITATION	158
COLLATERAL RELATIONS	158
COLLATERAL SECURITY	158
COLLECTOR OF CUSTOMS	159
COLLISION	159
COLLOCATION	159
COLONS	159
COLLUSION	159
COMMERCIAL MATTERS	159
COMMERCIAL TRAVELLERS	160
COMMISSION	160
COMMISSIONER	160
COMMISSIONERS	160
COMMISSIONERS	161
COMMISSIONERS COURTS	161
COMMISSION ROGATOIRE	161
COMMITMENT	161
COMMON SCHOOLS	161
COMMUNITY	166
COMMUTATION	166
COMPANIES, JOINT STOCK	166
COMPARISON OF HANDWRITING	174
COMPENSATION	174
COMPOSITION	176
COMPOSITION DEED	176
COMPOSITION NOTES	176
COMPROMISE	176
COMPUTATION	177
CONCEALMENT	177
CONCUBINE	177
CONDICTIO INDEBITI	177
CONDITIONS PRECEDENT	177
CONDITIONS	177
CONFESSION	177
CONFESSIONS	177
CONFESSIONAL	177
CONFIRMATION OF TITLE	177
CONFLICT OF LAWS	177
CONGÉ DEFAUT	177
CONJUNCTIVE AND DISJUNCTIVE	177
CONQUETS	178
CONSEIL DE FAMILLE	178
CONSEIL JUDICIAIRE	178
CONSENT	178
CONSERVATORY ATTACHMENT	178
CONSIDERATION	178
CONSIGNEE	178
CONSORTS	178
CONSTABLES' FEES	179
CONSTANTLY	179
CONSTITUTION OF CANADA	179
CONTEMPT OF COURT	179
CONTESTATION	181
CONTINUANCE	181
CONTRACTS	181
CONTRACTORS	189
CONTRAINTE PAR CORPS	190
CONTRIBUTORY NEGLIGENCE	190
CONVERSION	190
CONVEYANCES	190
CONVICTION	190
CO-PARTITIONERS	192
CO-PROPRIETORS	192
CORPORATIONS	192
CORRUPT PRACTICES	198
COSTS	198
COTISATION	210
COUNCIL OF THE BAR	210
COUNSEL	210
COUNSEL AT ENQUETE	210
COUNTS	211
COUNTY COUNCIL	211
COURT HOUSE TAX	211
COURT OF REVIEW	211
COURTS	211
COURTS MARTIAL	212
COVENANTS	212
CREDITORS	212
CRIMINAL CONVICTION	212
CRIMINAL LAW	212
CRIMINAL PROSECUTION	227
CROPS	227
CROWN	227
CROWN LANDS	227
CURATORSHIP	228
CURÉ	228
CURRENCY	229
CUSTOMARY DOWER	229
CUSTOMS AUTHORITIES	229

PAGE
..... 166
ITING... 174
..... 174
..... 176
..... 176
..... 176
..... 176
..... 177
..... 177
..... 177
..... 177
..... 177
..... 177
..... 177
..... 177
..... 177
..... 177
..... 177
CTIVE. 177
..... 178
..... 178
..... 178
..... 178
ENT.... 178
..... 178
..... 178
..... 178
..... 179
..... 179
..... 179
..... 179
..... 181
..... 181
..... 181
..... 189
..... 190
CE..... 190
..... 190
..... 190
..... 190
..... 192
..... 192
..... 192
..... 198
..... 198
..... 210
..... 210
..... 210
..... 210
..... 211
..... 211
..... 211
..... 211
..... 211
..... 212
..... 212
..... 212
..... 212
..... 212
..... 227
..... 227
..... 227
..... 227
..... 228
..... 228
..... 229
..... 229
..... 229

CADASTRE.

I. Errors of Quantity in.

1. Action arising out of an error in the cadastral plan of the plaintiff's seigniory, by which the property of defendant within the seigniory was said to contain 335 arpents, 8 perches, instead of 1084 arpents, 35 perches. The action was for $159.20, for five years arrears of rent in the excess or difference, and for which defendant had been paying nothing. Plea, that plaintiffs could not claim rent for more land than was set down in the cadastre, which constituted a final title between the parties—*Held*, that under 29 & 30 Vic. cap. 30, sec. 2*, the plaintiff was entitled to rent for the whole amount of land, but that he should have had a survey made establishing the extent of the land before bringing the action, and as that was not done the action would fail. *Debellefeuille & Piché*, 2 L. N. 115 & 23 L. C. J. 314, S. C. 1879.

2. And *held*, also, that notice of such survey should have been given to the censitaire, the only evidence of which was a bailiff's return, which was insufficient. Ib.

* Any *censitaire* whose name shall have been inscribed on the schedule as holding an extent of land less than that which he actually possesses shall nevertheless be bound to pay the *rente* for the whole extent of land which he possesses; and the seignior, after he has caused a survey to be made establishing the extent of the land in question, may claim from the *censitaire* payment of the *rente* due on such land, at the rate fixed for that part thereof which has been set down in the schedule.

In like manner any *censitaire* whose name shall have been entered on the Schedule for an extent of land greater than that which he actually holds may, after he shall have established by survey the real extent of the land in question, claim from the seignior a reduction of *rente* proportioned to the extent of land so established. Ib., sec. 3.

The errors of omission or commission mentioned in the preceding section may be corrected or rectified with the consent of the seignior and the *censitaire* without its being necessary to have recourse to a survey. Ib., sec. 4.

DEPOSIT OF RAILWAY PLANS.

If after the closing of the cadastral plan of any locality any land is taken for the line of a railway through and across the lots shown upon such plan, and designated in the book of reference thereof, the railway company is bound to deposit in the office of the Commissioner of Crown Lands a plan showing the land taken for the line; and if the Commissioner of Crown Lands finds such plan correct he may amend the cadastral plan by causing the land taken for the railway to be *marked* in red on it and on the copy thereof, and by certifying such addition. Q. 40 Vic. Cap. 16.

2. There is given to the land in each locality forming such line of railway a number to be its designation, under the provisions of art. 2168 of the Civil Code, and the lot so formed is entered in the book of reference, in conformity with art. 2167 of the Civil Code.

3. The land taken from each lot for such line of railway, on such amendment being made, is detached from and ceases to form part of such lot.

SUBDIVISIONS.

4. As soon as any subdivision, plan or redivision, accompanied with a book of reference, shall be deposited with him, the registrar shall note in the index to immoveables, under the number of the original lot or of the subdivision or redivision, the fact that such lot has been subdivided or redivided in whole or in part, as the case may be.

5. Whenever a subdivision or a redivision has been made the particular number and designation given to each lot, upon the plan and in the book of reference of such subdivision or redivision, are the true description of such subdivision lots respectively, which is sufficient as such in any document whatever; and the provisions of art. 2168 of the Civil Code shall apply to the lots of such subdivision or redivision. When a part only of any original lot is subdivided, or when a part only of any lot in a subdivision is redivided, the portion which remains undivided is sufficiently designated by calling it the undivided residue of such original lot or of such lot in a subdivision.

6. The Commissioner of Crown Lands may cause to be published in the *Quebec Official Gazette* the book of reference of any subdivision or redivision, with the same effect as is given to the publication of the book of reference of a locality by sec. 6 of the Statute 32 Vic. cap. 25.

CAHIER DES CHARGES.

I. Connected with Judicial Sale, *see* SALE JUDICIAL.

CALLS.

I. Action for, *see* COMPANIES.
II. Liability of Subscriber for, *see* COMPANIES.

CANADA GAZETTE—*See* OFFICIAL GAZETTE.

CANDIDATES.

I. At Elections, *see* ELECTION LAW.

CANVASSERS.

I. Payment of Travelling Expenses of at Elections, *see* ELECTION LAW.

CAPIAS.

I. Absence of Defendant.
II. Affidavit.
III. After Judgment.
IV. Against Insolvent.
V. Against Minor.
VI. Alias Writs of, *see* PROCEDURE ALIAS WRITS.
VII. Amendment of Process.
VIII. Appeal from Judgment on.
IX. Bail.
X. Burden of Proof in Cases of.
XI. By Foreigners.
XII. Declaration of Abandonment.
XIII. Effect of Filing Bilan.
XIV. Execution of, while Appeal Pending.
XV. Grounds of.
XVI. Intent to Defraud.
XVII. Jurisdiction in Cases commenced by.
XVIII. Petition to Quash.
XIX. Secretion.
XX. Sureties.
Liability of.
XXI. Waiver of Damages for False Arrest, *see* DAMAGES.

I. Absence of Defendant.

3. The pretensions of a defendant who, after being arrested under a capias, leaves the country, and refuses to appear for examination, will not be favorably regarded by the court. *Molsons Bank* v. *Campbell*, 21 L. C. J. 280, S. C. 1877.

II. Affidavit for.

4. Where an affidavit for capias *ad res.* set up that "the deponent is informed and believes that the defendant is about to secrete *ses biens meubles et effets mobiliers*"—*Held*, bad, and also for not stating the grounds of belief.* *Augé & Mayrand*, 21 L. C. J. 216, S. C. R. 1876.

5. In February, 1877, plaintiff sued out a writ of capias. The affidavit alleged that the defendant "was well and truly and personally indebted to plaintiff in a sum exceeding forty "dollars currency, to wit, sixty-two dollars and "seventy-five cents, for goods sold and delivered at the city of Quebec aforesaid, at the "special instance and request of the said J. R." The deponent went on to state that he was credibly informed and verily believed, etc., and further that his belief, etc., was founded on the fact that the said J. R. had sold his effects, and was then on the point of going to parts unknown in the United States of America, and refused to pay the said debt or make any provision therefor, although duly required—*Held*, that an affidavit for capias which alleges a debt to exist need not state when the same was contracted, nor show that it was contracted within the five years next preceding. *Maguire* v. *Rockett*, 3 Q. L. R. 347, S. C. 1877.

* This writ is obtained upon an affidavit of the plaintiff, his bookkeeper, clerk or legal attorney declaring that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding forty dollars, and that the deponent has reason to believe, and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave immediately the Province of Canada, with intent to defraud his creditors in general, or the plaintiff in particular, and that such departure will deprive the plaintiff of his recourse against the defendant; or upon an affidavit establishing, besides the existence of the debt as above mentioned, that the defendant has secreted or made away with, or is about immediately to secrete or make away with, his property and effects with such intent. 798 C.C.P.

FORM OF AFFIDAVIT FOR CAPIAS.

A. B. of——, said plaintiff (or agent of said plaintiff) being duly sworn, doth depose and say:—That C. D., the said defendant, is personally indebted to said plaintiff in a sum exceeding forty dollars currency, to wit, in the sum of —— —— dollars —— ——, being as and for (*here state succinctly the date, place and cause of debt*).

That this deponent is credibly informed, hath every reason to believe, and doth verily and in his conscience believe, that the said C. D., the said defendant, is immediately about to leave the Province of Canada (*allege specially the reasons of belief that the defendant is about to leave the Province of Canada, and from whom the information was obtained*) (or); that the defendant has secreted or made away with, or is about immediately to secrete and make away with, his property and effects; (or) that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors, or to make an assignment of his property to them, or for their benefit, and that he still carries on his trade, the whole with intent to defraud his creditors in general, and the plaintiff in particular, whereby the said plaintiff, without the benefit of a writ of capias, will be deprived of his recourse against defendant, and will sustain damage.

6. Nor that the sale and delivery were made *to the defendant* when they are alleged to have been made "at his instance and request." *Ib.*

7. And that when the facts upon which his belief are based are sworn to directly, and not as hearsay, the deposant is not bound to disclose the name of any informant. *Ib.*

8. Where an affidavit for capias alleges that the defendant is secreting, or is about to secrete his goods, with intent to defraud the plaintiff, it is not necessary to give the name of the person from whom he received the information, nor the special reasons deponent has for believing the allegations to be true. *Hotte* v. *Currie*, 1 L. N. 53, & 22 L. C. J. 34, S. C. 1877.

9. But where the affidavit has disappeared from the record and cannot be found, and the plaintiff has taken no means of replacing it, the *capias* cannot be maintained, although the contestation appears unfounded, and must be rejected. *Ib.*

10. And where the contestation consists of vague and general allegations of irregularity, without specifying any particular irregularity, it will be dismissed. *Ib.*

11. The defendant petitioned to quash the *capias*. One of the grounds was that the affidavit was sworn before a person whose right to receive it did not appear. It was signed simply "commissioner," without stating at length that he was a commissioner to receive affidavits for the court—*Held*, that this was not an adequate reason. The court knows its own officers, and the affidavit in question was sworn before one of them. *Joseph* v. *Donovan*, S. C. 1877.

12. But an affidavit for capias is defective which uses the words "*peut être privé de son recours*," instead of the words "*privera*," etc., and which omits to depose as to the intent to defraud. *Ford* v. *Léger*, 21 L. C. J. 191, S. C. 1877.

13. And an affidavit for capias is defective which deposes that the departure of the defendant "may" deprive the plaintiff of his recourse instead of saying "will" deprive, etc., as laid down in the Code of Procedure. *Stevenson* v. *Robertson*, 21 L. C. J. 102, S. C. 1877; 798 C. C. P.

14. And an affidavit for capias which deposes in the alternative that the defendant has secreted, or made away with, or is about immediately to secrete or make away with his property, etc., is defective. *McMaster* v. *Robertson*, 21 L. C. J. 161, S. C. 1877.

15. But it is sufficient to state the amount in "dollars without any qualification as to a particular currency. *Hall* v. *Zernichon*, 4 Q. L. R. 268, S. C. 1878.

16. And where the initial only of defendant's christian name was given, this was held to be no ground for a petition to quash.

17. But where the affidavit does not show a personal liability, or the nature of it, the capias was set aside. *Ib.*

18. The allegation in an affidavit for capias that deponent hath been informed by a person designated that the defendant had come to Montreal to attend the meeting of the Graphic Co., and that the said defendant was about to go to New York," was *held* insufficient in law to justify the belief that the defendant was

about to leave Canada for the United States of America, with intent to defraud the plaintiff, a creditor. *Canada Paper Co.* v. *Bannatyne*, 23 L. C. J. 261, 1879.

19. And so, also, an affidavit for capias alleging that the deponent is informed that the defendant is secreting, or is about to secrete, his property, is insufficient, if he does not give his reasons for swearing so, or mention the names of the persons from whom he received the information, in order to place the defendant in a position to contradict them if he can do so. *Mullarky & Phaneuf*, 9 R. L. 529, S. C. 1879.

20. An affidavit for capias, after establishing the existence of a debt, continued as follows:—"*Que le deposant est informé d'une manière "croyable, a toute raison de croire, et croit "vraiement dans son âme et conscience que le "dit defendeur de fait a caché et soustrait, cache "et soustrait et est sur le point de cacher et "soustraire ses biens, dettes et effets dans la vue "et avec l'intention de frauder ses creanciers en "général et le demandeur en particulier.*"—*Held*, that it was necessary to state the grounds of such belief. *Drapeau & Pacaud*, 6 Q. L. R. 9, S. C. R. 1879.

21. Defendant petitioned to be liberated on the ground that in the affidavit the words, "and that such departure will deprive the plaintiff of his recourse against the defendant" were omitted—*Held*, that as form No. 42 was substantially followed that the affidavit would hold. *Rhodes* v. *Robinson*, 2 L. N. 216 & 23 L. C. J. 166, S. C. 1879.

22. On a petition to quash a capias on the ground of the insufficiency of the affidavit—*Held*, that it was not necessary to state in such affidavit either the date when or the place where the debt for which the capias issues was contracted.* *Hurtubuise & Bourret*, 2 L. N. 54, Q. B. 1879.

23. And where the affidavit alleged merely that the defendant resided at New York, and had no domicile in Canada; that he refused to pay the debt, although he had means to do so; that he counted on escaping payment by his absence, and by the fact that he had no property in this country that plaintiff could seize; that he was in Montreal on family affairs which would only detain him a few hours, and that he was about to leave immediately for New York, where he carried on business—*Held*, that this was not sufficient of itself to establish that it was with the intention of defrauding his creditors that he was on the point of leaving the country, and the capias must therefore be quashed. *Ib.*

24. And the omission to state in an affidavit for capias that the defendant is personally indebted to the plaintiff is not fatal, if the affidavit otherwise discloses a personal indebtedness. *Sheridan* v. *Hennessey*, 2 L. N. 133, & 23 L. C. J. 212, S. C. 1879.

25. Nor (following Hurtubuise & Bourret) is it necessary in such affidavit to state where or when the indebtedness was created. *Ib.*

*In connection with this decision Monk, J., stated, that in the case of Brisson v. McQueen he was represented as quashing a capias solely on the ground that the place where the debt was contracted was not stated in the affidavit, which was an error. Vide Dig., vol 1, p. 192, art. 47.

26. But where the defendant petitioned to be liberated on various grounds, one of which was that it was not alleged in the affidavit that the defendant was *immediately* about to leave the Province—*Held*, that the word *immediately* was indispensable. *Hawkes* v. *Caffrey*, 2 L. N. 159, S. C. 1879.

27. And where an affidavit for capias set out that defendant was about immediately to leave the "Province of Quebec"—*Held*, insufficient. *Doyer* v. *Walsh*, 3 L. N. 304, S. C. 1880.

III. After Judgment.

28. The affidavit on which a capias after judgment has issued, is the only proof required of the allegations of fraud on which the capias is founded, and no additional proof is required, as in the case of a capias before judgment. *Drapeau* v. *Pacaud*, 6 Q. L. R. 140, S. C. R. 1880.

29. And such capias can only be contested on petition in the manner laid down in arts. 819 et seq. of the Code of Procedure. *Ib.*

IV. Against Insolvent.

30. A capias may lie against a defendant who has made an assignment under the Insolvent act. *Robertson* v. *Hale*, 21 L. C. J. 38, S. C. 1877.

V. Against Minor.

31. A capias will not lie against a minor even for necessaries. *Morgan* v. *Leboutillier*, 5 Q. L. R. 212, S. C. 1879.

VII. Amendment of Process.

32. The defendant was arrested under a capias on the 10th June by the name of Alfred Nelson Belisle, his real name being Alfred Napoleon Belisle. The writ was returnable, and was returned on the 24th June. Immediately after the arrest, or on the 13th June, the plaintiff discovered his mistake in the name, and served a motion on the 13th for the 16th to the defendant, and moved the court, on the 16th, that he be allowed to amend the writ and declaration, and this was granted *exparte* on the 18th. The defendant appeared on the 25th and filed an exception *à la forme*, attacking the procedure on the ground *inter alia* that his name was wrongly given in the affidavit and the writ—*Held*, that as the affidavit had not been amended, and as the amended writ was not served with sufficient delay before return, that the exception should have been maintained and action dismissed. *Slater & Belisle*, 3 L. N. 238, S. C. R. 1880.

VIII. Appeal from Judgment on.

33. A defendant arrested on capias must raise *in limine litis* all the grounds resulting from the insufficiency of the affidavit, as they cannot be raised in appeal. *Heyneman & Smith*, 21 L. C. J. 298, Q. B. 1877.

IX. Bail.

34. The sureties offered in a case of capias may justify on oath, and need not justify on

real estate. *Hochelaga Bank* v. *Goldring*, 2 L. N. 277, & 10 R. L. 234, S. C. 1879.

35. The defendant, who was capiased, is now moving under art. 825 C. C. P., furnishing sureties before the prothonotary. Under that article he has offered bail, but the latter seems to have halted. It is opposed by plaintiff on the ground that, under sec. 127 of the Insolvent Act, since repealed, art. 825 C. C. P. is repealed. We hold the contrary. *McMaster et al.* v. *Robertson*, 1 L. N. 77, S. C. R. 1878.

36. A defendant arrested on capias, who has given bail under art. 825 C. C., may be ordered to surrender himself into the hands of the sheriff of the district within one month from the service upon him or on his sureties of the judgment and order, and in default proceedings may be taken to enforce the judgment. *Brosseau* v. *Crevier*, 2 L. N. 403, S. C. R. 1879.

X. Burden of Proof in Cases of.

37. Capias issued upon the affidavit of plaintiff's bookkeeper, who alleged that the defendants were indebted to plaintiffs in a sum of $14,564, money feloniously stolen by defendants from plaintiff; that defendants had shortly after the larceny been arrested and committed for trial; that they had presented an application for Habeas Corpus to the Queen's Bench, which had been dismissed; that subsequently the Crown had given a consent for the admission of the defendant to bail, and an order was being prepared for their liberation—*Held*, in review, reversing the judgment of first instance, that in such case the burden was on the defendants to disprove the allegations of the affidavit. *McNamee & Jones*, 3 L. N. 371, & 10 R. L. 683, S. C. R. 1880.

XI. By Foreigners.

38. A capias by one alien against another will not lie, both parties being only temporarily in this Province, and the alleged debt arising out of a contract entered into in a foreign country where the allegation in the affidavit upon which the capias issued alleges the immediate departure of defendant with intent to defraud. *Ventini* v. *Ward & Roome* v. *Ward*, 2 L. N. 133, & 23 L. C. J. 267, S. C. 1879.

XII. Declaration of Abandonment.

39. A defendant arrested on capias, who has given special bail, is not bound to file a statement and make the declaration mentioned in art. 766 of the Code of Procedure.* *Poulet* v. *Lamnière*, 6 Q. L. R. 314, S. C. 1872.

---

* Any debtor arrested under a writ of capias *ad respondendum* may make a judicial abandonment of his property for the benefit of his creditors, 763 C. C. P.

A debtor who has been admitted to bail is bound to file this statement and declaration within thirty days from the date of the judgment rendered in the suit in which he was arrested. Any person condemned to pay a sum exceeding eighty dollars, exclusive of interest, from service of process and costs, for a debt of a commercial nature, is, likewise, after such moveable and immoveable property as he appears possessed of have been discussed, bound, upon being required to do so, to file a similar statement. 769 C. C. P.

XIII. Effect of Filing Bilan.

40. The mere filing of the statement, in conformity with article 764 of the Code of Procedure, does not entitle a party arrested under a *capias ad respondendum* to be released from custody, such statement being subject to attack by any creditor within the delays mentioned in art. 773. *Bruckert* v. *Moher*, 21 L. C. J. 26, S. C. 1876.

XIV. Execution of while Appeal Pending.

41. The respondents were bail to the sheriff for a person arrested on capias, and who neglected to give special bail, according to the terms of the bond. The capias having been declared good and valid, defendant appealed, but gave security for costs, only consenting that the judgment should, in the meantime, be executed in terms of art. 1124 of the Code of Procedure. Defendant having failed to pay the debt action was taken on the bond to the sheriff—*Held*, that, under the circumstances, the appeal did not suspend the proceedings against the bail. *Lajoie & Mullin et al.*, 21 L. C. J. 59, Q. B. 1876.

XV. Grounds of.

42. The defendant described as "of Westfield, Massachusetts, U. S., presently in the City of Montreal," was arrested in Montreal on a capias charging him with being indebted to the plaintiff, and as being about to leave the Province, with intent to defraud, etc.—*Held*, that as he lived in the States, and was only going home, that his intended departure was no evidence of fraud, and the capias was quashed. *Renaud & Vandusen*, 21 L. C. J. 44, Q. B. 1872.

43. The defendant borrowed money from the plaintiff on the strength of a bill of lading of wheat to arrive. On the arrival of the wheat he got this bill of lading from the plaintiff, on the promise that he would use the proceeds to pay the amount of the note, and for the ostensible purpose of doing so. The wheat was shipped on board another vessel, and a new bill of lading received by defendant, which he pledged to another bank, the proceeds of which went into his general business. Being utterly insolvent himself the bank issued a capias against him, charging with secretion of his estate and effects—*Held*, that diverting the proceeds of a security pledged for the payment of a particular debt to the extinction of other liabilities is not a secretion sufficient to maintain a capias under art. 798 of the Code of Procedure. *Molsons Bank* v. *McMinn*, 24 L. C. J. 256, S. C. R. 1874.

44. Defendant petitioned to be liberated from arrest under a capias, and his petition was dismissed. The writ issued in an action of damages for $5,000, and bail was fixed at $1,000. The affidavit was made by B as agent of the plaintiffs. It alleged a sale by the defendant to them of the sole right to manufacture and sell a medicine, under the name of Smith's Mountain Renovator, throughout all Canada, the defendant furnishing the ingredients and making up the medicine, in quantities not less than 100 gallons, at $3 a gallon; that the plain-

tiffs had fulfilled their part of the contract, and paid $695; but the defendant, in contravention of his agreement, and by malice, and with a view to injure them, had, in the course of November preceding, manufactured quantities (*plusieurs quantités*) of the aforesaid medicine, known as Green Mountain Renovator, for other persons, and under the proper price. It then alleged that the plaintiffs had spent nearly $3,000 in bottles, boxes, advertisements and lithographing to bring this medicine before the world, and have been prevented from making a profit, and suffered damage to the amount claimed; and that the deponent was informed that the defendant was immediately about to leave the Province, &c., &c. His reason for thus believing was that the defendant *has his residence in the United States*, and is only temporarily in Montreal, and will return immediately to Vermont, where he lives. The petition to quash was founded as well on the illegality and insufficiency of the affidavit as on its untruth, and on contestation the parties went to enquete, and the petition was dismissed because the allegations of it had not been proved. *Per Curiam*—the breach of contract is one thing, and the *meditatio fugæ* is another. There must not only be a right of action; but there must be a right to arrest. What was there, assuming the truth of the facts in the affidavit, to show any right of arrest whatever? It specially mentioned a deed between the parties, and refer to it as a part of the affidavit. The plaintiffs contracted with him as "Silas Smith, of East Georgia, Franklin county, State of Vermont, manufacturer." They knew that was his domicile—that it was no evidence of fraud for him to go there, he had a perfect right to go there, undiminished by any stipulation to the contrary. For this reason alone, the petition ought to have been granted and the capias quashed, as having issued upon an affidavit that was not true. Judgment reversed and petition granted. *Wingate Chemical Co.* v. *Smith*, S. C. R. 1876.

45. A debtor may be arrested in Quebec for secretion committed in Ontario where he resides. *Gault* v. *Robertson*, 21 L. C. J. 281, S. C. R. 1877.

46. A vendor with a *bailleur de fonds* claim duly registered may maintain a capias against the debtor who is dissipating his moveables, without proving in any way that the property hypothecated has depreciated in value, so as to render his debt more precarious than at the time of sale. *Benoit & Petitclerc*, 1 L. N. 32, & 9 R. L. 385, Q. B. 1877.

47. Capias on the ground of the departure of the defendant and of the secretion of his property. Proof that he spoke only of going to the States to cut wood, as he was in the habit of doing, and that he had sold his property at long credit to a minor—*Held*, that though he had acted imprudently, and the plaintiff had probable cause for believing that defendant was secreting his property for the purpose of defrauding his creditors, yet the evidence was to the contrary and capias quashed. *Beaudette & Audette*, 8 R. L. 581, Q. B. 1878.

48. The defendant, a marine insurance agent, a native of Canada, and who had resided in Quebec for about three years, at the close of the season of navigation, being without the means of supporting his family, and unable to get work here during the winter season, was about to go to Boston, in the hope of obtaining employment there. He at the time owed the plaintiff for board about $80, and was about to leave without paying her, the fact being that he had not the means of doing so—*Held*, that, under the circumstances, the plaintiff was not justified in swearing that the defendant was about to leave with intent to defraud her, the plaintiff, and capias quashed. *Henderson* v. *Duggan*, 5 Q. L. R., 364, S. C. 1879.

49. And, in another case, the defendant who had been imprisoned prayed to be released on the ground that the affidavit was insufficient, inasmuch as the cause of action on which the capias issued, arose in the United States and not in Canada. The part of the affidavit which referred to the cause and grounds of action was as follows: "That W. P., formerly of the said City of Fall River, manufacturer, and now at the City of Quebec, is personally indebted to the said Metacomet National Bank in the sum of five thousand dollars current money of Canada, being the amount of the promissory note of the said W. P., by him made and signed on the 2nd day of May last, payable five months after date, and now held by the said Metacomet National Bank of Fall River, as the legal holders thereof, which said sum of five thousand dollars the said W. P. has acknowledged to owe, and promised to pay at the said city of Quebec, during the present month of October instant." The proof went to show that the defendant had made the note in the United States, where he had carried on business, and that just prior to his arrest he had acknowledged to an agent of the plaintiff that he owed the debt, and expressed himself as sorry at being unable to pay, but had made no new promise to pay —*Held*, that the acknowledgment did not create a new debt, so as to render the defendant liable to arrest under capias; and as the original debt and cause of action arose in a foreign country the defendant must be discharged according to Art. 806 of the Code of Procedure.* *Metacomet National Bank & Paine*, 5 Q. L. R. 372, S. C., & S. C. R. 1879.

50. Where, in an affidavit for capias, the plaintiff, a bank, set up that the defendant had received from its cashier large sums of money, which had been fraudulently taken from the funds of the bank to defendant's knowledge, and alleged a consequent indebtedness in damages—*Held*, sufficient to justify the capias. *Goldring & Hochelaga Bank*, 2 L. N. 231, Q. B. 1879.

51. And a pretension that the defendant was indebted to the cashier and the cashier to the bank would not hold. *Ib.*

52. A capias was issued against defendant on the ground that he was about to leave for Europe, and the plaintiff would be defrauded of his debt. It appeared, however, that the defendant was not about to leave immediately, and had no fraudulent intention in his proposed trip, which was for the purpose of visiting the Paris exhibition, all his interests being

* It cannot issue for any debt created out of the Province of Canada nor for any debt under $40. 806 C. C. P.

in Montreal—*Held*, that the capias must be quashed. *Ambrois & Malleval*, 2 L. N. 159, S. C. 1879.

53. Where there was evidence that defendant himself had said that the plaintiff might go to the devil *(que le docteur pouvait aller se faire sacre)* that he would never pay him a cent, but would go off to Montana, and his family would follow,—*Held*, reversing the judgment of the judge *a quo*, that this was quite sufficient to support the affidavit, and the petition to quash should have been dismissed. *Valade* v. *Bellehumeur*, 2 L. N. 116, S. C. R. 1879.

54. The capias issued against defendant on a judgment already obtained. The affidavit merely referred to this judgment, and the declaration merely alleged that the amount of the judgment was still unpaid and demanding a capias—*Held*, that as a capias issuing after judgment was not a demand in the sense of Art. 50 C. C. P., but only a means of preventing the defendant from leaving the country until the debt should be paid, that a reference to the judgment as a ground of capias was sufficient. *Trust and Loan Co.* v. *Cassidy*, 3 L. N. 117, S. C. 1880.

55. Action of damages by plaintiff (appellant) for malicious arrest on a capias. Appellant was a wholesale grocer in Toronto, and was leaving with his son for the Paris exhibition. On reaching Montreal he was arrested on an affidavit of one of the defendants. Appellant owed defendants some $2,000 over due, which, on being applied for in Toronto by defendants' agent there, the latter was informed that it was settled, the only settlement, as it subsequently proved, being a note at four months, which plaintiff had sent to defendants at Montreal by mail. On his arrival at Montreal, one of the defendants called upon him at the hotel where he was stopping with reference to the amount, and plaintiff admitted that he was going to Europe, and moreover intimated that until his return defendants would not be paid, and they could get their money in the best way they could. On the other hand, there was proof that plaintiff was still carrying on his business, and that he was in the habit of crossing to Europe almost every year—*Held*, reversing the judgment of the court below*, that these circumstances did not disclose an intent to defraud sufficient to justify a capias, and damages to the amount of $500 was awarded. *Shaw & McKenzie*, 4 L. N. 89, Su. Ct. 1881.

XVI. Intent to Defraud, *see* Affidavit.

56. A debtor is not liable to be arrested on capias for intended departure to a foreign country without paying his debt, unless the circumstances be such as to make him chargeable with intent to defraud. *Paulet* v. *Antaya*, 10 R. L. 329, & 3 L. N. 154, S. C. R. 1880.

XVII. Jurisdiction in Cases Commenced by.

57. Where an action for $67 was originated in the Superior Court by capias *ad res* duly executed, but of which a *desistement* was subsequently filed by plaintiff on the return day—*Held*, that such action could not be then continued before the said court for want of jurisdiction, and must be dismissed, saving the recourse of the plaintiff before another court. *Turcotte* v. *Reyiner*, 1 L. N. 351, & 22 L. C. J. 132, S. C. 1878.

XVIII. Petition to Quash.

58. Alleged differences between the affidavit and the declaration cannot be raised by the petition to quash. *Sheridan* v. *Hennessy*, 2 L. N. 132, & 23 L. C. J. 212, S. C. 1879.

XIX. Secretion, *see* Grounds of.

59. Defendant was arrested by a *capias* issued for $197.87, amount of three notes given by him to plaintiff for materials supplied for his business as a blacksmith and carriagemaker at Vaudreuil. The ground was that he had secreted his estate with intent to defraud. The transactions between the parties began early in 1877. At that time there was a judgment for $100 and $24 of costs against the defendant, and in May, 1877, his moveables were taken in execution under it, and a sale took place on the 30th May, 1877, on which day the judgment was acquired by his brother, P. G., from the then plaintiff before the sale, and the entire stock sold for $51.31, in 66 different lots, and they were all acquired by P. G. He sold them to his father, A. G., on the 25th October, 1877, for $35.31, and other considerations then stated to have been given before. On the 8th July, 1878, A. G. made an agreement with the defendant, his son, by which the latter agreed to carry on the business as his employee, and did so. This agreement referred to a verbal agreement made between the parties on the 5th October, 1877, for the same purpose, and by it A. G. agreed to pay the son, the defendant, $76 per month for salary of himself and workmen. On the 21st February, 1879, the defendant sold his real estate in the village of Vaudreuil to B., notary public, reserving possession, if he thought proper, till September next. This property included the shop where the defendant had carried on his business, and which he continued to occupy from the sale of his moveables in May, 1877. On the 5th March, 1879, A. G. sold to B. all the stock-in-trade and moveables for the sum of $511.39, and the defendant was party to the sale, relinquishing his rights under a lease he had from [illegible] the. The plaintiffs had no knowledge of the transactions. On the contrary, there were of record two letters from defendant to plaintiffs, of date 6th February and 27th March, in which he promises payment of two of the notes in a few days by collections which he was about to make. Not a word was said of the interest of others in stock in trade and moveables—*Held*, there was the strongest presumption of fraud between the relatives. Judgment to maintain the *capias*. *Heney & Girard*, S. C. 1879.

60. The defendant had been arrested under a *capias ad respondendum*, and made a *cessio bonorum*—which was contested by the plaintiff

* 2 L. N. 5, & 3 L. N. 369, & 23 L. C. J. 62.

on the ground of concealment. Three witnesses deposed to his leaving his house a day or two before the bailiff went to make the seizure. One of them gave to his removal a suspicious aspect; but he only removed his effects to St. Jacques, and also removed to that place himself—*Held*, that this was not a concealment, and contestation dismissed. *Delisle & Robert*, S. C. 1877.

61. Action of capias and attachment before judgment on the ground of secretion. On petition to quash, defendant, who denied the secretion, that judgment had been taken against by action in the Circuit Court in the district of Richelieu, and that all his effects were seized under a writ of execution in virtue of such judgment; that, on the day fixed for the sale defendant, with the consent of several creditors, the effects were sold by the bailiff *en bloc* for the sum of $163, and were adjudged to the *tiers saisie* in the present action who, had distributed the price, $130, to the landlord of the premises and the balance for costs and the claim of the *tiers saisie*—*Held*, reversing the judgment of the Superior Court, that there was no secretion. *Dominion Type Founding Co.* v. *Lafond*, 10 R. L. 15, S. C. R. 1879.

62. The appellant borrowed from the respondent the sum of thirty thousand dollars on a mortgage given by him on property which, it turned out, did not belong to him absolutely, but apparently was subject to a substitution in favor of his wife and children. The $30,000 was deposited by appellant in the Mechanics Bank in his own name, but subsequently the words "mortgage in trust for E. A. Molson" were added, and shortly afterwards the money was all withdrawn from the bank by appellant. A capias then issued upon an affidavit made by respondent's agent setting out these facts, and charging appellant with secretion and making away with his property and effects with intent to defraud—*Held*, to constitute secretion and to justify the capias. *Molson & Carter*, 3 L. N. 258, Q. B. 1880.

63. And this notwithstanding the false statements, and transaction took place in 1875, and the capias did not issue until June, 1877. *Ib.*

XX. Sureties in.

64. *Liability of.*—The defendants were sureties or special bail for a person arrested under capias. Having obtained judgment against him, and finding that he had gone to the United States, action was brought against the defendants for the amount. It was shown by the proof that his absence in the States was but temporary, but nevertheless—*Held*, that even a temporary absence gave a right of action against the sureties.* *Thompson* v. *Lacroix*, 4 Q. L. R. 312, S. C. 1878.

*The defendant may obtain his discharge upon giving two good and sufficient sureties that he will not leave the Province of Canada, and that in case he does so such sureties will pay the amount of the judgment that may be rendered, in principal, interest and costs, or the amount fixed by the judge in the case of art 801. But this bail cannot be received after the expiration of the eighth day from the day fixed for the return of the writ of capias, unless with leave of the court expressly granted upon sufficient cause shown. 824 C. C. P.

The defendant may also obtain his discharge at any time before judgment by giving good and sufficient

65. Action against the sureties of a person arrested on a capias. The defendants entered into a bond under art. 828 of the Code of Procedure* for $1,054 currency, the condition of the bond being that P. D. would, on the 26th September, 1874, or previous thereto, or within eight days thereafter, give special bail to the action, and that in default thereof they would pay to the plaintiffs the debt, interest and costs, for which the arrest was made. The said P. D. did not give special bail as conditioned or any other security whatever, or pay the debt. That final judgment was rendered by which the said P. D. was condemned to pay the amount demanded, and the capias was declared good and valid; that the bond having been forfeited the defendants were liable, etc. The defendants pleaded that the judgments maintaining the capias had been appealed from, and the question between the plaintiffs and P. D. was still pending—*Held*, that as the security given in appeal only covered costs, that the judgment maintaining the capias was executable, and the defendants were liable. *Lajoie & Mallin*, 9 R. L. 48, & 21 L. C. J. 59, Q. B. 1876.

66. Plaintiffs arrested one H. under a writ of *capias ad respondendum;* and the defendants gave bail for him to the sheriff—but he never tyled an appearance, and judgment went against him by default. The bond being assigned to the plaintiffs they brought action on it, and the defendants pleaded that the action was premature, because there was an appeal pending when it was brought. They also pleaded the insufficiency of the affidavit—and the general denegation. The plaintiffs made special answer that the judgment against H. was rendered after a personal service of process on the defendant. That a writ of appeal was taken by H. on the 12th of April, returnable on the 2nd of May; but was not returned up to the 11th of May (after the institution of the present action), and on the 14th of May the plaintiffs gave H. notice that on the first day of the Term (11th July) they would move to dismiss the appeal. Judgment against H. had been given on the 23rd of March. The condition of the obligation assumed by the bail was that if H. did not give bail to the action they would pay the sheriff—*Held*, that that condition was satisfied by the default to appear or to give any security whatever. They had nothing to do with the validity of the judgment, but only with the existence of the debt. The appeal suspended the execution of the judgment; but the plaintiffs in the present case were not seeking to enforce that judgment, which was one against H., not against these defendants. They asked that, judgment or no judgment, the defendants may

sureties to the satisfaction of the court or judge, or prothonotary that he will surrender himself into the hands of the sheriff when required to do so, by an order of the court or judge within one month from the service of such order upon him or upon his sureties, and that in default they will pay the amount of the judgment in principal, interest and costs, or the amount fixed by the judge in the case of art. 801. 825 C. C. P.

*A defendant arrested upon a capias may obtain his provisional discharge by giving good and sufficient sureties to the sheriff, to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand in principal, interest and costs if he fails to give bail pursuant to art. 824 or art. 825. 828 C. C. P.

be made to satisfy their obligation to the sheriff, who had endorsed this bond to them, and unless the judgment was reversed in appeal, or H. by some other means shown not be the plaintiffs' debtor, they must pay ; but instead of reversal, the judgment against H. was confirmed in appeal. Judgment for plaintiffs. *Smith & David*, S. C. 1877.

67. The sureties of a defendant arrested on a *capias* who have entered into a bond under Art. 828 of the Code of Procedure are liberated from their obligation if on the day of the return of the writ of *capias* they deliver the defendant into the hands of the sheriff in terms of their bond. *Augers & Trudel*, 10 R. L. 566, Q. B. 1879.

CAPITAL.

I. And Interest not the same, *see* INTEREST.

CARE—*See* NEGLIGENCE.

CARGO—*See* AFFREIGHTMENT.

CARRIAGE.

I. Of Passengers, *see* CARRIERS, RAILWAYS.

CARRIERS.

I. Liability of.
II. Lien of on Goods carried.
III. Railways, *see* RAILWAYS.

I. Liability of.

68. A Steamboat Co. is liable for the value of passengers' baggage destroyed by a fire on the steamer, unless it be clearly proved that the fire occurred from some cause over which the Co. had no control. *Can. Nav. Co. & McConkey*, 1 L. N. 23, Q. B. 1877.

69. The plaintiffs sued for the value of a trunk and contents stolen from the Grand Trunk station at Montreal. The trunk in question was part of the baggage of a commercial traveller of plaintiffs, and had been put on board of the cars by him at Napanee for conveyance to Montreal, and extra charges paid therefor. The baggage arrived in town on Thursday but was not called for until the Monday following—*Held*, that, without evidence of a new contract, after the arrival of the baggage the Co. was not responsible. *Kellert* v. *G. T. R. Co.*, 22 L. C. J. 257, S. C. 1877.

70. The plaintiff, an advocate, residing at Montreal and passing the vacation with his family at Murray Bay, embarked with his son and daughter on the steamer Union, belonging to the defendants, on the 15th July, 1876, for a trip up the Saguenay and back to Murray Bay. At this place the embarkation and landing of passengers was effected by means of a wharf L shaped, occupied for the purposes of their business by the defendants. In the front part of the wharf was a slip, the steps of which were bound with iron. The Union returned to Murray Bay on the following evening about 10 p.m. The night was dark, and the wharf excessively crowded. The state of the tide rendering it inconvenient to land the passengers through the slip, as usual, a gangway was laid from the main deck to the top of the wharf, and at a distance of five or six feet from the edge of the slip. The plaintiff having given up his ticket at the gangway passed on to the wharf, followed by his son and daughter, and while making his way through the crowd fell into the slip from a height of eight or ten feet, sustaining a very severe injury to the ankle joint, which, in the opinion of the doctors, might cause lameness for life, and in any case his recovery would be very slow—*Held*, in an action for damages, that there is an implied engagement on the part of public carriers of passengers for hire that the latter shall not be exposed to undue or unreasonable danger in embarking upon or landing from the vessels of such carriers and that a Steamboat Co., under such circumstances, is bound to take all proper precautions for the prevention of accidents by the crowding of the public on the wharf. *Borlase & St. Lawrence Steam Navigation Co.*, 3 Q. L. R. 329, S. C. 1877, & 1 L. N. 32, Q. B. 1877.

71. And *held*, also, that in such cases any dangerous portion of the wharf should be sufficiently lighted at night to ensure the safety and protection of passengers. *Ib.*

72. Conditions on a passenger's ticket limiting the liability of the carrier will not bind the passenger, without proof of notice to him apart from the words on the ticket. *Woodward* v. *Allan et al.*, 21 L. C. J. 17, S. C. 1877, & 22 L. C. J. 315, & 1 L. N. 458, Q. B. 1878.

73. And *held*, also, that the fact that a trunk when opened by a passenger towards the close of the voyage bore traces of the lock having been tampered with, raised a presumption that goods afterwards discovered to be missing had then been abstracted, though no examination was made by the passenger at the time. *Ib.*

74. Action for the value of goods shipped on board the steamship St. Patrick, and lost, as alleged, through the negligence, etc., of those in charge of the vessel. A plea of want of interest, in that the plaintiff had recovered from the insurer, was overruled, and on the evidence as to fault and neglect the defendants were condemned to pay. *Cross & Allan*, 3 L. N. 47, S. C. 1880.

II. Lien of, on Goods carried.

75. The carriers claimed a lien on goods for a previous debt due for freight, not by the owners of the goods shipped but by the intermediate shipping agents for goods shipped for other parties. The bill of lading stipulated that the carriers should have a lien on the goods "for all previously unsatisfied freights and charges due to them by the shippers or consignees."—*Held*, that the owners of the goods could not be held liable in the absence of specific proof of a particular mode of dealing between them and the carriers to meet the case. *Leaf* v. *The Canada Shipping Co.*, 1 L. N. 220, S. C. 1878.

III. Railways *see* RAILWAYS.

76. *Rights of.*—Where a passenger having purchased a ticket from Montreal to Toronto, marked "good only for continuous trip within two days from date," stopped off for some days at Kingston, and afterwards attempted to continue his journey on the same ticket, it was *held* that, in default of other payment, the Company had a right to eject him from the train. *Livingstone* v. *The Grand Trunk Railway Co.*, 21 L. C. J. 13, S. C. R. 1876.

CAS FORTUIT—*See* FORTUITOUS EVENT.

CASHIER.

I. Indictment of, *see* CRIMINAL LAW.

II. May rank in Insolvency on a Mortgage taken by him to secure himself for advances made with Bank Funds, *see* INSOLVENCY Collection of Claims.

CATHOLICS—*See* ROMAN CATHOLICS.

I. Marriage of, *see* MARRIAGE.

CATTLE.

I. Action for Trespass of, *see* ACTION Cumulation of, Qui tam.

CAUTIONNEMENT—*See* SURETYSHIP.

I. En appel, *see* APPEAL.
II. In Cases of Capias, *see* CAPIAS.

CEMETERIES.

I. Right of Fabrique over.
II. Right to Damages for Profanation of.

I. Rights of Fabrique over.

77. The plaintiffs complained that the defendant had deposited in a vault belonging to one P., in the parish cemetery of St. Hyacinthe, the body of a child, without the permission of the Fabrique or of its officers, and without notice to the proper authorities. Plaintiff alleged, further, that by a by-law of the parish, passed in 1874, it was ordered that no stranger should be interred in the vault in question until the sum of ten dollars had been paid to the Fabrique, and for this sum they prayed judgment. Defendant pleaded that the vault in which he had deposited the body of his child belonged of full right to another, who could authorize him to place any bodies there without the permission of the Fabrique or any of its officers, and that the by-law imposing a payment of $10 for every body deposited there was illegal, inasmuch as it had been passed long after the grant to P. of the right to the vault—*Held*, that it was a question of public order, and that all cemeteries in Catholic parishes were under the control of the Fabriques, and no bodies could be deposited there without their permission; that it was necessary that this should be so in order that the causes and circumstances of the death should be known, which was a matter of importance to public order and the public health; that for this reason all clandestine interments, even in private vaults, were prohibited by law; that in the case in question the right of P. in the vault which belonged to him was strictly personal and could not be transferred, but that even he could not deposit the bodies of his dead there without the notice required by law; but as the plaintiffs had offered to accept $5 from defendant, he would be condemned only in that amount. *Les Curé et Marguilliers of St. Hyacinthe* v. *Renaud*, 9 R. L. 417, C. C. 1878.

II. Right to Damages for Profanation of.

78. Action against a curé for damages for profanation of the parish cemetery. Plaintiff alleged that he resided in the parish of St. Jean Chrysostôme, where he had practised as a physician since 1860, and was a Roman Catholic; that he had three children buried in the cemetery of that parish, and their burial-place marked by a marble headstone on which their names, etc., were inscribed; which was done with the approbation and consent of the curé and wardens of the parish, according to custom; that the cemetery had been duly consecrated as such, that the cemetery adjoined the church, and had been properly enclosed and protected from the intrusion of animals, etc.; that since the arrival of the defendant in the parish he had carried on an organized persecution against plaintiff; that he had, without proper reason, but by malice, and for the purpose of injuring plaintiff in his sensibilities, had a part of the cemetery known as the old cemetery ploughed, that before doing so he had taken away the tombstone placed at the head of plaintiffs children, and put it in some place unknown to plaintiff; that he had ploughed over the graves of his children and destroyed the grass and herbage, and had done all this without the authorization of the Fabrique, and against the will and consent of the plaintiff, and prayed for $175 damages for injury to his feeling and $25 for loss of his tombstone. Defendant pleaded that what he had done had been done in good faith, and for the purpose of improving the cemetery; that he had done so with the approbation of a large number of the parishioners and in conformity with the wish of the Bishop of Montreal; that he had ploughed over lots of graves and taken away other headstones, but which, as well as the plaintiffs, had since been replaced. The proof did not shew malice

on the part of defendant—*Held*, that what was done in good faith and for the improvement of the cemetery, even to introducing horses and ploughing across graves, did not constitute profanation, as it was in the intention only that such profanntion existed, and that, therefore, the action of plaintiff must be dismissed. *Lamartelliere & Seers*, 8 R. L. 601, C. C. 1878.

CENS ET RENTES.

I. Ranking of Claims for, *see* SEIGNIORIAL RIGHTS.

CENSITAIRES.

I. Error in Quantity of Land held by, *see* SEIGNIORIAL RIGHTS.

CERTIFICATE.

I. Of Bailiff, *see* BAILIFF.

CERTIFICATE OF BURIAL.

I. Regularity of.

79. A certificate of burial which does not purport to be an extract from a register of burials kept by a minister or other person authorized by law to keep such register is irregular. *Ricker* v. *Simon*, 22 L. C. J. 270, Q. B. 1877.

CERTIORARI.

I. Costs in Cases of.
II. Delay to Demand.
III. Deposit for.
IV. Grounds of.
V. Lapse of.
VI. May be Quashed after Execution.
VII. Motion for.
VIII. Motion to Quash.
IX. Procedure in Cases of.
X. Right to.
XI. Right to Order.
XII. When Lies.

I. Costs in Cases of.

80. The costs on a certiorari are in the discretion of the court. *Lariolette exp. & Trudel & Cazelais*, 3 L. N. 159, S. C. 1880.

81. Where a conviction had been quashed on certiorari—*Held*, that the prosecutor could not be condemned to pay costs unless he were a party to the proceedings. *McLaughlin exp.*, 3 L. N. 367, S. C. 1880.

II. Delay to Demand.

82. On the merits of a certiorari to which the Crown had given its consent after the lapse of six months from date of conviction—*Held*, that the Crown could waive the objection arising from failure to proceed within the delay prescribed. *Lariolette exp. & Trudel & Cazelais*, 3 L. N. 159, S. C. 1880.

83. Motion to quash a certiorari as having issued more than six months after the judgment was rendered—*Held*, that the application, having been made within the delay, was sufficient. *Fiset exp.*, 3 Q. L. R. 102, S. C. 1877.

III. Deposit for.

84. An applicant for a writ of certiorari to remove a conviction for violation of the Quebec License Act, is required to make the deposit provided for by Sec. 195 of that Act, before he can make the application. *McCambridge exp. & Desnoyers*, 21 L. C. J. 181, S. C. 1877.

IV. Grounds of.

85. The affidavit for a certiorari complained that the magistrate issued his warrant for the arrest of petitioner under 32 & 33 Vic. cap. 31, sec. 6, without causing a copy of the warrant to be served at the time of the arrest—*Held*, that as the question was not raised before the magistrate, it could not be raised by certiorari. *Morin & Marion*, 2 L. N. 180, S. C. 1879; 119 C. C. P.

86. The petitioner had been convicted of assault in carrying away the windows of a house, and leaving the family residing therein liable to injury from exposure, and condemned to $25 and costs, with imprisonment in the alternative, and afterwards a similar conviction in the same words the same day, with the addition that the imprisonment was to count "from the expiration of another term of imprisonment which the said, etc. "was condemned to undergo for another offence of which he had this day been found guilty," etc.—*Held*, not to be two convictions for same offence, and certiorari quashed. *Dubuc exp. & City of Montreal*, 2 L. N. 334, S. C. 1879.

V. Lapse of.

87. An applicant for certiorari who, after the granting of his petition, allows a considerable time to elapse without taking out the writ, may be declared to have forfeited his right to have the writ issued. *Hough & Corporation of Quebec*, 5 Q. L. R. 314, S. C. 1879.

VI. May be Quashed after Execution.

88. The conviction of an inferior tribunal will be quashed on certiorari, even after such conviction has been enforced and executed. *Thompson exp.*, 5 Q. L. R. 200, S. C. 1876.

VII. Motion for.

89. Petitioner was convicted under Chap. 22, C. S. L. C. sec. 3, by three magistrates at Hemmingford, on the 29th December, 1877, on the complaint of the respondent of having, on Sunday, the 16th December, in the Havelock church, during divine service, "resisted the said William Stewart, churchwarden of said church, by forcibly occupying, in opposition to the direction of him, William Stewart, the seat set apart and reserved for the choir, when ordered and re-

quired so to do by the said Stewart, thereby disturbing the congregation assembled in said church for the worship of Almighty God, contrary to the form of the statute," etc., and condemned to pay a fine of $1 and $9.65 costs. On the 25th June, 1878, he applied to the judge for a writ of certiorari, the notice having been served on the magistrates on the 21st June, and the distance to the Court House being upwards of thirty miles—*Held*, that the delay was sufficient, and that the motion to quash did not require to contain reasons, the inscription being sufficient. *Gates exp. & Stewart*, 23 L. C. J. 62, S. C. 1878.

VIII. MOTION TO QUASH.

90. No motion to quash is necessary in cases of certiorari. *Thompson exp.*, 5 Q. L. R. 200, 1876.

IX. PROCEDURE IN CASES OF.

91. On a certiorari from a conviction under a bye-law of a municipal corporation concerning school taxes—*Held*, that on proceedings by certiorari to quash a conviction, it is competent to establish by the assessment *roles* and by the by-laws of the municipal authorities that the provisions of the law have not been observed, and that there has been illegality in the by-laws and proceedings of the municipal authorities. *Dandelin exp. & The School Commissioners of St. Judes*, 7 R. L. 433, S. C. 1876.

X. RIGHT TO.

92. An application for a writ of certiorari on the part of a defendant, residing in a neighboring locality to that where the judgment was rendered will be refused if it is to the personal knowledge of the judge that there is no Commissioners Court in the locality in which the defendant presides, and the distance between the two localities is also known to him, although it does not appear by the copy of judgment produced with the application that the debt was contracted in the locality where the action was brought, nor that the defendant resided in that locality, nor that any of the dispositions required by Art. 1188 of the Code of Procedure* have been observed. *Dubois exp. & Fauteaux*, 7 R. L. 430, S. C. 1875.

* The Commissioners Court exercises an ultimate jurisdiction in all suits purely personal or relating to moveable property, wh ch arise from contracts or quasi contracts, and wherein the sum or value demanded does not exceed twenty-five dollars, and defendaot resides:

1. In the locality of the court;

2. In another locality but in the same district, and within a distance of five leagues, if the debt has been contracted in the locality for which the court is established;

3. In a neighboring locality in which there are no commissioners (or other courts having jurisdiction to take cognizance of the matter in issue, 43-44 Vic. cap. 28) or in which the commissioners cannot sit by reason of illness, absence or other inability to act, provided such locality is in the same district within a distance not exceeding ten leagues. 1188 C. C. P.

93. But in another case *held*, that a writ of certiorari supported by the ordinary affidavit would be granted, if it appears by the copy of the writ of summons and the copy of the judgment rendered by the Commissioners Court, filed with the petition, that the defendant did not reside in the same locality, and it does not appear that the debt was contracted in the locality for which the court was established, or that the defendant resided in a neighboring locality in which there were no commissioners, or in which the commissioners could not sit by reason of sickness or other disability. *Dupas exp. & Palliser*, 7 R. L. 431, C. C. 1875.

94. And a judgment rendered by the Commissioners Court against a defendant, residing in a neighboring locality where there is a Commissioners Court, will be annulled, if the jurisdiction of the court which pronounced the judgment does not appear on the face of the proceedings. *Ib.* p. 432.

95. But such judgment will be set aside without costs where it is through clerical error only that the jurisdiction of the court does not appear, and where the defendant, although he did not appear, was personally served with the action and knew of its existence. *Ib.*

96. No certiorari lies for a defect of form from a conviction for an offence within the meaning of the Summary Convictions Act (32-33 Vic. cap. 31), where the merits of the case have been tried, and the defendant has not appealed under sec. 60. *Wait exp.*, 1 L. N. 620, S. C. 1878.

XI. RIGHT TO ORDER.

97. Application by a prisoner committed for trial for a writ of certiorari, on the ground that, as the alleged offence was committed in the United States, the court here had no jurisdiction. Prisoner was charged with inciting certain individuals residing in New York to the commission of a certain felony, viz., to forge a quantity of Canada postage stamps—*Held*, by the Queen's Bench, that that court had no right to order a certiorari in such cases. *Narbonne exp.*, 3 L. N. 14, Q. B. 1879.

XII. WHEN LIES.

98. Where certiorari was brought from a court martial, and was objected to on the ground of jurisdiction, it was, *held* that these courts are inferior jurisdictions, and subject to the controlling and reforming power of the Superior Court. *Thompson exp.*, 5 Q. L. R. 200, S. C. 1876.

99. Certiorari does not lie from judgments of district magistrates. *Long & Blanchard*, 21 L. C. J. 331, C. C. 1877.

CESSIO BONORUM—*See* CAPIAS.

CHALLENGE.

I. RIGHT OF, *see* CRIMINAL LAW.

CHAMBERS.

I. Powers of Judge in, *see* JUDGES.

CHANGE.

I. Of Domicile, *see* DOMICILE.

CHARACTER.

I. Evidence of Character of Plaintiff may be admitted in Action of Damages for Malicious Prosecution, *see* DAMAGES.

CHARTER.

I. Of Joint Stock Companies, *see* COMPANIES.

CHARTER PARTY.

I. Evidence of, *see* EVIDENCE.
II. Liability Under, *see* AGENCY, DEMURRAGE.

CHEATING—*See* FRAUD.

CHEQUES.

I. Rights of Banks with Regard to, *see* BANKS.

CHILDREN—*See* ILLEGITIMATE CHILDREN.

I. Donation to, *see* MARRIAGE Liability of Wife.
II. Duty of to Maintain Parents, *see* ALIMENTS.
III. Filiation of, *see* ACTION en Declaration de Paternité.

II. Duty of to Maintain Parents.

100. The obligation of children to support an indigent parent is not joint and several, but each child is condemned to contribute in proportion to his means. *Leblanc* v. *Leblanc*, 1 L. N. 618, & 23 L. C. J. 10, S. C. 1878.

CHOSE JUGÉE—*See* JUDGMENTS.

I. Pleading, *see* PLEADING.

CHURCH DUES—*See* CHURCHES, CURÉ, TITHES.

CHURCHES—*See* CHURCH FABRIQUES.

I. Assessments for.

101. Action against defendants, an incorporated company, for their share of an assessment for the repair of the parish church and sacristy, which had been duly authorised by the Bishop of the diocese and the parishioners. Defendant pleaded by a perpetual peremptory exception that only the property of persons professing the Roman Catholic religion was liable to such assessment; that the property of corporations and joint stock companies, such as the defendants, was not thus liable, and the fact that all the shareholders were Roman Catholics would not make it so, as it was the juridical personality of the corporation which was to be considered and not the personality of the shareholders—*Held*, maintaining the action for the amount claimed. *Les Curé et Marguilliers de L'Œuvre et Fabrique de la Paroisse de St. Thomas de Pierreville* v. *La Cie. des Moulins à Vapeur de Pierreville*, 9 R. L. 505, C. C. 1878.

CHURCH FABRIQUES.

I. Action Against.
II. Action by.
III. Assessments by.
IV. Decree for Erection of Churches.
V. Judgment of Commissioners.
VI. Possession of Property by.
VII. Powers of.
VIII. Rights and Powers of Curé.

I. Action against.

102. On the 1st November, 1874, at a meeting of the Marguilliers du Banc de l'Œuvre et Fabrique de Notre Dame de la Victoire it was resolved to purchase for the purposes of a cemetery certain land belonging to the Fabrique de St. Joseph de Levis, for the sum of £600. Conformably to this resolution a deed of purchase was passed some time afterwards between the two Fabriques. In July, 1876, at a meeting of the "Marguilliers anciens et nouveaux de la paroisse N. D. de la Victoire" it was resolved to pay a part of the purchase money then falling due, and to commence the work of establishing a new cemetery. The Curé and two of the Marguilliers appointed were to employ for this purpose the money of the Fabrique, according to the authorization which they had received. The action of the plaintiffs attacked the two resolutions of November, 1874, and July, 1876, on the ground that at the time of the passing of the first resolution the Fabrique had not in hand sufficient money to pay the amount agreed upon; that the price was too high to be paid out of the ordinary revenues of the Fabrique; and that, with regard to the second resolution the meeting at which it was held was illegally convoked, and its proceedings were irregular. Conclusions for the nullity of the two resolutions, and that the Fabrique be enjoined not to use the money or credit of the Fabrique in carrying them out—*Held*, that the action must fail for want of interest both *ratione personæ and ratione materiæ*. *Carrier* v. *Les Curé et Marguilliers de l'Œuvre et Fabrique de la Paroisse de Notre Dame de la Victoire*, 3 Q. L. R. 27, S. C. 1876.

103. And *held*, also, that in such case the allegation that the plaintiffs are *paroissiens et fabriciens* of a Roman Catholic parish is not sufficient, as it is necessary to allege that they themselves are Roman Catholics. *Ib.*

II. Action by.

104. On action by the plaintiffs for a sum due under a parochial assessment—*Held*, that the Fabrique could only sue in its corporate name and not by its officers, and that the Curé was an essential member of such corporation, and his name should appear as part of the corporate name of the Fabrique. *Les Marguilliers en office de l'Œuvre et Fabrique de la Paroisse de St. Enfant Jesus* v. *Beaulieu*, 8 R. L. 744, C. C. 1878.

III. Assessment by.

105. Action by a church Fabrique for $42.-77½, amount of five instalments, due in virtue of an *acte* of *cotization* made by the Fabrique with the authorization of the commissioners for the civil erection of parishes in the diocese of Montreal, and under the authority of the statute 29 Vic. cap. 52, sec. 4*—*Held*, that under the circumstances recited, the ordinance of the commissioners authorizing the *cotization* was absolutely null, and that the commissioners had acted *ultra vires* in homologating. *La Fabrique de la Paroisse du St. Enfant Jesus* v. *Poirier*, 23 L. C. J. 155, C. C. 1879.

* When a Fabrique shall have taken possession of a church, sacristy, presbytery house or public hall, and any one of such buildings shall have been erected or repaired before or after the civil erection of the parish, either by such Fabrique or by voluntary subscriptions or by legal assessment, and moneys shall remain due to the builder or contractor of such building, or to the party who shall have lent or advanced moneys to defray the expenses of erection or repairs, in whole or in part, or to both of them, and the said Fabrique having applied such building to the purpose for which it was erected or repaired, have ascertained the impossibility of paying such debt upon its falling due by means of the revenues at its disposal, such Fabrique may, after an authorization to that effect given by a meeting of the parish regularly called, apply to the commissioners in order that the churchwardens in office may be authorized to levy upon the Catholic free holders of the parish the sum required for the payment of the said debts: and the said churchwardens shall, in relation thereto, observe all that is proscribed by the twenty-second section of chapter eighteen of the Consolidated Statutes for Lower Canada. Provided always that the said churchwardens, with the consent of the said commissioners, may exempt those of the said freeholders who shall have contributed towards the said erection or repairs by voluntary subscriptions from a portion or from the whole of the said assessment, according to the amount so paid by the said freeholders, deducting therefrom any amount which may have been repaid to them, unless the repayment of such voluntary subscriptions shall have been otherwise provided for. 1. During their sittings the commissioners shall adopt the same means and have the same powers and the same authority for keeping order during such sittings as those now conferred by law in similar cases and for similar purposes upon all courts of law in this province or on the judges thereof respectively during the sitting of such courts. 2. The majority of the commissioners present at any meeting shall decide all questions arising before them, and in case the commissioners are equally divided the president shall have a casting vote. 3. The commissioners may, whenever they consider it expedient to do so, authorize and appoint one of their number or another person to take and receive the depositions of the witnesses at the place where the latter reside, and the person so appointed shall, for the purpose of examining such witness under oath, have the same powers as the commissioners themselves. 4. Every act of assessment which may hereafter be prepared by a majority of the persons, whether trustees or churchwardens in office authorized to that effect by the commissioners, shall be as valid and effectual as if it had been prepared by all and each of such persons.

106. And *held*, also, that the Circuit Court had jurisdiction to declare that the said ordinance and the acte of cotization made thereunder were insufficient in law to base an action upon. *Ib.*

IV. Decree for Erection of Churches.

107. The plaintiffs set up that they were duly authorized by the commissioners for the civil erection of parishes in and for the Roman Catholic diocese of St. Hyacinthe to make an acte of *cotization* and *repartition*, and to raise the amount assessed upon the proprietors of immoveables situated in the parish of the Immaculate Conception of St. Ours, professing the Roman Catholic religion, as appeared by the ordinance of the said commissioners produced. That by acte passed before notary in June, 1873, the plaintiffs, for the purposes of a new church and sacristy in and for the said parish, and to raise the amount necessary for that purpose conformably to law, had, under the aforesaid authority, assessed the immoveables situated in said parish to the amount of $40,378.52, and had distributed that sum among the real and pretended proprietors of immoveables situated in said parish and professing the Roman Catholic religion, in proportion to the value of their respective properties, and notified each to pay the amount assessed against them in the course of ten years, in twelve equal instalments, payable every tenth month and the first of which, under the terms of the acte, became due the first of December then last past. That the defendant, who professed the Roman Catholic religion, was assessed on immoveables which he owned in the parish to the amount of $126; that the said *acte* of assessment and distribution, after the due observance of all the formalities required by law, was duly homologated by the commissioners, with an amendment to the effect that the sums of money to be raised under the *acte* should be payable in eight years instead of ten, and that in virtue of said acte the defendant was indebted to the plaintiff in the sum of twenty-one dollars for two instalments overdue, for which judgment was accordingly prayed. The defendant pleaded a variety of informalities in the proceedings of the plaintiffs, the principal of which was that the canonical decree in virtue of which the plaintiffs pretended to act had been revoked by competent authority, viz., by the diocesan bishop of St. Hyacinthe, and that the great majority of the parishioners of St. Ours had opposed the construction of a new building—*Held*, overruling all the objections raised, that a canonical decree for the construction of a new church in an old parish can only be revoked by another decree in the same form as the first and of equal authority. *Les Syndics de la Paroisse de l'Immaculée Conception of St. Ours* v. *Allair*, 7 R. L. 3, C. C. 1875.

V. Judgment of Commissioners.

108. The judgment of the commissioners cannot be declared null by the Circuit Court on a plea, inasmuch as the judgment would be null on its face, nor can it be attacked as the judgment of an inferior court. *Fabrique de St. Enfant Jesus* v. *Roy, & Fabrique de St. Paul* v. *Pigeon*, 5 Q. L. R. 327, C. C. 1879.

VI. Possession of Property by.

109. The actual possession of buildings, erected in the part of a Fabrique is sufficient to meet the requirements of 29 Vic. cap. 52, sec. 7,* without the necessity of making proof of property. *Fabrique du St. Enfant Jesus* v. *Roy. & Fabrique du St. Paul* v. *Pigeon*, 5 Q. L. R. 327, C. C. 1879.

VII. Powers of.

110. It is not necessary that a Fabrique be specially authorized by a meeting called for that purpose in order to sue in recovery of an assessment due, when it refers merely to acts of administration and receipt, as they are sufficiently authorized by the law itself. *Fabrique du St. Enfant Jesus* v. *Roy. & Fabrique de St. Paul* v. *Pigeon*, 5 Q. L. R. 327, C. C. 1879.

111. And the commissioners for the erection civile of parishes may order the raising of a sum of money less than that which is due by the Fabrique. *Ib.*

VIII. Rights and Powers of Curé.

112. The plaintiff, curé of the parish of St. François Xavier, in the County of Shefford, brought action against the defendant, alleging that he was indebted to him in the sum of $4, being for two years spiritual and temporal care and services rendered by the plaintiff in his capacity of curé to the defendant and his family, who were Roman Catholics, residing in the parish; that further the defendant was a farmer and owed tithes to the curé, to the extent of two dollars a year, under an ordinance of his eminence, the Bishop of St. Hyacinthe, approved at a meeting of the inhabitants of the parish. Defendant, by his plea, denied that he was a Roman Catholic; that the plaintiff had ever rendered any spiritual services to himself or family, and, if he had, that he had no right by law to be paid for such services, because they could not be valued in money. At the enquete the plaintiff proved that he had served as the curé of that parish for more than two years; that the defendant had been married twenty-six years previously at the Roman Catholic church, and that he had continued to practice the Roman Catholic religion until his departure for the States, thirteen years previously; and that since his return from the United States, two years before, he and his family had observed their religious duty at the plaintiff's church. Defendant made no proof of the allegations of his plea, and no proof was made by the plaintiff that the defendant had raised any crops from which tithes would be due, so that the question was purely and simply as to the liability of the defendant to a direct payment to the curé for spiritual services.—*Held*, that the services of a curé of a parish are of a nature partly spiritual and partly temporal; that they could be appreciated in money, and that further, as in taking the care and charge of a parish the curé is bound to certain obligations towards the parishioners, and they are reciprocally bound to and liable for his maintenance and support, and therefore the plaintiff was entitled to recover the amount claimed on a *quantum-mernit*. *Courtemanche & Mailloux*, 10 R. L. 195, Mag. Ct. 1879.

*And for the removal of doubts it is declared and enacted that whenever any land has been or shall hereafter be sold, conveyed or devised by any person or corporation not liable to assessment under section twenty three of the Act first above cited to any person, party or corporation professing the Roman Catholic religion, and such land has thereafter become or shall become liable to assessment under either of the acts hereby amended, the hypothec or charge for such assessment has ranked and shall rank after any privilege of *bailleur de fonds* in favor of such vendor, and after any hypothec or privilege anterior to such sale, conveyance or devise, anything in either of the said acts to the contrary notwithstanding. 29 Vic. cap. 52, sec. 7.

CHURCH OF SCOTLAND.

I. Constitutionality of Act of Union, *see* ACTS OF PARLIAMENT.

CHURCH PEWS.

I. Right to.

113. The right to a seat in a parish church is not a right of a public nature, but arises from a private agreement between the parishioner and the Fabrique. *Robillard & Les Curé & Marguilliers of Beauharnois*, 8 R. L. 63, Q. B. 1876.

CIRCUIT COURT.

I. Appeal from, *see* APPEAL.
II. Jurisdiction of, *see* JURISDICTION.
III. Review of Judgments of, *see* REVIEW.

CITY ATTORNEY.

I. Remuneration of, *see* MUNICIPAL CORPORATIONS.

CITY OF MONTREAL—*See* MONTREAL.

CIVIL STATUS.

I. Proof of, *see* ACTION en Paternité.

114. In an action for an account of a continued community commenced between the grandmother of plaintiff and her second husband, the defendant, it was necessary for the plaintiff to prove both her own status, she being descended from the marriage of her grandmother with her husband and the community which existed between the grandmother, both marriages having taken place under circumstances in which there was no clergymen

or registers of Civil Status to be had—*Held*, that proof by witnesses was sufficient.* *Cutting & Jordan*, 10 R. L. 401, Q. B. 1879.

CLAIMS.

I. In Insolvency, *see* INSOLVENCY.
II. Right of Action on when Transferred, *see* ACTION Right of.

CLERGY.

I. Interference of at Elections, *see* ELECTION LAW, Agency.

CLERGYMEN.

I. Liability of.

* On proof that in any parish or religious community no registers have been kept, or that they are lost, the births, marriages and deaths may be proved either by family registers and papers or other writings or by witnesses. 31 C. C.

ACT RESPECTING THE REGISTERS OF CIVIL STATUS.

Q. 41. Vic. cap. 8.

Whereas it is expedient to render more easy and expeditious the keeping of registers of birth, marriage and burial, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. The duplicate registers for acts of Civil Status may be divided into three volumes, one for acts of birth, one for acts of marriage, and the third for acts of burial; or into two volumes, one for acts of birth and of marriage, and the other for acts of burial. Such volumes of the duplicate registers may be either blank, or may be prepared with printed forms running consecutively through each volume; but when one volume is used for acts of birth and of marriage, the first part shall contain in such consecutive order the forms for acts of birth, and the last part in the same consecutive order the forms for acts of marriage.

2. Whenever, in accordance with Chapter 76 of the Consolidated Statutes of Canada and the Acts amending the same, a body shall have been delivered before burial to a school of medicine or to a University, an act of death shall be inscribed by the person charged with such duty in the duplicate registers for acts of Civil Status; and such act of death shall have the same effect as an act of burial, and shall take the place thereof.

3. The inspector of anatomy shall be bound within a delay of three days to appear before the rector, curate or other priest or minister of a church of the religion to which the deceased belonged, and to cause such act of death to be inscribed. It shall contain the day of the death, the names, surnames and quality or occupation of the deceased, and mention of the place where the body was found or of the institution where the death occurred, and of the school of medicine or university to which the body has been delivered; and it is signed by the inspector of anatomy and by the person inscribing the act.

4. Whenever the duplicate registers are divided into volumes, and are in printed forms, a sufficient number of blank pages shall be placed at the end of the volume for the acts of death mentioned in the two last sections.

5. Every omission by the inspector of anatomy to cause an act of death to be inscribed shall be punishable by a penalty not exceeding eighty dollars, nor less than eight dollars.

6. An alphabetical index shall be made at the end of each duplicate of the registers of civil status for each church, congregation or other religious community by the person entitled by law to keep such registers.

115. The plaintiff having married his deceased wife's sister by the instrumentality of a Protestant clergyman, and without the consent of his own; the defendant, curé of the parish in which he lived, pointed him out to the congregation one Sunday during the course of the service, as a person living in concubinage with his relation, and as one with whom they should have no intercourse, etc.—*Held*, on action of damages brought, that a priest should confine himself when preaching to general doctrines, and not point out particular persons as persons of bad character, etc., and that if he did so he was amenable like others to the civil tribunals. *Vigneux* v. *Noiseux*, 21 L. C. J. 89, S. C. 1877.

CLERK OF THE CROWN.

I. Commission of.

116. A commission naming two persons conjointly clerk of the Crown, to hold and enjoy with all the rights, powers, authority, privileges and advantages belonging to such office, confers on each of such persons the power to fill alone the duties of the office, so that after the resignation of one of them the other may act alone and in his own name. *Regina* v. *Ouellette*, 7 R. L. 222, Q. B. 1875.

117. And when the office is filled by several persons all the writs, orders and documents should be signed in the name of him who affixes the signature. *Ib.*

CLERKS.

I. Dismissal of, *see* MASTER AND SERVANT.

COERCIVE IMPRISONMENT—*See* IMPRISONMENT.

COHABITATION.

I. Effect of, *see* POSSESSION.

COLLATERAL RELATIONS.

I. Cannot bring Action of Damages for Death Resulting from a Quasi Offences, *see* DAMAGES.

COLLATERAL SECURITY.

I. Liability of Banks on Stock held as, *see* BANKS.

I. What is.

118. The plaintiff brought action for the proceeds of a draft, which he alleged had been given to defendants as collateral security for a

claim since paid by the firm to which he belonged at that time and which he represented. Plea that the draft was given in part settlement of an old balance due from a previous insolvency —*Held*, that as plaintiff had failed to prove that the draft in question had been given strictly as collateral security, as alleged, that the action must be dismissed. *Amos* v. *Moss*, 2 L. N. 52, S. C. 1879.

COLLECTOR OF CUSTOMS.

I. Sale by, *see* SALE.

COLLISION—*See* MARITIME LAW.

COLLOCATION.

I. Of Claims in Insolvency, *see* INSOLVENCY.
II. Under Report of Distribution, *see* DISTRIBUTION.

COLONS.

I. Privileges of, *see* EXECUTION EXEMPTIONS.

COLLUSION.

I. Evidence of, *see* INSOLVENCY.

COMMERCIAL MATTERS.

I. Legislative Authority in, *see* LEGISLATIVE AUTHORITY.
II. What are.

119. A music teacher who buys pieces of music and re-sells them to his pupils at a profit does not thereby become a trader. *Morgan & Leboutillier*, 5 Q. L. R. 212, S. C. 1879.

120. Action to recover a horse which had been placed with defendant to pasture, but which had been taken out of defendant's charge and stolen, by false representations to defendant, on the part of the person taking it away, that he was in the employ of plaintiff, and had authority to do so—*Held*, not to be a commercial matter so as to admit evidence either of the *depôt* or of the restitution. *Johnson* v. *Longtin*, 3 L. N. 86, & 24 L. C. J. 292, C. C. 1880.

121. But the engagement by a railway company of a civil engineer for the construction of the railway is a commercial matter, and may be proved by verbal testimony. *Legge & Laurentian Railway Co.*, 3 L. N. 23, & 24 L. C. J. 98, Q. B. 1879.

122. But in an action on a loan made by a non-trader to a commercial firm—*Held* (following *Wishaw & Gilmour**), not to be a commercial matter, and not subject to the prescription of either five or six years. *Darling & Brown*, 21 L. C. J. 92, Q. B.; & 21 L. C. J. 169, Su. Ct. 1877.

123. And an association of persons for the purpose of dealing in real estate is not a commercial partnership. *Girard* v. *Trudel*, 21 L. C. J. 295, Q. B. 1876.

* 1 Dig. p. 769, art. 324.

COMMERCIAL TRAVELLERS.

I. Liability for Baggage of, *see* CARRIERS.
II. Right of Action on Goods sold by, *see* ACTION RIGHT OF.

COMMISSION.

I. Agreement to take in Bonds, *see* COMPANIES.
II. Agreement to Pay to Surety is Legal, *see* SURETYSHIP.
III. Of Agent, *see* AGENCY.
IV. On Sales, *see* AGENCY.

COMMISSIONER.

I. Signature of in Affidavits for Capias, *see* CAPIAS.

COMMISSIONERS.

I. For Erection of Parishes, *see* CHURCH FABRIQUES.

124. Action for $45.78, being amount of three instalments due under an *acte* of assessment and repartition authorised by the commissioners for the erection of parishes, and homologated by them on 13th June, 1877. The conclusions were that the immoveable for which the defendant was assessed be declared affected and hypothecated by privilege for the amount due, and that the defendant be condemned to pay to plaintiffs the said sum, and in default of his doing so that the immoveable be sold, and the plaintiffs paid out of the proceeds. Defendant pleaded that the plaintiffs had no hypothecary privilege, and even if they had that they were bound first to discuss the moveables of defendant before proceeding to levy on the real estate. Defendant also urged the nullity of the act of repartition—*Held*, that the plaintiffs had a hypothec and privilege under Con. Stat. Lower Canada, cap. 18, sec. 32*, and that the homologation of the deed of assessment was a judgment of a special tribunal, and could not be set aside except by direct proceeding. *Les Curé & Marguilliers of the Parish of St. Paul & Lanouette*, 9 R. L. 542, C. C. 1879.

* "Le montant de toute cotisation imposée sur Immeuble pour defrayer les depenses d'une construction ou de réparition d'une eglise, sacristie, presbytère ou cimetière constituera la première obligation sur l'Immeuble et la première dette privilégiée qui engagera et grevera l'Immeuble en question, sans qu'il y a nécessité d'enrégistrer l'acte de cotisation ou le jugement de confirmation en tout ou en partie dans un bureau d'enregistrement."

COMMISSIONERS.

I. Of Common Schools, *see* COMMON SCHOOLS.
II. Of Turnpike Roads, *see* TURNPIKE ROAD COMMISSIONERS.

COMMISSIONERS' COURTS.

I. Amending Acts, *see* Q. 41 Vic. cap. 17, & 43-44 Vic. cap. 27.

COMMISSION ROGATOIRE—*See* PROCEDURE.

COMMITMENT—*See* CERTIORARI. CONVICTION.

I. Bad.
II. Regularity of.

I. Bad.

125. A commitment for insulting language, which did not set out time, place, etc., and did not state that it was illegally done, *held* bad. *Dallaire exp.*, 4 Q. L. R. 201, Q. B. 1877.

II. Regularity of.

126. A warrant of commitment for violation of the License Act of Quebec must show on its face a legal conviction, as also the procedure by which it was arrived at, in order to subject the defendant to imprisonment. Commitment quashed. *Cadieux exp.*, 9 R. L. 39, S. C. 1877.

COMMON SCHOOLS.

I. Appointment of Commissioners.
II. Assessments for.
III. Damages against Commissioners for Illegal seizure for School Taxes.
IV. Jurisdiction of Commissioners.
V. Powers of Commissioners.
VI. Powers of Superintendent.
VII. Re-election of Commissioners.
VIII. Secretary Treasurer's Account.

I. Appointment of Commissioners.

127. Action to set aside an appointment as School Commissioner. The defendant said it was true he was not properly elected, but before the action was brought he had sent in his resignation; his resignation had been accepted, and he had then been duly appointed school commissioner by the Lieutenant-Governor in Council. There was a good deal of difficulty as to the authority by whom the appointment should be made, but upon the whole the Court was disposed to hold that the Lieutenant-Governor had the right of appointment, and not the Minister of Education alone. *Laliberté & Ruelle*, Q. B. 1876.

128. Election of a common school commissioner annulled and set aside, on the ground that the election had been closed before the expiration of an hour from the opening of the meeting, as provided by Art. 310 of the Municipal Code* and 41 Vic. cap. 6, sec. 29.† *Armstrong* v. *Pangborn*, 10 R. L. 540, S. C. 1880.

129. A church Fabrique which contributes annually $50 to the support of a school, under the direction of the school commissioners, have a right thereby to place on the board of commissioners the curé and marguillier in charge of such Fabrique; and the allegation in a deed under which the Fabrique is obliged to contribute a still larger sum for a school, and his quality of marguillier in charge, is a sufficient answer to a petition accusing the latter of illegally exercising the office of commissioner. *Charest* v. *Vielleux*, 6 Q. L. R. 375, S. C. 1880.

II. Assessments for.

130. Three cases in which the same points arose: The principal question was whether the valuation roll which by law is to be the basis of the rate levied by the commissioners (under section 78 of the 15 chap. Con. Stat. of L. C.) was absolutely null in itself, so far as to be incapable of serving as such basis; or whether, on the other hand, the provisions of law which prescribe that an appeal from a valuation roll shall be made within three months (which was not done here) did not call upon the commissioners to treat this as an existing valuation roll not in any manner set aside or even appealed from. This was an important point. But the Court was not called upon now to decide it, as upon another point the pretensions of the commissioners failed. The provisions for assessments for common schools must first be looked at. Chap. 15 of the Con. Stat. L. C. sec. 84 says the rates shall be fixed between the 1st of May and the 1st of July, and shall be paid on demand, provided public notice be given, at least thirty days before enforcing payment of the same. Another paragraph of the same section says that it shall be sufficient publication if notice is given that the roll of school rates lies for inspection in the hands of the secretary-treasurer, and it shall lie there for at least thirty days after such notice. There was no proof of this having been done. The Act of 1863, c. 11, gives to school commissioners the same powers in levying assessments as were before possessed by Municipal Councils. These powers were regulated by C. 24 of the Cons. Stat., sec. 59, paragraphs from 12 to 17 inclusive. Paragraph 12 required the secretary-treasurer, on the next Sunday after completing his roll, to give public notice of its completion, and deposit in his office, and that people are required to pay within 20 days of the publication of the notice. Paragraph 13 said that after the 20 days, if the assessment

* Si après qu'il s'est écoulé une heure depuis l'ouverture de l'assemblée il a été mis en nomination comme conseillers autant de candidats qu'il y a de conseillers à elire ou moins que le nombre requis l'élection est declaré close et le president proclame elus conseillers les candidats mis en nomination, 310 M. C.

† By Q. 41 Vic. cap. 6, sec. 29, alluded to in the text, this is made to apply to the election of school commissioners. For provisions relating to the election of school commissioners see C. S. L. C. cap. 15, sec. 34 *et seq.*

remained unpaid, the secretary-treasurer was to leave, personally or at domicile, with the debtor, a statement and demand of payment; and paragraph 14 said that no demand of payment was necessary where the debtor lived beyond the limits of the municipality; but such persons had to pay in 30 days after publication of notice, without demand. The only evidence on the subject of notice, was that of Mr. Coté that he gave notice. Whether he gave notice under sec. 84, or under C. 11 of the 24 Vic., introducing the provisions of C. 24 Cons. Stat., there was nothing to show. In two of the cases the proceeding was summary by warrant under the hand of the Mayor; in the other case there was a common summons to answer; but in all three the principle was the same. The sum was not exigible unless these formalities were complied with. In the cases of Hogan and Delisle, the oppositions were maintained, and in the case of Barsalou the action dismissed, with costs in all. *School Commissioners of Hochelaga* v. *Barsalou et al.*, S. C. 1879.

131. Since the Seigniorial Act of 1854 the seigneurs are no longer bound to pay into the school fund the fortieth required by the Con. Stat. Low. Can. cap. 15, sec. 77; and a seigneur who has unduly paid such tax may recover the amount from the successors of the commissioners to whom he paid it. *Les Reverendes Dames Religieuses Ursulines de Trois Rivieres* v. *Les Commissaires D'Ecoles de la riviere du Loup*, 3 Q. L. R. 323, S. C. R. 1877.

And—*Held*, also, that the school tax is not an annual rent, and is not subject to the same prescription as annual rent. *Ib.*

132. On a certiorari from a judgment of inferior Court concerning school taxes—*Held*, that, notwithstanding the apparent regularity of all the proceedings subsequent to the conviction, the inferior Courts have the right to enquire into and control the proof in order to determine if the by-law imposing the assessment has been passed according to law. *Dandelin Exp.* v. *School Commissioners of St. Jude's*, 7 R. L. 433, S. C. 1876.

133. And if the by-law is tainted with illegality the assessment is not due, and the ratepayers are not in default if they do not pay. *Ib.*

134. And the action for such assessment must be directed against the defendant, either as proprietor or possessor or occupant, and must indicate in the most undoubted manner in which character the defendant is sued. *Ib.*

III. Damages against Commissioners for Illegal Seizure for School Taxes.

135. Where the defendants had seized and sold the property of plaintiff for school taxes, but in doing so had described themselves simply "the school municipality of the parish of St. Columban,"* and the plaintiffs brought action of damages based on this and on other alleged informalities—*Held*, that as they had used a wrong name, the plaintiff must have judgment, but as he had failed to establish the principal allegations of his action, the judgment would be for one shilling damages and one shilling costs. *Barrette & School Commissioners of St. Columban*, 7 R. L. 185, C. C. 1875.

IV. Jurisdiction of Commissioners.

136. Action for $4.29, two years' school taxes imposed on immoveable property, possessed by the defendant within the limits of the parish of St. Louis de Bonsecours, as fixed by proclamation ordering the civil erection of that parish, which was situated partly in the district of St. Hyacinthe and partly in the district of Richelieu. The defendants' property was situated in the old limits of the parish of St. Jude's in the county of St. Hyacinthe, from which that part of the new parish which was situated in the county and district of St. Hyacinthe was taken. Defendants pleaded by declinatory exception that they were not liable to an action in the district of Richelieu; that they had not been personally served there, and the cause of action did not arise there—*Held*, that the limits of a county or district could not be changed without a special provision of law, and as by secs. 28 & 29 of cap. 15, of the Con. Stats. of Lower Canada,* the limits of a school municipality are subject to the organization of municipalities for ordinary purposes, unless, under section 30, the limits of the municipality had been changed by the Government for school purposes; that the jurisdiction of the plaintiffs did not extend to the defendants' property, and the exception must be maintained. *School Commissioners of St. Louis de Bonsecours & Dalbec*, 10 R. L. 679, C. C. 1880.

V. Powers of Commissioners.

137. Action for an assessment for school taxes, in support of the only school existing in the municipality in which the immoveable for which the defendant was assessed was situated. The defendant refused to pay on the ground that he was a Roman Catholic, and the school

---

*The school commissioners in each municipality shall be a corporation under the name of "*the School Commissioners for the Municipality of in the County of*"; they shall have perpetual succession and a common seal, if they think proper to have one; they may sue and be sued, and shall generally have the same powers which any other body politic or corporate have or ought to have for the purposes for which it was constituted; but they shall not at any time hold real property to the value of more than two thousand dollars yearly in the cities and municipalities of Quebec and Montreal, or of $1,200 in other municipalities. C. S. L. C. cap. 15, sec. 53, & see 1. Dig. p. 246, arts. 400 & 401.

*Each municipality existing on the day last aforesaid, or legally established thereafter, shall be a municipality for the purposes of this Act; but the inhabitants of any town or village municipality, other than the cities of Montreal Quebec and Three Rivers, shall, for the purposes of this Act, be subject to the jurisdiction of the school commissioners or trustees, elected for the municipality of which the city, town, or village makes or did formerly make part, and shall have the right of voting at the election of such school commissioners or trustees.

The lieut.-governor in council may from time to time alter the limits of existing municipalities for school purposes, subdivide such municipalities, or erect new ones; but these alterations, subdivisions or erections, shall only take place after public notice, inserted twice in the *Quebec Official Gazette* and once in the *Journal of Public Instruction* and the *Journal of Education*, shall have been given at the expense of the parties applying for such alterations, subdivisions or erections of municipalities, and with all due diligence by the superintendent, and if these alterations, subdivisions or erections of municipalities take place notice thereof shall be given by the superintendent in the *Quebec Official Gazette*. Q. 41 Vic. cap. 6, sec. 5.

in question was conducted contrary to the principles of that church—*Held*, that in a school district in which the majority of the ratepayers are Roman Catholics the commissioners have not the right to maintain schools which have no religious character, nor to force Catholics to contribute to the support of such schools. *Commissioners d'Ecole de Tewksbury* v. *Corrigan*, 6 Q. L. R. 24, C. C. 1880.

VI. Powers of Superintendent.

138. The school-house in the school district No. one of the parish of St. Jean, Island of Orleans, having become old and insufficient, the commissioners decided to rebuild it in the same place, and passed a resolution to that effect the 31st January, 1877. Later they adopted another resolution, looking to the purchase of the old Presbytery for the purposes of a school-house. These proceedings were disapproved by the superintendent, and on the 23rd, 1879, the commissioners adopted a new resolution, authorizing the president and the secretary to buy another house, which was done. Appeal was taken from these proceedings to the superintendent, who, by sentence of the 19th March, 1879, quashed the resolution of the 23rd January, and ordered the construction of a school building on the old ground. The commissioners having refused to execute this judgment a writ of mandamus issued—*Held*, reversing the judgment of the Superior Court, that the superintendent of public instruction had the right by law to order the construction of a new building on the site of the old one, or on any place by him designated. *Delisle & The Commissioners of the St. John Schools*, 6 Q. L. R. 322, & 1 Q. B. R. 93, Q. B. 1880.

139. And, *held*, also that the answer of the respondents, who were at the time in possession of the site in question, that it was impossible for them to conform to the said judgment, inasmuch as they had no title to the property, and that they were exposed to be troubled by the Fabrique, was not admissible, and they had no interest to raise it. *Ib.*

VII. Re-election of Commissioners.

140. On a complaint in the nature of a *quo warranto*—*Held*, that a school commissioner on leaving office is ineligible for re-election without consent, and his candidature not accompanied by such consent is null.* *Beland* v. *L'Heureux*, 7 R. L. 232, S. C. 1876.

VIII. Secretary-Treasurer's Account.

141. Plaintiff was transferee of the book debts and accounts of a person who had carried on business and failed, and who for a number of years had filled the office of secretary-treasurer of common school commissioners. Plaintiff brought action as such transferee for a balance which appeared to be due to the insolvent by the school commissioners—*Held*, that the action must be dismissed in default of an account of the administration of the late secretary-treasurer showing the details and balance due.* *Dorais* v. *School Commissioners of Warwick*, 9 R. L. 161, Q. B. 1877.

* No school commissioner shall be re-elected except by his own consent during the four years next after his going out of office. C. S. L. C. cap. 15, sec. 43.

COMMUNITY.

I. Husband and Wife may sue for Debt Due to, *see* MARRIAGE CONTRACTS.

COMMUTATION.

I. Of Seigniorial Dues, *see* SEIGNIORIAL RIGHTS.

COMPANIES, JOINT STOCK. *See* CORPORATIONS.

I. Action by Foreign Company.
  Must file Power of Attorney.
II. Action on Subscription.
III. Broker's Commission, *see* BROKERS.
IV. Calls.
V. Declaration of
VI. Liability of Officers.
VII. Liability of Shareholders after Insolvency.
VIII. Liable to be Assessed for the Repairs of Parish Churches, *see* CHURCHES.
IX. Penalty for Refusal to Allow Inspection of Books of.
X. Powers of.
  To carry on Business.
  To pay Interest.
  To grant Warehouse Receipts.
XI. Power of Provincial Legislature to Incorporate.
XII. Shares.
XIII. Subrogation of in Rights of Promoters.
XIV. Subscription.
XV. Service of.
XVI. Winding up.

* The superintendent may in his own individual name sue before any court of competent jurisdiction, any secretary-treasurer whatever in an action *en reddition de comptes, en reformations, redressements ou revision de comptes*, each and every time that he is assured that such accounts have not been rendered, or if, having been rendered, that they are informal, irregular, illegal, fraudulent or erroneous, and may demand that all agreements entered into between school commissioners or trustees and the secretary-treasurer or any other person with reference to such accounts or their rendering, be set aside, annulled or modified in whole or in part; but the superintendent shall not enter into any such suit before having made a demand (*mise en demeure*) upon such school commissioners or trustees, as the case may be, by a notice signed by the superintendent and served upon them by a bailiff of the Superior Court, who shall serve such notice upon the persons mentioned therein in person or at their domicile, to institute such action themselves within the delay indicated in such notice, and such delay expired if the commissioners or trustees have not instituted the action, the superintendent shall do so. The superintendent may intervene in any such suit brought by the said commissioners or trustees to watch the judicial proceedings, and advance them if there is occasion.

The suits or intervention of the superintendent in virtue of this section shall be at expense of the school commissioners or trustees. The sureties of any secretary-treasurer may invoke *mis en cause* in any action brought against a secretary-treasurer by the superintendent. Q. 40 Vic. cap. 22, sec. 30.

I. Action by Foreign Company.

142. *Must file Power of Attorney.*—Where an insurance company described itself as "a body corporate and politic, duly incorporated according to law, and having its head office and principal place of business in New York, in the State of New York, one of the United States of America, and having an office and doing business in the City and District of Montreal"—*Held*, that they were obliged to file a power of Attorney under Art. 120 of the Code of Procedure. *The Globe Mutual Life Insurance Co.* v. *The Sun Mutual Life Insurance Co.*, 1 L. N. 139, & 22 L. C. J. 38, S. C. 1878.

II. Action on Subscription, *see* INSURANCE.

143. Where a creditor of a railway company brought action against a shareholder for the amount due on his shares, defendant filed declinatory exception, saying that he resided in Stanbridge, in the county of Missisquoi, and that the cause of action arose in Bedford, in said county, which was the place where he subscribed for his shares—*Held*, that the cause of action arose at Montreal, where the company had its principal office and where judgment was rendered for the debt due by the company. *Welsh* v. *Baker*, 21 L. C. J. 97, S. C. 1876.

144. But in another case—*Held*, that the right of action on a subscription to stock in a company arises where the subscription took place, and not necessarily where the offices of the company are and the allotment was made. *National Insurance Co. & Paige*, 2 L. N. 93, & 24 L. C. J. 187, Q. B. 1879.

IV. Calls.

145. Action for calls dismissed on the ground that the subscriptions of stock of two shareholders had been reduced on the subscription book after the respondent subscribed his shares, and the calls having been made against these shareholders on the reduced amount—*Held*, in appeal, maintaining the principle but reversing the judgment on the ground that respondent "had failed to prove that the calls made by "the company, appellants, were either illegal, "partial or unjust." *National Insurance Co. & Hatton*, 2 L. N. 238, & 24 L. C. J. 26, Q. B. 1879.

146. Defendant was sued for seven calls on five shares alleged to be held by him in the stock of the company plaintiff. The declaration was in the usual statutory form, and alleged, among other things: "*Que sept versements ont été appelés suivant les formalités voulues par la loi.*" The defendant pleaded, "*Qu'il n'y a jamais eu d'avis public de publier en aucun temps dans deux journaux de la Cité de Quebec, etc., et dans la Gazette du Canada au desir de la section 3 du chapitre 94 de la 37 Vic.* demandant la paiement des versements reclamés en cette cause,*" and to the plea so filed no answer was put in. By the 5th section of the Statute it is declared, "That a certificate under the seal of the company, and purporting to be signed by one of their officers, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him, shall be received in all courts of law as *prima facie* evidence to that effect. The plaintiff made no further proof, and after the enquete had been closed the defendant pretended that although the certificate so produced was *prima facie* evidence it could not have any effect in a contested case in which the facts intended to be proved by the certificate were expressly denied. And defendant contended further under Art. 144 of the Code of Procedure,† that as the plaintiff had not answered his plea the allegations above cited as being contained in it ought to be held to be admitted—*Held*, that the certificate was not rendered ineffectual by the mere denial of the defendant, but continued to be operative until some evidence was adduced tending to disprove the facts of which the certificate was offered as evidence; and that the failure by plaintiffs to answer the plea could not be regarded as an admission. *Stadacona Insurance Co.* v. *Trudel*, 6 Q. L. R. 31, S. C. R. 1879.

V. Declaration of.

By Que. 40 Vic. cap. 15, it is provided that incorporated companies carrying on business must file declaration in each district or registration division in which they carry on business.

VI. Liability of Officers.

147. The defendant signed a letter of guarantee in the following form:

Montreal, May 11, 1874.

Messrs. R. & B.,

Gentlemen,

"We, the undersigned, acting as president "and secretary of the Montreal Omnibus Co., "hereby agree to see the account that B. & "St. C. have against the said company duly "settled, provided the said account be made "out and agreed upon as either the court or "arbitrator may decide. (Signed) R. Kerr, as president of the M. O. Co." This letter was given in order to avoid an execution against the company, and was delivered to the attorneys of the plaintiff, without being signed by the secretary—*Held*, on action against the president, that he was personally liable. *Kerr & Brown et al.*, 1 L. N. 602, & 23 L. C. J. 227, Q. B. 1878.

VII. Liability of Shareholder after Insolvency.

148. To an action for calls, defendant pleaded a discharge under the Isolvent Act. of 1875—*Held*, that all the assignment could pass to the assignee was the beneficial interest in the shares, and as defendant's disability was not included in the list furnished to the assignee it was not covered by the discharge. *Compagnie d'Assurance de Stadacona* v. *Rice*, 2 L. N. 244, S. C. R. 1879.

* Act of incorporation of the company plaintiff.

† No particular form of words is required in any pleading, but every fact, the existence or truth of which is expressly denied or declared to be unknown, is held to be admitted. 144 C. C. P.

VIII. Penalty for Refusal to Allow Inspection of Books of.

149. This was a penal action. A stockholder desired to have communication of the books of the corporation, and the defendant refused to permit it, and incurred a penalty of $100. The court below sustained the action, and condemned the defendant. On the revision, the question had been debated whether the penal action was warranted. The question was, what was our law, and what was our rule of evidence? A witness may object to answer questions put to him if answering them would expose him to a criminal prosecution. Was the action, then, of a criminal nature, and would answering the question expose him to a criminal prosecution? There was a decision reported in 17 L. C. R., p. 379, in which the majority of the Court in Review held that a man was not bound to answer if he exposed himself to a penalty; but the Court on this one decision, from which Judge Taschereau dissented, was not disposed to waive its opinion. Judgment confirmed. *Macduff* v. *Blaiklock*, S. C. R. 1879.

X. Powers of.

150. *To Carry on Business.*—Question whether the Niagara District Mutual Insurance Company, organized in Ontario, under 6 William IV., had power to carry on business in the Province of Quebec.—*Held*, that the company, by subsequent statutes passed by the Legislature of the late Province of Canada, extended the powers of the company, and gave them full authority to transact business in Lower Canada. The action brought by plaintiff to annul the policy, and to recover the cash premium paid and premium note given, dismissed with costs. *Quintal & The Niagara District Fire Insurance Co.*, S. C. 1877.

151. *To Pay Interest.*—The plaintiff claimed the sum of $170.33, amount of coupons due on bonds. The defence was that the bonds were issued under Q. 37 Vic. cap. 57,* and that that Legislature could not enact a law authorizing the company, to enter into any contract binding on it by which a rate of interest higher than six per cent. was to be paid, and that the coupons being at the rate of seven per cent the obligation was void, or at most good only for six per cent. The answer to this was that the company was authorized to borrow and could legally agree to pay seven per cent., or such other rate as might be specially agreed upon—*Held*, maintaining the action. *Macdongall* v. *Montreal Warehousing Co.*, 3 L. N. 64, & *Royal Canadian Insurance Co.* v. *Montreal Warehousing Co.*, 3 L. N. 155, S. C. 1880.

152. And, *held* that corporations, other than banks, may validly lend at any stipulated rate of interest. *Royal Canadian Insurance Co.* v. *Montreal Warehousing Co.*, 3 L. N. 155, S. C. 1880.

*It shall be lawful for the said company to pay such rate of interest for such advances as may be agreed upon, and arrangements may be made allowing such interest, either by selling obligations bearing a lower rate of interest below par or by issuing them at par bearing the agreed rate of interest. Sec. 3.

153. But, *held*, that interest on the amount of the compons ran only from the institution of the action. *Ib.*

154. *To grant warehouse receipts.*—Action in revendication by which the appellant, as endorsee of five warehouse receipts given by the Moisic Iron Co., to one J. M., claimed 1100 tons of iron, of the value of $29,500. Two of the receipts were signed by the president and three by the secretary of the company. Defendants pleaded *inter alia* that they were not warehousemen and could not give warehouse receipts, and that their president and secretary had no authority to grant such receipts—*Held*, in appeal, that the [illegible] must be dismissed, as there was no evidence whatever that the Moisic Iron Co. carried on the business of warehousemen, or that the president and secretary were ever authorized to sign warehouse receipts. *Hearle & Rhind*, 22 L. C. J. 239, & 1 L. N. 101, Q. B. 1878.

XI. Power of Provincial Legislature to Incorporate.

155. The Provincial Legislature has power to incorporate a navigation company for traffic within the limits of the Province. *Macdongall & The Union Navigation Co.*, 21 L. C. J. 63, 1877.

XII. Shares.

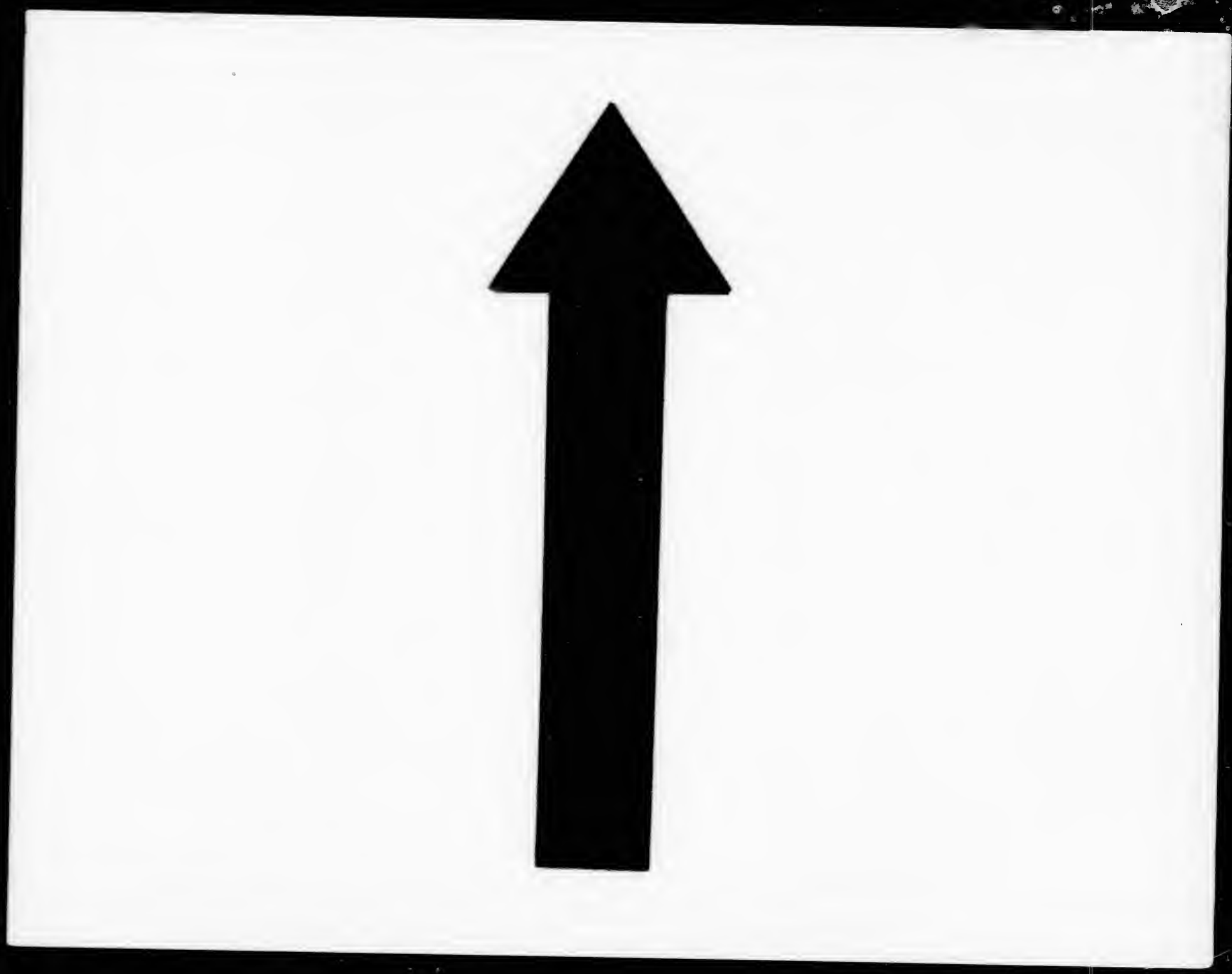
156. Where shares are purchased on which calls are pending they cannot be transferred until such calls are paid, and the brokers purchasing are not liable for failure to transfer. *Farrell* v. *Ritchie*, 1 L. N. 76, S. C. 1877.

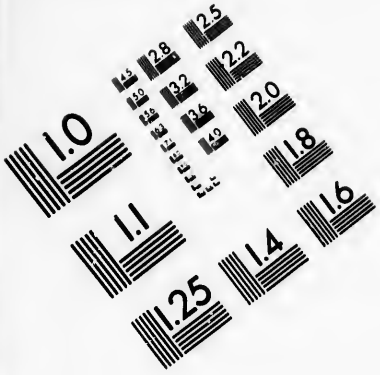
157. The respondent agreed with plaintiff, appellant, to pay him $500 cash, and to transfer him certain shares which he held in the stock of the Montreal Railway and Newspaper Advertising Co., on which $55 per share had been paid and $45 remained to be paid. The Co., however, refused to accept the plaintiff as a transferee, and the respondent wrote him to that effect, informing him he would be unable to carry out the agreement. The plaintiff then took action for paid-up shares or their equivalent in cash—*Held*, that he was only entitled to the shares as they stood, and as the Co. refused to transfer the agreement was at an end. *O'Brien & Weaver*, 3 L. N. 111, Q. B. 1880.

158. Banks may loan or advance money on the security of shares of stock in other companies. *Bank of Montreal* v. *Geddes*, 2 L. N. 356, S. C. 1879.

XIII. Subrogation of in rights of Promoters.

159. Certain real estate belonging to the defendants, the Canada Steel Co., was sold by the sheriff, and the Co., as opposants, claimed from the proceeds of the sale $483.36 and $2016.64, being two sums of money paid by them as purchasers of the property in question to creditors who had privileged claims on it. The claim was contested by a mortgagee who claimed priority of hypothec. The claim of the opposants as to the larger sum was dismissed unhesitatingly. As to the smaller sum it appeared





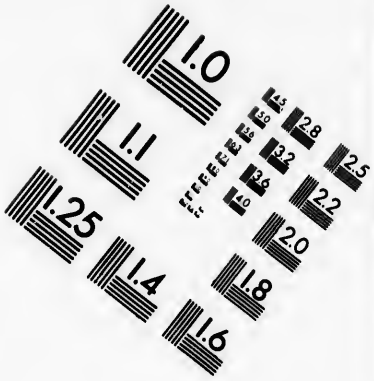
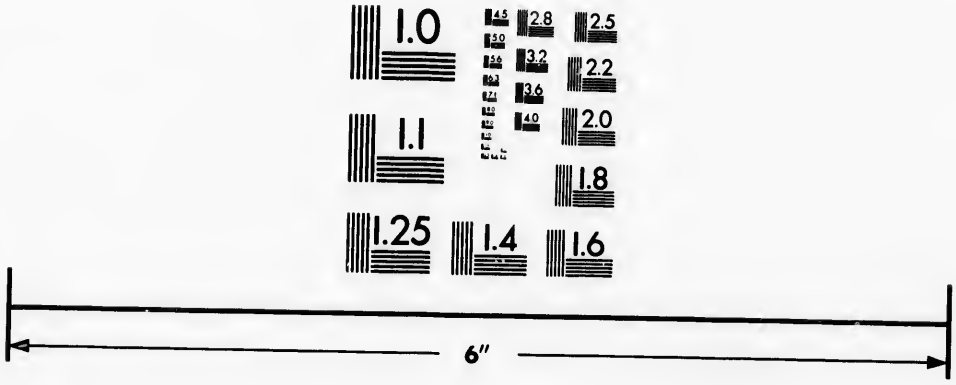
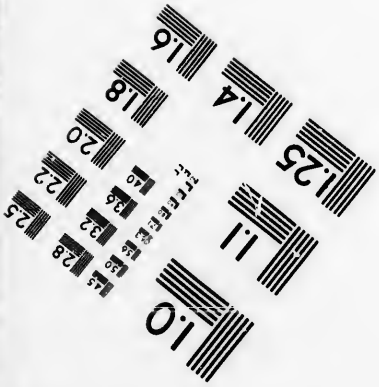
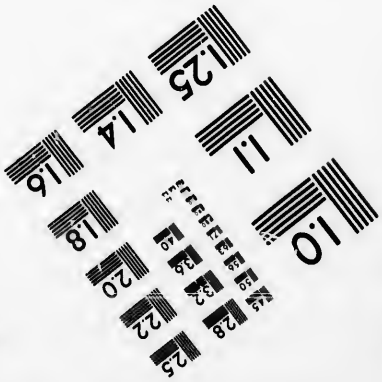


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

that the gentlemen engaged in organizing the Canada Steel Co. appointed five of themselves a board to purchase real estate and make other arrangements specified in the articles of association entered into by the said gentlemen. The board *inter alia* purchased the property in question by a deed which described them as "*agissant aux presentes tant en leur nom person, nel* qu'en vertu des pouvoirs qui leur sont donne et comme les representans de certains actionnaires en un certam acte d'association passé devant," etc., etc. Part of the purchase money payable under this deed, viz., the said sum of $483.36, was applied to the discharge of a privileged claim which the Crown had upon the property. The assistant commissioner of Crown lands became a party to the deed and accepted the sum of $483.36 in discharge of the privileged debt so due to the Crown, and in the registrar's certificate of the same it was declared that the purchase price mentioned in the deed of sale is wholly discharged, as well as the claims of the Crown mentioned in the deed of sale. After the Co. had been organized the board ceded and transferred to the Co., by deed, the said property in pursuance of the trusts in them reposed by the articles of association, but nothing was said in particular as to the $483.36, or to any rights they had in relation to it—*Held*, that the sum in question was not paid by the Co., nor by the agents of the Co., nor yet by persons whose rights were transferred to the Co. and that, consequently, the Co. could not be considered subrogated as to said sum under Art. 1156 of the Civil Code.* *Chinie* v. *Canada Steel Co. & Lloyd*, 3 Q. L. R. 1, S. C. R. 1876.

XIV. Subscription.

160. Where a shareholder, who had already paid some calls, was sued for the amount of others, and pleaded that the Co. had forfeited its charter by non-compliance with preliminary conditions—*Held*, that the forfeiture should have been first pronounced, and the plea was dismissed. *Windsor Hotel Co.* v. *Murphy*, 1 L. N. 73, S. C. 1877, and confirmed in appeal.

161. And where the same plea was raised to an action on a note, on which the same company appeared as endorsers, the plea was dismissed on the same grounds. *Bank of Montreal* v. *Thompson*, 1 L. N. 76, S. C. 1877.

162. But in another action by the some Co., against a shareholder for unpaid calls on stock, the Court found that it was not proved that $100,000 of capital had been *bona fide* subscribed at the time the directors were elected, as was required by its act of incorporation; nor was $40,000—the ten per cent on $400,000—paid-up, as was also required. The defendant's objections were therefore maintained, and the action dismissed. *Windsor Hotel Co.* v. *Lewis*, S. C. 1879.

163. A subscriber to a company to be incorporated under letters patent, but who never subscribed after the incorporation nor paid calls after such incorporation, is not liable on the stock thus subscribed for. *Union Navigation Co. & Couillard*, 7 R. L. 215, S. C., 21 L. C. J. 71, Q. B. 1877.

164. And *semble* that a purchaser, subsequently to incorporation of shares subscribed prior to incorporation, and who since his purchase has paid a call, is estopped from contesting the validity of his original subscription. *Macdougall et al* v. *The Union Navigation Co.*, 21 L. C. J. 63, Q. B. 1877.

165. The plaintiff having employed the defendants, a firm of brokers, to purchase some stock for him, and paid the money, sued to recover it, on the ground that they had failed, and refused to transfer the stock thus paid for. The plea was that the stock was sold him on the 12th February, and on the same day a call was made, which was notified on the 13th and payable on the 15th, to which the transfer was subject, of all of which plaintiff had been duly notified, but refused to pay the call—*Held*, that defendants had done all they had been employed to do, and plaintiffs could not recover. *Farrell & Ritchie*, 1 L. N. 76, S. C. 1877.

166. Action for three calls of 10 per cent. each on a $1,000 of stock subscribed by defendant. The plea was that the defendant's signature had been got by improper representations of the agent of the company, and that he was not held by his subscription—*Held*, that verbal testimony of what the agent said at the time of subscription could not be received to vary the written consent of the party. *National Insurance Co. & Cherrier*, 1 L. N. 591, S. C. 1878.

167. The company sued the defendant for $500, calls due on stock subscribed by him. Defendant pleaded that he never subscribed for stock in the present company, but in an antecedent one which was being organized—*Held* reversing the judgment of the court below, that a subscription of stock in a company to be formed was not binding. *Rascony & The Union Navigation Co.*, 1 L. N. 494, & 24 L. C. J. 133, Q. B. 1878.

168. The defendant subscribed for stock in a company, about to be formed, and received a letter from the secretary stating that his stock was taken on the same condition as that subscribed by three persons whose names preceded his on the book, and who had appended the condition to their subscription that the company was to be a Hydraulic Company. The defendant did not append such condition. The Hydraulic Company was not formed but a Cotton Mill Co. only—*Held*, that the defendant having signed the book unconditionally was not entitled to be relieved from liability for calls. *Jones & The Montreal Cotton Co.*, 1 L. N. 450, & 24 L. C. J. 108, Q. B. 1878.

---

* Subrogation takes place by the sole operation of law and without a demand:

1. In favor of a creditor who pays another creditor who se claim is preferable to his by reason of privilege or hypothec;

2. In favor of the purchaser of immoveable property who pays a creditor to whom the property is hypothecated;

3. In favor of a party who pays a debt for which he is held with others or for others, and has an interest in paying it;

4. In favor of a beneficiary heir who pays a debt of the successi n with his own moneys;

5. When a rent or debt due by one consort alone has been redeemed or paid with the moneys of the community in this case the other consort is subrogated in the rights of the creditor according to the share of such consort in the community. 1156 C. C.

169. The plaintiffs, a joint stock company, brought action for unpaid calls of stock subscribed by the defendant. Plea that defendant never subscribed for stock in the Windsor Hotel Co., but in another company called the Royal Hotel Co. He admitted his signature in a book produced at the trial in which the name "Windsor" had been substituted for "Royal," and in which the capital had been changed from $600,000 to $500,000—*Held*, that in default of proof by the plaintiffs that the alterations were made before the defendant signed the book, the action could not be maintained. *Windsor Hotel Co.* v. *Laframboise*, 1 L. N. 63, S. C. 1877, & 22 L. C. J. 144, S. C. R. 1878.

170. The plaintiffs *en garantie* alleged that the defendants *en garantie*, who were directors of the company, plaintiffs, had induced him to subscribe the stock on an express guarantee that they would take merchandise in payment —*Held*, that the guarantee, which was a *garantie formelle*, could not be proved by parole. *Compagnie de Navigation Union* v. *Christin & Valois*, 2 L. N. 27, S. C. 1878.

171. And *held*, in appeal, confirming this judgment, that in such cases the *aveu* of the defendants on interrogatories could not be divided so as to obtain a *commencement de preuve* sufficient to admit parole evidence. *Ib.* 3 L. N. 59, Q. B. 1880.

172. In an action for calls against a bank which held the stock only as collateral security —*Held*, that the bank was not liable. *Railway & Newspaper Advertising Co. & Molsons' Bank*, 2 L. N. 207, Q. B. 1879.

173. But where the bank pleaded that the stock had been sold as fully paid up, it having in fact been sold by an assignee in insolvency as "Railway & Newspaper Advertising Co.'s stock $5,642.76"—*Held*, that the transfer would first have to be set aside before such a plea could be admitted. *Ib.*

174. Action against a shareholder for calls. Defendant pleaded that he had been induced to take the shares by fraudulent misrepresentations on the part of the agents of the company. The proof showed that the defendant when he subscribed for the shares did not know the nature or extent of the liability which he assumed, but that on the same day, or the day following, he became aware of his true position, and applied to the secretary and another officer of the company for relief, but without success. Two years elapsed without his taking any legal proceedings. At the end of the first year a dividend of ten per cent. was declared, which the defendant received. At the end of the second two extensive fires occurred which required heavy calls to be made —*Held*, that under these circumstances it was too late for the defendant to be relieved of his contract. *Stadacona Insurance Co.* v. *Coté*, 5 Q. L. R. 133, S. C., & 10 R. L 285, & 6 Q. L. R. 147, Q. B. 1880.

175. On the contestation of the declaration of several garnishees, who were subscribers to the stock of the company, defendants, the garnishees answered that the contract they made with the society's agent was conditional and essentially different from what is alleged by the contesting parties—*Held*, that this could not be proved by parol evidence. *Wilson* v. *La Société de Construction de Soulanges & divers tiers saisies*, 3 L. N. 79, S. C. 1880.

XV. Service of.

176. A return of service by leaving the papers with one of the employees of the company at their office and place of business is sufficient.* *Bourgoin* v. *Montreal Ottawa & Occidental Railway Co.*, 3 L. N. 134, S. C. 1880.

XVI. Winding up.

Provision for the voluntary winding up of companies incorporated by the Provincial Joint Stock Cos. or General Clauses Act is made by Que. 42-43 Vic. cap 31.

COMPARISON OF HANDWRITING.

I. Evidence of Experts.

177. In an action against a bank for a balance of deposit, where the signature of the plaintiff to a cheque set up by the bank was denied, the evidence of experts was said to be of little value, and to be entirely rebutted by evidence that no such transaction as that represented by the cheque had occurred in the course of plaintiffs business. *Clark & Exchange Bank*, 3 L. N. 45, Q. B. 1875.

COMPENSATION.

I. Of Attorney's Costs.
II. Of Claims in Insolvency.
III. Of Damages.
IV. Of Debt Due Insolvent Estate.
V. When Arises.

I. Of Attorney's Costs.

178. Where distraction of costs has not been actually moved for and obtained, the costs may be set off by an amount due by the principal. *Latour* v. *Campbell*, 1 L. N. 163, S. C. 1878; 482 C. C. P.

II. Of Claims in Insolvency.

179. Under Insolvent Act, 1875—*Held*, that compensation did not arise between a dividend due from one insolvent estate to another and the balance due by that other after dividend paid. *Walker & Doutre*, 23 L. C. J. 317, Q. B. 1878.

III. Of Damages.

180. In action of damages for malicious prosecution—*Held*, that a judgment obtained by defendant in right of his wife against plaintiff might be placed in compensation. *Landa* v. *Pouleur*, 1 L. N. 614, S. C. 1878.

* Service upon a joint stock company may be made at its office, speaking to a person employed in such office, or elsewhere upon its president, secretary or agent. 61 C. C. P.

IV. Of Debt Due Insolvent Estate.

181. The sixth July, 1872, defendant purchased from the firm of L. L., etc., 25 cases of brandy for $193.75, payable the 1st December, 1872. In the commencement of November he purchased from H. R. & Co. a note of L. L. & Co., of $212.38, payable the 16th December, 1872, for $190, which he paid with his note at three or four months. The note he purchased was delivered him only three or four days subsequently to the agreement, viz., on the 12th November, endorsed by R. & Co., but without recourse. The 14th November, L. L. & Co. assigned to plaintiff, who was appointed assignee, and in his quality as such sued for the amount due for the brandy. Defendant set up the note he had purchased in compensation—*Held*, that under sec. 91 of Insolvent Act 1869, and arts. 1188, 1196, of the Civil Code* compensation did not arise. *Riddel & Reay*, 18 L. C. J. 130, S. C. 1874. †

182. On the 31st July, 1875, the insolvent wrote to the respondent as follows: "Messrs. "Ross & Co., Quebec,—On condition of your ac- "cepting my drafts to the extent of $4,750, at "three months date, I hereby pledge with you "warehouse receipts and orders for 600,000 "feet of my lumber now piled in Mr. W. Hill "Carter's yard, at Sorel, to be held by you as "security for the due repayment to you of the "amount of your acceptance, $4,750, with a "commission of 2½ per cent. on the same; and if "you are not repaid on or before maturity of "your acceptance, I hereby authorize you to "sell the said lumber whenever you think best, "at the best price possible, and, after charging "2½ per cent. on sales of lumber and interest, if "any, at the rate of eight per cent., place the "proceeds to my credit. (Signed). Walton "Smith." This proposition was accepted, and on the 30th and 31st July the insolvent transferre , by endorsement, to the respondent a warehouse receipt for 475,000 feet of lumber, and gave him an order for the delivery of 125,000 feet more, making 600,000 feet of lumber. On the 2nd of August following insolvent drew on respondent for $4,750, and his draft, payable at three months from date, was accepted, and paid at maturity by the latter. Insolvent having failed in business made an assignment of his estate on the 26th May to appellant, who was appointed assignee. Five months later respondent sold the 600,000 feet of lumber mentioned in the warehouse receipt, and delivery order for $6,600, payable on the 15th June, 1877. Having deducted the amount of the draft and charges, respondent placed the balance of the proceeds to the credit of the insolvent on account of previous indebtedness. Action by the assignee to recover such balance for the benefit of the estate was dismissed in the Superior Court; but in appeal, *held*, that as the lumber was not sold until after the insolvency there was no compensation of previous indebtedness, and the balance should have been paid over to the assignee for the benefit of all the creditors. Judgment of Court below reversed, and respondent condemned accordingly. *Perkins & Ross*, 6 Q. L. R. 65, Q. B. 1880.

183. But in another case, *held*, that, under sec. 107 of the Insolvent Act of 1875 compensation accrues in respect of debts falling due after the insolvency, when the transactions leading thereto began prior to such insolvency. *Miner v. Shaw & The Molsons Bank*, 23 L. C. J. 150, S. C. 1879.

V. When Arises.

184. An assignee in insolvency who has made advances on the strength of dividends coming due cannot set up such advances in compensation of the claim of the assignee of the person who received the advances and who subsequently failed. *Gareau & Perkins & Court*, 23 L. C. J. 64, S. C. 1878.

185. A debt due personally by the plaintiff may be set off against money due him in his capacity of executor of a legacy bequeathed to him and his sister, although the part of each is undivided. *Gray v. Quebec Bank*, 5 Q. L. R. 92, S. C. R. 1879.

186. Where the defendant was sued for the amount of two promissory notes, and proved that the plaintiff was indebted to him in a still larger amount than that for which the action was brought, and pleaded compensation—*Held*, that the action would be dismissed, although the plaintiff in his replication set up other debts due by the defendant which were sufficient in themselves to set off the claim of the defendant, and made proof of such other debts. *Gitbert v. Lionais*, 7 R. L. 339, Q. B. 18

187. Plaintiff sued for the a of a legacy which had been bequeathed r sister deceased, and by her sister in turn bequeathed to her, and which defendant had undertaken to pay —*Held*, that defendant could not set up in compensation that she had maintained and educated the children of the sister deceased. *Goodbody & McGrath*, 2 L. N. 165, S. C. 1879.

COMPOSITION.

I. Effect of, *see* OBLIGATIONS, Novation.

II. Offer of, *see* PAYMENT.

COMPOSITION DEED—*See* INSOLVENCY.

COMPOSITION NOTES—*See* INSOLVENCY.

COMPROMISE—*See* TRANSACTION.

I. Offer of, *see* PAYMENT.

II. Power of Attorney ad Litem to Enter into, *see* ADVOCATES.

*Compensation takes place by the sole operation of law between debts which are equally liquidated and demandable, and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality. So soon as the debts exist simultaneously they are mutually extinguished, in so far as their respective amounts correspond. 1188 C. C.

Compensation does not take place to the prejudice of rights acquired by third parties. 1195 C. C.

† Omitted in first vol.—Ed.

COMPUTATION.

I. Of Demurrage, *see* DEMURRAGE.

CONCEALMENT.

I. Of Material Fact in Insurance, *see* INSURANCE.

CONCUBINE.

I. Wife Cannot be Compelled to Live with, *see* MARRIAGE Rights of Wife.

CONDICTIO INDEBITI—*See* ACTIONS En Repetition.

CONDITIONS PRECEDENT—*See* SALE.

CONDITIONS.

I. Of Policy of Insurance, *see* INSURANCE.

CONFESSION.

I. Of Judgment, *see* JUDGMENT.

CONFESSIONS.

I. Evidence of, *see* EVIDENCE.

CONFESSIONAL.

I. Secrets of, *see* ELECTION LAW Pleading, and EVIDENCE Privileged Communications.

CONFIRMATION OF TITLE—*See* TITLE.

CONFLICT OF LAWS—*See* LAWS.

CONGÉ DEFAUT—*See* PROCEDURE.

CONJUNCTIVE AND DISJUNCTIVE.

I. Use of in Pleading, *see* ELECTION LAW Pleading.

CONQUETS—*See* MARRIAGE CONTRACTS.

CONSEIL DE FAMILLE.

I. Advice of, *see* TUTORSHIP.

CONSEIL JUDICIAIRE—*See* JUDICIAL ADVISER.

CONSENT—*See* PROCEDURE.

I. In Contracts, *see* CONTRACTS.

CONSERVATORY ATTACHMENT—*See* ATTACHMENT.

CONSIDERATION.

I. For Bills and Notes, *see* BILLS, etc.

CONSIGNEE—*See* AFFREIGHTMENT.

CONSORTS—*See* MARRIAGE.

I. Agency of.
II. Evidence of.
III. Liability of, *see* MARRIAGE.
IV. Power of Wife.
V. Service of.

I. Agency of.

188. Where the wife carries on business as a *marchande publique* the authority of the husband to act for her is presumed. *Vezina* v. *Lefebvre*, 2 L. N. 179, S. C. 1879.

II. Evidence of.

189. Under the Quebec Act 33 Vic. cap. 6, sec 9, the right to examine a consort as a witness is conferred upon the adverse party only. *Lareau & Beaudry*, 22 L. C. J. 336, S. C. 1878.

IV. Power of Wife.

190. A wife cannot bind herself or her property on behalf of her husband, and where she has done so she will have an action to recover *Buckley & Brunelle et vir.*, 21 L. C. J. 133, Q. B. 1873; 1301 C. C.

V. Service of.

191. In a joint and several action upon a husband and wife separate as to property, one copy of the writ and declaration is not suffi-

cient, though when the parties live together both may be served upon the husband. *Dansereau v. Archambault*, 21 L. C. J. 302, S. C. 1877; 59 & 67 C. C. P.

CONSTABLE'S FEES—*See* COSTS IN CRIMINAL MATTERS.

CONSTANTLY.

I. MEANING OF TERM, *see* DENTISTRY.

CONSTITUTION OF CANADA—*See* LEGISLATIVE AUTHORITY

CONTEMPT OF COURT.

I. BY ASSIGNEE IN INSOLVENCY.
II. COMMITMENT FOR.
III. CONTINUED IN PLEADINGS.
IV. DEFENDANT MAY BE ALLOWED TO EXPLAIN.
V. DELAY TO COMMIT.
VI. DISREGARD OF INJUNCTION.
VII. FOR UNFOUNDED OPPOSITION.
VIII. RULE AGAINST WITNESSES FOR.
IX. WHAT IS.

I. BY ASSIGNEE IN INSOLVENCY.

192. Under Insolvent Act, 1875—*Held*, that an assignee who receives from the court an order to sell the moveables of an insolvent, in order to pay a privileged claim, and who refuses to obey such order, will be condemned to imprisonment for contempt of court. *Blouin & Bouchard in re & Doutre & Craig*, 7 R. L. 445, S. C. 1876.

II. COMMITMENT FOR.

193. The prisoner was committed to prison for ten days, for that he, "being personally present before the said Court of Sessions of the Peace, hath this day been guilty of divers gross insults and contemptuous behavior to the said Court of General Sessions of the Peace for the district of Montreal, and hath been guilty of contempt to the said court, by using abusive and opprobious language, by refusing to obey the lawful orders and commands of the said court, and by using violent and threatening gestures before said court." The commitment then goes on to state: "Whereas the said—in consequence of such insolent and contemptuous behavior, contempt and language, is here adjudged, ordered and condemned to be imprisoned," etc.—*Held*, that the offence was sufficiently set out and described. *McNamee exp.*, 3 L. N. 197, & 10 R. L. 311, Q. B. 1880.

III. CONTAINED IN PLEADINGS.

194. In a petition for a writ of prohibition to defendants to prevent them proceeding with an execution for costs, which had been taxed by order of the judge, was the following moyen: "3. *Parceque ce jugement appert à la face des procedés avoir été rendre à la suggestion immorale de L'Hon. M. A. Plamondon.*" The word *immorale* had been effaced with a stroke of the pen, and in the margin the word *illegal* substituted, without, however, any mention at the foot of the petition of the erasure or marginal note. The judge, to whom the petition was presented, being the same thus referred to, held the expression thus used to be a contempt of court, ordered the petition to be locked up by the prothonotary, and the attorney signing it to appear to answer the contempt at the opening of the next term of the court. On appeal, the Court of Queen's Bench refused to interfere with the judgment. *Champagne & Belanger*, 9 R. L. 328, Q. B. 1877.

IV. DEFENDANT TO BE ALLOWED TO EXPLAIN.

195. In case of contempt of court *in facie curiæ*, the defendant should be allowed to explain his conduct. *McNamee Exp.*, 3 L. N. 197, Q. B. 1880.

V. DELAY TO COMMIT.

196. Where, in a case of contempt of court *in facie curiæ*, the judge presiding adjourned the court from the morning until the afternoon, in order to consult with another judge—*Held*, that the adjournment did not vitiate the commitment. *McNamee exp.*, 3 L. N. 197, Q. B. 1880.

VI. DISREGARD OF INJUNCTION.

197. A writ of injunction issued enjoining the company, defendant, not to proceed with the execution of certain works. The company disregarded the injunction and continued the works. On this the plaintiff sued out a rule for contempt of court against the secretary of the Company—*Held*, that no such rule would lie. *Tiernan v. La Cie. de Chemin de fer de Montreal, Ottawa & Occidental*, 8 R. L. 374, Q. B. 1876.

VII. FOR UNFOUNDED OPPOSITION.

198. When a defendant after judgment and execution filed an opposition founded on the allegation of his pleas—*Held*, that he could not be condemned to imprisonment for contempt of court until the merits of the opposition had been adjudicated upon. *Dawson & Ogden*, 8 R. L. 716, Q. B. 1877.

VIII. RULE AGAINST WITNESSES FOR.

199. A witness who has made default to appear and give evidence, and against whom a rule has issued for contempt, must appear in person to answer the rule. *Fair v. Cassels*, 3 L. N. 337, S. C. 1880.

IX. WHAT IS.

200. A witness neglecting to appear before an accountant, appointed by the court, in obedi-

ence to a *subpœna* duly served upon him, is guilty of contempt of court. *Prévost & Gauthier*, 23 L. C. J. 323, S. C. 1879.

201. Petitioner applied for a rule for contempt against an *adjudicataire* of a property purchased at a sheriff's sale, the conditions of which were that the *adjudicataire* should pay half down and give security for the other half. The *adjudicataire* paid half down and received a title, which made no mention of the security to be given for the other half—*Held*, that this was not a ground for contempt, but at most an error on the part of the officer of the court. *O'Reilly & Kearns*, 2 L. N. 414, S. C. 1879.

CONTESTATION.

I. Of Attachment, *see* ATTACHMENT.
II. Of Capias, *see* CAPIAS.
III. Of Opposition, *see* OPPOSITION.

CONTINUANCE.

I. Of Action for Costs, *see* COSTS.

CONTRACTS.

I. Action on Penalty in, *see* ACTION.
II. Alternative Obligations.
III. Betting.
IV. Breach of.
V. Consent.
VI. Consideration in.
VII. Created by Resolution of Directors.
VIII. Difference between Void and Voidable.
IX. Effect of.
X. Illegal.
XI. Illegal Consideration, *see* OBLIGATIONS.
XII. In Fraud of Creditors.
XIII. Interpretation of.
XIV. Liability of Minors on, *see* MINORITY.
XV. Of Insurance, *see* INSURANCE.
XVI. Of Marriage, *see* MARRIAGE CONTRACTS.
XVII. Parties to, cannot Allege their own Fraud to Avoid.
XVIII. Privity of.
XIX. Proof of.

II. Alternative Obligations.

202. The company appellant instituted an action in the court below for the recovery of $30,000, amount of subscription by the company respondent in the capital stock of appellant. It was alleged that under two by-laws, made by the corporation of St. Lin, the mayor of the parish was authorized to subscribe the sum of $30,000, and the corporation of St. Lin reserved the right of paying the amount in money or in its debentures at par. That demand had been made on respondents to hand over debentures, but the request was refused, and conclusions were taken for a condemnation to pay the amount in money, without giving the alternative

of paying in debentures—*Held*, that where no delay is fixed by the contract for the performance of an alternative obligation, the debtor can only be deprived of his option by the expiration of delay fixed by a judgment against him, and therefore the corporation could not by a mere notarial protest served on it, fixing a time for the delivery of the debentures, be deprived of its option to pay in debentures, and the action was dismissed on demurrer. *Cie. du Chemin de Fer des Laurentides & Corporation de la Paroisse de St. Lin*, 3 L. N. 34, & 24 L. C. J. 191, Q. B. 1879.

III. Betting, *see* ACTION.

203. On the 15th October, 1874, the appellant and one S. made a bet as to certain words alleged to have been used by S., and to secure the payment of the bet they each deposited a cheque in the hands of one L. The latter having decided that S. had won the bet, handed him the cheques. Subsequently S. endorsed the appellant's cheque, and transferred it to the respondents, who are brokers at Sorel. They presented it at the Merchants' Bank, and, payment being refused, instituted the present action against appellant, the drawer of the cheque, and S., who had endorsed it. The appellant pleaded the illegality of the consideration and his right to oppose this illegality, seeing that the respondents had received the cheque long after its date. The bet was proved to have been the consideration of the cheque. The question was reduced to this—did respondent receive the cheque in good faith? It was put into the hands of an arbiter, and given to S., as the winner of the bet, and by him transferred to respondent, a broker. This was not an unusual circumstance, as S. was accustomed to take notes there. The main issue raised in the case was that S. was not entitled to this cheque, because the bet was not properly decided in his favor. The next point was that respondent was a mere *prête nom* for S. The only evidence from which that could be inferred was the evidence of respondent himself, and he denied all knowledge that the cheque was given for a bet. An overdue cheque was not necessarily presumed to be received in bad faith, Articles 2,350 and 2,352, C. C. Upon the whole—*Held*, that the plaintiffs were entitled to recover on the cheque, and consequently there was no error in the judgment. *Ladouceur & Morasse*, Q. B. 1876.

IV. Breach of.

204. Under a covenant to sell and convey "all the estate, right, title, interest, claim or demand," that the vendors had in certain lots specified, an action for damages cannot be maintained against the vendors for failure to deliver the whole of the lots mentioned where they had included by mistake a lot to which they had no claim. *Fulton & McDonnell*, 1 L. N. 531, Q. B. 1878.

205. Held that an insolvent, even after his discharge, had no action against the assignee and inspectors of his estate for violation of a contract to re-transfer his estate to him on a composition. *Styce* v. *Darling*, 2 L. N. 250, S. C. 1879.

206. The plaintiff and another entered into a partnership agreement with the two defendants to tender for certain dredging and harbor works, tenders for which had just been invited by the harbor commissioners of Quebec. Defendants finding that it was a settled matter that other parties were to get the contract made common cause with them, and threw the plaintiff over board—*Held*, reversing the decision of the court below,* that plaintiff was entitled to his share. *Kane* v. *Wright*, 4 L. N. 15, & 1 Q. B. R. 297, Q. B. 1880.

207. In a case of breach of contract to deliver possession of premises leased, nominal damages should be awarded by the court, although no special damage is proved to have resulted from the breach. *Malcair* v. *Jubinville*, 23 L. C. J. 165, S. C. R. 1878.

208. The plaintiff, May 7th, sold defendant 500 tons of hay, deliverable "at such times and in such quantities" as defendant should order. The defendant having ordered only a portion of the hay, the plaintiff, July 28th, notified his readiness to deliver the balance, and then disposed of it by private sale—*Held*, that the terms of the contract bound the purchaser to order the hay within a reasonable time before the new hay was put on the market, and that the vendor was at liberty to sell at private sale and hold the first purchaser responsible for any loss. *Larin & Chapman*, 1 L. N. 458, Q. B. 1878; & 4 S. C. Rep. 349, Su. Ct. 1879; 1067, 1544 & 1073 C. C.

V. Consent.

209. Where the law declares consent to be of the essence of the contract, it does not refer to the consent of the mind but to the declaration of consent. *Coté & Stadacona Insurance Co.*, 6 Q. L. R. 147, Q. B. 1880.

VI. Consideration in.

210. A contract is not the less valid though the consideration be incorrectly expressed in the deed. *O'Brien* v. *Molson*, 21 L. C. J. 287, S. C. 1877; & 24 L. C. J. 43, Q. B. 1879; 989 C. C.

VII. Created by Resolution of Board of Directors.

211. A resolution of a board of directors to enter into a contract with a third party gives no right of action to such third party until formally communicated to and accepted by him. *Girard* v. *Bank of Toronto*, 2 L. N. 406, & 3 L. N. 115, S. C. R. 1879.

VIII. Difference Between Void and Voidable.

212. In an action by a sequestrator to set aside a pretended donation of the property sequestrated—*Held*, that there is a plain distinction between an action to annul an instrument valid *prima facie*, and one to have it declared that such an instrument never was or could have been valid under any circumstances. *Laframboise* v. *D'Amour*, S. C. 1876.

*1 L. N. 432, S. C. Since appealed to Supreme Ct.

IX. Effect of.

213. On the contestation of a claim in insolvency it appeared that the insolvent and the claimant had been joint owners of a property near Montreal, known as the Gregory property, and on the 16th August, 1878, the claimant sold his interest in the property to the insolvent for $7,500, the amount now claimed. The following day, however, the insolvent drew up a paper, which the claimant signed, acknowledging the receipt of his share of the payments made by purchasers of lots on the property, and which paper it was now alleged was intended to have and had the effect of cancelling the sale of the previous day. The paper was not signed by the insolvent, was not pleaded in the contestation, and there was nothing to show that the claimant ever intended to agree to a cancellation of the contract—*Held*, dismissing the contestation and maintaining the claim. *Fair & Dolan*, 2 L. N. 395, & 10 R. L. 103, Q. B. 1879.

X. Illegal.

214. Action on agreement by which defendants agreed to pay plaintiff $400, on condition that they could cause certain criminal proceedings, then pending in the Queen's Bench, against the father of the defendant, who had been indicted for embezzlement, to be discontinued —*Held*, that, if even a misdemeanor, it was an offence of a public nature, and the agreement was clearly an illegal one, upon which no action could be maintained. *Couture* v. *Marois*, 5 Q. L. R. 96, S. C. 1879.

XII. In Fraud of Creditors, *see* DONATION, INSOLVENCY, SALE, TRANSFER.

215. Respondent was the assignee of the insolvent estate of Dinning & Webster, merchants of Quebec, which held a mortgage from H. D. on the "Norwegian," a steamboat then in course of construction. H. D. became insolvent, and on filing their claim the creditors allowed D. & W. to take the vessel at their valuation on giving promissory notes for the balance. The notes were not paid at maturity, and on the 13th July, 1877, D. & W. transferred their hypothec on the "Norwegian" to the appellant for $6,500, the transfer being registered the same day. On the strength of this transfer D. & W. obtained delay from the bank for the payment of notes due them. On the 3rd of December, 1878, a writ of attachment in insolvency issued against them. Action by the assignee against the bank to set aside the transfer of the hypothec, as being the proper mortgage of all the creditors, and not of the bank only, and as having been made at a time when D. & W. were insolvent to the knowledge of the bank—*Held*, in appeal, reversing the judgment of the court below, that there was no proof of the essential allegations of the plaintiff, that on the 13th of July, 1877, the date of the execution of the transfer, the bank had reason to believe that the transfer was made in contemplation of insolvency. *Stadacona Bank & Walker*, 10 R. L. 381, Q. B. 1880.

XIII. Interpretation of.

216. Question as to the interpretation to be given to a special condition of a sale to the defendant, who bought for himself and others a valuable property known as "Belle Rive." The plaintiff was willing to execute a title according to her understanding of the contract, and she sued the defendants to compel them to take it under a delay to be fixed by the court. The price was 60 cents per superficial foot, English measure; payable, $12,000 and the auctioneer's commission in cash on passing the deed, which was to be done in ten days, and the balance in annual instalments of $1,000 until perfect payment, with interest on the unpaid balance at 7 per cent. from the date of the deed. There was also a special condition at the time of the sale that a clause was to be inserted in the deed "to release general mortgage on each particular lot sold by present purchasers in exchange for cash or a special mortgage on each lot, according to the plan that the present purchasers "will have made for reselling this property." These were the terms and conditions on which the vendor was willing to sell; and they were proved by the auctioneer to have been entered in his book, and signed by the parties on the 7th of May. On the 10th the defendants agreed by writing in the same book "to become purchasers of Belle Rive property, "described on opposite page, subject to the "terms and conditions therewith set forth, at "the rate of 60 cents per sq. foot English," and this last memorandum was signed by them and by the plaintiff. The land was also to be measured by a Mr. Perrault, which was done, and it was found to contain 88,320 feet English, making the price $52,992. On the 20th of May the defendants paid a sum of $8,000 on account of their purchase, and had since been in possession, and the plaintiff promised to execute a deed on demand on the conditions agreed on at the time of sale; but the defendants had neither paid up the four thousand dollars to complete the cash payment of $12,000, nor would they consent to sign the deed. They contended that having bought to sell again, and having subdivided the property into lots, and furnished a copy of the plan to the plaintiff, she was bound to subdivide her mortgage now. *By the Court*, I must say that I am at a loss to conceive how any misunderstanding of such a condition could have arisen. This condition is in its nature one made for the accommodation of the purchasers. The vendor could not be asked to part with her mortgage for the unpaid balance of the price; so she was only asked to subdivide it. How was this to be done? and when? There was no use in doing it before the lots should be resold, because though the mortgage remained up to that time entire, there was to be the stipulation in the deed that each lot was only specially charged with its share; on the other hand, the plaintiff had a plain interest that these gentlemen who bought her estate on speculation to sell again, should not part with any portion of her privileged security as vendor, without charging such portion specially with its proportion of liability, or paying its share in cash. This is the only view I can take of the condition; and I cannot conceive how the making a plan or picture of the property could change the plaintiff's liability in any respect. The defence failing then, the deed must be executed according to these terms; and the judgment will be in the usual form, condemning the defendants to execute the deed within one month from judgment, or, in default, that the judgment of the Court is to be their title, and that judgment is in all respects conformable to the conclusions of the declaration. *Westcott & Archambault*, S. C. 1877.

217. Action was brought by appellant to recover the amount of a commission stipulated when he was engaged as manager of the Life and Guarantee departments of the Citizens' Insurance Company. It was a question of interpretation of contract. The appellant was engaged at a salary of $2,000 per annum, and a commission on the net balance carried over on the 31st December of each year, after payment of all losses and expenses. The appellant was in the employ of the Company, not during an entire year, but for broken periods of two years—from *May*, 1869, to May, 1870. He claimed his commission on the balance shown by the books in May, 1870. But there was a claim against this balance for a loss which had been incurred. Appellant said this loss should not be deducted, that he should get his commission on the whole sum—*Held*, that the court could not sustain his view of the stipulation. The intention was to give the commission on the profits after deduction of the losses that occurred during the year. Judgment confirmed. *Rawlings & Citizens Insurance Co.*, Q. B. 1876.

218. The defendant on the 10th of September, 1869, at the time of the transfer of bodies from the old cemetery to the new, entered into an agreement of exchange of lots with the plaintiff's, by which he was to pay them the sum of $75 as a balance when he should have erected a vault or monument on his lot in the new cemetery for the reception of the bodies of his relatives. In the agreement it was stipulated as follows: *Le présent échange est ainsi fait pour et moyennant la soulte et retour de $75 en argent dur au pair trente sols pour trente sols en faveur de la dite Œuvre et Fabrique, laquelle dite somme le dit M. F. X. B., promet et s'oblige de payer à la dite Œuvre et Fabrique, ou ayant droit, lorsqu'il ferait construire son charnier ou monument sur le terrain ci-dessus en premier lieu echangé. Il est de plus convenu et entendu entre les dites parties que la dite Œuvre et Fabrique devra mettre et garder les corps qui seront exhumés du dit ancien cimetière appartenant à la famille du dit F. X. B. dans le charnier du dit cimetière de Notre Dame de la Côte des Neiges d'ici à ce que le dit M. F. X. B. ou ayant droit, ait fait construire un charnier dans son terrain qu'il a acquis par le présent échange*—*Held*, that this was not a conditional obligation, and the defendant was obliged to go on with the building of his vault or pay the money. *Les Curés et Marguilliers de la paroisse de Montréal* v. *Beaudry*, 9 R. L. 376, S. C.; 2 L. N. 126, S. C. R. 1879.

219. But *held*, in appeal, reversing the *dispositifs* of this judgment, that as no delay was fixed by the contract that the defendant should have been *mis en demeure* before action brought, which was not done. *Ib.* 3 L. N. 218, Q. B. 1880.

220. The defendant was charged on an agreement to pasture two cows, which he had failed to do, and to *maintenir* the fences—*Held*, in review, that as the fences in some places were entirely wanting, that this could not be held to mean the cost of new fences, and the judgment of the court below in this respect was reformed. *David* v. *Duderoir*, 2 L. N. 58, S. C. R. 1879.

221. Any ambiguity or uncertainty in the sense or meaning of a document signed by two parties, but drawn up by one of them in the absence of the other, and without any participation on his part, must be interpreted against him who drew it up. *Rooney & Fair & Dolan*, 2 L. N. 395, & 10 R. L. 103, Q. B. 1879.

222. Respondent had been employed to procure subscriptions of stock in the projected "Bank St. Jean Baptiste," of which appellant was president. He was to get one per cent. on stock subscribed by persons outside of the city, and ½ per cent. on stock subscribed by persons within the city limits. The commission was to be payable after the first call, there being a *post scriptum* to the agreement as follows: "*cette commission sera payable après le 1er versement.*" A call was made, but very few paid it, and the scheme was abandoned. The respondent claimed commission to the amount of $375—*Held*, that respondent was entitled to his commission as soon as a call had been made. *Hubert & Barthe*, 2 L. N. 227, Q. B. 1879.

223. Plaintiffs claimed $19,142.44, balance due for work done and material furnished by them to defendant, in virtue of a contract executed between the parties at Quebec. Defendant pleaded that the plaintiffs had not fulfilled their obligations according to the contract and at the time agreed upon, by which the defendant had suffered damage and loss—*Held*, that when it is stipulated in a contract for the construction of part of a railroad that the price which is fixed at so much per foot should be payable monthly, on the certificate of the engineer of the party giving out the contract, and that it contains but one price for all the work to be done and all the materials provided, the contractors have the right to be paid even if they have not completed their part of the work, if the completion of it or the dissolution of the contract or the permission to complete it at their expense has not been demanded, and the proprietor, on the contrary, has continued and completed the work himself, and used the materials prepared by the contractors. *McGreery & Boomer*, 9 R. L. 587, Q. B. 1879.

224. By a writing *sous seing privé* plaintiff purchased from defendant 2,265 cords of wood, "as now corded at Port Lewis," for the sum of $4,520, and by the same writing acknowledged receipt of the wood, declared himself satisfied therewith, and discharged the vendor *de toute garantie ultérieure*. The purchaser having measured the wood, found it 423 cords short, and a portion of it rotten. Suit for value of wood not delivered and the part that was rotten—*Held*, that by the terms of the agreement, the sale was *en bloc*, and not by the cord, and the purchaser could not recover. *Lalonde & Drolet*, 1 L. N. 29, Q. B. 1877.

225. Action for nine years interest at 8 per cent. on two obligations—*Held*, that where the obligation contained an undertaking to pay a sum of money on a fixed day, "*pour tous délais à peine*," etc., or "*sans intérêt pendant délai*," implies an undertaking to pay interest on the sum from the day the payment becomes due. *Montchamps* v. *Perras*, 3 L. N. 339, S. C. 1880.

226. And a clause of a contract, though not relating to the principal object of the convention, makes proof of its contents, when it contains a separate and distinct obligation. *Ib.*

XVII. Parties to, Cannot Allege their own Fraud to Avoid.

227. Action to set aside a deed of sale of an immoveable, on the ground that plaintiff when he made the deed was insolvent, and transferred it to his brother-in-law, a person of no means, in order to save it from his creditors, and with the understanding that, as soon as plaintiff should be relieved from his embarrassment, the property should be retransferred to him—*Held*, that no one could allege his own fraud to avoid his own deed. *Gareau & Gareau*, 24 L. C. J. 248, Q. B. 1878.

XVIII. Privity of.

228. A condition in a *cahier des charges* connected with a judicial sale of immoveables, that the purchaser shall be obliged to pay, in addition to the price of adjudication at the time of the execution of the deeds of sale to the notary superintending the same as *commis*, a commission of four per cent., creates no privity of contract between the notary and the purchaser so as to give rise to a right of action in favor of the former. *Doucet & Pinsonneault*, 23 L. C. J. 163, Q. B. 1878.

229. There is a privity of contract created by the usage of trade between banks and the holders of cheques drawn on them. *Marler & Molsons Bank*, 2 L. N. 166, S. C. 1879.

230. Plaintiff, as universal usufructuary legatee of her son, brought action to enforce the terms of a contract between her son and defendant. Defence, want of privity of contract between parties, set up by demurrer. Demurrer dismissed. *Brisbin es qual.* v. *Campeau*, 21 L. C. J. 16, S. C. 1877.

231. One M, carrying on the business of packing meat under the name of the North American Packing Co., made contract with P, of Paris, for the delivery of about 150,000 kilograms of boiled beef, and he shipped to P, late in February, 1876, about 50.000 kilograms, of the value of $16,143. The respondents then discounted for him a draft on P for $13,943.30, taking as security the bill of lading of the meat so shipped, thus leaving an estimated margin reverting to M of $2,200. P refused acceptance of the draft, and the beef was, in October, 1876, sold for the benefit of the bank as holder of the bill of lading, realizing an amount insufficient to pay the advance made by respondents to M. Before the sale respondents claimed payment of the entire draft from appellant, offering back to him the meats they held as security for the draft. The appellant refused to pay it, on the ground that he had never undertaken to pay the draft, and had nothing to do with it, his interest being only in the margin of the shipment of meat after the draft

had been paid out of it—*Held*, reversing the judgment of the first court, that he was not liable. *Hood & Bank of Toronto*, 3 L. N. 234, Q. B. 1880.

XIX. Proof of, *see* EVIDENCE.

232. Action by the appellants for $5,396,34, being for ties and other materials furnished by the appellants to the respondent for a railway to St. Cesaire. In their declaration the appellants alleged that on the 9th January, 1872, an agreement was entered into between respondent and them and one B, by which the latter undertook to perform certain work of grading, &c., and furnish materials along the proposed line of railway from West Farnham to St. Cesaire; that during the winter they supplied a large quantity of ties and other material; that in spring they were ready to commence the grading, but were prevented from proceeding as the defendant did not acquire the right of way for the proposed road. The conclusions were for the value of materials supplied, loss of profits, &c. The defendant pleaded that at the time referred to, he was contractor for the South Eastern Counties Junction Railway, the terminus of which was at West Farnham; that an extension to St. Cesaire was contemplated, and plaintiffs solicited a sub-contract. But the Legislature subsequently refused authority to make the extension, and the plaintiffs had, therefore, no right to recover, as there never was any contract. The action was dismissed by the court below—*Held*, that there was no sufficient evidence to show that there was a contract. There was no commencement of proof in writing; the property had never been acquired, and respondent had refused to make a contract. Judgment confirmed. *Meigs & Foster*, Q. B. 1876.

CONTRACTORS.

I. Liability of.
  For Accidents.
  For Work done.
II. Liability of Corporations for Acts of.

I. Liability of.

233. *For Accidents.*—Action in damages against a master roofer for injury suffered by plaintiff from the fall of a soldering iron on his head from a roof which defendant was repairing. The workman who let it fall did so to prevent himself falling—*Held*, that there was want of precaution on the part of defendant, and a judgment for $200 was confirmed in appeal. *Deblois & Glass*, Q. B. 1877.

234. *For Work done.*—Action for cost of a new roof which respondent had been obliged to put on his house by reason of defects in the original. Appellants admitted his liabilities for repairs, but not for a new roof—*Held*, liable. *Malo & Melançon*, 3 L. N. 42, Q. B. 1879.

II. Liability of Corporations for Acts of.

235. Corporations held liable for acts of contractors to whom they have given out work to be done. *Saleas & New City Gas Co.*, 2 L. N. 97, S. C. 1879.

CONTRAITE PAR CORPS—*See* IMPRISONMENT.

CONTRIBUTORY NEGLIGENCE—*See* NEGLIGENCE.

CONVERSION.

I. Indictment for under Power of Attorney, *see* CRIMINAL LAW.

CONVEYANCES—*See* DEEDS.

CONVICTION.

I. A Bar to other Proceedings.
II. Certiorari from, *see* CERTIORARI.
III. Error in.
IV. For Desertion.
V. May be Produced on Habeas Corpus.
VI. Nullity of.
VII. Regularity of.

I. A Bar to other Proceedings.

236. Action for malicious prosecution and arrest. *Per Curiam.*—The plaintiff was a carter, and was stationed in front of the St. Lawrence Hall by his comrades, under circumstances that the defendant must have known very well; yet he thought proper, as he had strictly a right to do, no doubt, to prosecute him for loitering there as a vagrant, and he was convicted. The point of the case is very shortly come at. Is there such a thing as the possibility of proof of want of reasonable and probable cause, and of malice in the face of a conviction. I thought not at the trial, and I think so still. It was urged that in a case of Forte *vs.* The City of Montreal, confirmed in Review two or three terms ago, the judges had held that in such a case they could incidentally go into the question of the propriety of the conviction. It certainly was a peculiar case, and I have looked at it closely. A policeman had been called to his assistance by a person who was assaulted, and the officer, not showing much alacrity, was reproached by the person who had called him, and thereupon took upon himself to arrest him and take him to the station, and the next day the Corporation adopted the act of their officer, and had the plaintiff convicted of resisting the police upon the officer's testimony, whereupon the plaintiff in that case

turned round and prosecuted the policeman before the Police Magistrate for an assault, and had him convicted and punished. He then brought an action of damages against the city, and the city pleaded that they were not bound by the act of their officer; but the court held that they were bound, having adopted his act. That was all that was decided there, and that was all that the Corporation pleaded to the action; not a word about a conviction is in the plea in that case, nor in the judgment in first instance, which was simply confirmed in review as it stood; and even if the two cross convictions could both have been looked at, there was the conviction of the policeman for an assault, which showed he had no probable cause for arresting the plaintiff in that case. The case cannot therefore be cited as deciding that proof of want of probable cause is not decisively rebutted by a conviction, but rather the other way. In the work I cited just now in another case, where all the rules governing these cases are carefully collected together with the adjudged cases on which their authority rests, I find the rule I laid down at the trial has always been considered as of the most necessary decisive authority. Where a conviction is unreversed, it is conclusive evidence of the facts. See Fawcett vs. Fowles, 7 B and C 394. Again: "Malice and want of probable cause, however, are conclusively disproved by the conviction of the plaintiff." Mellor *vs.* Baddeley, 2 Cri. and M. 675. If it could be otherwise, how could I possibly judge of the fairness of a conviction on which I have not one word before me of the evidence given for or against it? No; I must hold to the rule which I have never seen departed from—and I do so with regret under the circumstances, because the plaintiff had a permission of the Chief of Police to stand there as he did; and though I must hold that the conviction was right, and the complainant there was right, so far as the law goes; and though the Chief of Police could not override the law any more than the committee men who told him to do so, there certainly was hardship in the treatment the plaintiff got under the circumstances, at the instance of the defendant, who must have known all about it. I therefore dismiss the action, but without costs. *Rinahan* v. *Geriken*, S. C. 1879.

237. In an action of damages for assault, for which the defendant had already been fined in the Recorder's Court—*Held*, that a conviction for assault may be pleaded in bar to any other proceedings, civil or criminal, for the same cause.* *Callahan* v. *Vincent*, 3 L. N. 154, S. C. R. 1880.

238. But must be pleaded in order to avail. *Simard* v. *Marsan*, 2 L. N. 333, S. C. 1880.

III. Error in.

239. The petitioner was imprisoned under a conviction for assaulting a constable in the performance of his duty. He was brought before Thomas S. Judah, Esquire, described in the complaint and conviction as Magistrate of Police for the District of Montreal, which was error, as he was merely a Justice of the Peace, acting under 33 Vic. Cap. 12 (Que.)—*Held*, that there was no jurisdiction on the face of the proceedings, and the prisoner was discharged. *Senécal exp.*, 3 L. N. 267, S. C. 1880.

IV. For Desertion.

240. Conviction of a servant for deserting from service should find desertion after a hiring by written contract or verbally before a witness. *Pelletier & Hurteau*, 3 L. N. 331, S. C. 1880.

V. May be produced on Habeas Corpus.

241. On a habeas corpus to set aside a commitment, a copy of the conviction may be produced to show that it was invalid. *Dallaire exp.*, 4 Q. L. R. 201, Q. B. 1877.

VI. Nullity of.

242. Petition for *certiorari*. One ground was that the fact upon which the conviction was based was not stated; it stated that an assault was committed, without stating how it had been committed. Conviction quashed. *Laggett exp.*, S. C. 1877.

VII. Regularity of.

243. The validity of a conviction was questioned in the case. There was one defect which was fatal: the conviction did not set up the particular facts constituting the offence, so as to enable the court to see whether there was really a violation of the law or not. Under the authority in Paley, conviction quashed with costs. *Buss exp.*, S. C. 1877.

CO-PARTITIONERS.

I. Secretion of Estate of, *see* PARTITION.

CO-PROPRIETORS.

I. Not Entitled to Injunction to Restrain one another from Dealing with the Common Property, *see* INJUNCTION.

CORPORATIONS—*See* COMPANIES.

I. Agreement to pay in Stock of.
II. Books of as Evidence.
III. Contracts created by Resolution of, *see* BANKS.
IV. Exercise of Franchise by, *see* STREET RAILWAYS.
V. Injunction against.
VI. Liability of, for Acts of Others.
VII. Liability for Negligence of Members.
VIII. Mandamus against.
IX. Minutes of Directors need not be shown to Members, *see* BUILDING SOCIETIES.

* See 32 and 33 V. C. 20, sec. 45.

X. Powers of.
To carry on trade.
To issue negotiable instruments.
XI. Powers of Officers.
To vote at meetings of creditors.
XII. Reports and Accounts of.
Liability for.
XIII. Service of.

I. Agreement to pay in stock of.

244. Appeal was from a judgment condemning appellant to pay respondent the sum of $194,317.40, as commission and for advances. Plaintiff and defendant entered into an agreement in 1872 for the purpose of carrying on the works of the Montreal, Portland and Boston Railway, under which appellant was to make certain advances. Subsequently, by another agreement, plaintiff was authorized to proceed to England to obtain a loan not exceeding $750,000, and was authorized to take a commission *in Company's bonds* of one-fourth of the estimated joint profit on the contract. The action was under this agreement, and judgment went for the amount claimed—*Held*, that the judgment was erroneous in condemning defendant to pay in money instead of in the Company's bonds. *Hibbard & Baylis*, 2 L. N. 208, Q. B. 1879.

II. Books of, as Evidence.

245. In a case pending in the Superior Court, the clerk of the City of Montreal was served with a subpœna *duces tecum*, ordering him to produce certain records and documents of the City Council. By the City Charter it is provided that copies of any documents of the records or archives of the city may be authenticated by the signature of the proper officers, and become *prima facie* evidence in all Courts of Justice. By the same section it is provided that any elector may have access to all the records on payment of a shilling—*Held*, that as under these sections they must always be presumed to be at the office ready for inspection there, and as, in any case, the clerk had no power over them except as the servant of the Council, a rule cannot be granted. *Cramp & The Mayor et al. of Montreal*, 21 L. C. J. 249, Q. B. 1877.

246. In an action against the directors of a bank for having issued false statements and reports a rule, after much difficulty, was granted against the bank in its corporate capacity for refusing to bring up its books and papers in obedience to a subpœna *duces tecum*, the court remarking that on the signification to the bank of the subpœna it was its duty to appoint an attorney in order to conform with the injunction. *Cowie* v. *Trudeau*.*

* Not reported, but see 2 L. N. 60, & Stephens' Joint Stock Cos., p. 234.
The final result of the struggle on this point has been given, but on one of the applications Johnson, J., said: A subpœna has been served upon a corporation (the Banque Jacques Cartier) and they have not appeared, and I am asked for a rule against them. The law confers on corporations the power to sue and to be sued, and, therefore, provides the means for their being treated as all other parties to suits, and for their answering, through the person they may appoint for that purpose, interrogatories previously signified to them; but the law has provided no means for their

V. Injunction against.

247. An individual shareholder in a railway Co. will not be entitled to an injunction forbidding a special meeting of the company, for the purpose of sanctioning a lease of the road to another railroad, until a meeting has been called at which the accounts of the Co., have been submitted, unless fraud by the majority or corrupt influence have been proved. *Angus* v. *Montreal, Portland & Boston Railway Co.*, 2 L. N. 203, & 23 L. C. J. 161, S. C. 1879.

248. Where an injunction was demanded against the Harbor Commissioners of Montreal, on grounds which concerned the public generally—*Held*, that as the defendants trust was not of a private but of a public nature the proceedings should have been in the name of the attorney general, and the demand was refused. *The St. Lawrence Steam Elevating Co.* v. *Harbor Commissioners*, 2 L. N. 197, S. C. 1879.

VI. Liability of, for Acts of others.

249. A corporation is liable for accidents caused by the carelessness of contractors to whom they have given out work to do. *Salvas* v. *New City Gas Co.*, 2 L. N. 97, S. C. 1879.

VII. Liability of, for Negligence of Members.

250. The defendants, an educational body, were sued in damages for the death of the husband of plaintiff, who was killed during a St. Jean Baptiste day celebration by the bursting of an old cannon, which was being discharged by the pupils of the school, with the approval and under the direction of the school authorities. The defendants pleaded that they were an educational body, and also that deceased had contributed to the accident by having taken part in the firing of it on previous occasions, though not at the time of the accident—*Held*, that defendants were liable. *Labelle* v. *Les Clercs de St. Viateur*, 1 L. N. 63, S. C. 1877.

VIII. Mandamus against.

251. Mandamus will not lie to compel a railway company to deposit an amount awarded by arbitrators for expropriation. *Bourgouin* v. *Montreal, Ottawa & Occidental Railway Co.*, 21 L. C. J. 217, S. C., 1876.

IX. Powers of Majority.

252. The Court Mount Royal sued the three defendants, as formerly trustees for the plaintiffs, alleging that they had gone out of the

further testifying as witnesses in other cases, subject to examination and cross-examination; and no instance has been cited for their having been ever compelled to give evidence; and the thing appears to me to be on principle impossible. A corporation cannot possibly depute any person to give their answers upon matters in cross-examination that they have had no previous communication of. A court will render no judgment that it cannot execute. If I granted a rule, how could I execute judgment for non-obedience?—how could I send a corporation to prison? The thing appears to me altogether impracticable, and I must refuse the rule.

society, and that there was a sum of about $1,200 in their hands, deposited in the Bank of Montreal, which ought to be given up to the plaintiffs. Only two of the three defendants pleaded. They alleged that the money had been placed in their hands as trustees for the order; that the majority of the order had constituted it under another name, and that since the 21st September, 1877, no order had been in existence under the plaintiff's name; that the defendants hold no office from the plaintiffs. By the evidence it appeared that the court, by a considerable majority of whom were the defendants, had decided to change from the jurisdiction of the English order, under which they held, to the American or independent order, and to change the name of the court accordingly, which was done, and thenceforth the trustees refused to account to the minority, who remained under the original name and jurisdiction—*Held*, in review, reversing the judgment of the Superior Court, that the majority had a right to do as they had done, and the trustees were right in refusing to account to the minority, and in appeal the *dispositif* of this judgment was confirmed, but on the ground that the plaintiffs had not shown a right of action against the defendants. *Court Mount Royal, Ancient Order of Foresters* v. *Boulton*, S. C. R. 1880, & Q. B. 1881.

X. Powers of.*

253. *To Carry on Trade.*—In an action to prevent the defendants from manufacturing and selling a remedy called "Syrup of Red Spruce Gum," it was alleged, *inter alia*, that the defendants were originally incorporated by 4 and 5 Vic., cap. 67, under the name of "The Montreal Asylum for Aged and Infirm Women," and it was provided by the said Act that nothing therein contained should affect the rights of Her Majesty or of any person, or of any body corporate, such only excepted as are mentioned in the said Act; that, supposing the defendants should not infringe the rights of the plaintiffs as above mentioned, the defendants, by manufacturing for sale and by selling their article, the compound syrup of spruce gum, as an article of trade, act in breach of their charter, and beyond the powers granted to them by law, and affect the rights of the plaintiffs in the premises, the defendants causing to the plaintiffs damages $30,000 by their unjust competition on the market and vending the said article; that the plaintiffs, to carry on their trade, have to pay heavy municipal taxes on their business, and on the property by them occupied for their trade, while the defendants, under pretence that they are a religious and charitable society, are granted exemption from all taxes; therefore, for the cause last mentioned, as well as for the causes above alleged, plaintiffs are well founded in restraining the defendants from practising a trade incompatible with the objects of their in corporation. Conclusions—that the certificate gotten by defendants be declared null: that the defendants be restrained from preparing or selling the compound syrup of spruce gum, bearing plaintiffs' trade mark or any portion of it, or imitation of it; that the defendants be condemned to account for all profits, etc., and be enjoined to desist from making or selling "any article whatever, for want of authority and power so to do," and that defendants be further condemned to pay to plaintiffs $30,000 damages, &c.—*Held*, dismissing the action, and this judgment was confirmed in appeal. *Kerry & Les Sœurs de L'Asile de Providence*, 1 L. N. 472, Q. B. 1878.

254. *To issue Negotiable Instruments.*—Where a corporation has allowed a judgment to be taken against it on a note *exparte*, it cannot afterwards appeal on the ground of want of authority in the signers of the note. *Corporation of Grantham* v. *Couture*, 2 L. N. 350, Q. B. 1879.

255. The respondents brought an action against the appellants, a building society, on a promissory note for $2,000, signed on behalf of the society by the president and secretary, payable to the order of one Frechet, from whom it passed by endorsement through several hands to the defendants. The defendants pleaded by demurrer *inter alia* that the powers of the society were determined by C. S. L. C. cap. 69, and did not include the power of making promissory notes, or thereby binding themselves by the signatures of their president and secretary. They also pleaded a *defense en fait*. —*Held*, that a negotiable promissory note made by a building society, or other corporate body not specially authorized by its charter to make promissory notes, is a promise held out to the public that it will pay the amount to the order of the person named therein, and will be held good as an acknowledgment of indebtedness; and the endorsee thereof may recover the amount from the Corporation on the mere production of the note in the absence of a plea specially denying the existence of the debt, or the authority of the officers to make the note. *La Société de Construction du Canada & Le Banque Nationale*, 3 L. N. 130, & 24 L. C. J. 226, Q. B. 1880.

XI. Powers of Officers.

256. *To vote at meeting of creditors.*—In the estate of Timothe Payard, insolvent, the assignee in possession called the usual meeting of creditors. There were but two creditors to the

* ACT TO PERMIT CERTAIN CORPORATIONS TO EMPLOY MORE PROFITABLY THE REAL ESTATE IN THEIR POSSESSION.

Q. 42-43 Vic. cap. 34.

Whereas there are in the Province of Quebec a certain number of Corporations acknowledged by law, which by their charters cannot acquire or hold real estate beyond a limited amount, and whereas the said Corporations could employ their property to greater advantage if they were permitted whenever they dispose of them to employ the price received upon other real estate. Therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows.

1. All Corporations of this Province which cannot acquire real estate, but to a limited amount under the provisions of their charters or of the law, shall hereafter have the right, whenever they dispose of or alienate any real estate belonging to them, to apply the price thereof to the acquisition of other real estate, and also to receive the revenues whatever thereof, any law to the contrary notwithstanding, and to employ the same to the objects for which they were constituted.

estate, one of which was a building society. At the meeting the treasurer of the building society made a motion that an assignee he named should be given possession of the estate. The other creditor moved that the assignee who had issued the writ be retained in possession. The number of voters was thus even, but the building society had the largest interest, and thus commanded the greatest number of votes in value. The assignee in possession was, of course, chairman of the meeting, and as there was no seconder to either motion, he ruled them both out of order, and declared himself assignee, on the ground that under article 29, when there was no assignee to an estate, the assignee in possession continued in that position. A petition was presented in the Insolvent Court by the contesting assignee, asking that he be appointed, as he held a majority of votes in value, when the number of voters was equally divided. *Held* rejecting the petition, *en défaut de forme*. The secretary or any officer of any incorporated body, had no right to vote on the claim of that body unless a special resolution was passed by the Board of direction authorizing him to do so, which was not done in this case; nor had the president the right to sign a power of attorney to the secretary to vote, as was done in this case, without similar authority from the Board, and neither of those formalities having been complied with, the petition was rejected. *Payard Jus. in re.*

XII. Reports and Accounts of.

257. *Liability for.*—Reports made and accounts rendered by directors in the course of their duty, though made and issued to the shareholders only, as to the state of the affairs of the company, are considered the representations of the company, not only to the shareholders but to the public, if they are published and circulated by authority of the directors or a general meeting. *Rhodes & Starnes*, 1 L. N. 314, & 22 L. C. J. 113, S. C. 1878.

258. And directors of a corporation are personally liable for injury caused to third parties by false representations contained in a report of the directors to the shareholders, and the injury must be the immediate and not the remote consequence of the representation, and it must appear that the false representation was made with the intent that it should be acted upon by such third persons. *Ib.*

259. But a shareholder cannot claim damages for having been induced to purchase shares by misrepresentation, if he has continued to hold them without objection long after he has had knowledge, or full means of knowledge, of the untruth of the representation on which he bought them. *Ib.*

XIII. Service of.

260. Service upon a president, secretary or agent, under Art. 61 of the Code of Procedure, may be made either personally or at the domicile of the person served. *Board of Temporalities, &c., & Minister, &c., of St. Andrews Church*, 3 L. N. 379, Q. B. 1880.

CORRUPT PRACTICES.

I. At Elections, *see* ELECTIONS.

COSTS.

I. Action continued for.
II. After Desistement.
III. Against Corporation for Neglect of Roads.
IV. Deposit for.
V. Discretion of Court concerning.
VI. Distraction of.
VII. Due by Garnishee.
VIII. In Action.
By Subrogée.
For Account of Tutorship.
IX. In Appeal, *see* APPEAL.
X. In Cases in Insolvency.
XI. In Criminal Matters.
XII. In Election Cases.
XIII. In Hypothecary Actions.
XIV. In Maritime Cases, *see* MARITIME LAW.
XV. In Review.
XVI. Joint and Several Liability for.
XVII. Judgment as to, may be Reformed in Review.
XVIII. Liability of Sureties for.
XIX. Of.
Action en bornage.
Assignee in Insolvency, *see* INSOLVENCY.
Commission Rogatoire.
Commitment under License Law.
Dilatory Exception.
Insolvent's Discharge, see INSOLVENCY.
Interlocutory Judgment.
Opposition.
Second Action where First Dismissed.
XX. On.
Amendment of declaration.
Certiorari.
Congé défaut.
Contrainte par corps.
Motion withdrawn.
Petition in nullité de decrêt.
Petition to set aside Sheriff's Sale.
XXI. Payment of before Appeal.
XXII. Power of Court with regard to.
XXIII. Privilege for.
XXIV. Security for.
XXV. Taxation of.
XXVI. Where Contestation fails on a Technicalty.
XXVII. Where Desistement Filed.
XXVIII. Where Defendant Declines to plead to an amended Declaration.
XXIX. Where Judgment is for a small portion only of amount sued for.
XXX. Where no Articulation of Facts.

I. Action continued for.

261. When plaintiff's attorney has, by the conclusions of his declaration, demanded distraction of costs, and plaintiff's demand is substantially proved, a settlement between the parties, without the attorney's consent, by which a sum of money is paid by defendant to plaintiff, and the latter abandons his action, does not deprive plaintiff's attorney of his right to obtain judgment

for costs against the defendant. *Laplante* v. *Laplante*, 3 L. N. 330, S. C. 1864.

262. On the 2nd of June, 1877, the plaintiff instituted an action against one S. The defendant pleaded to the merits, and then died, leaving a last will whereby the now defendants were nominated his executors. The present suit was instituted to compel the defendants to take up the instance in the former suit. It was returned into court on the 12th of December, 1877. The defendants pleaded to the action *en reprise* that they had settled with the plaintiff before the institution of the action. The plaintiff answered that the pretended settlement was illegal and null, especially as to his attorneys, and had been obtained by fraud, and with the view of defrauding plaintiff's attorneys out of their costs. Issue having been joined on this plea, judgment was rendered on the 28th February, maintaining the plea of the defendants—*Held*, in review, that the judgment was in conformity with the jurisprudence of the courts as to the effect of settlements out of court, and their binding operation upon the attorneys *ad litem*. *Saunders* v. *Alloway*, S. C. R. 1878.

263. Action of damages for slander, and the question was as to costs, the plaintiff having only called the defendant to prove his case, which, however, the latter did not do; but admitted that since the action was taken he had settled with the plaintiff and paid him $25. He was asked if he did not do this by connivance with the plaintiff to cheat his attorney, and he did not deny it. Distraction of costs asked by the plaintiff's attorney, and granted against the defendant. *Stonehouse & Sonne*, S. C. 1878.

264. An attorney *ad litem* has a right to continue the suit for the recovery of his costs, though his client has agreed to discontinue the case without costs. More particularly in a suit by a wife against her husband, the settlement being obviously made by the defendant with the intention of depriving the attorney of his costs.* *Williams* v. *Montrait*, 1 L. N. 339, S. C., & 3 L. N. 10, & 24 L. C. J. 144, Q. B. 1879.

265. An attorney *ad litem* has no right to continue an action *en separation de corps et de biens* for costs after the reconciliation of the parties. *Gerard* v. *Lemire & St. Pierre*, 2 L. N. 255, & 24 L. C. J. 42, S. C. R. 1879.

266. The parties before the case was returned into court came to a settlement, which did not provide for the payment of the plaintiff's costs by the defendant, although the declaration prayed for distraction of costs—*Held*, that the plaintiff's attorney could not continue the case for his costs. *Carrier* v. *Coté*, 6 Q. L. R. 297, S. C. R. 1880.

II. After Desistement.

267. Where a party renounces his judgment after inscription in review he is bound to pay costs. *Robinson & Bowen*, 2 L. N. 180, S. C. R. 1879.

* This was the effect of this particular case, but the actual rule laid down appears to have been that where a settlement was made by the parties in good faith the plaintiff's attorneys could not continue the case for their costs; but if there was bad faith and the settlement was evidently made for the purpose of depriving the attorney of his costs the court might order that the discontinuance should be made subject to the payment of the costs. Ed.

268. And where the respondent had, after the appeal taken, desisted from a part of the judgment in his favor, and had offered to pay the costs of appeal up to the date of the *desistement*, and the judgment was confirmed in accordance with the desistement, the appellant was condemned to pay the costs subsequent thereto. *Chaloner & Poitras*, 10 R. L. 499, Q. B. 1879.

III. Against Corporation for Neglect of Roads.

269. Where a corporation after conviction repairs the road complained of, costs will not be awarded in favor of the private prosecutor. *Regina* v. *Corporation of the Parish of St. Sauveur*, 3 Q. L. R. 283, Q. B. 1877.

IV. Deposit for.

270. Since the jurisdiction of the Circuit Court in Quebec and Montreal has been restricted to $100, no deposit is required with preliminary pleas in that court. *Kennedy & McKinnon*, 3 Q. L. R. 358, C. C. 1877.

271. The amount of deposit in review is regulated by the amount of plaintiff's demand, although the proceeding be in compulsory liquidation. *Eastwood* v. *Corriveau*, 3 L. N. 8, S. C. R. 1879.

V. Discretion of Court Concerning.

272. Where the Court of Review has merely reformed a judgment of the Superior Court by disallowing the condemnation for costs, the Court of Queen's Bench will not interfere with the discretion as to costs thus exercised by the Court of Review. *Bayard & Martin*, 23 L. C. J. 211, Q. B. 1878.

VI. Distraction of.

273. Distraction of costs is equivalent to a transfer duly signified, and an attorney claiming distraction of costs can sue upon a bond given to secure the payment of such costs. *Fournier & Cannon*, 6 Q. L. R. 228, Q. B. 1861.

274. The attorney has not an incontestable right to distraction of costs, unless he moves for it on or before the day on which judgment is given, and therefore the costs due by one side may be set off by an amount due by the principal on the other side. *Latour* v. *Campbell*, 1 L. N. 163, S. C. 1878; 482 C. C. P.

VII. Due by Garnishee on Default.

275. The costs to be paid by a garnishee to be relieved from a judgment against him by default are those attributable to his default and no more. *Coveney* v. *Mullins & McLimont*, 6 Q. L. R. 173, C. C. 1880.

VIII. In Action.

276. *By subrogée.*—The respondent paid to the appellant a debt due by M., and took a subrogation of the claim. He sued M., and appellant had knowledge of the action, and furnished the names of witnesses to prove the

debt. Respondent obtained judgment for part only—*Held*, that respondent was entitled to recover by direct action, but as he had not called appellant in as *garant*, respondent was not entitled to recover the costs incurred in the suit against M *Carreau & McGinnis*, 3 L. N. 362, Q. B. 1880.

277. *For Account of Tutorship.*—A tutor was sued by his pupil *en reddition de compte* and appeared, but did not file account until after judgment—*Held*, that a tutor had always the right to render an account *en justice*, and to summon the pupil, if necessary, to receive the account, and in such cases the costs were at the charge of the pupil, but in the present case, as the neglect of the tutor to file an account with his appearance had occasioned more costs than were actually necessary, he would be condemned to pay the costs incurred subsequent to appearance. *Ferland & Frechette*, 9 R. L. 403, S. C. 1878.

IX. In Appeal.

278. Where a deposit of £500 has been made as security, under Art. 1179 C. C. P., on an appeal to the Privy Council, and the judgment appealed from is confirmed in the Privy Council, but without costs in the Privy Council, the deposit will nevertheless avail to liquidate the costs in the court below, and cannot therefore be withdrawn by appellant. *Lemoine & Lionais*, 22 L. C. J. 23, Q. B. 1877.

X. In Cases in Insolvency.

279. Where the defendant was proceeded against, under sec. 136 of the Insolvent Act, 1875, which authorizes imprisonment in certain cases of fraud, and the judgment went for the amount of the debt simply, costs, as in a case *exparte* only, were granted. *Brown* v. *Mullin*, 2 L. N. 344, S. C. 1879.

XI. In Criminal Matters.

280. By Order in Council of the Quebec Government costs of summoning witnesses and their taxation and other expenses attending the preliminary investigation of criminal offences, including constables' fees, are chargeable to the party prosecuting, and not to the Crown, in cases where the prisoner is not committed or held to bail to stand his trial. The defendant having obtained the services of plaintiff as high constable, in connection with an information for a misdemeanor, specially undertook to pay plaintiff's fees; therefore, "according to the Government regulations now existing," it appearing that the prisoner had been sent for trial—*Held*, that the defendant could not be made liable for the fees due the plaintiff on account of the services so rendered by him. *Gailloux* v. *Bell*, 4 Q. L. R. 264, S. C. R. 1877.

XII. In Election Cases.

281. Even if the petitioner succeeds, each party will be ordered to pay his own costs where the defendant succeeds in a recriminatory case, under sec. 55 of the Election Act. *Hamilton & Beauchesne*, 3 Q. L. R. 75, S. C. 1876.

XIII. In Hypothecary Actions.

282. Hypothecary action for $13.80, arrears of life rent, brought as an appealable action. Motion, after return, to treat it, with respect to costs and procedure, as a non-appealable action of the lowest class, dismissed as premature, and on final judgment—*Held*, that the costs would be taxed as an appealable action of the lowest class. *Leclair & Filion*, 7 R. L. 426 & 428, C. C. 1875.

XV. In Review.

283. The Court of Review will not give costs to parties coming to rectify a trifling error which has already been rectified by retraxit. *Soulière* v. *Heron*, 1 L. N. 87, S. C. R. 1878.

XVI. Joint and Several Liability for.

284. Where four defendants were condemned to pay $10 per month as alimentary pension to the plaintiff, their father, each for his share—*Held*, that they were not liable *solidairement* for the costs, but each for his share. *Crevier* v. *Crevier*, 9 R. L. 313, S. C. 1877.

XVII. Judgment as to, may be Reformed in Review.

285. The plaintiff brought his action against the defendants, husband and wife, to cancel the effect of the registration of a will of the mother of the female defendant deceased. Before action plaintiff, by letter, requested the defendants to sign a cancellation, but they refused, the female defendant specially replying that she would not sign any deed at all. The male defendant confessed judgment, but his wife contested. Judgment granting the cancellation, but ordering plaintiff to pay all costs, was reformed in review as to costs. *Hall* v. *Brigham*, 3 L. N. 219, S. C. R. 1880.

XVIII. Liability of Sureties for.

286. Sureties in appeal when the judgment has been confirmed, and the court has not granted leave to appeal to the Privy Council, are liable for the costs absolutely, and they have no right to annex a condition to a tender of such costs that the money will be returned in the event of the Privy Council granting a special application to appeal, and the judgment being reversed on such appeal. *Carter* v. *Ford*, 3 L. N. 412, S. C. 1880.

XIX. Of.

287. *Action en bornage.*—Where a person brings an action *en bornage* without previous demand, and joins with it a claim for damages, of which no proof is made, he will be condemned to pay the costs of suit. *Rochon* v. *Coté*, 21 L. C. J. 273, S. C. 1877.

288. *Commission Rogatoire.*—When the attorney of an absent party, upon whom an order for *faits et articles* has been served, indicates the residence of his client, and his option to have him examined by commission at such place, the commission will be at the diligence

and expense of the party requiring the interrogatories. *Knox* v. *Lafleur*, 1 L. N. 470, S. C. 1878; 223 C. C. P.

289. *Commitment under License Law.*—On a petition for *habeas corpus*—*Held*, that there was no authority under the license law for adding costs of commitment and conveyance to gaol to the other costs incurred on a conviction for selling liquor without license. *Archambault exp.*, 3 L. N. 50, Q. B. 1880.

290. *Dilatory Exception.*—*Held*—to abide final issue where the security, etc., demanded by it had been filed before hearing of the exception. *Martin* v. *Foley*, 2 L. N. 182.

291. The costs in dilatory exceptions calling for power of attorney and security for costs from plaintiff must abide the final judgment in the cause. *Symes et vir.* v. *Voligny*, 1 L. N. 512, S. C. 1878.

292. Costs will be awarded on a dilatory exception if the power of attorney asked for thereby has not been filed before the exception. *Westcott et vir.* v. *Archambault et al.*, 21 L. C. J. 307, S. C. 1877.

293. The costs of a dilatory exception asking for security for costs, which is furnished as demanded, will be reserved to abide the issue of the suit. *Akin* v. *Hood*, 21 L. C. J. 47, S. C. 1877.

294. *Interlocutory Judgment.*—On a motion for new security in appeal it was shown that the party moving had been in default, and had had the default, removed subject to pay cent of costs, and no notice had been given that these costs had been paid—*Held*, that the motion would be discharged *quant à present*. *Gaff & Grand Trunk Railway & Perkins*, 2 L. N. 410, Q. B. 1879.

295. *Opposition.*—Where an execution issued for more than was due an opposition was maintained *pro tanto* without costs. *Trudelle & Hudon*, 24 L. C. J. 171, Q. B. 1875.

296. A plaintiff who seizes, as belonging to defendant property which has been registered for years in the name of opposants must pay costs of opposition. *Robert et al.* v. *Forlin & La Société de Construction Jacques Cartier*, 21 L. C. J. 219, S. C. 1877.

297. Where an opposition *afin de distraire* was dismissed on motion—*Held*, that the opposant could not file a new opposition until the costs of the first were paid. *Dalton* v. *Doran*, 1 L. N. 220, & 22 L. C. J. 103, & 8 R. L. 372, S. C. R. 1878.

298. Costs incurred in order to obtain the dismissal of a tierce opposition to the sheriff's sale of an immoveable are costs upon proceedings incidental to the seizure, and, as such, must be collocated as privileged under Art. 728 of the Code of Procedure.* *Vaillancourt* v. *Collette & Perrault*, 3 L. N. 406, & 24 L. C. J. 302, S. C. 1880.

*Law costs must, however, be collocated in the following order:

1. Costs of the report.

2. Commission on amounts deposited and tax upon the amount levied, if any is due, and costs of seizure and sale, if they have not been retained out of the moneys levied.

3. Costs incurred upon the writ of execution against immoveables, and such as may remain due upon the discussion of the moveables.

299. And they are also costs incurred in the common interest of the creditors, according to Art. 2009 of the Civil Code, par. 6.* *Ib.*

300. The plaintiff sued the defendant, and his action was dismissed with costs. The defendant, on affidavit that the plaintiff was secreting his effects, caused an execution to issue before the expiration of fifteen days from the date of judgment. The plaintiff opposed, contesting the truth of the facts alleged in the affidavit, and praying that the seizure be annulled and set aside. The opposition was made and sworn at Montreal, where the plaintiff resided, the 14th December, 1878, transmitted to Three Rivers, where an order suspending the execution was obtained and registered in the prothonotary's book there. It was then returned to Montreal to be served on the bailiff seizing, which was done at half-past eleven in the forenoon of the 17th December, 1878. But half an hour previous to the service of the opposition the defendant served on the plaintiff opposing notice of a desistement of his seizure. On the 24th December, the 15 days having expired, the defendant sued out a new execution. Judgment, maintaining an opposition to the second seizure, on the ground that the costs of the first opposition had not been paid before issuing the second, confirmed with costs. *Bell & Rickaby*, 5 Q. L. R. 222.

301. *Second Action where first Dismissed.*—A plaintiff who takes a new action after his first is dismissed on a preliminary plea, and who is stopped in his proceedings by a motion on the part of the defendant, demanding that the costs of the first action be paid before he is allowed to proceed, is not bound to notify the defendant that he has paid the costs demanded, but the costs of the motion for costs must also be paid before he can proceed. *Laferrière & Provost*, 10 R. L. 26, 1879.

XX. On.

302. *Amendment of Declaration.*—Where, after a verdict by a jury in his favor which had been set aside in appeal, and a new trial ordered, the plaintiff moved to amend the declaration—*Held*, that plaintiff should pay costs of contestation, including the jury trial. *Rolland* v. *Citizens Insurance Co.*, 2 L. N. 180, S. C. 179.

303. *Certiorari.*—The costs on a certiorari are in the discretion of the court. *Laviolette exp. & Trudel & Cazelais*, 3 L. N. 159, S. C. 1880.

304. The prosecutor cannot, on a petition for certiorari, be condemned to pay costs, unless he has been made a party to the proceedings. *McLaughlin exp.*, 3 L. N. 367, S. C. 1880.

4. Costs of cancelling hypotheca or of establishing that they are extinguished.

5. Costs of affixing seals and of making any inventory required by law.

6. Costs incurred either in the court below, or in appeal upon proceedings incidental to the seizure, and necessary to effect the sales of the immoveables.

7. Costs of suit as provided in Article 606.

* The privilegod claims upon immoveables are hereinafter enumerated and rank in the following order:

1. Law costs and the expenses incurred for the common interest of the creditors. 2009 C. C.

305. *Congé défaut.*—No costs will be allowed with congé défaut on motions served and not made. *Grant & Lavoie*, 3 L. N. 392, Q. B. 1880.

306. *Contrainte par Corps.*—A judgment for contrainte, concluding with the words, "the whole with costs," includes the necessary future costs of executing the judgment, and a commitment including such additional costs is not in excess of the judgment. *Thompson exp.*, 1 L. N. 102, Q. B. 1877.

307. *Motion withdrawn.*—Motion for an order to the prothonotary to send up an exhibit filed and not produced before the motion was served. Before the hearing of the motion the exhibit was returned, and the party moving asked to be allowed to withdraw his motion without costs, opposite party objected on the ground that he meant to move to reject the paper—*Held*, that he should be allowed to withdraw his motion and pay costs. *Latulippe & Bernard*, 3 L. N. 298, Q. B. 1880.

308. *Petition en nullité de decrêt.*—No costs were allowed in a judgment setting aside an adjudication where the adjudicataire was the original vendor and plaintiff at whose suit it was sold. *Cie. de Prêt et Crédit Foncier & Baker*, 24 L. C. J. 45, Q. B. 1879.

309. *Petition to set aside a Sheriff's Sale.*—The costs on a petition to set aside a sheriff's sale, on grounds of fraud, are the same as those allowed in ordinary suits. *Commercial Mutual Building Society* v. *McIver*, 3 L. N. 358, S. C. 1880.

XXI. Payment of, before Appeal.

310. Costs paid to the attorneys of the successful party, in a case which is afterwards appealed and the judgment reversed, cannot be recovered in an action en repetition, even though paid under reserve. *Holton* v. *Andrews*, 3 Q. L. R. 19, S. C. 1876.

XXII. Power of Court with regard to.

311. The question of costs is entirely in the discretion of the Court, except in such cases as are specially provided for by statute, and the Court of Queen's Bench, sitting in appeal, will not, as a general rule, interfere with the award of costs by the inferior court; and, where a judgment is confirmed as to the *dispositif*, the appellant may be condemned to pay costs on the appeal, though the judgment appealed from was based on erroneous grounds. *McClanaghan & St. Ann's Mutual Building Society*, 3 L. N. 61, & 24 L. C. J. 162, Q. B. 1880.

XXIII. Privilege for.

312. Plaintiff having sued out an execution against defendant the latter filed an opposition which was maintained with costs. For these costs certain real estate belonging to plaintiff was brought to sale—*Held*, that the opposant could not be collocated for and paid these costs by privilege, and in preference to the claim of a duly registered hypothecary creditor.* *Brunean* v. *Gagnon & Pacaud*, 4 Q. L. R. 316, S. C. R. 1878.

*Art. 606 of the Code of Procedure, as amended by 33 Vic. Cap. 17, Sec. 2, referred to and commented on.

XXIV. Security for.

313. Where, by a letter addressed to the suppliant, the secretary of the Public Works department stated that he was desired by the Minister of Public Works to offer the sum of $3,950 in full settlement of the the suppliant's claim against the department, an application on behalf of the Crown for security for costs was refused, on the ground that the power of ordering a party to give security for costs, being a matter of discretion, and not of absolute right, the Crown in this case could suffer no inconvenience from not getting security. *Wood* v. *The Queen*, 3 Q. L. R. 17, Ex. Ct. 1876.

314. And, *held*, also, that applications for security for costs in the Exchequer Court must be made within the time allowed for filing statement in defence, except under special circumstances.—*Ib.*

315. Where a plaintiff is ordered to give security for costs by the first day of next term, he cannot, by furnishing security in the intervening vacation, and giving notice thereof, compel the defendant to plead even preliminary pleas before the said first day of term. *Kennedy* v. *McKinnon*, 3 Q. L. R. 358, C. C. 1877.

316. Where an opposant is non-resident, though his domicile has been in the province, he will be required to give security for costs. *Gravel* v. *Mallette & Mallette*, 21 L. C. J. 162, S. C. 1877.

317. A motion for security for costs must be made within four days after return, and, if vacation intervene, within four days exclusive of vacation. *Cartier* v. *Germain*, 21 L. C. J. 310, S. C. 1877.

318. An appellant will not be ordered to give new security because one of his sureties admits and declares that he was really insolvent at the time he signed the bond, although he then declared he was solvent. *Riddell & McArthur*, 22 L. C. J. 78, 1877.

319. A foreign insurance Company which has a place of business in the Province of Quebec, is not bound to give security for costs. *Globe Mutual Insurance Co. of New York* v. *Sun Mutual Insurance Co.*, 1 L. N. 53, & 22 L. C. J. 38, S. C. 1877.

320. But *held*, subsequently, on motion for power of attorney in the same case, that the company, plaintiff, under such circumstances should give security. *Ib.*, 1 L. N. 139.

321. An Ontario Insurance Company, though doing business in Montreal, is bound to give security for costs. *Niagara District Fire Ins. Co.* v. *Macfarlané*, 21 L. C. J. 224, S. C. 1877.

322. A demand for security for costs from an insolvent will not be granted unless the insolvent is such under the Insolvent Act 1875. *Niagara District Fire Insurance Co.* v. *Mullin*, 21 L. C. J. 221, S. C. 1877.

323. The Court in Montreal has no power to order that sureties residing in another district shall justify before the prothonotary of that district, when the case appealed from is in Montreal. *Fournier* v. *Delisle*, 21 L. C. J. 165, S. C. 1877.

324. A seaman of a foreign vessel suing for wages, and describing himself as "of Norway, now at Quebec," will be compelled to give security for costs. *Anderson* v. *Brusguard*, 3 Q. L. R. 287, C. C. 1877.

325. The Court of Queen's Bench cannot entertain a petition to have the security declared insufficient, on the ground that the respondent has discovered, since the completion of the bond, that the securities were really insufficient at the time the bond was signed. *Lapointe & Faulkner*, 22 L. C. J. 53, Q. B. 1877.

326. Under the Insolvent Act 1875, a creditor proceeding, though without domicile in the Province of Quebec, was not obliged to give security for costs. *Reed* v. *Larochelle*, 3 Q. L. R. 93, S. C. 1877.

327. The maker of a note, on which the defendant was sued as endorser, desired to intervene for the purpose of taking up the *faits et cause* of defendant, and showing that the note was given without consideration. Plaintiff moved that he be ordered to give security both as being domiciled in the United States and as being an undischarged insolvent. *Held*, that security could not be demanded from a person who simply sought to defend himself, neither under Art. 29 of the Code nor sec. 39 of the Insolvent Act. *Marois* v. *Brodeur & Brodeur*, 1 L. N. 554, S. C. 1878.

328. But a defendant, who has become an insolvent under the Insolvent Act, cannot call on the plaintiff to declare whether he admits or contests an opposition filed by him to the execution of a judgment against him, without giving security for costs. *Beausoleil & Bourgoin et al.*, 1 L. N. 554, & 22 L. C. J. 227, S. C. 1878.

329. A motion for the production of a power of attorney, and for security for costs, cannot be presented after the expiration of four days from the return of the writ. *Melles* v. *Swales*, 1 L. N. 566, & 22 L. C. J. 271, S. C. 1878.

330. Under the circumstances disclosed by defendant's motion, plaintiff held to give further security for costs without staying proceedings. *Hale & Price*, 4 Q. L. R. 207, S. C. 1878.

331. In cases under sixty dollars no deposit is required with preliminary exceptions. *La Compagnie d'Assurance des Cultivateurs & Beaulieu*, 1 L. N. 566, C. C. 1878.

332. The appellant, defendant in the court below, appealing from a judgment against him in favor of the respondent, who had become insolvent, moved that all proceedings on the part of respondent be suspended until he should have given security for costs or until his assignee should have taken up the instance, and in default of this that he (appellant) be permitted to proceed *exparte—Held*, that the appellant was not entitled under sec. 39 of the Insurance Act, 1875, to demand security from an insolvent respondent, or to call upon the assignee to take up the instance; and in any case such motion could not be entertained without notice thereof to the assignee. *McKinnon & Thompson*, 1 L. N. 494, & 23 L. C. J. 95, Q. B. 1878.

333. It is not sufficient to entitle a defendant to security for costs to allege that the plaintiff has left his "domicile," in the Province of Quebec. *Prentice* v. *The Graphic Co.*, 1 L. N. 484, & 555, & 22 L. C. J. 268, S. C. 1878; 29 C. C.

334. A motion for security for costs cannot be made after the four days from the return of the writ of summons, even although notice of

such motion has been given within the four days. *Sproat* v. *Corriveau*, 1 L. N. 139 & 22 L. C. J. 55, S. C. 1878; & *Cruickshank & Lavoie* 3 L. N 37 & 24 L. C. J. 59, C. C. 1879; & *Adams & McIntyre*, 3 L. N. 143, S. C. 1880.

335. A private letter, whereby the signers bind and oblige themselves jointly and severally to be responsible and to pay the costs and damages which may be suffered by the respondents, etc., is not a compliance with the Injunction Act of 1878, which provides that a writ of injunction shall not issue unless the person applying first gives good and sufficient security in the manner prescribed by and to the satisfaction of the court, or a judge thereof. *Board of Temporalities of the Presbyterian Church & Dobie*, 2 L. N. 52, & 23 L. C. J. 229, Q. B. 1878; Q. 41 Vic. cap. 14, sec. 4.

336. On a motion for security for costs under the 39th sec. of the Insolvent Act, 1875—*Held*, that as long as plaintiff was quiescent he could not be forced to give security. *Perry* v. *Pell*, 2 L. N. 125, & 23 L. C. J. 55, S. C. 1879.

337. Under the Insolvent Act, 1879—*Held*, that an insolvent, contesting the collocation of a creditor on his estate, was bound to give security for costs. *Gervais & Heywood*, 2 L. N. 322, & 23 L. C. J. 283, S. C. 1879.

338. Security for costs, under the ordinary procedure, may be demanded from a non-resident who brings proceedings by injunction, notwithstanding that security in pursuance of the Injunction Act, Q. 41 Vic. cap. 14, sec. 4, has been already given. *Dobie* v. *Board of Management of the Temporalities Fund of the Presbyterian Church of Canada*, 2 L. N. 277, & 23 L. C. J. 71, S. C. 1879.

339. Nor is such demand for security a waiver of the defendant's right to ask for increased security under the Injunction Act. *Ib.*

340. Where two plaintiffs between whom there is no *solidarité* as co-heirs, bring action, and one of them is non-resident, he will be held to give security for costs. *Henderson* v. *Henderson*, 2 L. N. 191, & 23 L. C. J. 208, S. C. 1879.

341. Defendant moved that plaintiff be held to give security for costs. The plaintiff answered that he had done so already—*Held*, that the security given only extended to judgment and not to proceedings subsequent to judgment. Motion granted. *Dalton & Doran & Mansfield*, 2 L. N. 181, S. C. 1879.

342. Where the evidence showed that the plaintiff had not resided in the country for five years, security for costs ordered. *Jones* v. *Varlivet & Jones* v. *Pearson*, 3 L. N. 184, S. C. R. 1880.

343. Where of two or more co-plaintiffs who are co-heirs one is absent from the Province security can be demanded from the absent one. *Howard* v. *Yule*, 3 L. N. 373, S. C. 1880.

344. Motion for security for costs will not be granted against a plaintiff who has left the Province since the institution of the action, if it appear that the motion was not made within four days of the knowledge of the departure. *Oliver & Darling*, 3 L. N. 303, C. C. 1880; & *D'Extras & Perrault*, 3 L. N. 304, S. C. 1880.

345. Opposition produced on the 25th June. The 29th was Sunday. On the 30th plaintiff contesting gave notice that on the first day of

term he would move security for costs, the opposant being resident in the United States. The court below granted the motion, and ordered security to be given. Leave to appeal refused, because, by Art. 24 C. C. P.,* the party seeking security was within the delay if it applied to a case like this, and also because the four days rule only applies to proceedings which are signified to the opposite party. *Wadleigh & Painchaud*, 3 L. N. 298, Q. B. 1880.

346. Application for security for costs under sec. 39 of the Insurance Act, 1875. Application resisted, on the ground that the repeal of the Act prevented the demand—*Held*, that, under the terms of the repealing Act, the application should be granted. *Gareau* v. *Cinq Mars*, 3 L. N. 242, S. C. 1880.

XXV. TAXATION OF.

347. Action for $144.25. Judgment for $77.93. Defendant opposed the execution by an opposition *afin d'annuler*, which was subsequently dismissed with costs—*Held*, on contestation of the bill of costs incurred on the contestation of the opposition, that the costs should be taxed as in an appealable case over $100, and not as in a case of $77.93. *Francœur* v. *Baron*, 5 Q. L. R. 145, S. C. 1879.

348. The plaintiff instituted an action for $47.50, and obtained judgment for $23.17. Execution issued in satisfaction of the judgment and the defendants moveables being seized an opposition was filed, which was subsequently maintained. On revision of the opposant's bill of costs, which had been taxed by the clerk according to the amount of the action, that is to say as in a case above $40.00, it was decided that the bill was incorrect, that it should be taxed not according to the amount of the original action but according to the amount of the judgment, that is to say, in an action under $25.00. *Rocheleau & Sinclair*, 5 Q. L. R. 308, C. C. 1879.

349. The taxation of a bill of costs by a judge in chambers, under the authority of the Quebec Railway Act 1869, sec. 9, sub-sec. 10, is not subject to revision by another judge sitting in banco. *Mathiot & Burroughs*, 1 L. N. 291, & 22 L. C. J. 100, S. C. 1878.

350. A judgment and taxation of costs under secs. 47 and 48 of the Quebec Election Act are final, and not susceptible of being reviewed. *Picard* v. *Vallée*, 5 Q. L. R. 309, S. C. R. 1879.

351. A judgment for costs cannot be executed until the bill has been taxed. *Lewis* v. *McGinley*, 6 Q. L. R. 61, S. C. R. 1880.

XXVI. WHERE CONTESTATION FAILS ON TECHNICALITY.

352. Where a contestation attacking a deed as made in fraud of creditors, failed, because of a defect in pleading, but the fraud was established by the evidence, the contestation was dismissed without costs. *Blouin & Langelier*, 3 Q. L. R 272, S. C. R. 1877.

* Delays continue to run upon Sundays and holidays, but if a delay expires on a holiday it is of right extended to the next following day. The same rule applies to all other delays in Procedure.

XXVII. WHERE DESISTEMENT FILED.

353. Where a party has desisted from a judgment in his favor, but without costs, and the case goes to appeal, he will be condemned in costs of both courts. *Bellay & Guay*, 4 Q. L. R. 91, Q. B. 1874.

XXVIII. WHERE DEFENDANT DECLINES TO PLEAD TO AN AMENDED DECLARATION.

354. Plaintiff moved and was allowed to amend his declaration after plea filed. Defendant declined to plead *de novo*, and after judgment against him for debt and, costs, complained of being condemned to pay costs of contestation on the ground that he had not pleaded to the declaration as amended—*Held*, that this did not constitute an acquiescence sufficient to relieve him from the costs of contestation. *Archambault & Pangman*, 2 L. N. 246, S. C. R. 1879.

XXIX. WHERE JUDGMENT FOR SMALL PORTION ONLY OF AMOUNT SUED FOR.

355. Action for $109.59. Defendant offered by his plea $28.64, which plaintiff accepted—*Held*, that plaintiff should pay costs of defendant's plea, and obtain costs as in a Circuit Court, action for $28 64. *Olivier* v. *DeMontigny*, 2 L. N. 158, S. C. 1879.

XXX. WHERE NO ARTICULATION OF FACTS.

356. On a petition to revise a taxed bill of costs, it appeared that defendant had pleaded a *defense en fait* simply and had succeeded. Plaintiff now objected to the bill of costs, on the ground that defendant was not entitled to costs of enquete where no articulation of facts had been filed—*Held*, that under a *defense en fait*, no articulation of facts is required. *Mathewson* v. *O'Reilly*, 2 L. N. 322, S. C. 1879; 207 C. C. P.

COTISATION.

I. BY CHURCH FABRIQUES, *see* CHURCH FABRIQUES.

II. FOR ERECTION OF PARISHES, *see* CHURCH FABRIQUES.

COUNCIL OF THE BAR—*See* BAR.

COUNSEL.

I. FEES OF, *see* ADVOCATES.

COUNSEL AT ENQUETE—*See* PROCEDURE.

COUNTS.

I. In Indictment, *see* CRIMINAL LAW.

COUNTY COUNCIL—*See* MUNICIPAL CORPORATIONS.

COURT HOUSE TAX.

I. Crown Exempt from, *see* CROWN.

COURT OF REVIEW—*See* REVIEW.

COURTS.

I. Meaning of Term.
II. Powers of.
To Appoint Arbitrators, see ARBITRATORS.

I. Meaning of Term.

357. "The Court" in sec. 136 of the Insolvent Act of 1875, in the Province of Quebec, means the Superior Court, and not the judge sitting in insolvency. *Gear & Sinclair & Furniss*, 21 L. C. J. 279, S. C. 1877.

II. Powers of.

358. Where a judge in chambers had ordered a *sequêstre*, which order on a *requête afin d'opposition* filed on the ground of insufficient service had been suspended by another judge, and the whole matter finally referred to the Practice Court—*Held*, that that court had no jurisdiction to revise the order ordering a *sequêstre*. *Heritable Securities & Mortgage Association* v. *Racine*, 2 L. N. 300, S. C. 1879.

359. The Court of Appeal has no power to order a person to intervene and take up an *instance* in the place of appellants, on the ground that such person was the party really interested. *Maher & Aylmer*, 2 L. N. 378, Q. B. 1879.

360. The Court of Appeal has no power to issue an injunction restraining the City of Montreal from proceeding to execute a judgment of the Recorder's Court. *Mallette* v. *City of Montreal*, 2 L. N. 379, Q. B. 1879.

361. The Court of Queen's Bench, sitting in appeal in civil matters, has no power to entertain an application for a change of venue in a criminal matter. *Corwin exp.*, 2 L. N. 364, Q. B. 1879.

362. Under the Imp. Stat. 22-23 Vic. cap. 63, in any case depending in any court within Her Majesty's Dominions, if the law applicable to the facts of the case is the law administered in any other part of Her Majesty's Dominions, and is different from the law of the place in which the court is situate, it is competent to the court in which such action is pending to direct a case to be prepared, showing the facts and to be remitted for reference to the Superior Court administering the law applicable to the facts of the case, and desiring such court to pronounce its opinion upon the question submitted. *Noad & Noad*, 21 L. C. J. 312, S. C. 1874.

363. The Court of Review may send a case back to the court below, in order that the *serment supplétoire* may be deferred to the plaintiff. *Canadian Navigation Co. & McConkey*, 1 L. N. 23, Q. B. 1877.

364. The Court in Montreal has no power to order that securities in another district justify before the Prothonotary of that district, when the case is in Montreal. *Fournier* v. *Deliste*, 21 L. C. J. 165, S. C. 1877.

365. On a petition in *quo warranto* against an alderman, *held* that the court could exercise its discretion as to granting the petition, even where a good objection was shown. *Roy* v. *Thibault*, 22 L. C. J. 280, S. C. 1878.

COURTS MARTIAL—*See* MILITIA LAW.

COVENANTS.

I. Breach of, *see* CONTRACTS.
II. In Policies of Insurance, *see* INSURANCE.

CREDITORS.

I. Meeting of under Insolvent Act, *see* INSOLVENCY.
II. Rights of in Insolvency, *see* INSOLVENCY.
III. Rights of on Report of Distribution, *see* DISTRIBUTION.
IV. Right to set aside Donation in Fraud of, *see* DONATION.
V. Sale in Fraud of, *see* SALE.
VI. Transfer in Fraud of, *see* TRANSFER.

CRIMINAL CONVICTION.

I. No Bar to Damages, *see* DAMAGES.

CRIMINAL LAW.

I. Abduction.
II. Arson, *see* BAIL.
III. Bail.
IV. Bill may be sent back to Grand Jury.
V. Challenge.
VI. Costs of Preliminary Examination, *see* COSTS.
VII. Embezzlement.
VIII. Error.
IX. Evidence in Criminal Cases.
X. False Pretences.
XI. Indecent Assault.
XII. Indictment.

Amendment of.
Different counts in.
For larceny.
For making false returns.
For neglect to provide for family.
For obtaining signature by false pretences.
For perjury.
For setting fire to timber.
Signing of.

XIII. Jury.
XIV. Larceny.
XV. Libel.
XVI. Making False Bank Statements.

Indictment for.

XVII. Manslaughter.
XVIII. Mistrial.
XIX. New Trial.
XX. Nuisance.
XXI. Perjury.
XXII. Plea of Title.
XXIII. Receiving Stolen Goods.
XXIV. Record in.
XXV. Reserved Case.
XXVI. Summary Trial.
XXVII. Taking and Applying.
XXVIII. Trial.

Discharge of jury during.

XXIX. Name.
XXX. Verdict.
XXXI. Wrongful Conversion of Property.

I. Abduction.

366. On an indictment for abducting a girl under sixteen years of age, where it appeared that the girl had left her guardian's house, for a particular purpose, with his sanction—*Held*, that she did not cease to be in his possession under the statute. *The Queen* v. *Mondelet*, 21 L. C. J. 154, Q. B. 1877.

III. Bail.

367. A prisoner committed for trial on a charge of arson may be admitted to bail. *Onasakenarat exp.*, 21 L. C. J. 219, S. C. 1877.

368. A true bill was found against the prisoner at Quebec. The trial was deferred until the following term, and it was agreed that the prisoner should be admitted to bail. He was allowed to go to fetch his bail, but left the country; subsequently he returned, and was arrested and committed to gaol. He now asked to be allowed to stand out on bail. Application refused. *Deenan exp.*, 3 L. N. 195, Q. B. 1880.

369. Application for bail on behalf of a prisoner indicted with others for the larceny of a large sum of money. The grounds of the application were that the case had been tried before the judge of quarter sessions, and the jury discharged on account of the absence of an important witness who had been present when the trial was opened—*Held*, that the court could not decide whether the discharge of the jury was legal or not, and, as the absent witness had evidently been tampered with, the application was refused. *Jones exp.*, 3 L. N. 206, Q. B. 1880.

IV. Bill may be sent back to Grand Jury.

370. The grand jury on an indictment for murder found *no* bill, and the crown counsel moved to send it back, on the ground that certain evidence had not been brought under their notice—*Held*, that while the court had the right to refer the bill back to the grand jury the new evidence was insufficient to warrant such a proceeding. *Regina* v. *Meyers*, 2 L. N. 378, Q. B. 1879.

V. Challenge.

371. The prisoner should challenge before the juror takes the book in his hand, but the judge, in his discretion, may allow the challenge afterwards before the oath is fully administered. *Regina & Kerr*, 3 L. N. 299, Q. B. 1880.

VII. Embezzlement.

372. A clerk in a bank may be convicted of embezzlement on proof of a general deficiency, supported by evidence of unlawful appropriation though no precise sum paid by any particular person is proved to have been taken. *Regina* v. *Glass*, 1 L. N. 41, Q. B. 1877.

VIII. Error.

373. On a writ of error—*Held*, that the court cannot look beyond the record for what took place at the trial, and affidavits purporting to contradict the record are inadmissible. *Dougall & The Queen*, 22 L. C. J. 133, Q. B. 1876.

374. And the notes taken by the judge presiding at the trial do not form part of the record. *Ib.*

IX. Evidence in Criminal Cases.

375. The prosecutrix on an indictment for rape was asked in cross-examination, after she had declared she had not previously had connection with a man other than the prisoner, whether she remembered having been in the milk-house of G., with two persons named M., one after the other—*Held*, that the witness may object, or the judge may, in his discretion, tell the witness she is or she is not bound to answer the question, but the court ought not to have refused to allow the question to be put, because the counsel for the prosecution objected to the question. *Laliberté & Regina*, 1 S. C. Rep. 117, Su. Ct. 1877.

376. And also where a witness in the same case was called for the defence and asked "Did you ever see P. M. (the prosecutrix) with D. M. and B. M. (the persons before alluded to) if you have, please state on what occasion, and what they were doing?" the court refused to allow the question. *Ib.*

377. Three indictments were found against, the prisoner, lately assistant postmaster at Sweetsburgh, and who was also a clerk in the store there kept by the postmaster; one for having stolen a registered post office letter arriving [illegible] and which contained $50; a second for having forged in the book of record there for such letters a signature purporting to be that of the person to whom the stolen letter had been addressed; and a third for embezzlement.

On his trial on the first of these indictments it was sought by the Crown to prove that he had confessed his guilt in a conversation between him and the postmaster and one Bury. It appeared that the conversation had begun about the embezzlement, and had continued to the matters of the theft and forgery. At the outset of the conversation, and in connection with the first subject the witness admitted having in effect intimated to the prisoner that he had better confess—*Held*, that evidence of the confession could not be admitted. *Regina & Wyllie*, 3 L. N. 139, Q. B. 1880.

378. And in the same case new evidence being discovered, after the retirement of the jury, which, if true, would establish the prisoner's innocence of the theft and forgery—*Held*, that the jury could not be recalled for the purpose of having the new evidence submitted to them, and that the only remedy would be to discharge the jury, at the instance of the Crown, with the prisoner's consent. *Ib.*

X. False Pretences.

379. *Obtaining Money by.*—Prisoner was indicted for obtaining money under false pretences. The evidence showed that he had obtained a cheque on the bank and had cashed it—*Held*, insufficient to sustain the indictment. *Regina v. Maynard*, 2 L. N. 357, Q. B. 1879.

380. Where the evidence established that the defendant sold two railway passes good only to carry a particular person, and which the purchaser could not use except by committing a fraud on the railway company, and at the risk of being at any moment expelled from the train, that there was evidence to go to the jury on an indictment against the defendant for obtaining money by false pretences. *Regina v. Abrahams*, 24 L. C. J. 325, & 1 Q. B. R. 126, Q. B. 1880.

XI. Indecent Assault.

381. The prisoner was indicted for an indecent assault on the person of a boy of about thirteen years of age. The evidence clearly showed the consent of the boy, and that he only denounced the facts when questioned by his father—*Held*, on the authority of Regina v. Wollaston, 12 Cox, p. 180, that the prosecution could not be maintained. *Regina v. Laprise*, 3 L. N. 139, Q. B. 1880.

XII. Indictment.

382. *Amendment of.*—Where an indictment for taking and applying certain property of the Hochelaga Bank, to wit—"75 shares of the stock of the Montreal Telegraph Co." was objected to on the ground that it did not set out that the stock taken was that of a body corporate, the words "a body corporate" were ordered to be added. *Regina v. Paquet*, 2 L. N. 140, Q. B. 1879.

383. And on an indictment for making a false bank statement, a similar amendment was ordered. *Ib.*

384. Defendant was indicted for that she on the 5th January, 1879, "then being the mistress of a certain girl called Marie, her servant, her maiden name being unknown, of the age of eight years, did unlawfully and maliciously do grievous bodily harm to the said Marie, whereby the health of the said Marie was permanently injured." At the trial it was proved that the child's name was Marie Vincent, and that she was not the servant of the defendant. In face of this evidence the offence, as laid, could not be proved, and motion to amend being made, the court ordered the indictment to be amended by striking out the words "then being mistress of," and "her servant, her maiden name being unknown," and by adding after the name "Marie" the name "Vincent" in the three places where the name "Marie" occurs—*Held*, on a reserved case, that the alteration or amendment was admissible. *Regina v. Bissonette*, 2 L. N. 212, & 23 L. C. J. 249, Q. B. 1879.

385. Although in general it is not permitted to include under different heads or counts of an indictment two different felonies, yet the same offense may be charged in different ways in different counts of the same indictment. Thus, in the first count, the accused may be charged with having stolen wood belonging to A, and in another with having stolen wood belonging to B. *Regina* v. *Falkner*, 7 R. L. 544, Q. B. 1876.

386. But an indictment returned by the grand jury of one district for a perjury committed in another district, which does not contain an allegation that the defendant was accused before the return of the indictment, or arrested or detained, will be quashed, nor can such indictment be remedied by amendment. *Regina* v. *Lynch*, 7 R. L. 553, Q. B. 1876.

387. An indictment based on the 11th section of 32 & 33 Vic. cap. 22,* which does not contain the words "so that the same be injured or destroyed," or words equivalent to them, is irregular, and a verdict rendered on such an indictment will be quashed. *Regina* v. *Bleau*, 7 R. L. 571, Q. B. 1876.

388. On an indictment for perjury, the civil suit in which the perjury was charged to have been committed was described as *Emilie Lamoureux & David Leonard*, where as it should have been *Didier Leonard*. This error was twice repeated—*Held*, subject to amendment. *Regina* v. *Leonard*, 3 L. N. 138, Q. B. 1880.

389. The prosecution then moved to be allowed to add a negative amendment to correspond with the third answer assigned as false—*Held*, not to come within any of the statutes allowing amendments. *Ib.*

---

* Whosoever unlawfully and maliciously sets fire to any forest tree, manufactured lumber, square timber, logs or floats, boom, dam or slide on the Crown domain, or on land leased or lawfully held for the purpose of cutting timber, or on private property, or on any creek or river or railway beach or wharf, *so that the same be injured or destroyed*, is guilty of felony, and shall be liable to be imprisoned in the penitentiary for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years without hard labor, and with or without solitary confinement. C. 32-33 Vic. cap. 22, sec. 11.

390. The prosecution then moved to be allowed to amend by striking out the question and answer—*Held*, that a count might be rejected, but not an allegation. *Ib.*

391. In an indictment for libel there was only a general allegation that the newspaper in which it appeared circulated in the district of Montreal. Under this the court would not allow evidence of the publication of the special article in the district of Montreal, nor was an amendment to that effect allowed under 32 & 33 Vic. cap. 29, sec. 70. *Regina* v. *Hickson*, 3 L. N. 139, Q. B. 1880.

392. *Different Counts in.*—Counts for different misdemeanors of the same class may be joined in the same indictment. *Regina* v. *Abrahams*, 24 L. C. J. 325, & 1 Q. B. R. 126, Q. B. 1880.

393. *For Larceny.*—In an indictment for a larceny, committed on board a British vessel, it is sufficient to say *upon the sea* without saying upon the *high seas*. *Regina* v. *Sprungli*, 4 Q. L. R. 110, Q. B. 1878.

394. The prisoner, who had been cashier of the Hochelaga bank, was indicted for larceny as a clerk—*Held*, that the word "cashier" being placed in brackets after the work "clerk" did not vitiate the indictment. *Regina* v. *Paquet*, 2 L. N. 140, Q. B. 1879.

395. Nor did the fact that the sum said to have been stolen was described in brackets as "legal tender notes," as it was necessary, by C. 32 & 33 Vic. cap. 29, sec. 25, to state the particular coin or note.* *Ib.*

396. *For Making False Returns.*—In an indictment of a cashier under the Banking Act, of 1871, sec. 62, for having unlawfully and wilfully made a wilfully false and deceptive return respecting the affairs of the bank, it is not necessary to allege that the return referred to was one required by law to be made by the accused, or that any use was made by him of such return, or to specify in what particulars the return was false. *Regina & Collé*, 22 L. C. J. 141, Q. B. 1877.

397. And the enumeration in the indictment of several alleged false statements constitutes but one count, and a general verdict is sufficient if the statement be shown to be false in any one of the particulars alleged. *Ib.*

398. And it is not necessary to allege in the indictment that the false statement was made with intent to deceive or mislead. *Ib.*

399. On a demurrer to an indictment for making false bank returns, it is not necessary to set ont that the Act under which the prosecution is had, or any Act of the Dominion of Canada applies to the particular bank in question. *Regina* v. *Sir Francis Hincks & others*, 2 L. N. 358.

* Whenever in any indictment it is necessary to make an averment as to any money or to any note of any bank or Dominion or Provincial note, it shall be sufficient to describe such money or note simply as money without any allegation (so far as regards the description of the property), specifying any particular coin or note, and such averment shall be sustained by proof of any amount of coin or of any such note, although the particular species of coin of which such amount was composed or the particular nature of the note be not proved. C. 32-33 Vic. cap. 29, sec. 25.

400. Nor do the different false statements alleged in an indictment of this kind constitute different offences or different counts of the same offence, but constitute only one offence and one count of the offence. *Ib.*

401. Nor is it necessary to set out that the returns and statements were to the Dominion Government or were ever made public, as these are the only kind referred to in the Act. *Ib.*

402. Nor is it necessary to allege that the offence mentioned in the indictment was committed in the district. *Ib.*, & 10 R. L. 53.

403. Nor that the false return set up was ever published or made public. *Ib.*

404. Nor that the defendants were directors of a bank to which the Dominion Bank Act applied. *Ib.*

405. *For Neglect to Provide for Wife, etc.*—In an indictment of a husband for neglecting to provide his wife with necessary food and clothing, it is not necessary to allege that defendant has the means and is able to provide such food and clothing, nor that the neglect on the part of the defendant to provide the necessary food and clothing endangers the life or affects the health of the wife. *Regina* v. *Smith*,* 2 L. N. 247, Q. B. 1879.

406. *For Obtaining Signature by False Pretences.*—Prisoner was indicted at the Court of Queen's Bench for having induced, by false and fraudulent pretences, one B, a farmer, to endorse a promissory note for $170.45, and moved to quash on the ground that the indictment did not state that the endorsement in question had been declared false in any manner by competent authority, etc., nor that the said endorsement had been obtained for the purpose of converting the said note or paper-writing into money. Motion rejected.† *Regina & Boucher*, 10 R. L. 183, Q. B. 1880.

407. And a motion to quash, on the ground that the Crown prosecutor, representing the attorney general, had refused to furnish to prisoner the particulars of the false pretences charged, although demanded, was also refused. *Ib.*

* Whosoever, being legally liable either as a husband, parent, guardian or committee, master or mistress, nurse or otherwise to provide for any person, as wife, child, ward, lunatic or idiot, apprentice or servant, infant or otherwise, necessary food, clothing or lodging, wilfully, and without lawful excuse, refuses or neglects to provide the same, or unlawfully or maliciously does or causes to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant has been and is likely to be permanently injured, is guilty of a misdemeanor, and shall be liable to be imprisoned in the penitentiary for any term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years with or without hard labor. C. 32-33 Vic. cap. 20, sec. 25.

† Whosoever with intent to defraud or injure any other person by any false pretence fraudulently causes or induces any other person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix his name or the name of any other person or of any company, firm or co-partnership, or the seal of any body corporate, company or society upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a misdemeanor, and shall be liable to be imprisoned in the penitentiary for any term not exceeding three years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labor, and with or without solitary confinement. C. 32 & 33 Vic. cap 21, sec. 95.

408. *For Perjury.*—An indictment for perjury committed in a case must indicate that the facts sworn to, and which constitute the perjury, were material and important to the cause in which they were sworn. *Regina* v. *Paulet*, 9 R. L. 449, Q. B. 1878.

409. In an indictment for perjury, alleged to have been committed in a certain cause "wherein one Adrien Girardin, of the township of "Kingsey, in the district of Arthabaska, trader, "and Thomas Ling, of the same place, farmer, "*was defendant*," the omission of words *was plaintiff* in the description of the plaintiff—*Held*, fatal, and conviction quashed. *Regina* v. *Ling*, 5 Q. L. R. 359, Q. B. 1879.

410. The omission in an indictment for perjury to state in setting up the case, in which the perjury was committed, that A. G "was plaintiff"—*Held*, fatal where the question on the answer to which perjury is assigned is—"Did you not make a bargain with plaintiff to buy that property?" and when the negative averment is that "whereas in truth the said Thomas Ling had entered into an agreement with said A. G. to purchase, etc." *Ling* v. *The Queen*, 2 L. N. 410, Q. B. 1879.

411. *For setting fire to timber.*—The prisoner was indicted for having, "at the township of Wright, feloniously, unlawfully and maliciously set fire to a certain quantity of manufactured lumber, to wit, three thousand shingles and nineteen piles of boards." Motion to quash the indictment, on the ground that it did not allege that the setting fire was done "so as to injure or destroy" the lumber in question, in accordance with the terms of sec. 11 of 32-33 Vic cap. 22.† *Per contra* it was urged that if the indictment were insufficient under sec. 11 it was valid under sec. 21, which makes the setting fire to "any stack of corn * * * any steer or pile of wood or bark" a felony—*Held*, that the latter words applied only to unmanufactured wood, and could not be held to apply to lumber, and the indictment, being insufficient, must be quashed. *Regina* v. *Berthe*, 3 L. N. 266, Q. B. 1880.

412. *Signing of.*—The attorney general or solicitor general may delegate to counsel prosecuting for the Crown the authority vested in him by sec. 28 of 32-33 Vic. c. 29,* to direct an indictment to be laid before the grand jury for certain offences. *Regina* v. *Abrahams*, 24 L. C. J. 325, & 1 Q. B. R. 126, Q. B. 1880.

413. It is not necessary that an indictment submitted to a grand jury be signed by the clerk of the Crown, as the signature of the attorney general, signed by his substitute, is sufficient. *Regina* v. *Ouellette*, 7 R. L. 222, Q. B. 1875.

XIII. Jury.

414. On a trial for a felony the jury cannot be allowed to separate during the progress of the trial, and where such separation takes place it is a mistrial, and the court may direct that the party convicted be tried again, as it no trial had been had in such case. *Regina* v *Derrick*, 2 L. N. 214, & 23 L. C. J. 239, Q. B. 1879; C. S. L. C. cap. 77, s. 63, & 32 & 33 Vic. cap. 29, sec. 57.†

XIV. Larceny.

415. Prisoner was indicted for stealing "a note for the payment of and of the value of $458.33, the property of A. Mc. & C. R., and tried and convicted at the March term of the Queen's Bench, Montreal, 1877. The evidence showed that the promissonary note in question was drawn by A. Mc. & C. R., and made payable to prisoner's order. The note was then given by mistake to prisoner, it being supposed that the sum of $258.33 was due him by the drawers instead of the less sum of $175. The mistake being immediately discovered prisoner gave back the note to the drawers unstamped and unendorsed, in exchange for another note of $175. An opportunity occurring the prisoner afterwards, on the same day, stole the note. He caused it to be stamped, endorsed it, and tried to collect it. After conviction the following questions were reserved for the consideration of the full court: Whether an unstamped promise to pay is a promissory note or valuable security; and whether, in the hands of the drawers, it was such property as to be the subject of larceny—*Held*, in appeal to the Supreme Court, reversing the judgment of the Queen's Bench (21 L. C. J. 225) that prisoner was not guilty of larceny of "a note" or of a valuable security within the meaning of the Statute, and that the offence of which he was guilty was not correctly described in the indictment. *Scott & Regina*, 2 S. C. Rep. 349, Su. Ct. 1879.

416. On an indictment for having unlawfully appropriated a sum of money exceeding two hundred dollars, to wit the sum of four

* No indictment shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears upon the record," or "as appears by the record," or of the words "with force and arms," or of the words "against the peace," or for the insertion of the words "against the form of the statute, instead of the words "against the form of the statutes," or *vice versa*, or for the omission of such words, or for the want of an addition, or for an imperfect addition of any person mentioned in the indictment, or for that any person mentioned in the indictment is described by a name of office or other descriptive appellation instead of his proper name, or for omitting to state the name of which the offence was committed in any case where it is not of the essence of the offence, or for stating the same imperfectly, or for stating the offence to have been committed on a day subsequent to the finding of the indictment or on an impossible day, or on a day that never happened, or for want of a proper and perfect name or for want of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant, or for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil in any case where the value or fine or amount of damage, injury or spoil is not of the essence of the offence. C. 32-33 Vic. cap. 29, sec. 23.

† *Vide Supra* note.

* No bill of indictment for any of the offences following, viz.—perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, keeping a disorderly house, or any indecent assault, shall be presented to or found by any grand jury, * * * unless the indictment for such offence is preferred by the direction of the attorney general or solicitor general for the province or of a judge of a court having jurisdiction to give such direction or try the offence. C. 32 and 33 Vic. cap. 29, sec. 28.

† In all criminal cases less than felony the jury may, in the discretion of the court, and under its direction as to the conditions, mode and time, be allowed to separate during the progress of the trial.

thousand dollars, with intent to defraud—*Held*, that section 110 of the Act concerning larceny and other offences of the same nature, cap. 21 of the Act of 1869, 32-33 Vic., applies only to a temporary privation of the property.* *Regina* v. *Warner*, 7 R. L. 116, Q. B. 1875.

XV. Libel.

417. On an indictment for libel the court refused to admit the evidence, as it was necessary, in order to bring the defendant within the Statute, to plead that the publication was not only true, but made for the public good. *Regina* v. *Hickson*, 3 L. N. 139, Q. B. 1880.

418. In the same case where there was only a general allegation that the newspaper in which it appeared circulated in Montreal—*Held*, that evidence of the circulation of the special article in the district of Montreal could not be allowed. —*Ib.*

419. Nor was an amendment to that effect allowed under 32 & 33 Vic. cap. 29, sec. 70.—*Ib.*

XVI. Making False Bank Statements.

420. *Indictment for.*—Where an indictment for making a false bank statement failed to set out that the bank in question was a body corporate the words were ordered to be added. *Regina* v. *Paquet*, 2 L. N. 141, Q. B. 1879.

XVII. Manslaughter.

421. Prisoner was indicted for manslaughter. It appeared that he had a quarrel with his brother, that the deceased prisoner's father took the part of the brother, that the prisoner, having been stopped from fighting with his brother, advanced in a threatening attitude to within two or three feet of deceased, and with violent words and menaces, and with a table knife in his hand, declared that he would have done with deceased. He was prevented by the bystanders from striking deceased, who was removed in a state of great agitation and weakness, and within twenty minutes afterwards died of syncope.

* Whosoever unlawfully, and with intent to defraud by taking, by embezzlement, by obtaining by false pretences or in any other manner whatsoever, appropriates to his own use or to the use of any other person any property whatsoever, real or personal, in possession, or in action, so as to deprive any other person temporarily or absolutely of the advantage, use or enjoyment of any beneficial interest in such property in law or in equity, which such other person may have therein, is guilty of a misdemeanor, punishable in like manner as simple larceny; and, if the value of such property exceeds two hundred dollars, then such misdemeanor shall be punished by imprisonment in the penitentiary for any term not exceeding fourteen years, or in any manner in which simple larceny is punishable; and if on the trial of any person for larceny, for embezzlement or for obtaining by false pretences the jury are of opinion that such person is not guilty of the offence charged in the indictment, but are of opinion that he is guilty of an offence against this section, they may find him so guilty, and he shall be liable to be punished as herein provided, as if he had been convicted on an indictment under this section; and in any case in which any person is convicted of an offence against this Act by any stealing, embezzling or obtaining by false pretences any property whatever, then if the value of the property be over two hundred dollars the offence shall be liable to be punished by imprisonment in the penitentiary, for a term not exceeding seven years, in addition to any punishment to which he would be otherwise liable for such offence. C. 32-33 Vic. cap. 21, sec. 110.

On these facts the jury found a verdict of guilty. On a reserved case—*Held*, that death resulting from fear, caused by menaces of personal violence, and assault, though without battery, is sufficient in law to support an indictment for manslaughter. *Regina* v. *Dugal*, 4 Q. L. R. 350, Q. B. 1878.

XVIII. Mistrial.

422. On a trial for forgery the panel of petit jurors returned by the sheriff contained the names of Robert Grant and Robert Crane. The name of Robert Grant was called from the panel as one of the jury, and Robert Grant, as was supposed, went into the box, and was duly sworn as Robert Grant without challenge. The prisoner was convicted. Before the jury left the box it was discovered that Robert Crane had by mistake answered to the name of Robert Grant, and that Robert Crane was really the person who served on the jury—*Held*, a mistrial. *Regina* v. *Feore*, 3 Q. L. R. 219, Q. B. 1877.

XIX. New Trial.

423. On a motion for a new trial from a conviction for perjury—*Held*, that the trial within the meaning of C. S. L. C. cap. 77, sec. 57,* is not terminated until sentence is rendered, and a "question which has arisen on the trial" does not necessarily mean a question that was raised at the trial, but one that took its rise at the trial, and therefore a point not raised by the defence may be reserved by the court. *Regina* v. *Bain*, 23 L. C. J. 327, Q. B. 1877.

424. And where, on a reserved case, the Court of Queen's Bench holds the conviction to be bad, and the question has been reserved whether a new trial should be granted, a new trial may be ordered in cases of misdemeanor under C. S. L. C. cap. 77, sec. 58, ss. 2.† The authority

* When any person has been convicted of any treason, felony or misdemeanor at any criminal term of the said Court of Queen's Bench, or before any Court of Oyer and Terminer, gaol delivery or Quarter Sessions, the court before which the case has been tried may, in its discretion, reserve any question of law which has arisen on the trial for the consideration of the said Court of Queen's Bench, on the appeal side thereof, and may thereupon respite execution of the judgment on such conviction, or postpone the judgment until such question has been considered and decided by the said Court of Queen's Bench, and in either case the court before which the case trial was had in its discretion shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties and in such sum as the court thinks fit, conditioned to appear at such time or times as the court shall direct and receive judgment or render himself in execution, as the case may be. C. S. L. C. cap. 77, sec. 57.

† The said Court of Queen's Bench shall have full power and authority at any sitting thereof, on the appeal side, after the receipt of such case, to hear and finally determine every question therein, and thereupon to reverse, amend or affirm any judgment which has been given on the indictment or inquisition, on the trial whereof such question arose, or to hold such judgment and order an entry to be made in the record that in the judgment of the said Court of Queen's Bench the party convicted ought not to have been convicted, or to arrest the judgment or to order judgment to be given thereon at some other criminal term of the said Court or Session of Oyer and Terminer or Quarter Sessions, if no judgment has before that time been given, as the said Court of Queen's Bench is advised, or to make such other order as justice requires. Ib. sec. 58, ss. 2.

"to make such order as justice requires" including the right to order a new trial when, in the opinion of the court, the interests of justice require it. *Ib.*

425. And a general verdict on two counts for perjury was *held* to be bad, and a new trial ordered, where the assignment of perjury in the second count was defective in setting up part only of what the defendant said, and omitting a qualifying statement, and the evidence on the first count was so contradictory as to leave room for doubt whether the jury would have found a verdict of guilty on that count if it had stood alone; and this notwithstanding the fact that if the first count had stood alone the verdict could not have been touched. *Ib.*

426. Where no new trial is asked for in a reserved case the court will not order a new trial. *Regina* v. *Hincks*, 2 L. N. 422, & 24 L. C. J. 116, Q. B 1879.

XX. Nuisance.

427. On an indictment for mooring a raft in the channel of the River Ottawa, thereby preventing the complainant and the public generally from navigating the river—*Held*, that the obstruction constituted a public nuisance, and as such was punishable as a misdemeanor. *Regina* v. *Kerr*, 3 L. N. 121, Q. B. 1880.

XXI. Perjury.

428. On a reserved case from the district of Bedford it appeared that the defendant was indicted for perjury, committed in the course of a deposition commenced before a judge who took notes, and afterwards continued under a different system before the prothonotary only—*Held*, that the deposition was illegal, as not being in conformity with 264 C. C. P. or 284 C. C. P.* *Regina* v. *Gibson*, 7 R. L. 574, Q. B. 1876.

429. Perjury cannot be assigned upon a deposition taken under Art. 284 C. C. P., where the consent in writing required by that article has been omitted. *Regina* v. *Martin*, 21 L. C. J. 156, Q. B. 1877.

430. Defendant was indicted for perjury in a deposition taken in a civil suit in the Superior Court. The deposition purported to have been taken before Mr. Justice Berthelot, on the 2nd May, 1876. The deposition in fact was begun on that day, adjourned to the third of May, and closed on the 8th May. The alleged perjury was contained in the examination-in-chief taken on the 2nd May, and it was proved that the oath was taken at enquete sittings by the prothonotary, there being no consent in writing that the enquete should be taken otherwise than by a judge taking notes. It was contended for the defence that the prothonotary had no authority to administer the oath without a consent in writing under Art. 284 of the Code of Procedure.* For the prosecution it was contended that the Act of 1870 (33 Vic. cap. 18, sec. 2)† covered the case, and that there was a subsequent consent—*Held*, that in a contested case an enquete at length under the old system required a consent in writing, and that without such consent the oath was only a voluntary one, on which perjury could not be assigned; and though consent might be waived so as to bind the parties no subsequent proceedings of the parties could make that perjury which was not so at the time the oath was taken. *Regina* v. *Martin*, 7 R. L. 672, Q. B. 1876.

431. On a reserved case arising out of a conviction for perjury had upon the evidence of the stenographer who took the deposition—*Held*, that while the accused could not be convicted upon the notes of the stenographer, because they were not read or signed by the accused, that he was nevertheless properly convicted on the evidence of the stenographer given from his recollection of what the accused said, and this notwithstanding some slight irregularities in the original suit. *Regina & Leonard*, 3 L. N. 138 & 211, Q. B. 1880.

XXII. Plea of Title.

432. By 32 & 33 Vic. cap. 22, sec. 26, "An "Act respecting malicious injuries to property" it is provided that "whosoever unlawfully "and maliciously cuts any tree, the injury "done being to the amount of twenty-five cents "at the least, shall on conviction thereof, before "any justice of the peace, at the discretion of "the justice, either be committed to the com- "mon gaol or house of correction, there to be "imprisoned only, or to be imprisoned and kept "to hard labor, for any term not exceeding "one month, or else shall forfeit and pay, over "and above the amount of the injury done, "such sum of money, not exceeding five dol- "lars, as to the justice seems meet. In answer to a charge under this section the defendant set up and showed a *bona fide* claim of title—*Held*, that the jurisdiction of justices of the

---

* The notes of evidence are read, and if necessary explained to the witness, who may make the necessary additions or alterations in order to express correctly the material parts of his evidence, they are then signed by him, if he can write,—if not that fact is mentioned; they are finally signed by the judge, and constitute and are held to be the evidence of the witness. 264 C. C. P. Upon the consent in writing of all the parties to a case, and subject to such additional costs and fees as may from time to time be fixed by tariff, the proof may be taken down in writing in the manner hereinafter provided, either before a judge or before the prothonotary, who in such case may exercise all the powers of a judge except as to the objections which must be reserved for the decision of the latter. If the judge is unable to attend court on the day fixed for taking proofs the prothonotary may preside over them, and in such case he exercises all the powers of the judge, except as regards the objections made by either party, which must be taken down in writing and reserved for the decision of the court at the final hearing of the case. 284 C. C. P.

* See supra.

† ACT TO FACILITATE THE TAKING OF EVIDENCE IN CIVIL CASES.

1. Notwithstanding any of the provisions of Arts. 239, 240, 263, 280, 284, 285, 287, 288 and 1075 of the Code of Civil Procedure of Lower Canada all depositions of witnesses in cases before the Superior Court or before the Circuit Court may, as regards default cases, and also by consent of the parties or of their attorneys as regards contested cases, be taken at any stage of the proceedings, at any place on any juridical day, in or out of term, and may, after being so taken, be sworn to before a commissioner of the Superior Court.

2. The provisions of the foregoing section shall apply with retroactive effect to all depositions already taken in cases now pending, but shall not in any manner affect any judgment of a court already rendered, or any proceedings had or to be had in virtue of such judgment.

peace to hear and determine the charge in a summary way was ousted, the proceedings being under a criminal statute, and there being an implied restriction requiring the justices to "hold their hands" when a *bona fide* claim of right is set up. *Regina* v. *O'Brien*, 5 Q. L. R. 161, Q. S. 1879.

XXIII. Receiving Stolen Goods.

433. Prisoner was indicted and tried at Quarter Sessions for having received stolen goods, knowing them to be stolen. The evidence was to the effect that the goods in question having been missed from the premises of a farmer of St. Hubert, near Montreal, a search warrant was procured, and a constable on going with the search warrant to the premises of the prisoner all of the goods were found there, some of them in the stable and some of them concealed in the cellar of the prisoner's house. The prisoner, on the arrival of the constable, denied all knowledge of the said goods, but when the constable said that he had warrant to search the premises, was observed to wink at one of his men in a suspicious manner—*Held*, on a reserved case, that evidence of possession, though it might support an indictment for stealing, would not support an indictment for receiving, knowing them to be stolen, and the conviction was quashed. *Regina* v. *Perry*, 3 L. N. 12, & 10 R. L. 65, Q. B. 1879.

XXV. Reserved Case.

434. In a case of perjury the Crown prosecutor made application to enter a *nolle prosequi*, which was opposed by the counsel for the accused. The judge presiding granted the application, but on motion of the counsel for the accused, reserved the point, and submitted it to the full bench in appeal. The Court of Appeal decided that no reserved case could be had where there had been neither trial nor conviction, and remitted the record. *Regina* v. *Labanne*, 3 L. N. 16, Q. B. 1879.

435. *Presence of Prisoner.*—It is not necessary that a prisoner be present at the hearing of a reserved case. *Regina & Glass et al.*, 21 L. C. J. 245, Q. B. 1877.

XXVI. Summary Trial.

436. A conviction on summary trial for an aggravated assault committed the day of voting, at an election of a member to the Dominion House of Commons, is null, as the statute which establishes the offence renders it punishable by way of indictment, and as it is not of the number of those mentioned in secs. 2 and 3 of cap. 32, 32 & 33 Vic.* *Regina* v. *Larouche & Regina* v. *Lemieux*, 5 Q. L. R. 261, S. C. 1877.

XXVII. Taking and Applying.

437. The prisoner was indicted for taking and applying to his own use certain property of the Hochelaga Bank, to wit—"75 shares of the stock of the Montreal Telegraph Co."—*Held*, that as there was nothing to show that the bank could not hold such shares as its property, that the indictment could not be quashed on that ground. *Regina & Paquet*, 2 L. N. 140, Q. B. 1879.

438. And where it was objected to the same indictment that it did not show that the stock taken was that of an incorporated company, the words "a body corporate" were added after the words "Montreal Telegraph Co. *Ib.*

XXVIII. Trial.

439. *Discharge of Jury during.*—On a writ of error the record showed that on the trial the judge discharged the jury after they were sworn, in consequence of the disappearance of a witness for the Crown, and the prisoner was remanded—*Held*, that the judge had a discretion to discharge the jury, which a court of error could not review; that the discharge of the jury without a verdict was not equivalent to an acquittal, and that the prisoner might be put on trial again. *Jones & The Queen*, 3 L. N. 309, Q. B. 1880.

XXIX. Venue.

440. Application to Queen's Bench in appeal for a change of venue on an indictment for manslaughter rejected on ground of want of jurisdiction. *Corwin exp.*, 2 L. N. 364, Q. B. 1879.

---

* Where any person is charged before a competent magistrate with having committed:

1. Simple larceny, larceny from the person, embezzlement, or obtaining money or property by false pretences, or receiving stolen property, and the value of the whole of the property alleged to have been stolen, embezzled, obtained or received does not, in the judgment of the magistrate, exceed ten dollars; or, (2) with having attempted to commit larceny from the person or simple larceny; or, (3) with having committed an aggravated assault by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously cutting, stabbing or wounding any other person; or, (4) with having committed an assault upon any female whatever, or upon any male child, whose age does not, in the opinion of the magistrate, exceed fourteen years, such assault being of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other Act, and such assault, if upon a female, not amounting in his opinion to an assault with intent to commit rape; or, (5) with having assaulted, obstructed, molested or hindered any magistrate, bailiff or constable or officer of customs or excise, or other officer, in the lawful performance of his duty, or with intent to prevent the performance thereof; or, (6) with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy house.

The magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way. C. 32-33 Vic. cap. 32, sec 2.

3. Whenever the magistrate, before whom any person is charged, as aforesaid, proposes to dispose of the case summarily under the provisions of this Act, such magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the party charged for any statement which he may wish to make, shall state to such person the substance of the charge against him and (if the charge is not one that can be tried summarily without the consent of the accused) shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it could soonest be tried*")"; and if the person charged consents that the charge being summarily tried and determined as aforesaid, or if the power of the magistrate to try it does not depend on the consent of the accused the magistrate shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge. Ib., sec. 3.

XXX. Verdict.

441. The defendant was indicted for that she, being mistress of a certain girl called Marie, her servant, her maiden name being unknown, of the age of eight years, did unlawfully and maliciously do grievous bodily harm to the said Marie, whereby the health of the said Marie was permanently injured. At the trial the indictment was amended by omitting the words "then being mistress of" and "her servant, her maiden name being unknown," and by adding after the name "Marie" the name of "Vincent" in the three places where the name "Marie" occurs. The trial proceeded on the indictment so amended, and the prisoner was found guilty of common assault—*Held*, on a reserved case, that the finding was legal. *Regina* v. *Bissonette*, 2 L. N. 212, & 23 L. C. J. 249, Q. B. 1879.

XXXI. Wrongful Conversion of Property.

442. Indictment under 32-33 Vic. c. 21, s. 78, which is as follows:—"whosoever being entrusted, either solely or jointly, with any other person *with any power of attorney for the sale or transfer of any property*, fraudulently sells or transfers, or otherwise converts the same or any part thereof, to his own use or benefit, or to the use or benefit of any person other than the person by whom he was so intrusted, is guilty of a misdemeanor, and shall be liable to any of the punishments which the court may award as hereinbefore last mentioned"—*Held*, that the power of attorney in said section mentioned must be a *written power of attorney*, and oral testimony of a verbal power of attorney will not bring the defendant's act within the scope of that statute. *Regina* v. *Chouinard*, 4 Q. L. R. 220, Q. B. 1874.

CRIMINAL PROSECUTION.

I. Agreements to Procure the Withdrawal of, Illegal, *see* CONTRACTS.

CROPS.

I. Damages for Destruction of, by Fire, *see* DAMAGES.

CROWN.

I. Exempt from Court House Tax.
II. Injunction does not Lie Against, *see* INJUNCTION.

443. Proceedings on behalf of the Crown are exempt from paying stamps. *Ostell & Blake*, 22 L. C. J. 17, Q. B. 1877.

CROWN LANDS.

I. Privileges of Settlers on, *see* EXECUTION EXEMPTIONS.

CURATORSHIP.

I. Curator.
Cannot Purchase Property of which he is Curator.
Must be resident in the Province.
II. Power of Curatrix.
III. Power of Judge in Appointing.

I. Curator.

444. *Cannot Purchase Property to which he is Curator*—The parties were the co-heirs of the late F. B., who, dying, bequeathed his property to his children, with substitution to his grandchildren. The principal defendant was appointed a curator, and, being authorized to sell a property belonging to the succession by licitation, the other defendant became the adjudicataire. On proof that he was only a *prête-nom* for the curator, the latter condemned to abandon and render an account. *Benoit & Benoit*, 8 R. L. 425, Q. B. 1876.

445. *Must be resident in the Province.*—Action *en destitution de curatelle* by the daughter of an interdicted person, setting out that the curator resided in the Province of Ontario; that plaintiff was dependent on her father, and was unable to compel the defendant to contribute thereto. Plea that he was known to be living in Ontario at the time of his appointment, and, moreover, that plaintiff had since married, and was not now dependent on her father for support. Demurrer to plea maintained. *Legge* v. *Legge, & Simpson*, 3 L. N. 160, & 24 L. C. J. 83, S. C. 1880.

II. Power of Curatrix.

446. Where a wife was sued in her quality of curatrix to her husband, who was interdicted on an obligation given by her in order to secure the rent of the house in which she lived—*Held*, the obligation was null and void, as a curatrix could not mortgage without authorization of justice. *Short* v. *Kelly*, 2 L. N. 284, S. C. 1879.

III. Power of Judge in Appointing a Curator.

447. On a demand by appellant to be appointed curator to his son interdicted for imbecility—*Held*, that in making such appointment the judge was not obliged to follow the wishes of the majority of the relations and friends convened, their advice being but for the information and assistance of the judge in the performance of his duties, and in such case the father of the interdict has a right to be appointed curator in preference to a stranger. *Dufaux & Robillard*, 7 R. L. 471, Q. B. 1876.

CURÉ.

I. Interference of at Elections, *see* ELECTION LAW.
II. Rights and Powers of, *see* CEMETERIES.

CURRENCY.

I. Loss Valued in.
II. Nature of, need not be Specified in Affidavit for Capias. *see* CAPIAS.

448. In a case of damages for loss by collision the promoters having stated and proved their loss in United States currency, the registrar and merchants reported an equivalent amount in gold not at the current rate of exchange, but at the rate as on the day of collision, and the court upon contestation maintained the report. *The Frank in re*, 3 Q. L. R. 193, V. A. C. 1877.

CUSTOMARY DOWER—*See* DOWER.

CUSTOMS AUTHORITIES.

Sale of Goods by.

449. The collector of customs sold a quantity of goods as not having been entered within a month in conformity with the Act,* and which

* Every importer of any goods by sea, or from any place out of Canada, shall, within three days after the arrival of the importing vessel, make due entry inwards of such goods and land the same; and any importer of any goods imported by inland navigation in a decked vessel of one hundred tons burthen or more shall, within twenty-four hours of the arrival of the importing vessel, make due entry inwards of such goods and land the same; and every importer of any goods imported by inland navigation in any undecked vessel or in vessel less than one hundred tons burthen or by land shall forthwith, after the importation of such goods, produce the same to the proper officer and make due entry thereof.

2. The persons entering any goods inwards shall deliver to the collector or other proper officer a bill of the entry thereof in such form as shall be appointed by competent authority, fairly written or printed, or partly written and partly printed, and in duplicate, containing the name of the importer, and if imported by water the name of the vessel and of the master and of the place to which bound, and of the place within the port where the goods are to be unladen and the description of the goods and the marks and numbers and contents of the packages and the place from which the goods are imported, and of what country or place such goods are the growth, produce or manufacture; and—

3. Unless the goods are to be warehoused in the manner by this Act provided, such persons shall, at the same time, pay down all duties due upon all goods entered inwards, and the collector or other proper officer shall immediately thereupon grant his warrant for the unlading of such goods, and grant a permit for the conveyance of the same further into Canada, if so required by the importer;

4. In default of such entry and landing or production of the goods or payment of duty, the officer of customs may convey the goods to the customs warehouse, there to be kept at the risk and charge of the owner, and if such goods be not duly entered for consumption or for warehousing within one month from the date of their being so conveyed to the customs warehouse, and charges of removal and warehouse rent, duly paid at the time of such entry, the goods shall be sold by public auction to the highest bidder, and the proceeds thereof applied first to the payment of duties and charges, and the over plus, if any, after discharging the vessel's lien, shall be paid to the owner of the goods or to his lawful agent, provided always that in case the same cannot be sold for a sum sufficient to pay the duties and charges if offered for sale for home consumption or the charges if offered for sale for exportation, such goods shall be destroyed, and any goods unladen or landed before due entry thereof and warrant for landing shall be forfeited, and any person concerned in landing or receiving or concealing goods so landed shall for each offence forfeit $400.

goods had, by direction of the Harbor master, been placed in a private examining warehouse, subject to the order of the importer. The warehouseman refused to deliver them and the purchaser brought action against him and the collector of customs—*Held*, that the sale was null, inasmuch as the goods had not been in the customs warehouse for a month previous to the sale, and the warehouseman with whom they were stored had a perfect right to refuse to deliver them. *Simpson & Vaile*, 22 L. C. J. 229, Q. B. 1877.

450. But the collector of customs has a right, under c. 31 Vic. cap. 6, secs. 13 and 60, to sell goods held as security for dues, the delay for such sale having expired.

D.

SUMMARY OF TITLES.

	Page
DAMAGES	233
DEATH	249
DEBATS DE COMPTE	250
DEBENTURES	250
DEBT	250
DECISORY OATH	250
DECLARATION	250
DECLARATION OF HYPOTHEC	250
DEDICATION	250
DEEDS	250
DEFAMATION OF CHARACTER	251
DEFAULT	251
DEFAUT CACHÉ	251
DEFENSE EN FAIT	252
DEFENSE EN DROIT	252
DEFICIENCY	252
DEFRICHEURS	252
DEGUERPISSEMENT	252
DELAISSEMENT	252
DELAY	252
DELEGATION	252
DELIRIUM TREMENS	252
DELIVERY	252
DELIVERY ORDER	253
DEMAND OF PAYMENT	253
DEMEURE	253
DEMURRAGE	253
DEMURRER	254
DENTISTRY	254
DEPOSIT	254
DEPOSITIONS	256
DEPUTY PROTHONOTARY	256
DERNIER EQUIPEUR	256
DESAVEU	256
DESCRIPTION	256
DESERTION	256
DESISTEMENT	256
DESTITUTION	256
DETERIORATION	256
DIFFERENCE IN VALUE	256
DILATORY EXCEPTION	257
DIMINUTION	257
DIRECTORS	257
DISAVOWAL	257
DISCHARGE	257
DISCIPLINE	257
DISCONTINUANCE	257
DISCUSSION	258
DISHONESTY	258
DISSENTIENTS	258
DISTINCTION OF THINGS	258
DISTRIBUTION	258
DISTRICT MAGISTRATES	260
DIVIDENDS	261
DIVINE WORSHIP	261
DOCUMENTS	261
DOL	261
DOMAINE PUBLIQUE	261
DOMICILE	261
DOMINION PARLIAMENT	262
DONATION	262
DOUBLE WINDOWS	271
DOWER	271
DRAFTS	273
DRAINS	273
DRINK	273
DROIT D'ACCES	273
DROIT DE PASSAGE	273
DROIT DE RETENTION	274
DROIT DE SUITE	274
DUES	274
DUNKIN ACT	274
DUTY	274

PAGE
..... 256
..... 256
..... 256
..... 257
..... 257
..... 257
..... 257
..... 257
..... 257
..... 258
..... 258
..... 258
..... 258
..... 258
..... 260
..... 261
..... 261
..... 261
..... 261
..... 261
..... 262
..... 262
..... 271
..... 271
..... 273
..... 273
..... 273
..... 273
..... 273
..... 274
..... 274
..... 274
..... 274
..... 274

DAMAGES.

I. Action by Insolvent for.
II. Against.
Clergymen.
Employer.
Lessor.
Municipal Corporation.
Physician.
Railways.
School Commissioners.
Telegraph Company.
Turnpike Road Trustees.
III. Detailed Statement of.
IV. For.
Accidents.
Assault.
Breach of Contract.
Breach of Covenant to Sell.
Death of Relative
Defamation of Character.
Destruction of Crop by Fire.
Destruction of Wharf on the Ground of Nuisance.
False Arrest.
False Imprisonment.
Illegal Attachment.
Illegal Execution.
Illegal Seizure.
Illegal Seizure for School Taxes.
Injury to Horses.
Libel in Pleadings.
Malicious Prosecution.
Personal Injury.
V. May be Laid in Action for Deficiency in Quantity of Land Purchased, *see* ACTION, QUANTO MINORIS.
VI. Measure of.
VII. Not Barred by Criminal Conviction.
VIII. Prescription of, *see* PRESCRIPTION.
IX. Proved by Interrogatories, *see* EVIDENCE.
X. Right of Heirs to Action for.
XI. Transfer of Claim for.
XII. When Continuous, *see* PRESCRIPTION.
XIII. Where caused by Contributory Negligence.
XIV. Will not lie for Wrong Judgment.

I. Action by Insolvent for.

1. The plaintiff, just after his discharge from insolvency, took action against the assignee and inspectors of his estate for breach of contract for selling the estate to another, after entering into a written contract with him to retransfer it to him for 40 cents on the dollar—*Held*, that as he had nothing at the time the contract was entered into he could have suffered nothing by the violation of it. *Styee* v. *Darling*, 2 L. N. 250, & 9 R. L. 557, S. C. 1879.

2. *Clergymen.*—An action of damages will lie against a priest for defamatory words uttered during his sermon of a particular individual. *Vigneux* v. *Noiseux*, 21 L. C. J. 89, S. C. 1877.

3. *Employer.*—Two thousand dollars damages was given to plaintiff for an accident suffered in the employ of defendant while blasting, the accident having been caused by the use of a steel drill expressly ordered by defendant's foreman. *Hall & Canadian Copper & Sulphur Co.*, 2 L. N. 245, S. C. R. 1879.

4. *Lessor.*—A landlord is liable for damages caused by the absence of *grosses reparations*, though he has never been called upon to make them. *Scanlan* v. *Holmes*, 2 L. N. 185, S. C. 1879.

5. *Municipal Corporations.*—In an action of damages against the City of Montreal, for closing one end of a street—*Held*, reversing the decision of the courts below,* that this was not such an interference with a servitude under the French law as would give rise to an action of damages, nor did it constitute expropriation so as to give right to preliminary indemnity under the special Act. *The Mayor, &c., of Montreal & Drummond*, 22 L. C. J. 1, P. C. 1876.

6. The Corporation of Montreal is liable in damages caused by the bad state of one of the public footpaths in the city. *Grenier & The Mayor, &c., of Montreal*, 21 L. C. J. 296, Q. B. 1876.

7. The plaintiff's wife proceeding over a market place in the City of Quebec, stepped on a plank, forming part of the planking of the market, which broke and struck her in the face, inflicting injuries for which the action was brought. It appeared that the clerk in charge walked over the market every day, generally several times, to verify its condition and no apparent defect existed at the place in question, but an after-examination showed the plank to have been decayed from underneath—*Held*, that the defect complained of was a latent defect, due to the silent unobservable effect of time, and circumstances of which the defendants had no notice, actual or constructive, and that, the occurrence was plainly an accident for which the defendants were not liable, no negligence having been proved against them, and the action was therefore dismissed. *Kelly* v. *Corporation of City of Quebec*, 3 Q. L. R. 379, S. C. 1877.

8. Damages were claimed by the plaintiff on the ground that the Corporation of the township had opened a public road through his property and had not fenced it, thus allowing cattle to stray on to his land. Defendants demurred, on the ground that by law they were not bound to fence any front road which they opened, and that, consequently, there was no ground of action—*Held*, reversing the judgment of the court below, that the action could not be dismissed on demurrer. *Whitman & Corporation of Township of Stanbridge*, 1 L. N. 474, Q. B. 1878.

9. Action of damages against a Municipal Corporation for having run a road through plaintiff's farm, and put up no fences. Demurrer, on the ground that if it was a front road as defendant alleged, defendant would not be liable—*Held*, dismissing the demurrer, that plaintiff had alleged sufficient to entitle him to go to proof. *Whitman & The Corporation of the Township of Stanbridge*, 23 L. C. J. 176, Q. B. 1878.

* See 1. Digest, p. 863, Art. 615.

10. The appellant sued to recover damages caused by the upsetting of his sleigh in the township of Ascot, which he alleged was due to the bad state of the road. Defendants pleaded that plaintiff was intoxicated at the time, and contributed to the accident. There was evidence that the road was in a very bad condition, and also that the plaintiff had been drinking, but none that the accident was due in any way to the plaintiff's condition *Held*,—reversing judgment of Court of Review, and confirming that of Superior Court which gave plaintiff $200 damages. *Martin* v. *Corporation of Township of Ascot*, 2 L. N. 227, Q. B. 1879.

11. Where the plaintiff's carriage, while driving along Craig street, in the City of Montreal, suddenly sank, owing to a recent excavation for a new tunnel having been carelessly filled, and the horse ran away and injured itself so that it had to be killed—*Held*, that the city was liable, and that without special notice of the state of the road. *Archambault* v. *City of Montreal*, 2 L. N. 141, S. C. & S. C. R. 1879.

12. Plaintiff sued for $8,000 alleged to have been suffered by him, owing to his having been precipitated into an excavation while driving at night in Sherbrooke street, in the city of Montreal, and having been, in consequence, severely injured. It was proved that the night was very dark and the excavation was unfenced. It was also proved that plaintiff was driving very fast, so as to have been unable to check his horse in time—*Held*, that he had contributed to the accident, and could not recover. *Luckhurst* v. *City of Montreal*, 2 L. N. 278, S. C. 1879.

13. Respondent was the owner of a house and lot of land on Lejeune street, in the city of Three Rivers, and claimed from the corporation of that city $1,200 damages for the destruction of the level of the street opposite his property by the construction of the Quebec, Montreal, Ottawa & Occidental Railway. The pleas of the defendants, the city, included a demurrer and general denegations. The Superior Court held them to be liable, and dismissed their pleas; but, in appeal—*Held*, maintaining one of the grounds of demurrer, that the plaintiff had no recourse against the municipality for damages caused to his property by alterations in the street made by a railway company authorized by law to construct such works; and if the plaintiff had suffered loss or damage by reason of such alterations his recourse was against the railway company, and not against the corporation which had no control over the company in the construction of works authorized by law. *Corporation of Three Rivers & Lambert*, 10 R. L. 359, Q. B. 1880, & *Corporation of Three Rivers & Lessard*, 10 R. L. 441, Q. B. 1880.

14. Plaintiff brought action against the city of Montreal, for damages caused by the raising the level of the street in the front of his property in said city—*Held*, that notwithstanding the municipality was authorized by the legislature to do such acts, that it was nevertheless liable for damages caused thereby. *Grenier & City of Montreal*, 3 L. N. 51, Q. B. 1880.

15. Action of damages against a city corporation alleged to have been occasioned by a flood of water lodging around appellant's house—

Held, that the corporation was not liable for damages occasioned by the construction of necessary works, where no negligence appears, or resulting from the omission to make a drain in a street where no drain previously existed. *Riopel & The City of Montreal*, 3 L. N. 320, Q. B. 1880.

16. Action against the City of Montreal for an injury received by a fall occasioned by the bad condition of the sidewalk opposite the house of one L., who, the corporation contended, was the party liable under the by-laws of the city—*Held*, that the corporation was primarily liable to plaintiff, but they had no right to call in L. as they had done, and judgment would go against him to indemnify the corporation. *Guillaume & City of Montreal, & City of Montreal & Larose*, 3 L. N. 406, S. C. 1880.

17. *Physician.*—A physician is liable in damages for publishing the malady of his patient in an action against him for fees, and malice will be presumed by the publication. *H. & T.*, 2 L. N. 202, & 5 Q. L. R. 267, & 9 R. L. 579, Q. B. 1879.

18. *Railways.*—Where the plaintiff was injured by being knocked down by a locomotive while walking on the railway track near a crossing, there being a footpath near by which he might have reached the crossing in safety—*Held*, granting a motion for a new trial, he had contributed by his negligence to the accident, and could not recover. *Wilson* v. *Grand Trunk Railway Co*, 2 L. N. 45, S. C. R. 1879.

19. The corporation of Tingwick sued the Grand Trunk Railway Co., by reason of damages caused by a bridge which they had built on their line over a little river called Trout River. The damage complained of was to a bridge belonging to the plaintiffs, and was caused by the swelling of the river in consequence of defendants bridge—*Held*, that the plaintiffs were entitled to damages, including the costs of rebuilding their bridge, but only including damages suffered within a year previous to the date of the action. *Corporation of Tingwick & Grand Trunk Railway Co. of Canada*, 3 Q. L. R. 111, Q. B. 1877.

20. Where the plaintiff, who was an architect, deriving considerable income from his business and practice, was very seriously injured by an accident which occurred while travelling on the defendants railway during a freshet, and which accident might have been avoided if the company's servants had shown greater diligence, a verdict of $7,000 damages was rendered against the defendants, and this verdict was sustained. *Lambkin & South Eastern Railway Co.*, 3 L. N. 162, P. C. 1880.

21. Where a railway was sued in damages for the value of cattle killed on the road—*Held*, that they were liable for accidents occasioned by the defective state of the fences, although it was proved that the road belonged to another Co. *Central Vermont R. R. Co.* v. *Paquette*, 2 L. N. 390, Q. B. 1879.

22. In an action against the Grand Trunk Railway for having been struck by a locomotive while crossing the track in the city of Montreal—*Held*, that the proof of negligence on the part of defendants should be of the most positive kind. *Lovett* v. *G. T. Ry. Co.*, 3 L. N. 98, S. C. 1880.

23. *School Commissioners.*—Where the school commissioners of Ste. Marthe dismissed one school teacher without cause, and appointed another to whom the salary was paid—*Held*, on an action by their successors in office to recover the salary so paid, as plaintiffs alleged illegally, that the action should have been of damages, and it was dismissed, but without costs. *School Commissioners of Ste. Marthe & St. Pierre*, 2 L. N. 343, S. C. 1879.

24. *Telegraph Company.*—The plaintiff telegraphed from Montreal to Kingston, and the person to whom the message was sent immediately sent back his answer, both the message and the answer being sent by defendants' line. The answer, however, was never delivered, and the consequence was that some expense was incurred by the plaintiff in sending some men by railway to work in a mine, and whom he would not have sent if he had got the answer—*Held*, that the company was liable, and $50 and costs awarded. *Bell & Dominion Telegraph Co.*, 3 L. N. 405, S. C. 1880.

25. *Turnpike Road Trustees.*—The plaintiff complained that while passing along the Lower Lachine road, in October, 1876, with a vehicle drawn by a valuable mare, the road in one place was in such bad order that the carriage sank on one side up to the axle tree, and the horse was seriously injured by falling on a rock—*Held*, that the trustees having collected toll from the plaintiff were directly liable to him. *Trustees of the Montreal Turnpike Road & Daoust*, 1 L. N. 506, Q. B. 1878.

III. Detailed Statement of.

26. A lessee sued for damages for deterioration of the leased premises cannot, by motion, demand a detailed statement of such damages, but he should make such demand by exception to the form. *Rheaume & Panneton*, 9 R. L. 591, Q. B. 1879.

IV. For.

27. *Accidents.*—The trustees of the Montreal Turnpike Roads are liable for an accident caused by the bad state of a temporary road constructed by the corporation of Montreal to replace a piece of the turnpike road interrupted by works in progress. *Trustees of Montreal Turnpike Roads & Daoust*, 23 L. C. J. 175, Q. B. 1878.

28. Action for $10,000 damages against three defendants by the tutor *ad hoc* of a minor, who had received injury by the falling of a piece of ice on his head from the roof of a building, of which J. was proprietor, C. tenant, and G. the under-tenant. They pleaded separately. J.'s pretension was that there was no liability on his part, and indeed no participation, he being merely the landlord, and the tenants having the sole control and responsibility. G. pleaded that he only subleased the lower storey, and had no access to the roof, and no control or liability; and C. denied everything. The jury found—1st. That J. was proprietor of the house. 2nd. That G. and C. were in possession as tenants. 3rd. That the person injured was struck on the head by ice which fell from the roof, and paralyzed him and injured him for life, without fault or negligence on his part, and gave him $5,000 damages. 4th. They found that there was negligence on J.'s part "by a defective building." 5th. That the accident was caused by the negligence of C. in not removing the ice; and 6th, they absolved G. from all negligence whatever. Motion on the part of defendants for judgment *non obstante*, or for a new trial—*Held*, on the evidence: 1st, to grant the plaintiff's motion for judgment against C.; 2ndly, to grant G.'s motion for judgment as regards him, dismissing the plaintiff's action, but without costs—the plaintiff, however, paying the costs of G.'s motion; 3rdly, to refuse J.'s motions for judgment *non obstante*, and also for arrest of judgment, and lastly, to grant his motion for a new trial—the costs to await the event. *Mason* v. *Judah*, S. C. R. 1876.

29. Where the plaintiff fell into a slip in the wharf while landing from the defendants' steamboat at Murray Bay, and received injuries which, in the opinion of the medical men, might cause lameness, and in any case his recovery would be very slow, a thousand dollars damages and costs were awarded. *Borlase* v. *St. Lawrence Steam Navigation Co.*, 3 Q. L. R. 329, Q. B. 1877.

30. The action was brought against a master roofer. It appeared that in October, 1874, the plaintiff, who was then a law-student, was going home, and when near the corner of St. Lawrence Main and Craig streets, a soldering iron fell on his head from a roof which the defendant was repairing. The young man was knocked down by the blow, and sustained severe injuries, which occasioned him a great deal of suffering, just at the time when he was going through his course of studies and required all his faculties. Under these circumstances he brought an action against the roofer who had the work in charge. The defendant pleaded that there was no negligence or want of care, and that he was not responsible therefor. It appeared that the workman who let the tool drop did so to prevent himself from falling. This man was in the employ of the defendant. No precautions had been taken to prevent accident, either by ropes nor in any other way, nor was any one stationed below to warn passers-by that work of this dangerous character was going on above—*Held*, that there was want of precaution on the part of the defendant, and the judgment which allowed $200 was confirmed. *Deblois & Glass*, Q. B. 1877.

31. The plaintiff and defendant were both of a number of persons returning home from a distant part of the parish where they had been working together. Four of the party carried guns, one of the four being the defendant. Plaintiff had no gun. Defendant was running after a porcupine, which he saw at the side of the road, and preparing to shoot at it, when plaintiff, who was in front, suddenly turned around bringing him face to face with defendant, whose gun was accidentally discharged, and the shot lodged in plaintiff's leg. Five of the shot, which were large duck shot, entered his left leg, and forty-five entered his right. During fifteen days, according to the evidence of the doctors, he suffered terribly, and only escaped losing his leg by the natural strength of his constitution. Proved that he would be lame for the rest of his life—*Held*, that in such case

damages would be awarded for suffering as well as for actual loss, and judgment for $135 and costs. *Pelletier & Bernier*, 3 Q. L. R. 94, & 9 R. L. 338, Q. B. 1877.

32. Action by the father, mother, two minor brothers and a minor sister, all represented by the father as tutor, of a person killed on the Grand Trunk Railway. The action was for $2,000 damages—*Held*, that the "consort and ascendant and descendant relations" could alone have the right to claim damages for death occasioned by a quasi offence, and that therefore, in so far as the brothers and sister were concerned, the action was unfounded, and must be dismissed. *Ruest* v. *Grand Trunk Railway Co.*, 4 Q. L. R. 181, S. C. 1878.

33. Damages were claimed for injuries which occurred to plaintiff in consequence of having been run into by a runaway horse, which had been frightened by a fall of snow from a church roof. The defendants were trustees of this church, and proved that there had been a heavy snow storm just previous and up to ten o'clock of the morning of the day on which the accident occurred. The corporation rules forbid the removal of snow after 9 a.m. *Held*, to be *force majeure* and no negligence.* *Trestler & Dawson*, 2 L. N. 344, S. C. 1879.

34. On the 18th December, 1877, the appellant, and defendant, was returning from Levis to St. Michel where he lived. He was driving himself, and was accompanied by his son. He was approaching the top of the hill on the high road near the parish of Beaumont, and there was joined by a sleigh going in the same direction, in which was the plaintiff and his son. There had fallen but two or three inches of snow, and the sleighs ran equally on any part of the road over its whole width. The defendant's sleigh had followed the plaintiff's sleigh for some minutes when a collision occurred. The defendant's horse struck the plaintiff's sleigh and fell. The sleigh was broken, and the plaintiff himself received serious injuries. An action of damages was on these grounds brought against defendant. By the evidence it appeared that the affair occurred just as the plaintiff was turning off the road into his own premises, when the defendant's horse, being rather wild, jumped into the sleigh and committed the damage. Judgment for $300 and costs being appealed from by defendant was confirmed. *Mercier & Guay*, 10 R. L. 598, Q. B. 1879.

35. To an action for damages caused by the destruction of a horse that fell into a pit made under defendant's authority in the streets of Montreal, the defendants pleaded that they had given out the work to be done by another and therefore were not responsible—*Held*, that this would not alter their liability, but, as the horse was without a driver at the time of the accident, the action would be dismissed. *Salras* v. *The New City Gas Co.*, 2 L. N. 97, S. C. 1879.

36. Demand in damages for having caused the loss of plaintiff's horse and damage to his sleigh and harness caused by the elevation of defendant's track above the road-bed of the street. On evidence that the runaway from which the damage arose was caused by the sleigh being caught in this portion of the track and upset, judgment for plaintiff for the full value of the damage. *Coristine* v. *Montreal City Passenger Railway Co.*, 3 L. N. 229, S. C. 1880.

37. *Assault.*—The plaintiff sued for damages suffered through the defendant having assaulted him. The sum of $500 was claimed. Plea that plaintiff commenced the fight and, therefore defendant was not guilty. Evidence was that plaintiff had commenced the fight, and his finger was bitten in the struggle. The finger subsequently had to be amputated and, while the action was pending, the arm also, the gangrene having extended upwards—*Held*, that the plea of self-defence could not enable the defendant to go free, where the violence used to repel the assault was greatly in excess of that committed by the other side. *Bocage* v. *Larimée*, 2 L. N. 59, S. C. R. 1879.

38. Where the defendant had assaulted the plaintiff in the Court House, Montreal, and called him "*une crasse*," "*une canaille*," "*un maudit voleur*," "*un enfant de putin*," &c., the plea being provocation, $100 and costs were awarded. *Simard* v. *Marsan*, 2 L. N. 333, S. C. 1879.

39. *Breach of Contract.*—Damages may be awarded for breach of contract to deliver possession of premises leased, although no special damage is proved to have resulted from the breach. *Mulcair* v. *Jubinville*, 23 L. C. J. 165, S. C. R. 1878.

40. An agent who contracts in his own name is personally responsible for a breach of the contract, whether the principal be known or not.* *Evans & McLea*, 2 L. N. 370, S. C. 1879; & 1 Q. B. R. 201, & 4 L. N. 76, Q. B. 1881.

41. *Breach of Covenant to Sell.*—Under a covenant to sell and convey "all the estate, right, title, interest, claim or demand" that the vendors had in certain lots specified, an action for damages cannot be maintained against the vendors for failure to deliver the whole of the lots mentioned, where they had included by mistake a lot to which they had no claim. *Fulton & McDonnell*, 1 L. N. 531, Q. B. 1878.

42.—*Death of Relative.*—Action of damages by father, mother, sister and brother of a person whose death it was alleged was by the carelessness of defendant. Demurrer maintained in part, on the ground that no such action would lie by collateral relatives, but dismissed as to the parents. On application for leave to appeal the action was maintained as to the ascendants, and appeal refused. *Grand Trunk Ry. Co.* v. *Ruel*, 1 L. N. 129, Q. B. 1878.

43. *Defamation of Character.*—Where one of a firm of stevedores applied for the unloading of a cargo of coal, and the defendant called out not to give him the unloading, as one of the firm, meaning the plaintiff, had stolen some of his coal—*Held*, in review, confirming a judgment for $50 damages and costs. *Bowden & Hart*, S. C. R. 1880.

* Reversed in review, and $150 damages and costs allowed, 3 L. N. 76, S. C. R. 1880; and in appeal, judgment of Court of Review confirmed, 5 L. N. 114.

* A mandatary who acts in his own name is liable to the third party with whom he contracts, without prejudice to the rights of the latter against the mandator also 1716 C. C.

44. But in another case the same court refused to disturb a judgment of $20 damages for having been called by defendant a *voleur*. *Godin* v. *Ennis*, S. C. R. 1879.

45. And where action was brought by a notary against defendant for defamation of character, which consisted in saying at the door of the parish church, as the people were issuing from mass, "*Le notaire Mathieu est accoutumé à faire des mauvaises pièces et à forger des billets,*" and added that he (the defendant) had never signed a certain note in favor of one J. C., and if his name was on the note it was the notary Mathieu who put it there—*Held*, that considering the language used was proved false, that the plaintiff was a person of good reputation, and that the fact that the defendant was also of good reputation and standing in the community only made his words more injurious, damages for $250 and costs. *Mathieu & Forget*, 7 R. L. 669, S. C. 1877.

46. *Destruction of Crop by Fire.*—Action for destruction of a crop of barley by fire, alleged by plaintiff to have been started by defendant in a clearing belonging to him, and not far from plaintiff's property. He also claimed for the value of a fence destroyed in the same way, and from want of which the animals had got into his crops—*Held*, in appeal, reversing the judgment of the Superior Court, that the plaintiff should have proved that the defendant set the fire in question or caused it to be set. *Turcotte & Rioux*, 9 R. L. 363, Q. B. 1876.

47. *Destruction of Wharf on ground of Nuisance*—Action of damages by appellant for the destruction of a wharf and gangway communicating with the main shore belonging to appellant, and which respondent had destroyed as a public nuisance—*Held*, that respondent having allowed appellant to erect the gangway on public property, and remain in possession of it for over a year, had waived the right of destroying what might have been originally a nuisance; and, notwithstanding the subsequent abandonment of the wharf and gangway, appellants were entitled to substantial damages. *Caverhill & Robillard*, 2 S. C. Rep. 575, Su. Ct. 1878.

48. *False arrest.*—Appellant, a debtor, resident in Ontario, being on the eve of departure for a trip to Europe, passed through the City of Montreal, and while there refused to make a settlement of an overdue debt with respondents, his creditors, who had instituted legal proceedings in Ontario to recover their debt, which proceedings were still pending. Respondents thereupon caused him to be arrested on capias. The debt was thereupon paid, and appellant claimed damages for the malicious issue and execution of the capias. Respondents, on appeal, relied upon a plea of justification, alleging that when they arrested appellant they acted with reasonable and probable cause. In his affidavit, on which the capias issued, the deponent (one of respondents) gave as his reasons of belief that the appellant was about to leave the Province of Canada. "That Mr. "P., the deponent's partner, was informed last "night in Toronto by one H., a broker, that the "said W. J. S. was leaving immediately the "Dominion of Canada to cross over the sea for "Europe or parts unknown; and deponent was "himself informed this day by J. R., a broker, "of the said W. J. S.'s departure for Europe "and other places." Appellant was carrying on business as a wholesale grocer at Toronto, and was leaving with his son for the Paris Exhibition, and there was evidence that he was in the habit of crossing almost every year, and that his banker and all his business friends knew he was only leaving for a trip, and there was no evidence that the deponent had been informed that appellant was leaving *with intent to defraud*. There was also evidence that after the issue of the capias, but before its execution, the deponent asked appellant for the payment of what was due to him, and that plaintiff answered him "that he would not pay him, and that he might get his money the best way he could"—*Held*, that the affidavit was defective, there being no sufficient reasonable and probable cause stated for believing that the debtor was leaving *with intent to defraud* his creditors, and that the respondents had no reasonable and probable cause for issuing the writ of capias, and judgment reversed. Damages $500. *Shaw & McKenzie*, 4 L. N. 89, Su. Ct. 1880.

49. Where a capias was taken out under circumstances which might justify a suspicion of unfair dealing, but without sufficient probable cause to justify the issue of the writ, and the parties, on the matter being explained, settled about the payment of the debt without any reserve, and the defendant was at once released without having been taken to gaol—*Held*, reversing the judgment of the court below, that the court would readily presume that the defendant had waived any claim to damages. *Lapierre & Gagnon*, 1 L. N. 32, & 8 R. L. 727, Q. B. 1877.

50. Defendant took out a *capias* against plaintiff, and the latter properly resisted the proceeding, and obtained its dismissal. Plaintiff sued for wrong and malicious *capias*, and made out his case. It was perfectly clear that he was entitled to damages, and the only question was as to the amount. The court below gave him $200. If this sum had been awarded by a jury, the court would never think of disturbing it, and it did not seem right to change the assessment of damages under such circumstances. The amount was not excessive. Judgment confirmed. *Campbell & Reeves*, S. C. R. 1877.

51. In an action of damages for false arrest on a charge of receiving stolen goods there being no proof of malice, though the bill was thrown out by the grand jury, the action was dismissed. *Peloquin* v. *Workman*, 2 L. N. 268, S. C. 1879.

52. The defendants, members of the Montreal police force, were sued in damages for false arrest. A murder had been committed by a mob of persons on the 12th of July, and the Chief of Police had received an anonymous letter, stating that plaintiff was implicated in it. The information turned out to be without foundation—*Held*, that notwithstanding the defendants were in good faith in making the arrest, the plaintiff was entitled to compensation, which was fixed at $75. *Coyle* v. *Richardson*, 2 L. N. 60, S. C. 1879.

53. The plaintiff had been arrested on a capias issued by defendants against him on a disputed claim concerning some partnership matter. The plaintiff resided in New Jersey, and was in Montreal attending the progress of the suit which had arisen out of this disputed claim when arrested. The capias was quashed, and the plaintiff sued for damages. Judgment for $500 confirmed in review. *Bannatyne & Canada Paper Co.*, 3 L. N. 207, S. C. R. 1880.

54. Where, in an action of damages for false arrest, the arrest was proved to have been due to a mistake in the person, and not to malice, nominal damages only were awarded. *Charbraud* v. *Pudney*, 3 L. N. 237, S. C. R. 1880.

55. *False Imprisonment.*—An action of damages will not lie against a justice of the peace by an individual who has been illegally condemned to fine and imprisonment, if the justice of the peace does not appear under the circumstances to have acted with malice, and without sufficient and probable cause. *Marois* v. *Boldue*, 7 R. L. 148, Q. B. 1875.

56. And the judgment or conviction rendered by the justice of the peace protects its author from all liability in damages as long as it remains in force. *Ib.*

57. There is no action of damages for false imprisonment simply because the person arrested is innocent; it is also necessary to establish that the person who caused the arrest was without reasonable ground for doing so. *Lefebvre* v. *La Cie. de Navigation a Vapeur de Beauharnois*, 9 R. L. 517, & 2 L. N. 269, S. C. 1879.

58. Respondent obtained judgment in damages for slander against the wife of appellant, and on such judgment sued out a *contrainte par corps*. The *contrainte par corps* was set aside on the tierce opposition of appellant, who then took action of damages for false imprisonment —*Held*, that defendant having acted in good faith no such action would lie. *Langlois & Normand*, 6 Q. L. R. 162, Q. B. 1880.

59. *Illegal Attachment.*—The prothonotary is not liable for the damages caused by the illegal issue of a writ of attachment before judgment, unless it be proved that he acted in bad faith or without reasonable and probable cause. *McLennan* v. *Hubert*, 22 L. C. J. 294, & 23 L. C. J. 273, Q. B. 1874.

60. Damages to the extent of $20 and costs allowed for an attachment before judgment, issued on the ground that plaintiff was advertising his furniture for sale preparatory to removing to the country. *Perry* v. *Pell*, 2 L. N. 405, S. C. 1879.

61. Plaintiff, being about to give up barkeeping, and remove to another house, advertised his goods for sale by public auction, being at the time indebted in $104 to defendant, as assignee of an insolvent estate. Defendant had made frequent applications for payment, and plaintiff had constantly promised to pay but had failed to do so. Defendant, seeing the plaintiff's advertisement, caused an attachment to issue, which was contested by plaintiff, and it being shown that there was no intention to secrete on his part—*Held*, that the process of *saisie-arrêt* could not be made use of as a means of compelling dilatory debtors to pay doubtful debts, but was allowed by law only against debtors guilty of fraud; that the plaintiff had disproved the charge of fraudulent secreting, and had a right of action, but, as the defendant had acted as a public officer, and without any feeling of malice towards the plaintiff, and as the latter had not suffered any real damage, and moreover had not acted as he ought to have done towards his creditors, damages assessed a $20 with costs as in an action of $60. *Powell* v. *Paterson*, 4 Q. L. R. 192, S. C. 1878.

62. The plaintiff was a cabinetmaker and dealer in household furniture, and the defendant had been in his employ, but was discharged. The defendant sued for wages, which was contested on the ground that money had been stolen through defendant's negligence. While the action was pending plaintiff advertised an extensive sale of furniture, and on this ground defendant took out an attachment before judgment, which was dismissed as groundless. On action of damages $250 and costs awarded. *Thompson & Watson*, 24 L. C. J. 131, S. C. 1879.

63. The plaintiff sued for damages for illegal proceedings on an execution. The plaintiff alleged that one of the defendants, having a judgment against him, caused an execution to issue addressed to the other defendant, a bailiff, that there was an opposition, and yet the defendant went on and sold the effects seized, including a cow which was exempt from seizure. Action dismissed, on the ground that the opposition was false and frivolous and plaintiff had consented to the sale of the cow and had received the money. *Guertin* v. *Nolan*, 3 L. N. 182, S. C. 1880.

64. *Illegal Seizure.*—Defendant was condemned to pay $100 damages for improvidently issuing a writ of *saisie gagerie* against a tenant who did not owe him any money. The complaint was that on the 10th June, 1877, the defendant *es qualite* as assignee to the estate of one Phelan caused a *saisie gagerie* to issue unlawfully and with malice, causing the plaintiff damages to the amount of $2,000. The defendant pleaded: 1st. That the seizure was made without his knowledge or authorization, and by error, owing to the fault and bad faith of plaintiff. 2nd. That the action should have been directed against the defendant personally, and not against him in his quality of assignee. 3rd. That there was no malice and therefore no action. 4th. That there being no malice there was no ground for exemplary damages. It appeared from the evidence that there was an unsettled account in January, 1877, between the insolvent and the plaintiff, who was his tenant and sub-tenant of L., the proprietor. The last was claiming payment of rent from the assignee, and was allowed by the latter to address himself to the plaintiff for payment. The plaintiff was unable to settle with the landlord or his lawyers, and settled with the assignee. Meanwhile the landlord, losing patience, sued out a *saisie-gagerie* against the plaintiff, who then owed nothing—*Held*, that as there was an understanding between the assignee and the landlord that the latter should collect in the name of the assignee from the plaintiff, the seizure was an illegality, and judgment condemning to pay $100 for his error and the seizure made in his name and by his

sufferance was confirmed, but without costs, in review, as the damages were rather excessive. *Trempe & Perkins*, S. C. R. 1877.

65. Action of damages against defendant, a physician, for having caused three executions to issue against plaintiff for a tax due defendant as a witness in two causes, and the tax of another. The evidence left no doubt that these different fees had been paid before execution issued, and that the defendant had been in error when he issued them. Oppositions on this ground had been filed and maintained at a cost to the defendant of $87. The effects seized were valued at $25—*Held*, that notwithstanding there was no proof of malice on the part of defendant, yet he had made a mistake, and judgment against him for $20 and costs over $100. *Brault & Marsolais*, 10 R. L. 111, S. C. 1879.

66. *Illegal Seizure for School Taxes.*—Plaintiff's property had been seized and sold for school taxes at the instance of the defendants, in virtue of a writ in which they called themselves simply "The School Municipality of the Parish of St. Columban." Plaintiff alleged that the defendants in so doing had not used the name which the law had given them; that they had illegally seized and sold because the writ which issued was not stamped; because the assessment roll was null, being based on one made by assessors not possessing the necessary qualifications; because the notices had not been regularly given, and because the property had been sold *à vil prix*. The proof showed that the seizure had not been made in the proper name of the defendants, that the writ had not been stamped, and that the assessors had not assessed each at the amount required by law. On the other hand, it was proved by the defense that all the proceedings had been made according to law, that all the notices had been given, and that, in fact, the plaintiff himself had given most of the notices—*Held*, that plaintiff had not established the essential allegations of his declaration; that defendants had a right to seize for school taxes, but, in exercising their right, they had used a name which, according to law, they should not have used, and in consequence they would be condemned to pay one shilling damages and one shilling costs. *Barrette* v. *The School Commissioners of St. Columban*, 7 R. L. 185, C. C. 1875.

67. *Injury to Horses.*—Plaintiff brought action for the value of a horse which had been suffering from a disease in the hind legs, and which defendant, pretending to be able to cure, had first given to plaintiff certain remedies for, and afterwards had taken away to his home at St. Robert to cure. The arrangement was that unless the defendant cured the horse that he was to charge nothing for his services; but, instead of curing him, he brought him back at the end of several weeks much worse than he was before, so that he was almost useless. Plaintiff demanded $65, and tendered back the horse to defendant. Defendant pleaded that there was no guarantee of a cure, and that if the horse was made worse that it was the fault of plaintiff's servant, who, before defendant had taken the horse home to treat, had used the applications contrary to instructions—*Held*, on the evidence, that defendant was wrong in pretending to exercise the art of a *marechal* or veterinary surgeon without a sufficient knowledge of it, and without being licensed so to do; and that having done so he was responsible for all injury that the horse had suffered by reason of his negligence or want of skill, and judgment against him for the value of the horse and costs. *Leri* v. *Gagnon*, 10 R. L. 68, C. C. 1879.

68. The proprietor of a stallion is bound when he rents the services of the stallion to take all the care ordinary to prevent injury, and where the mare served died from rupture, the proprietor of the stallion was held liable for not having taken the usual precautions. *Bergeron & Brossard*, 10 R. L. 21, C. C. 1879.

69. *Libel in Pleadings.*—Damages will not lie for libel contained in judicial pleadings where there has been wrong on both sides, and no express malice is proved. *Barthe & Boudreault*, 8 R. L. 489, Q. B. 1878.

70. *Malicious Prosecution.*—In an action of damages for malicious prosecution—*Held*, that malice and want of reason and probable cause may be inferred from the acts, conduct and expressions of the party prosecuting, as, for example, the existence of a collateral motive, such as a resolution on his part to stop the plaintiff's mouth. *Lefantua* v. *Boldue et al.*, 1 L. N. 266, S. C. 1878.

71. But in another case—*Held*, that malice and probable cause are conclusively disproved by the conviction of the plaintiff. *Renahan* v. *Geriken*, 1 L. N. 267, S. C.

72. It is sufficient to support an action for malicious prosecution if the prosecutor while complaining that a sum entrusted to the accused a commission merchant, had not been employed according to instructions, and that part had been misappropriated, endeavored to compound what he pretended was a felony by warning the accused to settle to save further trouble, and held back the warrant for nineteen months after laying the information, in order to coerce him into a settlement, though the prosecutor had obtained a legal opinion that it was a case of felony and acted thereon.* *Larocque & Willett*, 23 L. C. J. 184, Q. B. 1874.

73. Where a woman, not with intention to steal, but apparently to annoy a neighbor, appropriated a quantity of ice delivered to the latter who prosecuted her for larceny—*Held*, that she was not entitled to damages for malicious prosecution. *Ryan & Laviolette*, 1 L. N. 289, Q. B. 1878.

74. Action was brought by appellant, a young notary, for malicious prosecution. Respondent had caused appellant to be arrested on a charge of perjury, and it was alleged that this proceeding had been taken maliciously and without probable cause. The Circuit Court for the county of Bedford sustained the action, and allowed the plaintiff, now appellant, fifty dollars damages. The case was taken before the Court of Review, and that court reversed the judgment, and dismissed the action. It was from the latter judgment that the plaintiff appealed. It appeared that there was a suit going on between the trustees of the Parish of St. Jean Baptiste de Roxton and one McGrail, and the trustees

* Reversing S. C. *See* 2 R. C. 79, & 1 Dig. 385, 110.

having been summoned to answer on *faits et articles* touching the truth of certain averments of the plea, appellant, who was their secretary-treasurer, appeared in court on their behalf, and made answer to the questions. It was in these answers that the alleged perjury was committed. When appellant was arrested on the charge of perjury, the magistrate bound him over for trial at the criminal term of October, 1868, and the grand jury returned a true bill, but the case was not tried, owing to some technical errors in the indictment—*Held*, that it had been clearly established that there was probable cause for bringing the accusation. The magistrate thought so, and the grand jury found a true bill, and two judges of the Superior Court, sitting in the Court of Review, endorsed the opinion of the grand jury and of the magistrate. How, then, was it possible to say that the plaintiff acted without probable cause? It was not necessary that the accusation should be proved in order to hold respondent free from responsibility. It was sufficient to show that he had not acted without probable cause, and the evidence was ample for this purpose. Judgment of the Court of Review, dismissing the action, confirmed. *Beauchemin & Trudeau*, Q. B. 1876.

75. In an action of damages for malicious prosecution for bigamy—*Held*, that proof that the plaintiff had been formerly convicted of attempting to have carnal knowledge of a girl under eleven years of age will be admitted in mitigation of damages. *Landa* v. *Pouleur*, 1 L. N. 614, S. C. 1878.

76. And a judgment obtained by defendant in right of his wife against plaintiff may be pleaded in compensation of damages claimed for such malicious prosecution for bigamy. *Ib.*

77. Action by a commercial traveller against his employer for having maliciously, and without probable cause, procured his arrest and detention on a charge of feloniously embezzling $30. On a previous occasion the plaintiff had sold his samples, and had been debited with the amount by his principal, who, however, told him not to do so again. This time he got instructions by telegraph to sell them for $50 or $60, and all over $60 was to be his own. He sold them for $50, and on his return left $20 in defendant's office during his absence. The balance he had used to pay his travelling expenses—*Held*, that the evidence did not justify a charge of embezzlement and arrest, and the plaintiff would have judgment for $200 and costs. *Misell* v. *Lesser*, 2 L. N. 108, S. C. 1879.

78. Action of damages for having begun a criminal prosecution against plaintiff. Plaintiff was arrested, and after examination of the facts by a police magistrate was discharged. The trouble arose out of transactions which the plaintiff had undertaken for the defendant as a broker in stock, and which had resulted in loss—*Held*, that there was want of probable cause, and $200 damages and costs allowed. *Barthe & Dagg*, 3 L. N 239, S. C. 1880.

79. *Personal Injury.*—Action of damages against the defendant for having caused to plaintiff the loss of a finger, and the consequent suffering and peril of life by trying to upset a load of wood on which plaintiff was seated or

was resting. The evidence showed that the plaintiff had his left hand on the wood at the time, which was so lacerated and torn, in consequence of the act of defendant, that he was obliged to allow it to be amputated some days afterwards, that he suffered very much for several months, during which time he was unable to work, and was at one time in danger of losing his life by tetanus. The court below gave him $3,000, but in appeal reduced to $600. *Desilets & Gingras*, 10 R. L. 275, Q. B. 1880.

VI. Measure of.

80. Plaintiff, in the Superior Court, instituted an action against the defendant for the recovery of one hundred thousand dollars, damages alleged to have been suffered by him by reason of the cancellation of two letters of credit obtained from the manager of the Bank of Toronto at Montreal on the City Bank of London, on the 17th January, 1875, one for £300 stg. and the other for £3,000 stg. Plaintiff alleged that the said letters of credit were so given to the plaintiff on the eve of his departure for England, on or about the same date when he was going to make his purchases for the next season of trade; that he deposited the letters of credit with the City Bank, London, who received the same, and agreed to act as directed; that upon the strength of this the plaintiff gave orders for large quantities of goods, intending to draw for the payment of them against his credit so established with the City Bank; that on the 7th of February plaintiff drew a cheque on the City Bank for £250, which was not accepted, on the ground of a despatch received by cable from defendant cancelling the said letters of credit, and afterwards confirmed by letters; that in said letters the defendants and their agents gave to the City Bank their reasons for so acting, which were of a very damaging nature to the plaintiff, his character, his credit and standing as a merchant, and which were utterly false, untrue and unfounded. The plaintiff thereupon protested the City Bank, out without effect. Plaintiff further alleged that the cancellation of said letters was done maliciously, and without any reasonable grounds or cause, and with a view to injure and ruin the plaintiff, and had in fact a disastrous effect on the credit and business of plaintiff, and amongst those with whom he was doing business. Plaintiff claimed $100,000 damages. Verdict for plaintiff for $6,500, which was confirmed by the court sitting in review. On appeal, verdict set aside on the ground of excessive damages and new trial ordered.* *Bank of Toronto & Ansell*, 7 R. L. 262, Q. B. 1875.

VII. Not Barred by Criminal Conviction.

81. Where a person had been tried criminally for a libel and punished, and action for damages was afterwards taken—*Held*, that the criminal trial and punishment were no bar to the action for damages, though nominal damages only would be awarded. *Guest* v. *Macpherson*, 3 L. N. 84, S. C. 1880.

I. Dig., p. 143, Art. 39.

VIII. Prescription of.

82. An action of damages for a *quasi delit* is prescribed by two years, and the court is bound to take notice that such prescription has intervened, even without plea to that effect. *Grenier* v. *City of Montreal*, 21 L. C. J. 215, S. C. 1876.

X. Right of Heirs to Action for.

83. In an action of damages by an ex-volunteer for imprisonment and hardship suffered by him at the hands of the officers of the regiment after the expiration of his term of engagement—*Held*, that though the right to such actions was purely personal, and could not be instituted by his heirs, that nevertheless it could be continued by them where it had been instituted by the person himself previous to his death, and that they could succeed to the claim. *Thompson* v. *Strange*, 5 Q. L. R. 205, S. C. 1879.

XI. Transfer of Claim for.

84. A transfer and assignment of leased premises does not carry with it a transfer of a claim for damages arising out of the deterioration of the premises by the lessor. *Rheaume & Panneton*, 9 R. L. 594, Q. B. 1879.

XIII. Where Caused by Contributory Negligence.

85. Where there is contributory negligence damages cannot be recovered. *Periam & Dompierre*, 1 L. N. 5, Q. B. 1877.

XIV. Will not Lie for Wrong Judgment.

86. During the winter of 1874 the appellant bought from and paid for to respondent 70 cords of hemlock bark, which afterwards discovering to be 15 cords short he sued the respondent to get back $22.50, the value of the 15 cords, at $1.50 per cord, and obtained judgment. Respondent afterwards discovered that the 15 cords had been accidentally left in the woods, and had been subsequently found and appropriated by appellant. He then sued appellant for damages for having taken an unfounded action against him, and obtained an unfounded judgment, and for the amount he had been obliged to pay on account of such judgment—*Held*, that as it was in his power to find out that the bark was still in the bush when the first action was taken, and to have delivered it to defendant, that he had no right of action and judgment granting him damages was reversed. *Lainesse* v. *Labonté*, 8 R. L. 354, Q. B. 1876.

DEATH.

I. Action of Damages for, Cannot be brought by Collateral Relations, *see* DAMAGES.
II. Of Attorney ad Litem, *see* ATTORNEYS.

III. Of Party to Appeal does not Suspend Appeal, *see* APPEAL.
IV. Of Party to Suit does not Suspend Proceedings.
V. Of Testator, *see* REGISTRATION.
VI. Proof of.

IV. Of Party to Suit.

87. *Effect of*—The death of one defendant, among several jointly and severally sued, does not suspend the proceedings *quoad* the survivors. *Allan et al.* v. *McLagan*, 1 L. N. 4, Q. B. 1877.

VI. Proof of.

88. An affidavit of the death of a person out of Lower Canada, purporting to be sworn before a foreign notary, does not make proof of its contents. *Quinn & Dumas*, 23 L. C. J. 182, Q. B. 1879.

DEBATS DE COMPTE—*See* ACCOUNTS, ACTION en Reddition.

DEBENTURES.

I. Of Municipality, *see* MUNICIPAL CORPORATIONS.

DEBT.

I. Evidence of, *see* EVIDENCE.

DECISORY OATH—*See* EVIDENCE.

DECLARATION—*See* PROCEDURE.

I. Amendment of, *see* PLEADING.
II. Service of, *see* PROCEDURE.

DECLARATION OF HYPOTHEC—*See* ACTION, HYPOTHEC, SALE Judicial.

DEDICATION.

I. For Public uses, *see* MUNICIPAL CORPORATIONS Streets.

DEEDS—*See* CONTRACTS.

I. Copies of.
II. Errors in, *see* IMPROBATION.
III. How Proceeded against.
IV. Interpretation of.
V. Parties to, cannot Allege their own Fraud in Voidance of, *see* FRAUD.
VI. Sous Séing Privé.

I. Copies of.

89. A copy of a notarial deed not certified by the notary is a nullity, and an action based on such a copy will be dismissed. *Ricker & Simon*, 22 L. C. J. 270, Q. B. 1877.

II. Errors in.

90. Though the consideration be incorrectly expressed in the deed the contract is not the less valid. *O'Brien* v. *Thomas*, 21 L. C. J. 287, S. C. 1877; 989 C. C.

III. How Proceeded Against.

91. The correctness of a duly certified copy of a notarial *acte* may be attacked otherwise than by an inscription *en faux*, and when the procedure by way of such inscription is unnecessary ought to be rejected. *Dufresne et al.* & *Lalonde et al.*, 21 L. C. J. 105, S. C. 1876.

IV. Interpretation of.

92. Where the faculty is accorded to the purchaser in a deed of sale of immoveables to relieve any of the lots described in the deed of the whole balance of the purchase money, which by the deed carries interest at the rate of seven per cent., by paying to the vendor at the rate of sixteen cents per foot of the lot to be discharged, the interest at the rate aforesaid must also be paid in addition to the capital at said rate of sixteen cents a foot. *Chaussé & Larose & Symes & Dupres*, 24 L. C. J. 127, S. C. R. 1879.

VI. Sous Séing Privé.

93. An instrument under private seal need not be executed in duplicate. *Morin* v. *Morin*, 4 Q. L. R. 228, S. C. 1878.

94. A deed of discharge *sous seing privé* may be set up against a notarial deed of obligation in the hands of a transferee of the creditor, and that without special proof of the execution of the discharge or that it was signed at the time it purports to have been signed. *Prevost & Melançon*, 23 L. C. J. 167, Q. B. 1878.

DEFAMATION OF CHARACTER—*See* LIBEL AND SLANDER.

I. Aggravation of, in Plea, *see* LIBEL.

DEFAULT—*See* PAYMENT.

I. Judgments by, *see* JUDGMENTS.
II. When Necessary, *see* OBLIGATIONS.

DEFAUT CACHÉ—*See* SALE, WARRANTY.

DEFENSE EN FAIT—*See* PLEADING.

DEFENSE EN DROIT—*See* PLEADING.

DEFICIENCY.

I. Of Contents in Immoveables Sold by the Sheriff, *see* SALE Judicial.
II. In Quantity of Land sold may be Recovered as Damages, *see* ACTION Quanto Minoris.

DEFRICHEURS.

privileges of—*See* Executions Exemption.

DEGUERPISSEMENT—*See* ABANDONMENT, HYPOTHEC.

DELAISSEMENT—*See* HYPOTHEC.

DELAY—*See* PROCEDURE.

I. To Appeal in Insolvency, *see* APPEAL.
II. To bring Redhibitory Action, *see* ACTION.
III. To File Opposition for Payment, *see* OPPOSITION.

DELEGATION.

I. Acceptance of, *see* VENDORS AND PURCHASERS.

Of Hypothec, *see* HYPOTHEC.

DELIRIUM TREMENS,

Wills null in Consequence of, *see* WILLS.

DELIVERY.

I. Of Moveables Sufficient to Constitute Donation.
II. What is.

I. Of Moveables Sufficient to Constitute Donation.

95. Where a son of the defendant filed an opposition by which he claimed a piano seized in his father's house, the evidence was that the son, the opposant, had commenced to teach the piano

for a living some five years previously, and his father had given him the piano for that purpose; that thereupon it had been removed somewhere else and remained away for several days; that the defendant and the rest of his family did not play, and did not use the piano at all; that, in short, it was exclusively used by the opposant and his pupils—*Held*, that the proof of delivery was sufficient, and the opposition was maintained.* *McMaster & Moreau*, 3 L. N. 91, S. C. 1880.

96. But where an opposant claimed under a donation which had never been registered nor had any delivery been made of the effects the opposition was dismissed. *Crossen & O'Hara*, 21 L. C. J. 103, S. C. 1877.

II. What is.

97. The petitioner, a merchant of Leeds, England, sought by revendication to recover possession of goods sold and sent to Montreal, where they had been deposited and were still lying in the Custom House. The revendication was sought for on the ground that the buyer had since purchasing become insolvent. The assignee to his estate opposed the revendication under sec. 82 of the Insolvent Act of 1875—*Held*, maintaining the petition, that no delivery had taken place in terms of Art. 1893 of the Civil Code.* *Thompson* v. *Greenwood*, 9 R. L. 379, S. C. 1877.

DELIVERY ORDER—*See* WAREHOUSE RECEIPT.

DEMAND OF PAYMENT—*See* PAYMENT.

DEMEURE—*See* PAYMENT.

DEMURRAGE.

I. Computation of.
II. Liability for.

I. Computation of.

98. Where a rate for demurrage was stipulated in the charter party——*Held*, that only working days should be counted in estimating the damages. *Hart* v. *Beard*, 1 L. N. 260, S. C. 1878.

* Gifts of moveable effects, whether universal or particular, are exempt from registration, when they are followed by actual delivery and public possession by the donee. 808 C. C.

* The obligation of the seller to deliver is satisfied, when he puts the buyer in actual possession of the thing or consents to such possession being taken by him and all hindrances thereto are removed.

II. Liability for.

99. Action for fifteen days demurrage at £15 per day. The defendants chartered the steamer *Tagus* to take a cargo of coal from Sydney, Cape Breton, to Montreal, and the charterers undertook that the vessel was to be loaded with all despatch at Sydney. Plea that the vessel was to be loaded according to the custom of the port, and of the mines of Sydney, namely, in her due turn with other vessels there loading coal. That on the arrival of said vessel at Sydney the master was informed that three weeks would elapse before the *Tagus* would be entitled to her turn, which was on the 4th July, and she was then loaded with all despatch—*Held*, that the undertaking of the charterers was *de rigueur* and was not qualified by the custom of the port. *Dunkerly* v. *Lord*, 3 L. N. 170, S. C. 1880.

DEMURRER—*See* PLEADINGS.

I. Appeal from Judgment on, *see* APPEAL.

DENTISTRY.

I. License to Practice.

100. Mandamus to compel defendants, the Dental Association of the Province of Quebec, to grant plaintiff a license to practice as a dentist. Petitioner alleged that during three years and upwards, previous to the 28th January, 1874, he had been constantly engaged in the practice of dentistry in the Province of Quebec, having an office, and that on the 10th July, 1877, he applied to defendants for a license as dentist, and was refused—*Held*, that as he had at various times admitted that he was not a practising dentist during the years mentioned, and as, moreover, he had been absent from the city from two to six months during that time, and therefore, could not be said to have been "constantly" in practice as a dentist during said three years, that he had not complied with the requirements of the statute, and the mandamus was discharged. *Young* v. *Dental Association of Province of Quebec*, 2 L. N. 292, S. C. 1879.

DEPOSIT—*See* BAILMENTS.

I. For Certiorari, *see* CERTIORARI.
II. In Court.
III. In Review, *see* REVIEW.
IV. Liability of Banks for Interest on, *see* BANKS.
V. Of Official Plans and Books of Reference, *see* REGISTRAR.
VI. Withdrawal of, *see* PROCEDURE.

II. In Court.

101. Where a party to a suit deposits money in the hands of the prothonotary to abide the order of the court, the other side cannot with-

draw the money on simple motion or petition, especially if his petition raises questions of fact which should be regularly tried on an incidental demand.* *Middlemiss & Attorney General*, 7 R. L. 255, Q. B. 1875.

*AN ACT TO FURTHER AMEND THE ACT RESPECTING JUDICIAL AND OTHER DEPOSITS.

Assented to 24th July, 1880.

1. Sections 4 and 5 of the Act 35 Vic. cap. 5, and section 1 of the Act 38 Vic. cap. 14, are repealed and replaced by the following provisions:

"Every clerk of appeals, prothonotary of the Superior Court, clerk of the Circuit Court or of a District Magistrate's Court, who, in his official capacity, shall have received himself, or by his deputy, as a judicial or other deposit, any sum of one hundred dollars or over, shall immediately deposit such sum to the credit of the treasurer of the Province in such bank or other monetary institution as shall be indicated by the said treasurer, and shall file in the record of the case or of the proceedings in which he has received the said sum the deposit receipt of such bank or other monetary institution.

Every sheriff who, in his official capacity, shall have himself or by his deputy received, either as the price of a judicial sale or otherwise, a sum of one hundred dollars or over, shall immediately deposit such sum to the credit of the treasurer of the Province in such bank or other monetary institution which shall be indicated by the said treasurer, and shall without delay file in the office of the prothonotary or clerk the deposit receipt of the said bank or other monetary institution.

As to sums less than one hundred dollars which shall be received as aforesaid by the said officers, they shall be deposited in the manner aforesaid, so soon as they shall amount to an aggregate sum of one hundred dollars and over.

Such officers shall, from the mere fact of holding such offices, be agents of the treasurer of the Province for the purposes of the said Act, 35 Vic. cap. 5, and its amendments. Any payment made to them under the said Act and its amendments shall be deemed to be made to the treasurer of the Province; and all persons who are entitled to draw such sums or securities deposited under said Act shall have the warranty of the Government of the Province for the payment to them of such sums or securities.

2. It shall be the duty of the said clerks of appeals, prothonotaries of the Superior Court, clerks of the Circuit Court, or of the Magistrate's Court, and sheriffs, who now hold in their hands moneys which they would be obliged to deposit if they had received them after the coming into force of the present Act to deposit the same in the manner aforesaid one month after the coming into force of the present Act, subject to the consequences and under the penalties herein after enacted.

3. Sections 19, 20 and 21 of the said Act, 35 Vic. cap. 5 are repealed.

4. Section 25 of the said Act 35 Vic. cap. 5 is repealed and replaced by the following:

25. Every public officer who shall fail to comply with the provisions of this Act or of the Acts amending the same, may be deprived of his office, and shall, moreover, incur a penalty not exceeding two hundred dollars, which shall belong to the Province and shall be recovered in the name of the Crown by an action for debt before a court which is competent to take cognizance of an action for debt for such amount, and in default of payment of the fine the officer who shall be condemned to pay the same shall be imprisoned in the common gaol for a period not exceeding three months."

5. It shall be the duty of the treasurer to see that the expenses connected with the carrying into effect of the judicial and other deposits, acts and amendments, shall not exceed the interest or profit accruing to the treasury from the moneys deposited in virtue of the said Acts; and all the said expenses shall be deducted from such interest or profit by the treasurer, and the balance, if any balance, of interest now in the treasury shall be transferred to the Consolidated Revenue Fund of the Province and form part thereof.

6. It shall be lawful for the treasurer of the Province upon deposits made in the treasury department in sums under one hundred dollars, upon a certificate from the prothonotary or clerks of the court, stating that the treasurer pay such deposits in whole or in part for him to do so, except in cases wherein judgment of distribution is rendered.

7. This Act shall come into force on the day of the sanction thereof.

DEPOSITIONS.

I. IRREGULAR.

102. A deposition commenced before a judge, and afterwards continued before the prothonotary, is illegal, and cannot found an accusation for perjury. *Regina* v. *Gibson*, 7 R. L. 573, Q. B. 1876.

DEPUTY PROTHONOTARY.

I. AGE OF, CANNOT BE CALLED IN QUESTION SO AS TO INVALIDATE A WRIT SIGNED BY HIM, *see* WRITS.

DERNIER EQUIPEUR.

PRIVILEGE OF, *see* PRIVILEGE.

DESAVEU—*See* DISAVOWAL.

DESCRIPTION.

I. OF PARTIES, *see* PROCEDURE.
II. OF LAND SOLD AT JUDICIAL SALE, *see* SALE.

DESERTION.

I. OF SERVICE, *see* MASTER AND SERVANT.

DESISTEMENT—*See* PROCEDURE.

I. COSTS IN CASES OF, *see* COSTS.

DESTITUTION.

I. OF TESTAMENTARY EXECUTORS, *see* EXECUTORS.

DETERIORATION.

I. OF LEASED PREMISES, *see* LESSOR AND LESSEE.

DIFFERENCE IN VALUE.

I. RIGHT TO, *see* SUBSTITUTION RIGHTS OF PARTIES.

DILATORY EXCEPTION - *See* PROCEDURE.

DIMINUTION.

I. Of Price of Land for Deficiency in Quantity may be Claimed as Damages, *see* ACTION Quanto Minoris.

DIRECTORS.

I. Contracts Created by Resolution of, *see* CONTRACTS, BANKS, &c.
II. Liability of, *see* COMPANIES, CORPORATIONS.
III. Of Companies, &c., *see* COMPANIES, CORPORATIONS.

DISAVOWAL.

I. Notice of.
II. Right of.

I. Notice of.

103. To a petition *en desaveu* filed subsequently to judgment in the suit, the defendant *en desaveu* filed an exception to the form on the ground that ten days notice was not given to them before presentation of the petition—*Held*, that no notice was necessary. *McClanaghan and Harbor Commissioners of Montreal & Duhamel*, 2 L. N. 300, S. C. 1879.

II. Right of.

104. Where the plaintiff had taken an action in separation *de biens et de corps* against her husband, and after inscription for proof the parties were reconciled, and plaintiff's attorneys continued the action for their costs in opposition to the plaintiff's wishes—*Held*, that the plaintiff had a right to disavow them, as the action was extinguished by the reconciliation. *Gerard* v. *Lemire & St. Pierre*, 2 L. N. 255, S. C. R. 1879.

DISCHARGE—*See* PAYMENT.

I. In Insolvency, *see* INSOLVENCY.

DISCIPLINE.

I. Of the Bar, *see* BAR.

DISCONTINUANCE—*See* PROCEDURE.

I. Of Proceedings in Insolvency, *see* INSOLVENCY.

DISCUSSION.

I. Of Principal Debtor, *see* SALE, Warranty, SURETYSHIP.

DISHONESTY.

I. Insurance against, *see* INSURANCE.

DISSENTIENTS.

1. Rights of.

105. Action to set aside a sale of certain lots of land which had been sold by the school commissioners for school taxes and for damages—*Held*, setting aside the sale, but refusing damages, that the fact that rate payers are dissentients, and the organization of a corporation of dissentient school trustees may be proved by verbal testimony, especially where it is evident by receipts for school taxes, granted by such dissentient corporation in favor of dissentien rate payers during a series of years, and by othet circumstances, that such a corporation has *dr facto* existed, and claimed payment of schoole taxes in that capacity during many years. *School Commissioners of the Township of Roxton & Boston*, 3 L. N. 20, & 24 L. C. J. 122, Q. B. 1879.

106. And *held*, also, that in such action it was not necessary to allege that the land in question was sold at the demand of the defend ants, the school commissioners, where it was shown that they had received the proceeds and knew from what they were derived. *Ib.*

DISTINCTION OF THINGS—*See* PROPERTY, Description of.

DISTRIBUTION.

I. Collocation of.
II. Contestation of Report of.
III. Homologation of Report.
IV. Payment of Moneys.
V. Rights of Creditors.

I. Collocation of.

107. Where, in a report of distribution of the proceeds of the sale of the real estate of an insolvent sold by the sheriff and returned by him, on the 28th August, 1875, the assignee of the estate of the insolvent was collocated in the amount of his claim for fees and disbursements, filed on the 20th January, 1876—*Held*, that having been filed after the delay had expired, and without leave of the court, that it was improperly filed, and the appellants, who were hypothecary creditors, could appeal from the

judgment homologating the report of distribution, although they had not contested in the court below. *Shortis & Normand*, 1 L. N. 86, Q. B. 1877.

108. And, *held*, also, that as no vouchers had been produced by the respondent to show that he was the assignee to the estate of the insolvent, or that the interim assignee, whose costs were included in the claim, had ever acted as such, or ever transferred his claim to respondent or been paid by him, there was no *prima facie* claim made out to entitle the respondent to be collocated. *Ib.*

II. Contestation of Report of.

109. A person interested may be allowed, on showing cause, to contest a report of distribution after the delay of six days, provided that no proceedings have been had for the homologation of the report. *Delalurantaye* v. *Posé & La Soc. Per. de Construction Jacques Cartier, & Lacroix*, 21 L. C. J. 100, S. C. 1877.

110. Where a vendor of a property already mortgaged to a third party is collocated for the balance of his *prix de vente* next after such third person on the proceeds of the property, sold at judicial sale, a subsequent creditor has a right to contest the collocation of the vendor and the first mortgagee, as the claim of the latter is a personal debt of the vendor. *Arpin* v. *Lamoureux & Boivin*, 7 R. L. 196, S. C. 1875.

111. And where the contestation does not allege certain payments, afterwards admitted by the person collocated and not credited, the contestant will nevertheless have the benefit of them, and the report will be reformed accordingly. *Ib.*

112. And where a donor was collocated for the capital of a life rent stipulated in a deed of donation not registered, and the subject of which had been transferred to another, subject to the charges in the first—*Held*, that even a second transferee had a right to oppose the collocation, on the ground that the original donor had lost his hypothec for the life rent stipulated in the first deed. *Arpin* v. *Lamoureux & Bedard*, 7 R. L. 203, S. C. 1875.

113. The plaintiffs contested the hypothecary claim mentioned in item 10 of the report of distribution as having been paid, and asked that the item be struck out and the amount distributed among the remaining creditors. The creditors collocated by said item had renounced their claim, but answered that the plaintiffs contesting should have attacked the registrar's certificate, as the report was right on its face—*Held*, that under the new law which did not require opposition *afin de conserver* a creditor was not bound to contest the registrar's certificate in such cases. *Carrier & Boucher*, 6 Q. L. R. 282, S. C. R. 1880.

114. The appellant was collocated on a mortgage. The respondents contested on the ground that the mortgage was null, as given in fraud of the creditors of the mortgagor—*Held*, that as the contestants were not shown to have been creditors of the mortgagor at the time mortgage was given, that they were without interest to contest. *Dufresne & Mechanics Bank*, 3 L. N. 26, Q. B. 1879.

115. Where a widow contested a report of distribution in her quality of universal legatee and testamentary executrix of her late husband, claiming a balance of a *bailleur de fonds* of a property sold by him some years previous to his decease, and it was shown that she was in community with her husband, and would have been entitled to one-half of the amount due in that capacity, if she had so pleaded—*Held*, that her claim could only be maintained to the extent of one-half. *Amiot* v. *Tremblay & Reid*, 2 L. N. 196, S. C. 1879.

III. Homologation of Report.

116. A report of judgment of distribution, which has been homologated without contestation on motion made on the seventh day after its deposit and posting *nisi causa* five days after, will be set aside and annulled as having been irregularly and illegally homologated. *Villeneuve & Rolland*, 23 L. C. J. 220, Q. B. 1878.

IV. Payment of Moneys.

117. A report of distribution was contested by certain heirs, and the contestation was dismissed. Four of the heirs appealed, but three of them subsequently desisted from the appeal. The respondent moved that as there were seven heirs and only one was persisting in the appeal that the other six be paid their share—*Held*, that as the report had not been homologated, and as the part of the record belonging to the contestation was missing, that the court could not give an order to the sheriff to pay the money. *Anger & O'Meara*, 2 L. N. 104, Q. B. 1879.

V. Rights of Creditors.

118. A claim of the contestants having been omitted from the registrar's certificate, in consequence of the registration division having been divided—*Held*, that they were not bound to come in by opposition *afin de conserver*, and were perfectly justified in contesting the report of distribution as they had done. *La Banque Nationale & La Société de Construction du Canada* et *La Banque Ville Marie*, 2 L. N. 59, S. C. R. 1879.

DISTRICT MAGISTRATES.

I. Judgments of.

119. The Circuit Court has no jurisdiction on certiorari from judgments of the District Magistrates.* *Long & Blanchard*, 21 L. C. J. 331, C. C. 1877.

* An Act to Provide for the Abolition of District Magistrate's Courts.
Assented to 20th July, 1878.

1. It shall be lawful for the Lieut.-Governor in Council by proclamation to abolish the Magistrate's Court for any county, or any Magistrate's Court he may deem proper; and from and after the day fixed by the proclamation for such purpose the Magistrate's Court shall no longer be held in such locality.

2. The records, registers, documents, and archives of every Magistrate's Court, abolished under the authority of the present Act, whether they be in the possession of the clerk of such court or of any other person, shall be transmitted without delay to the office of the clerk of the Circuit Court, specified in the proclamation, and shall form part of the archives of the latter court.

DIVIDENDS.

I. In Insolvency, *see* INSOLVENCY.

DIVINE WORSHIP.

I. Disturbance of, *see* RELIGIOUS SERVICES.

DOCUMENTS.

I. Of Corporations as Evidence, *see* CORPORATIONS.

DOL—*See* FRAUD.

DOMAINE PUBLIQUE.

I. In Railways, *see* RAILWAYS.

DOMICILE—*See* COSTS, Security for.

I. Change of.
II. Election of, by Attorney ad litem, *see* ATTORNEY AD LITEM.
III. Description of, in Writ, *see* PROCEDURE, Description of Parties.

3. Every clerk or other person having in his possession records, registers, documents or archives of a Magistrate's Court, which shall have been abolished, shall be bound to transmit the same within eight days from the date at which such court shall have ceased to be held, under penalty of a fine of ten dollars or of an imprisonment of eighteen days for each and every day that he shall refuse or neglect so to do.

The costs and disbursements necessitated by such transmission shall be at the expense of the Province.

4. On the refusal by such clerk or other person to transmit such documents or any of them within the prescribed delay, the attorney general or the solicitor general may authorize a competent person to take possession thereof, and to transmit them to the locality specified.

5. After the records, registers, documents and archives of a Magistrate's Court which has been abolished shall have been transmitted to the office of the clerk of the Circuit Court indicated, all proceedings pending and all judgments not executed in such Magistrates Court may be continued and executed before such Circuit Court, as if they had been commenced and obtained before, subject, however, to the following provisions:

6. Prescription and all delays incidental to procedure in every case pending before a Magistrate's Court, which shall have been so abolished, shall be suspended and shall cease to run from the day fixed for the abolition of such court until the juridical day next ensuing after that on which the record of such case, registers, documents and archives of such Magistrates court, referring thereto, shall have been deposited in the office of the clerk of the Circuit Court indicated.

7. The title and number of each such pending case shall be the title and number which shall be given to it by the clerk of the Circuit Court to which it shall have been transmitted.

8. For the continuance of proceedings in such pending cases before the Circuit Court it shall not be necessary to give any notice, except such as would have been necessary if the Magistrates Court had not been abolished.

9. The present Act shall come into force on the day of its sanction.

I. Change of.

120. A temporary change of residence does not effect a change of domicile. It must appear that the person has the intention of remaining permanently at his new place of residence, or of making it the seat of his principal establishment. *Waldron & Brennan*, 2 L. N. 333, & 23 L. C. J. 268, S. C. 1879.

DOMINION PARLIAMENT—*See* ACTS OF PARLIAMENT, LEGISLATIVE AUTHORITY, ETC.

I. Powers of.

121. Where an appeal in insolvency was brought after the eight days allowed by the Insolvent Act, 1875, and the appellant contended that the Dominion Parliament had no power to shorten the delays provided by the ordinary procedure—*Held*, that the Dominion Legislature had a right to legislate on matters of procedure incidental to the subjects assigned to it. *Girouard & Germain*, 3 L. N. 109, Q. B. 1880.

DONATION.

I. By Marriage Contract.
II. By Parents to Children.
III. By Particular Title.
IV. Delegation of Charges in.
V. Evidence of.
VI. Form of.
VII. Hypothec Created by.
VIII. In Fraud of Creditors.
IX. Lapse of Conditions in.
X. Liability of transferee of donee.
XI. Liability of Donee.
XII. Made during Illness.
XIII. Mortis Causa.
XIV. Not affected by Survenance d'Enfants.
XV. Obligations of Beneficiary.
XVI. Of Moveables.
XVII. Of Usufruct.
XVIII. Prohibition to Alienate.
XIX. Resiliation of Procured by Fraud.
XX. Revocation of.
XXI. Rights of Donor.

I. By Marriage Contract.

122. Where donation was made by marriage contract from a husband to a wife of a sum of money to be applied to the purchase of household furniture for their joint use—*Held*, that the death of the husband before the donation was so applied did not exempt the husband's estate from liability for the amount thereof. *Symons* v. *Kelly et al.*, 21 L. C. J. 251, S. C. 1877.

II. By Parents to Children.

123. A wife who, being in community with her husband, makes with him a donation to one of their children, remains liable for one-half the

donation, although she subsequently obtain judicial separation of property and renounce the community.* *Vincent* v. *Benoit*, 21 L. C. J. 218, S. C. 1876.

III. By Particular Title.

124. In order that a donation be considered universal, the donor must give all his goods as a universality, and the donation of things specially designated constitutes only a special donation, though in effect the donor has given all he possessed. *Brunet* v. *Saumure*, 2 L. N. 189, S. C. 1879; 780 C. C.

IV. Delegation of Charges in.

125. Where a donation of an immoveable was made subject to a life rent, prior to the coming into force of the Code, but not registered, and the donee subsequently transferred the immoveable to another, subject to a charge of paying the rent stipulated in the previous donation—*Held*, on contestation of a report of distribution, that the first donor had no hypothec for his life rent, as it was not distinctly specified in the second deed, and that the donor could not consequently rank for the amount of the life-rent until he had obtained a judgment setting aside the second donation. *Arpin* v. *Lamoureux & Bedard*, 7 R. L. 203, S. C. 1875.

V. Evidence of.

126. A deed is not necessary to give validity to a donation for public uses. *Guy & City of Montreal*, 3 L. N. 402, Q. B. 1880.

VI. Form of.

127. In an action concerning the succession to certain property, in which a large number of deeds and transfers of one kind and another figured, and *inter alia*, a private writing by which the parties thereto declared that they accepted a donation which another person intended to make them, and another private writing made two days afterwards by which the person in question made the donation referred to, and which professed to be registered but without affidavit, the question of the effect of these two papers to convey the property to which they referred arose. *Per curiam*. The question then will be: is this writing of the 16th of December, purporting to have been completed on the 18th by the donor, and said to have been made before witnesses, but not registered with the affidavit of any witness to it, worth anything? In the first place is a donation *sous seing privé* a valid donation in law? In the second place, if it is, can it have any effect without proper enregistration? and is the registration without the affidavit effective registration? The court is of opinion that neither of these three questions can be answered in the affirmative. This instrument is dated at St. François du Lac, in Lower Canada. The first part, which appears to have been made by the donees exclusively, is an acceptance, if it be anything, of a donation not appearing to have then been made at all, as far as anything at that time done by the donor can attest. The second part is dated at the same place, two days afterwards, and purports to have been signed by Mrs. Woolrich, who declares it was her intention to have given as the first part relates. It was all, therefore, done in Lower Canada; by law (Art. 776 C. C.) donations in Lower Canada must be *notariées à peine de nullité*, and the acceptation must be in the same form. The reasoning of counsel for the defendant, founded on modern French authority, with respect to *actes sous seing privé*, which, in reality, are not donations in their nature, but only a declaration of a natural obligation, in the first place has no application to the writing before the court, which is undoubtedly, in its nature, whatever may be its defects of form, a donation, and nothing else: and in the next place it is not matter of general reasoning, but of positive law regulated by the text of the Code. The only appearance of plausibility in the argument for the non-necessity of the notarial form for donations in Lower Canada was that which was based on the statutes respecting conveyances of lands held in free and common soccage—and the registration of them. The article of the Code excepts certain localities mentioned in Chapter 38 of the Consolidated Statutes L. C., and this extends only to property held in Gaspe. The other statutes are the Chapters 35 and 37 of the Consolidated Statutes. The first reproduced two statutes, viz.: the 9th Geo. IV., c. 77; and the 20 Vic. c. 45, which were merely passed to render valid conveyances then already made; and the latter (chap. 37) regards especially the question of registration, and required registration in full and the affidavit of one of the witnesses, which is not here. It was contended that this affidavit need not be in writing, but from the words of section 21 it would seem that the affidavit required must be sworn before certain named officers, and be brought with the document to be registered, or must be made before the registrar himself, and whether in the latter case it must be in writing or not is immaterial, since there is no certificate or other evidence that it was ever made at all. *Laframboise & D'Amour*, S. C. 1877.

VII. Hypothec Created by.

128. A third party, in whose favor certain charges were established by a deed of donation of real estate, brought a hypothecary action against the *detenteur* of the real estate, although there was no express clause in the deed stipulating a hypothec on the immovable alienated—*Held*, in appeal, confirming the judgment of the Court of Review, that the action might be brought by the party benefited, although the deed did not by an express clause hypothecate the real estate thus given. *Dufresne & Dubord*, 1 L. N. 43, Q. B. 1877.

* If the consorts have jointly benefited their common child, without mentioning the proportion in which they each intended to contribute, they are deemed to have intended to contribute equally, and whether such benefit has been furnished or promised out of the effects of the community, or out of the private property of one of the consorts; in the latter case such consort has a right to be indemnified out of the property of the other for one-half of what he has so furnished, regard being had to the value which the object given had at the time of the gift. 1308 C. C.

131. A donor who causes his deed of donation to be registered, preserves his right of hypothec and bailleur de fonds for all the charges appreciable in money which are stipulated in his favor, without the necessity of establishing the value of such charges in the deed. *Dufresne & Dubord*, 4 Q. L. R. 59, Q. B. 1878.

132. And the registration of such a donation will preserve to a third holder in whose favor such charges are stipulated, the same right of hypothec. *Ib.*

VIII. In Fraud of Creditors.

133. Where the defendant, in a case of capias, had made a donation of all his property to his daughter, and did not by the deed charge her with the payment of the plaintiff's claim—*Held*, by the Court of Review, reversing the judgment of the court below, that there was no secretion. *Morin & Bissonnette*, S. C. 1876.

134. But a deed of donation of the donor, made in fraud of the creditors, may be set aside on contestation of the opposition filed by the donee invoking such deed. *Morin* v. *Bissonnette & Bissonnette*, 1 L. N. 242, S. C. R. 1878.

135. A donation made between near relations at a moment when the donor has just been served with notice of action for a debt, and in the absence of proof of good faith, will be presumed fraudulent. *Lortie* v. *Dionne*, 4 Q. L. R. 299, S. C. 1878.

136. In June, 1876, the plaintiff served a notarial demand upon the defendant to proceed to establish the boundaries between them, which the defendant had refused to do. By deed of donation of the 7th August, 1876, the defendant gave to his son all his moveable property, three lots of land in the county of Richmond, and the usufruct of the immoveable, concerning which he was threatened with an action *en bornage*. The donation was subject to the charge of maintaining the donor and his wife and also his sister and three brothers, until they were otherwise provided for, and to pay each of the latter $200 when they attained the age of majority. At the time of the donation the parties all lived together, and the donee was just twenty-one years of age. The plaintiff obtained judgment against the defendant and seized for his costs, which amounted to $168.65, the moveable property which had been given to the son. The son opposed and set up the deed of donation, which had not been registered, but which he alleged had been completed as regards the moveables by the delivery of the property and his public possession of it. The proof went to show that there had been no change in the situation of the moveables, but that the parties had continued to live together since the donation, precisely as before, and that his mother, the wife of the donor, had the management of the household, precisely as before. The only articles he had been seen in open possession of was a cart and a horse, with which he carried the mail, but which, according to the proof, had been purchased, at least as regards the cart and harness, by the donor and his wife. There was also evidence which seemed to indicate that the donation had been made for the purpose of defeating the consequences of the suit *en bornage*—*Held*, that notwithstanding the donation was made before the institution of the plaintiff's action, that the donation was evidently made in fraud of his rights, and the opposition was dismissed. *Ivers & Lesieux*, 5 Q. L. R. 128, S. C. R. 1878.

IX. Lapse of Conditions in.

137. *Per Curiam.*—Action to recover possession of the Jacques Cartier Square, Montreal, on the ground that the conditions of the original donation in 1803 had not been fulfilled, in particular that the ground had not been used as a public market square, and that the right had been reserved to the donors to re-enter into possession if the land were converted to any other use—*Held*, from the evidence that *auteurs* of the plaintiffs, more than fifty years ago, had ceded the lots which they possessed along the line of the square, and that they had not been troubled by their *ayants cause*, and therefore were without right to complain of the failure to use the ground as a public market. Further, the defendants were always in time, up to the judgment, to establish a public market, and it was proved that the square was now used as a market square. Action dismissed. *Chevrogny* v. *City of Montreal*, S. C. 1877.

X. Liability of transferee of Donee.

138. Plaintiff gave all her property to her son on the condition, *inter alia*, that he was to furnish a cow. He supplied his mother with a cow, as he had agreed to do, but some time afterward sold the property to the defendant, who assumed the same obligations to the plaintiff. On his failure to furnish a cow—*Held*, that defendant was bound by the obligations of the donee. *Lalonde & St. Denis*, 3 L. N. 415, S. C. R. 1880.

XI. Liability of Donee.

139. In 1860, the plaintiffs gave to their son different properties, and especially a piece of land, situated on the north branch of the River Nicolet, *à charge d'une rente*, etc. In 1863 the son sold the land to the father of the defendant for $375, subject to the further charges contained in the following clause: *De plus à la charge par l'acquereur qui s'y oblige de cultiver le dit lot de terre en bon pere de famille et de donner, bailler et livrer à D. E G. B. et uxor* (the plaintiffs), *pere et mere du vendeur, le juste et egal tiers des produits et recettes du dit lot de terre les grains nonbattus, et de les laisser jouir du droit de prendre et couper sur le dit lot de terre, leur bois de chauffage leur vie durant.* The plaintiffs were present at the making of this deed, and accepted the clause. The 12th January, 1870, the father and mother became parties to defendant's contract of marriage with his intended wife, and therein made a donation *à cause de mort* to their said son and his future wife *en termes d'institution d'heritiers* of all the property they should leave at their death in a general way, and without any special designation. The clause was

as follows: "*Instituent les dits futurs époux leurs héritiers savoir—Le dit futur époux en propriété, et la future épouse en jouissance sa vie durant en tous les biens meubles et immeubles généralement quelconques qu'ils delaisseront, et qui seront trouvés leur être et appartenir au jour et heure du décès du dernier mourant d'eux, le survivant d'eux devant rester en possession jusqu'à son décès; pour par eux les dits futurs époux après le décès des dits Sr et Dame Joseph Desilets jouir, user, faire et disposer les dits biens meubles et immeubles, le futur époux en propriété et la future épouse et jouissance en usufruit seulement sa vie durant.* After this there followed a clause providing that until the opening of the succession of the father and mother, the son and his future wife and children were to live with them and work together harmoniously. Both deeds were registered. The father died first, but the mother continued up to the time of the action, and the son, the defendant, continued to live with her and work the land in question. The plaintiff not having been paid their third of the produce, as provided in the above clause, brought action against defendant, the son, personally and hypothecarily, as holder, owner and possessor of the land, and asking for $160. Defendant pleaded that he was not personally liable to the charges in the deed, the only action which the plaintiff could bring against him being an action *pro socio* to account for a third of the crops, the charge being payable in kind and not in money; and that, moreover, he was not the owner and holder of the land, and would not be until after the death of his mother, as stipulated in the contract of marriage; that in cultivating the land he acted only for his mother, and had nothing to do with the plaintiff and his rights in it. Plaintiff replied that the mother, had only a precarious possession under the contract of marriage, and could not be sued hypothecarily. Action dismissed, on the ground that as defendant could not abandon the property under his rights, he could not be sued hypothecarily, and the plaintiff had established no claim against him personally. *Beauchemin & Desilets*, 10 R. L. 323, S. C. 1880.

XII. Made During Illness.

140. Where a person had expressed an intention to make a particular donation, and subsequently, while afflicted with softening of the brain and of feeble intelligence, he made the donation with the assistance of a judicial counsel—*Held*, valid. *Brault & Brault*, 1 L. N. 495, Q. B. 1878.

XIII. Mortis Causa.

141. Appellant claimed half of the property of his late grandfather, and in order to recover it brought action *en reddition de compte* against his uncle. The Superior Court dismissed the action. The question arose out of the terms of an acte of donation, of an acte in resiliation of part of the donation, and of a will which in turn followed. By the deed of donation the grandfather gave to his two sons, one of whom was the respondent, four immoveables to be equally

divided between them, and added: "*Donne de plus le dit donateur aux dits donataires tous ses biens meubles de ménage et effets mobiliers, hardes et linge de corps qu'il possède actuellement, et qui pourront se trouver lui appartenant au jour de son decès, excepté que le donateur se reserve la maîtrise et jouissance de tous les biens meubles et immeubles susdonnés sa vie durant, et de jouir des animaux et effets mobiliers de ménage sa vie durant à son besoin et son lit garni avec sa garniture, quant à tous les argents qui peuvent être dus au dit donateur, soit par billets, obligations, constitutions de rentes ou autrement, alors le dit donataire se les réserre en pleine propriété pour en disposer comme bon il aviserà, mais si a son décès il y a quelques argents ou de dus comme susdits, alors tous les dits argents appartiendront en propriété aux deux dits donataires avec cette condition que si l'un d'eux décède sans lignée, alors sa part des dits argents retournera à ses trois sœurs nommées * * ou à leurs enfants en propriété.*"—*Held*, confirming the judgment of the court below, that a will which ratifies a donation can do so only as to the dispositions which are legal and will be good, therefore, only as regards gifts of present property. *Moreney & Morency*, 8 R. L. 634, Q. B. 1876.

XIV. Not affected by Survenance d'Enfants.

142. By a notarial deed, dated the 29th May, 1866, appellant gave an annuity to respondent in trust for her five daughters, *pour partie de leur frais de toilette et autres petits besoins personnels*, the capital sum being thereby settled upon the daughters after the mother's death. The gift was made soon after the appellant came of age, and amounted to about one-hundredth part of her whole estate, and it was to be presumed, from the circumstances, that if she had contemplated having children she would still have made it—*Held*, that under the circumstances, by the law of Canada prior to the Code (being that which existed in the jurisprudence of the Parliament of Paris before the Ordinance of 1731), the gift was not dependant on the birth of children; that the Ordinance of 1731 was not a mere declaration of existing law, and although it enacted that all gifts made by persons who had not children at the time of the donation "*de quelques valeur que les dite donations puissent être et à quelque titre qu'elles aient été faits demeureront revoquées de plein droit par la survenance d'un enfant legitime du donateur,*" yet such enactment did not take effect in Canada *proprio vigore*, never having been registered in Canada; and consequently the French law introduced into Canada by the edict of 1663, remained unaffected by the Ordinance; and it was not proved, and could not be presumed, that such law became altered or modified in consequence of the jurisprudence of the Province having adopted the rule contained in the Ordinance.* *Symes & Cuvillier*, 1 L. N. 302, Q. B 1878; 4 L. R. 138, P. C. 1880.

* Hutchinson & Gillespie & Les Sœurs Hospitalières de St. Joseph & Middlemiss approved.

In gifts the subsequent birth of children to the donor does not constitute a resolutive condition, unless it is so stipulated. 812 C. C.

XV. Obligations of Beneficiary.

143. The father and mother of plaintiff made a donation to the sister of plaintiff, subject to the charge of paying to plaintiff when he should come of age certain land and stock, and to the further charge "*de garder leurs garçons avec lui jusqu'à l'age de vingt et un ans.* To an action against the transferee of the donation for his rights under it—*Held*, that the fact that the plaintiff, beneficiary, had left the service and protection of the donee before his majority could not be pleaded in bar of the plaintiff's rights. *Doyon & Doyon*, 8 R. L. 472, Q. B. 1876 & Art. 138 *Supra*.

XVI. Of Moveables.

144. *What constitutes delivery.*—To a seizure of a piano at the house of the defendant the son of the defendant opposed, alleging that the piano had been given to him by his father, the defendant, over five years previously, by verbal donation. The plaintiff contested this statement, and the question which arose was as to the delivery necessary to the validity of a verbal donation. The proof was that the son, some five years previously, had commenced to teach the piano for a living, and his father had given him the piano for that purpose; that thereupon it had been removed somewhere else, and remained away for several days; that the defendant and the rest of his family did not play and did not use the piano at all, that in short it was exclusively used by the opposant and his pupils —*Held*, that the proof of delivery was sufficient, and the opposition was maintained. *McMaster* v. *Moreau & Moreau*, 3 L. N. 91, S. C. 1880 & Art. 136 *Supra*.

145 To a seizure of moveables an opposant claimed under a donation which had never been registered, neither had there been any delivery of the effects and the opposition accordingly—*Held*, bad. *Crossen* v. *O'Hara & McGee*, 21 L. C. J. 103, S. C. 1877, 808 C. C.

XVII. Of Usufruct.

146. A universal donation in usufruct by contract of marriage is a donation *causa mortis*. *Hudon & Painchaud & Rivard*, 3 L. N. 414, & 24 L. C. J. 268, Q. B. 1880.

XVIII. Prohibition to Alienate.

147. A donation made before the Code, with prohibition to the donee and to his heirs to alienate during the life of the donor on pain of nullity, does not prevent the donee from bequeathing the property donated to one or more of his heirs, and such a bequest is not an alienation; and that in this respect it differs from a legacy of property made to a stranger. *Penisson* v. *Penisson*, 6 Q. L. R. 239, S. C. 1880.

148. And even if it were the violation of the condition could only be invoked by the donor, and a co-donee would have no right to avail himself of it. *Ib.*

149. Where a contract of marriage contained a donation to the husband from his father and mother (the plaintiffs herein) of "*un lot de terre à la charge de ne pouvoir vendre, ceder,*

" échanger ni autrement aliener le dit immeuble " sans exprès consentement et par écril des dits " demandeurs."—*Held*, that the donee by this clause was deprived of the right of disposing of it even by will, and that his legatee, who had taken possession, was bound to restore it to plaintiff. *Pepin & Courchêne*, 2 L. N. 397, & 10 R. L. 77, Q. B. 1879; 972, 975 C. C.*

150. And *held*, also, that the omission to register such donation could not deprive the donor of the right of *retour* resulting from Art. 630† of the Civil Code, as under Art. 2,098‡ the donee could not transfer any rights in the property to the prejudice of the donor without having himself registered his title. *Ib.*

XIX. Resiliation of, Procured by Fraud, etc.

151. In 1866 the respondents received by onerous donation a lot of land and certain moveables, animals and agricultural instruments. After the death of the donor the appellant, who claimed to represent his succession, discovered that the donation was not countersigned, and notified the respondents that he would bring an action to recover back the subject of the donation, unless they agreed to a resiliation of the deed. Under this pressure, they, by deed of 2nd February, 1871, agreed to the resiliation of the deed of donation, and by a deed of compromise, of the 6th September of that year, they agreed to submit to arbitration the claim for enjoyment of the property from the time of the donation. Action was subsequently taken by appellants against respondents to recover the value of such enjoyment. Defendants pleaded that the deed of donation, being by onerous title, was really a sale; that appellant had deceived them into believing that they had no valid title, and that he represented the heirs of the donor, which was not true, and that it was by error that they had agreed to the resiliation —*Held*, that in any case the respondents could not be called on to account for the enjoyment of the property up to the time of the resiliation of the deed; that the deed of resiliation itself was obtained without cause and by fraud, and as it did not set up the legal considerations on which it was based that it could not be regarded as a transaction under 1918 C. C.,‖ and was very properly set aside. *Doutney & Richard*, 24 L. C. J. 30, Q. B. 1879.

* Although the motive of the prohibition to alienate be not expressed, and it be not declared, under pain of nullity or some other penalty, the intention of the party disposing suffices to give it effect, unless the expressions are evidently within the limits of mere advice.

When the prohibition is not made for another motive, it is interpreted as establishing in favor of the party disposing, and his heirs a right to get back the property. 974 C. C.

† Ascendants inherit to the exclusion of all others property given by them to their children or other descendants who die without issue, where the objects given are still in kind, in the succession, and if they have been alienated the price, if still due, accrues to such ascendants. They also inherit the right which the donee may have had of resuming the property thus given. 630 C. C.

‡ So long as the right of the (*acquirer*) has not been registered all conveyances, transfers, hypotheca on real rights granted by him in respect of such immoveable are without effect. 2098 C. C.

‖ Transaction is a contract by which the parties terminate a law suit already begun, or prevent future litigation by means of concessions or reservations made by one or both of them. 1918 C. C.

XX. Revocation of.

152. A donation of an immoveable was made to the brother of plaintiff by his father, on the condition of his paying 1,500 livres to each of his brothers and sisters on their coming of age. This was accepted by the donee, but subsequently, on a seizure of the immoveable by the creditors, of the donor, the donation having in the meantime been revoked by him, an arrangement was come to between the donee and the creditors by which the former in effect renounced his acceptance of the donation. The plaintiff claimed a hypothec for the 1,500 livres —*Held*, that the rights of the brothers and sisters who had never accepted the donation in any way were completely extinguished by the donee's renunciation. *Grenier & Leroux*, 1 L. N. 231, S. C. R. 1878.

XXI. Rights of Donor.

153. On the 12th July, 1862, the respondent gave to his son two lots of land, subject to a life-rent which he reserved in his favor. The son sold the two lots of land to the appellant on the 10th January, 1870. By the deed of sale the appellant undertook to pay the interest on the purchase money to respondent, in place of his life-rent, to which the respondent consented by a separate writing. Later the appellant, with the consent of the respondent, paid $1,200 to the son on account of the purchase money. He also paid $150 to the respondent on account of interest owing up to the 10th January, 1875; and for the balance of the interest, amounting to $108, the respondent brought action against the appellant as holder of the land which he had given to his son, subject to a life-rent—*Held*, that his acceptance of the interest from the purchaser, instead of the life-rent, did not operate as a novation of his claim, and that he had a right consequently to bring an hypothecary action in virtue of his donation, as well as a personal action in virtue of the deed of sale. *Bernier & Carrier*, 4 Q. L. R. 45, Q. B. 1878.

DOUBLE WINDOWS.

I. Right of Lessee to Carry away at Expiration of Lease, *see* LESSOR AND LESSEE.

DOWER.

I. Claim of Wife for, on Insolvent Estate of Husband.
II. Nature of.
III. Renunciation of.

I. Claim of Wife on Insolvent Estate of Husband.

154. The wife of an insolvent filed a claim on his estate under a clause in her marriage contract which provided that on the death of her husband, should she survive him, she should receive £250, or, at her option, the legal interest of one-third of the property and assets belonging to his "succession and estates—*Held*, that her right could not be exercised during the life of her husband. *Workman & Renny*, 2 L. N. 82, & 23 L. C. J. 324, & 10 R. L. 412, Q. B. 1879.

II. Nature of.

155. The claim to customary dower is a real right, and is governed by the law of the place where the real property of the husband is situate, and not by the law of his domicile at the time of his marriage or of the place where the marriage was celebrated. *Erichsen & Cuvillier*, 3 L. N. 285, & 25 L. C. J. 80, Q. B. 1880.

III. Renunciation of.

156. The appellant's niece made a donation to appellant and her husband, previous to the death of the latter, subject to the express condition that the said donation "*n'aura d'effet qu'en* " *autant et après que Dame Charlotte Erich-* " *sen*, (appellant) " * *aura renoncé tant pour* " *elle même que pour ses enfants nés et à naître* " *de son mariage avec le dit Austin Cuvillier,* " *à tous douaires et autres avantages matri-* " *moniaux quelconques qu'elle ou qu'ils pour-* " *raient en aucune manière avoir, demander ou* " *prétendre en ou sur toutes et chacune les pro-* " *priétés immeubles ci-devant appartenant au* " *dit Austin Cuvillier en la cité de Montréal ou* " *ailleurs, et dont la plus grande partie a été* " *acquise chez le shérif dans l'intérêt de la dite* " *Demoiselle Symes comme représentant sa* " *mère décédée, et par Dame Marie Angélique* " *Cuvillier, épouse d'Alexandre Maurice Delisle,* " *écuier, et Demoiselle Luce Cuvillier ses tantes,* " *la dite donation n'admettant pas toutefois* " *que la dite Dame Austin Cuvillier ou ses* " *enfants ou puissent avoir aucun tel douaire* " *ou autres avantages matrimoniaux sur les* " *dites propriétés.*" Appellant then authorized by her husband and along with her said husband made a deed under seal at London, in England, in and by which she formally recognized the said donation and the condition of renunciation therein expressed, and upon the fulfillment of which the said donation depended, and accepted the said donation subject to the said condition. And for the purposes of said deed she, with the authority of her said husband, named and appointed Maurice Cuvillier to be her attorney for her and in her name to renounce for her, as well as for her children, "to " all dower and right of dower, and all other " matrimonial advantages which she herself " and her said children can or could in any " way have in, to or upon all the real or im- " moveable property hereinafter described." Maurice Cuvillier, under this authority, renounced on the part of appellant to all the properties mentioned in the power of attorney, and no more. On an action for her dower on a lot not mentioned in the deed, though belonging to the succession of her husband's father —*Held*, that it was covered by the renunciation thus made. *Erichsen & Cuvillier*, 3 L. N. 285, & 25 L. C. J. 80, Q. B. 1880; C. C. 1444.

DRAFTS.

I. Liability of Drawee, *see* BILLS OF EXCHANGE.

DRAINS.

I. Liability of Corporation to make, *see* MUNICIPAL CORPORATIONS.

DRINK.

I. Given at Elections, *see* ELECTION LAW, Corrupt Practices.

DROIT D'ACCÉS—*See* STREETS, Servitudes, etc.

DROIT DE PASSAGE—*See* SERVITUDES, Right of Passage.

DROIT DE RETENTION—*See* PRIVILEGE, LIEN, ETC.

DROIT DE SUITE.

I. Attachment by, *see* ATTACHMENT.

DUES.

I. Power of Benefit Societies in Cases of Non-payment of, *see* BENEFIT SOCIETIES.

DUNKIN ACT—*See* TEMPERANCE ACT.

DUTY.

I. Of Commissioners in Expropriation, *see* EXPROPRIATION.

E.

SUMMARY OF TITLES.

	PAGE
EDUCATION	277
EDUCATIONAL BODIES	277
EJECTMENT	277
ELECTION LAW	277
ELECTION OF DOMICILE	303
ELECTORS	303
EMBEZZLEMENT	303
EMPHYTEUSIS	303
EMPIÉTEMENT	303
EMPLOYERS AND EMPLOYEES	303
EMPLOYMENT	303
ENCROACHMENT	304
ENDORSER	304
ENDORSEMENT	304
ENFANTS	304
ENJOYMENT	304
ENQUETE	304
ENTAIL	304
ENTRIES	304
EQUITIES	304
ERASURES	304
ERECTION OF PARISHES	304
ERROR	304
ERRORS	305
ERROR AND APPEAL	305
ESQUIRE	305
ESTATE	305
EVICTION	305
EVIDENCE	305
EXCEPTION DILATOIRE	316
EXCEPTION DECLINATOIRE	317
EXCEPTION TO THE FORM	317
EXCHEQUER COURT	317
EXECUTION	317
EXECUTIVE COUNCIL	323
EXECUTORS	323
EXEMPTIONS	325
EXHIBITS	325
EXPARTE PROCEDURE	325
EXPENSES	325
EXPERTS	325
EXPERTISE	326
EXPROPRIATION	326
EXPULSION	328
EXTRADITION	328
EXTRAIT DE BAPTEME	329
EXTRAIT MORTUAIRE	329
EXTRAS	329
EXTRA REMUNERATION	329

PAGE
..... 305
..... 305
..... 305
..... 305
..... 316
IRE.. 317
RM..... 317
..... 317
..... 317
..... 323
..... 323
..... 325
..... 325
..... 325
..... 325
..... 325
..... 326
..... 326
..... 328
..... 328
..... 329
..... 329
..... 329
..... 329

EDUCATION—*See* COMMON SCHOOLS.

The following are the principal Acts relating to Public Instruction in this Province, and the establishment of common schools therein: Con. Stat. Low. Can. cap. 15; Que. Stat. 39 Vic. cap. 15; Que. Stat. 41 Vic. cap. 6; 43 & 44 Vic. caps. 16 & 22*; & 44 & 45 Vic. cap. 19.

EDUCATIONAL BODIES.

I. LIABILITY OF.

1. Educational bodies are liable, like other corporations, for the negligence of their members in the performance of their trust. *Labelle* v. *Les Clercs de St. Viateur*, 1 L. N. 63, S. C. 1877, & 2 L. N. 83, Q. B. 1879.

EJECTMENT.

I. ACTION IN, *see* ACTION, LEASE, LESSOR AND LESSEE.

ELECTION LAW.

I. ACTION FOR PENALTIES UNDER.
II. AGENCY AT ELECTIONS.
III. AMENDMENT OF PARTICULARS.
IV. APPEAL UNDER.
V. BILL OF PARTICULARS.
VI. BRIBERY.
VII. CORRUPT PRACTICES.
VIII. CONSTITUTIONALITY OF ACT.
IX. COSTS IN ELECTION CASES.
X. COUNTER PETITION.
XI. COUNTING OF BALLOTS.
XII. DELAYS UNDER.
XIII. DEPOSIT OF PETITION AND SECURITY.
XIV. ELECTION EXPENSES.
XV. ELECTION LISTS.
XVI. EVIDENCE IN CASES UNDER.
XVII. EVIDENCE OF CORRUPT ACTS.
XVIII. EXHIBITS.
XIX. JURISDICTION OF COURT.
XX. LIABILITY OF RETURNING OFFICER, *see* REGISTRAR.
XXI. MOTION TO REOPEN ENQUETE.
XXII. OFFENCES UNDER.
XXIII. OFFICIAL RECOUNT.
XXIV. PENALTY UNDER.
XXV. PLACE OF TRIAL OF PRELIMINARY OBJECTIONS.
XXVI. PLEADING UNDER.
XXVII. POSTPONEMENT OF TRIAL.
XXVIII. POWER OF PROVINCIAL COURTS UNDER THE ACT.
XXIX. PRELIMINARY OBJECTIONS.
XXX. PROCEDURE UNDER.
XXXI. PROOF IN ACTION FOR PENALTY.
XXXII. QUALIFICATION OF CANDIDATES.
XXXIII. QUALIFICATION OF ELECTORS.
XXXIV. RULES OF PRACTICE.
XXXV. SERVICES UNDER.
XXXVI. SUSPENSION OF PROCEEDINGS DURING THE SITTING OF THE LEGISLATURE.
XXXVII. TREATING.
XXXVIII. UNDUE INFLUENCE.

* By this act a pension fund is established for teachers.

I. ACTION FOR PENALTY UNDER.

2. A penal action bought under sec. 109 of the Dominions Elections Act, 1874* will be dismissed on motion, if the writ of summons has issued without the previous filing of the affidavit required by sec. 1 of 27, 28 Vic. cap. 43. *Lavoie* v. *Racine*, 5 Q. L. R. 319, S. C. 1879.

3. Action for £18,600, penalties which it was alleged the defendant had incurred under the Dominion Elections Act, 1874. The plaintiff called the defendant as a witness, and asked him: "*Avez vous donné ou promis de donner aux personnes nommés en la declaration du demandeur en cette cause aucune somme d'argent pour les engager à voter pour vous à l'election mentionnée en la dite declaration.*"

* All penalties and forfeitures (other than fines in cases of misdemeanor) imposed by this Act shall be recoverable with full costs of suit by any person who will sue for the same, by action of debt or information in any of Her Majesty's Courts in the Province in which the cause of action arose, having competent jurisdiction; and, in default of payment of the amount which the offender is condemned to pay within the period fixed by the court, the offender shall be imprisoned in the common gaol of the place for any term less than two years, unless such fine and costs be sooner paid.

110. It shall be sufficient for the plaintiff in any action or suit given by this Act to state in the declaration that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence for which the action or suit is brought, and that the defendant hath acted contrary to this Act, without mentioning the writ of election or the return thereof.

111. In any such civil action, suit or proceeding, as last aforesaid, the parties to the same, and the husbands and wives of such parties respectively, shall be competent and compellable to give evidence to the same extent, and subject to the same exceptions as in other civil suits in the same Province, but such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the party or person giving it.

112. It shall be lawful for any Criminal Court, before which any prosecution is instituted for any offence against the provisions of this Act to order payment by the defendant to the prosecutor of such costs and expenses as appear to the court to have been reasonably incurred in and about the conduct of such prosecution; but the court shall not make such order unless the prosecutor, before or upon the finding of the indictment or the granting of the information, enters into a recognizance with two sufficient sureties in the sum of five hundred dollars, and to the satisfaction of the court, to conduct the prosecution with effect, and to pay the defendant his costs in case he be acquitted.

113. In case of an indictment or information by a private prosecution for any offence against the provisions of this Act, if judgment be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the proper officer of the court in which the judgment is given.

114. In any indictment or prosecution for bribery or undue influence or any other corrupt practice, it shall be sufficient to allege that the defendant was at the election, at or in connection with which the offence is intended to be alleged to have been committed, guilty of bribery or undue influence or any other corrupt practice, describing it by the name given to it by this Act or otherwise (as the case may require), and in any criminal or civil proceeding in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election and of any person named in such certificate having been a candidate thereat.

115. It shall not be necessary on the trial of any suit or prosecution under this Act to produce the writ of election, or the return thereof or the authority of the returning officer founded upon any such writ of election, but general evidence of such facts shall be sufficient evidence.

Held, that he was not obliged to answer questions tending to criminate him.* *Langlois & Valin*, 6 Q. L. R. 249, S. C. 1880.

II. Agency at Elections.

4. In principle there is under the election law two kinds of agents, as under the Civil law, general agents and special agents, and he who, authorized by the candidate or with his knowledge and consent, speaks, acts, and canvasses for him in order to gain votes, whether it be in all the county or only in a certain district or portion of it, is a general agent, and the candidate is responsible for all his acts, that is to say, that the intention even of the agent is imputable to the candidate himself, if he has not thought, proper to limit his agency. *Cimon & Perrault*, 10 R. L. 651, S. C. 1880.

5. But it is not so in the case of a special agent, that is of one who has received authority to do a particular act and nothing else, and if such an agent has been authorized to do something in itself perfectly legal and the agent adds to it conditions which make it illegal, or does it in such a manner as to make it illegal, the candidate will not be responsible for the illegality. *Ib.*

6. Where the *curés* of a county take an active part in an election in favor of one of the candidates, who, in a speech to the electors, declared himself the candidate of the clergy, that he was brought out by the clergy, and that, without the assurance of their support, he would not have accepted the candidature, the *curés* will be considered the agents of the candidate, and the latter will be responsible for their acts. Therefore, if a *curé* so constituted agent threatens his parishioners, in the presence of a candidate, with a refusal of the sacraments in case they vote for the opposite candidate, the candidate present will be deemed to have consented to the act of undue influence and to have approved it, and will be disqualified if, in a speech pronounced some hours afterwards, he declares himself the candidate of the clergy, and does not disavow the threats nor otherwise free himself from responsibility. *Hamilton & Beauchesne*, 3 Q. L. R. 75, S. C. 1876.

7. On a petition to set aside an election on the ground of corrupt practices committed by agents, the question of proof of the agency was raised concerning a number of the alleged agents. With regard to one there was evidence that he was one of the leaders of the party, in one of the places in which the election meetings were held; that the respondent put up at his place and drove with him to one of the meetings; that he arranged for the use of the house in which the meeting was held; and the evidence of the person himself that he worked actively for the respondent, under his instructions, and a part of the time in his company; that he received money from him for which he did not account, and sent for voters on polling day; and finally the respondent's own statement that he was one of his leaders, and that he paid him money, for which he did not ask him to account, and the expenditure of which he did not control or see to. With regard to the agency of another there was also evidence that he acted as a leader taking an active part; and the testimony of the respondent himself, that he gave him money with instructions how to use it, but without asking for or receiving any account of it. With regard to another he was proved by the respondent himself to have been his poll agent. With regard to another his own evidence showed that he canvassed for the respondent, who knew he was working for him, and from the evidence of others, that he was a leader taking an active part in the election. With regard to another that he was the liberal member for the county in the local legislature, accompanied the respondent to one of his meetings, and in other respects, according to his own evidence, took part in the election, at least as much as an ordinary elector; his being entrusted with the expenditure of the Government grant of $1,500 for colonization roads in the county, the expenditure of this sum at a time when the canvass and election were going on, and the manner in which the money was being expended, facts could fairly be presumed to have been within the knowledge of the respondent, not only by reason of their public nature and also because the money was given to and for the purpose of being expended by recognized active electoral agents, whose acts the respondent would legally be presumed to have been cognizant of. With regard to another that he took a very active part, canvassed, held public meetings, spoke every evening, and challenged the opposite candidate to meet him—*Held*, that the agency of all these persons had been sufficiently made out. *Deslauriers & Larue*, 6 Q. L. R. 104, S. C. 1880.

III. Amendment of Particulars.

8. A motion at the hearing of an election petition to amend the particulars by substituting one baptismal name for another was refused, as sufficient time had been allowed to prepare the particulars. *Robillard & Lecavalier*, 7 R. L. 662, S. C. 1877.

9. Under the Dominion Controverted Elections Act—*Held*, that the petitioner may amend his petition by adding new particulars at any time during the trial on sufficient cause shown to the satisfaction of the presiding judge. *Clayes* v. *Baker*, 23 L. C. J. 194, S. C. 1879.

* But by section 99 of the Dominion Elections Act, 1874, it is enacted that:

No person shall be excused from answering any question put to him in any action, suit or other proceeding in any court or before any judge, commissioner or other tribunal touching or concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege or on the ground that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or on the ground that such answer will tend to criminate himself, shall be used in any criminal proceeding against such person other than an indictment for perjury, if the judge, commissioner or president of the tribunal shall give to the witness a certificate that he claimed the right to be excused on either of the grounds aforesaid and made full and true answers to the satisfaction of the judge, commissioner or tribunal.

IV. Appeal from Order Under.

10. There is no appeal from an order given in chambers by a judge of the Superior Court, permitting a candidate at a general election to examine the ballots. *Mackenzie & White*, 7 R. L. 218, Q. B. 1875.

11. The Provincial Legislature, in enacting the Quebec Controverted Elections Act, having created the Superior Court a tribunal for the purpose of trying election petitions in a manner which should make its decisions final, the prerogative right to admit an appeal to Her Majesty in Her Privy Council does not exist. *Landry & Theberge*, 3 Q. L. R. 202, P. C. 1876.

12. Defendant moved for leave to appeal from a judgment of the Superior Court on an election petition under the Dominion Contraverted Elections Act. His election as a member of the House of Commons for the county of Richelieu had been contested by the petitioners, and respondent had pleaded a declinatory exception, alleging that the Dominion Parliament had no right to impose upon the Superior Court the duty of trying contested elections of members elected to the House of Commons. The exception having been dismissed, defendant asked leave to appeal. Held that there was no appeal to the Queen's Bench in controverted election cases.* *Brunneau & Massue*, 2 L. N. 38, & 23 L. C. J. 60, Q. B. 1878.

V. Bill of Particulars.

13. When the petitioner, in a controverted election case, claims the seat for himself, a bill of particulars or list of the electors to whom the petitioner wishes to object, as also the heads of the objections which he intends to raise against their votes, must be filed and regularly served upon the adverse party, at least ten days before the day fixed for trial, in conformity with the rules, principles and practice followed in England in such cases. *Goyer & Coupal*, 8 R. L. 80, S. C. 1875.

14. But the non-production or the irregular production of a bill of particulars will not involve the dismissal of the petition, nor be equivalent to an abandonment on the part of the petitioner, but has the effect solely of preventing the petitioner from making proof of the illegality of the votes which he contests. *Ib.*

* Provided also, that in the Province of Quebec any party to the petition may, within the said delay of eight days from the day on which the judge has given his decision, deposit with the clerk of the court, at the place where the petition has been tried, the sum of one hundred dollars (with an additional sum of ten dollars for making up and transmitting the record, if the trial has been had elsewhere than at Quebec or Montreal), and may then file in the same office an inscription for review, notice of which must be given to each of the opposite parties, and the record, with a copy of the decision and any orders made in the case, shall be transmitted to the clerk of the court at Quebec or Montreal, as the case may require, and all other proceedings shall be had as in a case in review, and the court shall determine and certify its determination and decision to the speaker upon the several points and matters, as well of fact as of law, upon which the judge might otherwise have determined or certified his decision, in the same manner as the Judge would otherwise have done in pursuance of sections 29, 30, and 31 of this Act, and the determination of the court, thus certified shall be final to all intents and purposes, and the money deposited as aforesaid shall be dealt with as a deposit in a case of review. C. 37 Vic. cap. 10. sec. 33.

15. And a bill of particulars which declares that the petitioner objects to all the votes taken in such a parish at such an election, by reason of the illegality of the assessment role and the electoral list of the parish, is sufficient. *Ib.*

16. The petitioner must give such particulars as to time, place and circumstances as will afford the respondent fair information in reference thereto; and no evidence will be received at the trial except as to matters within the particulars, and tending to support the same, without the leave of a court or judge, and upon such conditions as to postponement of the trial, payment of costs, or otherwise, as may be ordered. *Langlois & Valin*, 6 Q. L. R. 18, S. C. 1880.

17. The allegations of the petitionmay be admitted by respondent so as to cause him to lose his seat. *Ib.*

18. Bill of particulars ordered to be filed in court, and served on the defendant on all the heads of allegations of the petition, so as to put the defendant in a position to defend himself in respect of each and every charge in the petition, and so to be as explicit and complete as they would be in an ordinary civil action before the same court, and to be served on the defendant at least eight days before that fixed for trial. *Bruneau & Massue*, 9 R. L. 561, S. C. 1879

VI. Bribery.

19. The following words by a candidate to an elector at an election, "*si tu n'est pas mal à main pour moi je ne le serai pas pour toi*," were *held* not to constitute a corrupt offer within the meaning of the Act, and that the words made use of on such occasions should be interpreted not according to what the person addressed understood by them but according to what the candidate means.* *Robillard* v. *Lecavalier*, 7 R. L. 662, S. C. 1877.

*. The following persons shall be deemed guilty of bribery, and shall be punished accordingly:

1. Every person who, directly or indirectly, by himself, or by any other person on his behalf, gives, lends or agrees to give, or lend, or offers, or promises any money or valuable consideration, or promises to procure, or to endeavor to procure, any money or valuable consideration to or for any voter or to or for any person on behalf of any voter, or to or for any person in order to induce any voter to vote or refrain from voting, or corruptly does any such Act as aforesaid on account of such voter having voted or refrained from voting at any election;

2. Any person who directly or indirectly by himself, or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavor to procure any office, place or employment to or for any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election;

3. Every person who, directly or indirectly, by himself, or by any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavor to procure the return of any person to serve in the House of Commons, or the vote of any voter at any election;

4 Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages or promises or endeavors to procure the return of any person to serve in the House of Commons on the vote of any voter at any election;

5. Every person who advances or pays or causes to be paid any money to, or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery or corrupt practices at any election;

20. And the payment of an old account at a time when there was no question of an election, and by means of a third person, is not a corrupt act within the meaning of the election law. *Ib.*

21. Appeal from a judgment holding appellant guilty of bribery within the meaning of ss. 3, sec. 92 of the Dominion Elections Act, 1874, "for having agreed and promised to pay the expenses of one H., a voter and a professional speaker." It was admitted that H. addressed meetings in the interest of appellant, and during the time of election made no demand for expenses, except on one occasion when, being unexpectedly without money, he asked for and received the sum of one dollar and a half for the purpose of paying the livery bill of his horse—*Held*, that the weight of evidence showed that the appellant only promised to pay H.'s travelling expenses, *if it were legal to do so*, and such a promise was not a breach of the section cited. *Wheeler & Gibbs*, 3 L. N. 334, Su. Ct. 1880.

22. A promise by a candidate that if elected he would lay sidewalks at his own expense in the municipality is a corrupt promise, and will void an election. *Robert* v. *Bertrand*, 2 L. N. 198, S. C. R. 1879.

And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, with full costs of suit; Provided always that the actual personal expenses of any candidate, his expenses for actual professional services performed and *bona fide* payments for the fair costs of printing and advertising shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act.

93. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

1. Every voter who before or during any election directly or indirectly himself, or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration office, place or employment for himself or any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;

2. Every person who, after any election, directly or indirectly himself, or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, together with full costs of suit.

94. Every candidate who corruptly, by himself or by or with any person, or by any other ways or means on his behalf, at any time, either before or during any election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment or provision to or for any per on in order to be elected, or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election shall be deemed guilty of the offence of treating, and shall forfeit the sum of two hundred dollars to any person who shall sue for the same with full costs of suit, in addition to any other penalty to which he may be liable therefor under any other provision of this Act; and on the trial of an election petition there shall be struck off from the number of votes given for such candidate one vote for every person who shall have voted, and is proved in such trial to have corruptly accepted or taken any such meat, drink, refreshment or provision.

And the giving or causing to be given to any voter on the nomination day or day of polling, on account of such voter having voted or being about to vote, any meat, drink or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall forfeit the sum of ten dollars for each offence to any person suing for the same, with full costs of suit.

23. On appeal from a judgment dismissing an election petition—*Held*, that if gifts and subscriptions for charitable purposes made by a candidate who is in the habit of subscribing liberally to charitable purposes are not proved to have been offered or made as an inducement to or on any condition that any body of men or any individual should vote or act in any way at an election, or on any express or implied promise or undertaking that such body of men or individuals would, in consequence of such gift or subscription, vote or act in respect to any future election, then such gifts or subscriptions are not a corrupt practice within the meaning of that expression as defined by the Election and Controverted Elections Act 1874. *Mackay & Glen*, 3 S. C. Rep. 641, Su. Ct. 1879.

24. And the settlement by payment of a just debt by a candidate to an elector, without any reference to the election, is not a corrupt act of bribery, and especially so when the candidate distinctly swears he never asked the elector's support, and the elector says he never promised and never gave it. *Ib.*

---

95 Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to makes use of any force, violence or restraint, or inflicts or threatens the infliction by himself or through any other person of any injury, damage, harm or loss or in any manner practises intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting or on account of such person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any voter either to give or refrain from giving his vote at any election shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and shall also forfeit the sum of two hundred dollars, to any person suing for the same, with full costs of suit.

96. And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters be or be not according to Law it is declared and enacted that the hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter in going to or returning from any election, are and shall be unlawful acts, and the person so offending shall forfeit the sum of one hundred dollars to any person who shall sue for the same; and any voter hiring any horse, cab, cart, waggon, sleigh, carriage or other conveyance for any candidate or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places shall, *ipso facto*, be disqualified from voting at such election, and for every such offence shall forfeit the sum of one hundred dollars to any person suing for the same.

97. Every candidate who corruptly, by himself or by or with any other person in his behalf, compels or induces or endeavors to induce any person to personate any voter or to take any false oath in any matter, wherein an oath is required under this Act, shall be guilty of a misdemeanor, and shall, in addition to any other punishment to which he may be liable for such offence, be liable to forfeit the sum of two hundred dollars to any person suing for the same.

98. The offences of bribery, treating, or undue influence, or any of such offences as defined by this or any other act of the Parliament of Canada, personation or the inducing any person to commit personation, or any wilful offence against any one of the six next preceding sections of this Act, shall be corrupt practices within the meaning of the provisions of this Act

100. Every executory contract or promise or undertaking in any way referring to arising out of, or depending upon, any election under this Act, even for the payment of lawful expenses or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election.

VII. Corrupt Practices.

25. On a petition under the Dominion Controverted Elections Act charging bribery and corruption in the usual form—*Held*, that drinking on the nomination or polling day is not a corrupt practice sufficient to void an election, unless the drink is given by an agent on account of the voter having voted or being about to vote. *Somerville & Laflamme*, 2 S. C. Rep. 216, Sn. Ct. 1878.

26. And that a candidate charged by his opponent with having no influence is not guilty of a corrupt practice if, in a public speech in reply to the attack, he states that he had influence to procure more appointments for the electors of the county than any member. *Ib.*

27. That the respondent having a perfectly legitimate motive in promising R. to try and get an office for his brother-in-law, viz., his desire to please a political friend and supporter, was not guilty of a corrupt act in making such promise, and that the act of R. in relation to the votes of the Paré family, even if a corrupt one, was not committed with the knowledge and consent of the respondent. *Ib.*

28. And whether R. was respondent's agent or not the conversation which took place between him and the family, did not sufficiently show a corrupt intent on his part to influence their vote, and that he was not guilty of bribery or undue influence within the meaning of the statute. *Ib.*

29. The term "six next preceding sections" in the 98th section of the Dominion Controverted Elections Act, 1874,* means the six sections preceding the 98th, and the hiring of a team to convey voters to the polls prohibited by the 96th section is a corrupt practice, and will void an election if an agent is proved to have intentionally hired a team for that purpose. *Young & Smith*, 3 L. N. 335, Sn. Ct. 1880.

VIII. Constitutionality of Act.

30. The Dominion Controverted Elections Act of 1874 is constitutional. *Valin* v. *Langlois*, 2 L. N. 364, & 3 S. C. Rep. 1, Sn. Ct. 1879.

IX. Costs in Election Cases.

31. Even if the petitioner succeeds each party will be ordered to pay his own costs, where the defendant succeeds in a recriminatory case under sec. 55 of the Election Act.† *Hamilton & Beauchesne*, 3 Q. L. R. 75, S. C. 1876.

X. Counter Petition.

32. Where the respondent to an election petition makes counter charges against the unsuccessful who is not a party to the cause, and in whose behalf the seat is not claimed, and prays that he be disqualified, that such petition is an election petition and must be accompanied by security and all other formalities prescribed by the Dominion Controverted Elections Act, 1874, 37 Vic. cap. 10, secs. 8, 9 & 40. *Somerville et al. & Laflamme & Girouard*, 21 L. C. J. 240, S. C. 1877.

* *Vide Supra* Note.

† On the trial of a petition the respondent may give evidence to show that any other candidate has been guilty of corrupt practice in the same manner and with the same effect as if he had himself presented a petition complaining of such election or of the conduct of such candidate.

XI. Counting of Ballots.

33. An election having been held for Montreal, and an application having been made under section 55* for a count of the ballots by a judge, it appeared that the returning officer had removed the ballots from the envelopes in which they had been transmitted to him by the deputy returning officers, and had made them into packages—*Held*, that the judge, under such circumstances, could not recount the ballots. *Montreal Centre Election in re*, 1 L. N. 496, S. C. 1878.

* No person shall be allowed to inspect any ballot papers in the custody of the Clerk of the Crown in Chancery, except under the rule or order of one of Her Majesty's Superior Courts or a judge thereof; such rule or order to be granted by such court or judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return, and any such order for the inspection or production of ballot papers may be made, subject to such conditions as to persons, time, place and mode of inspection or production as the court or judge making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Dominion Elections Act, sec. 66, as amended by 41 Vic. cap. 6, which see.

67. No person shall except by order of a tribunal having cognizance of petitions complaining of undue returns or undue elections, be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery; and such order may be made subject to such conditions as to persons, time and place and mode of opening or inspection as the tribunal making the order may think expedient.

By the Quebec Act 42-43 Vic. cap. 15, it is provided that:

1. In case it is made to appear within four days after that on which the returning officer has made the final addition of the votes for the purpose of declaring the candidate (or candidates) elected, on the affidavit of any credible witness to a judge of the Superior Court ordinarily discharging his duties in any judicial district in which the electoral district or any part thereof is situated, that such witness believes that any deputy returning officer at any election in such electoral district in counting the votes has improperly counted or rejected any ballot papers at such election, or that the returning officer has improperly summed up the votes; and in case the applicant deposits within the said time with the clerk of the court the sum of fifty dollars 44-45 V. c. 8) as a security for the costs of the candidate, in respect of the recount appearing by the addition to be elected, the said judge shall appoint a time within four days after the receipt of the said affidavit by him to recount the votes or to make the final addition as the case may be, and shall give notice in writing to the candidates or their agents of the time and place at which he will proceed to recount the same, or to make such final addition as the case may be, and shall summon and command the returning officer and his election clerk to attend then and there with the parcels containing the ballots used at the election, which command the returning officer and his election clerk shall obey.

2. The said judge, the returning officer and his election clerk, and each candidate or his agent authorized to attend such recount of votes, or in case any candidate cannot attend, then not more than one agent of such candidate, and if the candidate and their agents are absent then at least three electors shall be present at such recount of the votes.

3. At the time and place fixed the said judge shall proceed to recount all the votes or ballot papers returned by the several deputy returning officers, and shall, in the presence of the parties aforesaid, if they attend, open the sealed packets containing: 1o, the used ballot papers which have been counted; 2o the rejected ballot papers: 3o, the spoiled ballot papers, and no other papers, commencing and proceeding in alphabetical or numerical order of the polls.

XII. Delays under.

34. On the trial of a controverted election under the Dominion Controverted Elections Act, 1874—*Held*, that any counter petition by the respondent must be served within the thirty days mentioned at the beginning of sub-section 2 of sec. 8 of the said Act,* as the extra delay of fifteen days mentioned towards the end of the said sub-section is exceptional, and is confined to the particular case mentioned in section 8, and therefore a counter petition served after the thirty days, though within the extra fifteen days, will be rejected with costs. *Langlois & Valin*, 5 Q. L. R. 1, S. C. 1879.

XIII. Deposit of Petition and Security.

35. It is not necessary to state in the certificate of the deposit of the petition that it was filed in the office of the prothonotary during office hours, and a certificate in the following terms is sufficient: "*Je soussigné protonotaire de la Cour Supérieure pour le bas Canada, dans et pour le district de Richelieu, certifie que la presente petition d'election à été produite ce jourd'hui en mon bureau et que les petitionaires ont déposé entre mes mains la somme de mille piastres courant en billets de la puissance "Dominion Notes" pour tenir lieu du cautionnement exigé par les* 26 *et* 27 *secs. de l'Acte des élections contestées de Québec*, 1875.† *Brissette & Sylvestre*, 8 R. L. 334, S. C. 1875.

36. And the deposit of a sum of $1,000 is a sufficient security, and is sufficiently established by a writing in the following form signed by petitioners: "*Nous soussignés les dits petitionaires donnons le cautionnement requis par l'Acte des Elections Contestées de Québec*, 1875, *et par la loi lequel cautionnement consiste en un depot de la somme de mille piastres en billets de la puissance du Canada entre les mains du Prothonotaire de cette Cour.*"

37. And it is not necessary in such certificate to enumerate the bills filed, nor to mention the value, amount, number or date of the bills.—*Ib.*

38. Nor is it necessary to mention the particular facts of the petition, but it is sufficient to allege generally the violation of the Act charged against defendant and his agents.—*Ib.*

39. And a notice of the presentation of the petition in the following form is sufficient;"

A—le défendeur en cette cause.

Nous vous donnons avis que nous avons ce jourd'hui présenté à la Cour Supérieure siégant dans et pour le district de une petition en vertue de l'Acte des Election contestées de Québec 1875 *contre vous et contre votre élection comme membre de l'assemblée législative de Québec à l'élection qui à eu lieu en vertu de la loi dans le dit district électoral de le dernier jour de la présentation des candidats et le dernier jour de votation dont copie accompagné aussi le présent avis, nous vous donnons aussi avis que nous avons donné le cautionnement requis par la loi aussi qu'appert au recepisse du greffier de la dite Cour qui accompagné le present avis; nous vous donnons également avis que écuier, avocat a comparu comme procureur et conseil des petitionnaires et qu'il à fait élection de domicile au numero.—Ib.*

---

4. The judge shall, as far as practicable, proceed continuously, except on Sundays and non-juridical days, with such recount of the votes, allowing only time for refreshment, and excluding (except so far as he and the parties aforesaid agree) the hours between six in the evening and nine on the succeeding morning. During the excluded time and recess for refreshments the said judge shall place the ballot papers and other documents relating to the election in a sealed envelope, under his own seal and the seals of such other of the parties as desire to affix their seals, and shall otherwise take necessary precautions for the security of such papers and documents.

5. The judge shall proceed to recount the votes according to the rules set forth in section 189 of the Quebec Election Act, as hereby amended and shall verify or correct the count of the ballot papers and statement of the number of votes given for each candidate by deciding the objections without delay, and as fast as they are made: and upon the completion of such recount, or as soon as he has thus ascertained the true result of the poll, he shall seal up all the said ballot papers in separate packets, and shall forthwith certify the result to the returning officer, who shall then declare to be elected the candidate having the highest number of votes, and in case of an equality of votes the returning officer shall give the casting vote in like manner as provided in section 259 of the Quebec Election Act.

6. The returning officer, after the receipt of a notice from the judge of such recount of ballots, shall delay making his return to the Clerk of the Crown in Chancery until he receives a certificate from the judge of the result of such recount, and upon receipt of such certificate the returning officer shall proceed to make his return in the form of schedule Y of the said Act.

7. In case the recount or addition does not so alter the result of the poll as to affect the return, the judge shall order the costs of the candidate appearing to be elected to be paid by the applicant; and the said deposit shall be paid over to the said candidate on account thereof so far as necessary, and the judge shall tax the costs on giving his decision, and if the deposit is insufficient the party in whose favor costs are allowed shall have his right of action for the balance.

---

*The petition must be presented not later than thirty days after the day of publication in the *Canada Gazette* of the receipt of the return to the writ of election by the Clerk of the Crown in Chancery, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other act of bribery to have been committed by any member or on his account or with his privity, since the time of such return, in pursuance of or in furtherance of such corrupt practice, in which case the petition may be presented at any time within thirty days after the date of such payment or act so committed; and in case any such petition is presented the sitting member whose election and return is petitioned against may, not later than fifteen days after service of such petition against his election and return, file a petition complaining of any undue and corrupt act by any candidate at the same election who was not returned and who is not a petitioner, and on whose behalf the seat is not claimed.

*26. At the time of the presentation of the petition the petitioner shall give security for the payment of all costs, charges and expenses that may become payable by him:

1. To any person assigned as a witness on his behalf.

2. To the member whose election or return is called in question.

3. To the returning officer or deputy returning officer if their conduct is complained of.

4. To the candidate not elected whose conduct is complained of.

27. The security shall be one thousand dollars, and shall be given by a deposit of such sum with the prothonotary, who shall transmit the same to the office of the Provincial Treasurer in the manner prescribed for judicial deposits.

The deposit shall be valid or made in gold coin or in notes of any incorporated or in Dominion bonds or debentures.

The prothonotary shall give a receipt for such deposit which shall be evidence of the sufficiency thereof.

XIV. Election Expenses.

40. Section 100 of the Dominion Elections Act, 1874* must be interpreted as annulling all contracts, even those formed for the payment of legitimate expenses, when they have for their object to illegally influence the election, and constitute a corrupt act such as is prohibited by the Statute. *Jalbert* v. *DeLery*, 5 Q. L. R. 297, S. C. R. 1879.

41. But an action may be brought to recover legitimate expenses, when these expenses are not incurred in pursuance of a corrupt bargain. —*Ib.*

42. The costs of an election feast after the election has been closed are not recoverable. *Guèvremont & Tunstall et al.*, 21 L. C. J. 293, Q. B. 1876.

43. The penalty enacted by sec. 286† of the Quebec Act, 38 Vic. cap. 7 for failure to deliver a statement of the expenses of the election, is not incurred where there has been no expenditure of money at the election. *Gauthier* v. *Bergevin*, 1 L. N. 65, & 22 L. C. J. 51, S. C. R. 1877.

44. As to effect of failure to appoint an agent for all election expenses and to publish a statement of such expenses. *Desbauriers* v. *Larue*, 6 Q. L. R. 100, S. C. 1880.

45. Plaintiffs sued for $8 each, agreed to be paid them by defendant for their services as cabmen at Quebec on the 17th December, 1878. Defendant pleaded that on that day a parliamentary election was in progress, and that the contract was an illegal one under the Election Act, 1874, sec. 100.‡ Plaintiffs proved the services and their value, and that they were not electors, and it did not appear that they had driven voters, nor was it shown that the defendant was an agent. Action dismissed without costs. *Bradford* v. *Driscoll*, 5 Q. L. R. 70, C. C. 1878.

46. Action for the recovery of $600 penalty for neglecting to file the detailed statement of election expenses in connection with an election for the county of Berthier, in which the defendant was a candidate, defendant pleaded that neither he nor his agent had expended any money in connection with the election, of which he was bound to render an account. He added

* *Vide Supra* Note.

† 284. A detailed statement of all election expenses, incurred by or on behalf of any candidate, including such expected payments as aforesaid shall, within two months after the election, be made out and signed by the agent, or, if there be more than one, by every agent who has paid the same, and by the candidate in cases of payments made by him, and delivered with the bills and vouchers relative thereto to the returning officer. If, from the death of any creditor an account has not been sent in within the two months next after the election, a supplementary statement shall be made and delivered as herein above described within one month after such account shall have been received.

285. The returning officer shall, at the candidate's expense, cause to be published within fourteen days an extract of such statement with the signature of the agent attached thereto in the *Quebec Official Gazette*.

286. Any agent or candidate failing to deliver to the returning officer the statements required by section 284, shall incur a penalty of two hundred dollars or imprisonment for six months in default of payment.

287. Every agent or candidate wilfully delivering unto the returning officer an inaccurate statement shall incur a penalty of five hundred dollars or imprisonment for twelve months in default of payment.

‡ *Vide Supra* Note.

that he had paid out $2.45 for personal expenses, of which he had delivered no account, not considering it necessary, but he offered to consent to judgment for $10 and costs, if the court should hold that a statement of such expenses was required by law. There was no proof of any other expenses than the $2.45, and the defendant appeared to have been in the utmost good faith throughout—*Held*, in the court of first instance, that the action should have been dismissed altogether, but for the offer of defendant, but, in revision, *held*, that as the personal expenses of a candidate were election expenses the defendant had subjected himself to some penalty, and would be condemned to pay $30 and all costs, or go to gaol for 30 days. *Therriault* v. *Ducharme*, 3 L. N. 140 & 351, & 24 L. C. J. 320, S. C. R. 1880.

47. To an action for an account for printing and advertising done for the purposes of an election, the defendant, who was the successful candidate, pleaded that the expenses were unauthorized by him or by his agent, that they were extravagant and unnecessary, and that under the Dominion Election Act no action lay for their recovery—*Held*, that sec. 100 of the Act of 1874 does not preclude the recovery of lawful accounts connected with an election, unless the expenses were incurred with a corrupt or illegal motive. *Workman & The Herald Printing and Publishing Co.*, 21 L. C. J. 268, & 9 R. L. 305, Q. B. 1877.

XV. Election Lists.

48. In revision of the electoral lists of the county of Kamouraska, the following holdings were found.—That the valuation roll of the municipality is conclusive as to the value of the property. *Electoral lists of Kamouraska*, 3 Q. L. R. 308, S. C. 1877.

49. That no one can be on the electoral list who is not on the valuation roll. *Ib.*

50. That all those who appear by the roll to be qualified should be on the electoral list, unless some disqualification of a personal nature prevents them from being so. *Ib.*

51. The Municipal Code points out the manner in which a valuation roll should be attacked, and in a collateral procedure as in a contestation of the electoral lists the correctness of the roll cannot be called in question. *Ib.*

52. Neither has the secretary-treasurer any right to correct the valuation roll. *Ib.*

53. And, in another case, in which appeal was had from the decision of the municipal council—*Held*, that the valuation roll is an authentic document which makes complete proof of the real and annual value of taxable property of a municipality for election purposes. *Gratton* v. *Corporation of the Village of St. Scholastique*, 7 R. L. 356, Mag. Ct. 1875.

54. And at the time of the revision of the list no other value can be admitted but that mentioned in the roll. *Ib.*

55. But the roll does not make proof of the quality of the person occupying the property at the time of the completion of the list. And the council may, at the time of the revision of the list, replace the names of those who were not before then proprietors, occupants or lessees by the names of those who have such quality. *Ib.*

56. In virtue of ss. 3, sec. 8* of the Electoral Act of Quebec the annual value of a property is sufficient to give the franchise to the proprietor or occupant, even when the actual value does not give that qualification, but the rent required by law does not unless the property has the actual value required. *Ib.*

57. And the petition in appeal from the revision of an electoral list is, according to the Election Act of Quebec, 38 Vic. cap. 7, a non-contentious proceeding, and does not require that the corporation who revised the list in question should be made parties to the cause, or should have notice of the petition. *Center* v. *The Corporation of the Township of Chatham*, 7 R. L. 366, Mag. Ct. 1875.

58. But the petition should be served on the secretary-treasurer who should cause notice of it to be given to the mayor and to the parties interested. *Ib.*

59. And the corporation and others interested can only become parties to the case by intervention. *Ib.*

60. So that the illegal designation of the corporation in such petition does not involve its nullity, and the petitioner, notwithstanding this informality, may have the benefit of the 46th sec. of the statute.† *Ib.*

61. On an appeal from the decision of a municipal council on the subject of the election lists, it will not be permitted to add to the roll by verbal testimony, nor by proving the existence of facts not established by the roll, but which the law directs that it should contain. *Coté exp.*, 4 Q. L. R. 98, S. C. 1878.

62. And when a municipal council takes upon itself to revise the lists, without any complaint having been produced, there is no appeal from its decision to a judge in Chambers. *Ib.*

63. But when the council has decided upon a complaint, even when the complaint has not been filed within the delay fixed by law, an appeal will lie to a judge from such decision. *Ib.*

64. The Election Act, sec. 38, provides that a duplicate list of electors must be transmitted to the registrar within eight days following the day upon which such list shall have come into force under a penalty of $200. The defendant transmitted the list four days before it came into force—*Held*, that this was not a compliance with the law, and he had subjected himself to the penalty. *Marcotte* v. *Paquin*, 5 Q. L. R. 168, S. C. 1879.

65. The electoral list is a paper of the highest importance, for upon its validity may depend the legality of the election. No element of uncertainty should be allowed to find its way into the proceedings, and it is the duty of the courts to insist upon a strict adherence to the directions of the Legislature on the subject. *Ib.*

66. By the Quebec Election Act, sec. 27,* the electoral list of a corporation must remain for thirty days only, and any alterations made in it after the thirty days have expired are illegal and must be set aside. *Jodoin & The Corporation of the Village of Varennes*, 2 L. N. 262, S. C. 1879.

67. Nor can any names be struck from or added to the electoral list, except on *plaintes par écrit* in regular form. *Viger & The Corporation of the Town of Longueuil*, 2 L. N. 267, S. C. 1879.

XVI. Evidence in Cases under.

68. On a petition in the usual form charging bribery and corruption by respondent and his agents and treating by respondent's agents on the nomination and polling days, the respondent was examined on his own behalf—*Held*, on appeal to the Supreme Court, that the evidence of a candidate on his own behalf in the Province of Quebec is admissible. *Somerville & Laflamme*, 2 S. C. Rep. 216, Su. Ct. 1878.

69. And that when a multiplicity of charges of corrupt practices are brought against a candidate or his agents, each charge should be treated as a separate charge, and if proved by one witness only and rebutted by another the united weight of their testimony, without accompanying or collateral circumstances to aid the court in its appreciation of the contradictory statements, cannot overcome the effect of the evidence in rebuttal, and that in such case the candidate is entitled to the presumption of innocence to turn the scale in his favor. *Ib.*

70. The enquête in a contested election case will not be allowed to go beyond the bill of particulars. *Rocheleau* v. *Martel*, 9 R. L. 511, S. C. 1878.

XVII. Evidence of Corrupt Acts.

71. In the Charlevoix contested election case —*Held*, that the evidence of persons who were friends of the defendant during the election, and afterwards changed their political party and became his enemies, should be accepted with great caution. *Cimon & Perrault*, 10 R. L. 651, S. C. 1880.

72. And when an act is testified to by one witness only, his evidence, in order to constitute proof, must be irreproachable, and must not be contradicted in any important particular, or if contradicted must be corroborated by circumstantial evidence.—*Ib.*

73. And in order to prove attempts at corruption simply it must be still stronger.—*Ib.*

74. And a single witness when he is contradicted by another witness, even if it be the defendant himself, is insufficient.—*Ib.*

---

* He must be actually and in good faith owner or occupant of real estate, estimated according to the valuation roll in force as revised, if it has been revised, even for local purposes, only at a sum of at least three hundred dollars in real value in any city municipality entitled to return one or more members of the Legislative Assembly, and two hundred dollars in real value in any other municipality; or be a tenant in good faith paying an annual rent for real estate of at least thirty dollars in any city municipality entitled to return one or more members of the Legislative Assembly, and of at least twenty dollars in any other municipality, provided that such real estate be estimated according to such valuation roll in real value at at least three hundred dollars in any city municipality entitled to return one or more members of the Legislative Assembly, and two hundred dollars in any other municipality.

† No proceedings on such appeal shall be annulled for defect of form. Q. 38 Vic. cap. 7, sec. 46.

* The list of electors may be examined and corrected by the council of the municipality in the thirty days next after the publication of the notice given in virtue of section 21, upon complaint in writing to such effect under either of the two sections following and not otherwise. Q. 38 Vic. cap. 7, sec. 27, as amended by Q. 39 Vic. cap. 13, sec. 4.

75. And it is not evidence of a corrupt intention that the defendant has, since the election, in order to avoid difficulty and enmity, settled with persons to whom he did not previously acknowledge himself indebted.—*Ib.*

XVIII. Exhibits.

76. During the *enquête* on a contested election petition it is the duty of the judge to order the exhibits to be placed in the care of the clerk of the Court. *Rocheleau* v. *Martel*, 9 R. L. 511, S. C. 1878.

XIX. Jurisdiction of Court.

77. Motion to dismiss an election petition for want of jurisdiction in the court rejected with costs. *Bruneau* v. *Massue*, 9 R. L. 560, S. C. 1878.

78. Motion for leave to appeal from a judgment dismissing an *exception declinatoire*. The action was instituted at Quebec for corrupt practices at an election under 37 Vic. cap. 9, sec 92.* On behalf of the motion it was urged that the offence was a *délit*, and that it could only be prosecuted where it took place, viz., in the district of Saguenay and in a Criminal Court. Motion rejected on the ground that there were two modes of procedure, one for the misdemeanor, punishable as all misdemeanors, and the other penalty to be recovered, as in an action for debt, which was the present case. *Tarte* v. *Cimon*, 3 L. N. 195, Q. B. 1880.

XXI. Motion to Reopen Enquete.

79. On the hearing of an election petition motion was made to reopen the *enquête*, in order to produce new particulars—*Held*, that considering that sixty-five accusations had been brought and eighty witnesses heard that the motion would be rejected. *Robillard & Lecavalier*, 7 R. L. 662, S. C. 1877.

XXII. Offences under.

80. In a prosecution against six persons for what is called ballot stuffing—*Held*, that sec. 114 applies to an accusation for an offence under sec. 68 of the Elections Act, Canada.† *Queen* v. *Forget et al.*, 1 L. N. 542, Q. B. 1878.

81. And the failure of the returning officer to take the oath prescribed in such cases will not defeat a prosecution under the Act, the failure of the officer to be sworn not having the effect of annulling the election.—*Ib.*

82. And a return signed by the election clerk as returning officer is good, where it appears that the returning officer had declared himself unable to act, and had been represented throughout the election by the clerk.—*Ib.*

83. And the omission of a substantial averment in the indictment for an offence under the Elections Act that an election was held, though a defect, is such as must be objected to by demurrer or motion to quash.—*Ib.*

84. But a count alleging that each of several defendants put illegal ballots in the box, which the said deputy returning officer (one of them) had not a right to put in, is bad as lacking precision.—*Ib.*

XXIII. Official Recount.

85. In a contested election case in which the count is disputed the court will order an examination of all the ballot tickets, and will compare the election lists with the returning officer, in order to establish that it is in conformity with the copies in the registry office. *Rocheleau* v. *Martel*, 9 R. L. 511, S. C. 1878.

XXIV. Penalty under.

86. Action for a penalty under the Elections Act of 1874, sec. 94.* The defendant pleaded by exception to the form that the action was for several offences, while the demand was for one penalty. Plaintiff declared that the offence took place before, at and after the election, but *held*, that this did not invalidate the action. Leave to appeal consequently refused. *Raymond* v. *Valin*, 6 Q. L. R. 146, Q. B. 1880.

XXV. Place of Trial of Preliminary Objections.

87. The hearing on preliminary objections to an election petition under sec. 10† of the Dominion Controverted Elections Act, 1874, should

---

* *Vide Supra* Note.

† No person shall, Firstly. Forge or counterfeit or fraudulently alter, deface or fraudulently destroy any ballot paper or the initials of the deputy returning officer signed thereon; or,

Secondly. Without authority supply any ballot paper to any person; or,

Thirdly. Fraudulently put into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or,

Fourthly. Fraudulently take out of the polling place any ballot paper; or,

Fifthly. Without due authority destroy, take, open or otherwise interfere with any ballot box or pack of ballot papers then in use for the purposes of the election.

No person shall attempt to commit any offence specified in this section.

Any contravention of this section shall be a misdemeanor; and any person found guilty thereof shall be punishable, if he be a returning officer, deputy returning officer or other officer engaged at the election, by a fine not exceeding one thousand dollars, or by imprisonment for any term less than two years in default of paying such fine; and if he be any other person by a fine not exceeding five hundred dollars, or by imprisonment for any term not exceeding six months, with or without hard labor, in default of paying such fine. C. 37 Vic. cap. 9, sec. 68.

In any indictment or prosecution for bribery or undue influence or any other corrupt practice, and in any action or proceeding for any penalty for bribery or undue influence or any other corrupt practice, it shall be sufficient to allege that the defendant was at the election, at or in connection with which the offence is intended to have been committed, guilty of bribery or undue influence or any other corrupt practice, describing it by the name given to it by this Act or otherwise (as the case may require); and in criminal or civil proceeding in relation to any such offence the certificate of the returning officer in this behalf shall be sufficient evidence of the due holding of the election, and of any person named in such certificate having been a candidate thereat.—Ib. sec. 114.

* *Vide Supra* Note.

† Within five days after the service of the petition and the accompanying notice the respondent may present in writing any preliminary objections or grounds of insufficiency which he may have to urge against the petition or the petitioner, or against any further proceeding thereon, and shall in such case at the same time file a copy thereof for the petitioner. The court or any judge thereof shall hear the parties upon such objections and grounds, and shall decide the same in a summary manner.

take place at the *chef-lieu* of the district, and an order fixing the hearing at the *chef-lieu* of the county affected is irregular, and will be set aside. *Hills & Christie*, 23 L. C. J. 266, S. C. 1879.

XXVI. Pleading Under.

88. Motion to reject certain items of the particulars of an election petition, as containing charges against clergymen which could only be proved by revealing the secrets of the confessional. Motion dismissed, on the ground that the kind of proof required could not be indicated by a motion of that kind, and that the proof could only be controlled at the time it was offered. *Massé & Robillard*, 10 R. L. 675, S. C. 1880.

89. An answer to an election petition that the petitioner was not a qualified voter at such election, is not a preliminary objection in the sense of the Quebec Election Act, 1875, but a *défense au fonds*, and may be pleaded by a simple denial that the petitioner was a qualified voter as alleged in the petition. *Adam* v. *Mercier*, 2 L. N. 293, & 23 L. C. J. 256, S. C. 1879.

90. And *held*, also, that it is perfectly competent to the respondent, in his *reponse*, to intimate that he intends to adduce proof at trial of fraudulent practices on the part of any of the other candidates at the election in question. *Ib.*

91. During an election trial respondent moved that petitioner be not permitted to make any proof, or to proceed under certain specified clauses of the bill of particulars, on account of the vagueness and generality of the charges therein contained—*Held*, that as the trial had begun, and evidence had been taken under the clauses in question, although under reserve of objection, the motion could not be granted. *Clayes & Baker*, 23 L. C. J. 194, S. C. 1879.

92. Motion for leave to appeal from a judgment dismissing an exception to the form of an action under the Elections Act 37 Vic. cap. 9, sec. 92.* The point of the exception was that the declaration set up numerous infractions of the law which are set forth in the statute in the disjunctive. Motion rejected on the ground that they were varieties of the same offence. *Tarte & Cimon*, 3 L. N. 195, Q. B. 1880.

XXVII. Postponement of Trial.

93. Under the Dominion Controverted Elections Act, 1874—*Held*, that on the trial of an election petition it is competent to the presiding judge to postpone the trial after it has been begun until after the termination of the session of Parliament then about to open. *Clayes* v. *Baker*, 23 L. C. J. 194, S. C. 1879.

XXVIII. Power of Provincial Courts under Dominion Act.

94. On the trial of a controverted elected petition, under the Dominion Controverted Elections Act, 1874—*Held*,* that the Superior Court of Lower Canada, in the exercise of its ordinary powers, as the highest court having original civil jurisdiction throughout this Province, can legally discharge the duties assigned to it by the Act in question. *Langlois* v. *Valin*, 5 Q. L. R. 1, S. C.; & 3 S. C. Rep. 1, Su. Ct. 1879

95. But that *the trial* of an election petition under the statute must take place not before any Provincial Court, but before a Dominion Court of Record, as appears more particularly by section 48† *Ib.*

96. And the reports to be made to the speaker, as to the right to the seat and as to corrupt practices, etc., are to be made not by any Provincial Court, but by the judge who held the Dominion Court of Record. *Ib.*

97. But although it may be true that the Dominion Parliament cannot extend the jurisdiction of any Provincial Court, it does not follow and is not true that the Dominion Parliament cannot assign to judges named by the Dominion Government any judicial duties which can be discharged by such judges elsewhere than in the Provincial Court of which they are members, and consistently with their other duties. *Ib.*

98. And in fact and in principle a judge trying an election petition, or performing any other duty under the Act of 1874, is in the same position as to his powers as were the judges who discharged like duties under the Act of 1873. *Ib.*

99. And as to procedure the exclusive powers of the Provincial Legislature seem to be limited to matters in other respects within their control; and, moreover, the objection as to procedure, whatever may be its importance as to proceedings before a Provincial Court, cannot apply to *a trial* before a Dominion Court, nor to the proceedings before a judge out of court, and that under the express words of the statute every duty that can be performed by a Provincial Court, may also be performed by a judge out of court, except that of fixing the time and place of trial. *Ib.*

100. But in another case—*Held*,‡ that the Superior Court is a court of original jurisdiction of and for this Province, with all the powers, jurisdiction and authority of the courts of *Prevoté, Justice Royale, Intendant and Conseil Supérieure*, prior to the year 1759, and such others as have been conferred upon it by the laws or ordinances of Lower Canada since 1759, and that at the Union there had not been conferred upon it any jurisdiction to try and determine a controverted election petition. *Bélanger* v. *Caron*, 5 Q. L. R. 19, S. C. 1879.

---

* *Vide Supra* Note.

* It has been deemed desirable to give all the holdings in the different courts concerning this question, and also the names of the judges by whom it was so held—ED.

By Meredith, C. J.

† On the trial of an election petition, and in other proceedings under this Act, the judge shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as a judge of one of the Superior Courts of law or equity for the Province in which such election was held, sitting in term or presiding at the trial of an ordinary civil suit, and the court held by him for such trial shall be a Court of Record.

‡ By Stuart, J.

101. That the legislative powers conferred by the British North America Act, 1867, exclusively upon the legislatures of the Provinces, comprise the administration of justice and the constitution and organization of Provincial Courts, both of civil and criminal jurisdiction, for the Provinces, and that the Legislature of this Province hath not legislated on the subject of this court, and the administration of justice by it so as to confer any authority upon it to try and determine an election petition of a member of the House of Commons, and no other Legislature hath the power to confer that or any other jurisdiction or duty on this court. *Ib.*

102. That the Parliament of Canada, under the power conferred exclusively upon it to provide for the constitution, maintenance and organization of a general Court of Appeal and for the establishment of any additional courts for the administration of the laws of the Dominion, has in fact constituted a Supreme Court and a Court of Exchequer, with jurisdiction throughout the Dominion, and that the Dominion Controverted Elections Act of 1874 is a law common to the whole Dominion, to be administered of right by the judicial department of the Dominion, and not by Provincial Courts. *Ib.*

103. And in another case—*Held*,* that the Imperial Parliament has given to the Parliament of Canada the power to establish additional courts for the better administration of the laws of Canada,† and in passing the Dominion Contested Elections Act of 1874 the Parliament of Canada has, at the same time, established a court for the administration of that law in the Dominion. *Dubuc & Vallée*, 5 Q. L. R. 34, S. C. 1879.

104. That sec. 3 of the Act does not add to or extend the jurisdiction of the Provincial courts, but merely designates those courts or one of the judges thereof as being the court established for applying that law or trying the merits of contested election cases, and in doing so the Parliament of Canada has not encroached on the rights conferred on the Provincial Legislatures by the British North America Act; but has made the Superior Court a distinct tribunal or Federal Court for the purposes of the Act. *Ib.*

* By Caron, J.

† It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of the section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated. B. N. A. Act, sec. 91.

By sec. 92 the Provincial Legislatures have exclusively the power of making laws respecting the administration of justice in the Province, including the constitution, the maintenance and organization of Provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.

By sec. 101 it is enacted that the Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance and organization of a general Court of Appeal for Canada, *and for the establishment of any additional courts for the better administration of the laws of Canada.*

105. Nor does the said Controverted Elections Act in any way affect the rights mentioned in par. 13 of sec. 92 of the British North America Act, but regulates merely the manner in which controverted election trials are to be held, that is to say the procedure to be followed. *Ib.*

106. A citizen of a Province may be deprived of his political rights in that Province while continuing to enjoy his rights of citizenship in the Dominion. *Ib.*

107. And in another case—*Held*,* that the Dominion Controverted Elections Act of 1874 in giving to the Superior Court, which is a civil provincial court, and to its judges the trial of Dominion contested election cases, has conferred upon it a jurisdiction which it did not before possess, and has also, in deciding upon and regulating the procedure to be followed in such cases, encroached upon the rights of the Provincial Legislature, which possesses with regard to the creation, organization and maintenance of civil and criminal courts, and as to the procedure in civil matters in such courts an unlimited authority, and in illegally pretending to and exercising such power and authority the Dominion Legislature has acted unconstitutionally and illegally. *Guay & Blanchet*, 5 Q. L. R. 43, S. C. 1879.

108. In another case—*Held*,† that by the Dominion Controverted Elections Act of 1874 the Parliament of Canada has not created a Dominion Court, as it was empowered to do by section 101 of the British North America Act, and has merely sought, in so far as regards the Province of Quebec, to extend the jurisdiction of the Superior Court of that Province. *Deslauriers* v. *Larue*, 5 Q. L. R. 191, S. C.

109. And that the Parliament of Canada has no power to extend the jurisdiction of the Superior Court of this Province. *Ib.*

110. And that the said Superior Court has no power to try controverted elections of members of the House of Commons of Canada. *Ib.*

XXVII. Preliminary Objections.

111. Corrupt practices, before and during an election, by and on the part of the candidate petitioning and claiming the seat, cannot be urged on the part of the respondent by way of preliminary objection. *Lacerte* v. *Lajoie*, 7 R. L. 70, S. C. 1874.

Other points concerning preliminary objections. *Ib.*

XXVIII. Procedure under.

112. The hearing of the preliminary objections, and the trial of the merits of the election petition, are distinct acts of procedure. *Brossard & Langevin*, 2 S. C. Rep. 319, Su. Ct. 1878.

113. In contested election cases the principles of procedure in ordinary actions before the Superior Court must be followed, as to the parties to be joined in the cause, as to the nature of the pleadings by which the relations of the parties are determined and defined, and as to the issues joined in every case where the statute makes no other special provision. *Rocheleau & Martel*, 8 R. L. 592, S. C. 1878.

* By Casault, J.

† By McCord, J.

111. And the only parties in such a case are the petitioners on the one side, and on the other those who are designated in the petition, against whom conclusions are taken, and on whom the petition has been served, and the contestation is joined only between such parties. *Ib.*

115. And the answer to such a petition must arise out of the allegations and conclusions of the petition, and not introduce new matter. *Ib.*

116. And when a candidate is not in a case, proof of fraudulent and corrupt practices on his part will not be admitted, at least until he has been notified according to sec. 55 of chap. 8 of 38 Vic. (Que.),* and nothing can be proved against him unless he has been brought into the case, and unless he is given opportunity to be heard in his defence, nor can the parties in a case be forced to defend the interests of those who are not in it, especially when the law provides special means of bringing them before the court. *Ib.*

117. There are only two means provided by the Controverted Elections Act of bringing a non-elected candidate into the case, viz., by an election petition conformably to secs. 6 and 21, and by a notice under sec. 55. *Ib.*

XXIX. Proof in Action for Penalty under.

118. The appellant sued the respondent, one of the members of the Quebec Legislative Assembly, under sec. 134 of the Quebec Election Act, 28 Vic. cap. 7,† for the recovery of the penalty therein provided for making a false declaration of qualification under the preceding sections—*Held*, that in such cases, as fraud could not be presumed, the strictest proof would be required. *Neault* v. *St. Cyr*, 3 Q. L. R. 147, Q. B. 1877.

119. But in an action for a penalty under secs. 245 and 246 of the Quebec Elections Act‡—*Held* sufficient to allege and prove the giving of drink or other refreshment by a candidate to an elector during the election, without alleging or proving the existence of any wrong motive whatever. *Philibert* v. *Lacerte*, 3 Q. L. R. 152, S. C. R. 1877.

---

* On the trial of a petition the respondent may give evidence to show that any other candidate has been guilty of corrupt practice in the same manner and with the same effect as if he had himself presented a petition complaining of such election or of the conduct of such candidate.

But before entering into such proof the respondent shall give notice thereof to such candidate, if he be not already in the cause, who may cross-examine the witnesses against him and produce others on his own behalf.

† Whosoever shall willfully and knowingly make a false statement in the declaration given under section 125 or section 130 shall incur a penalty of five hundred dollars, or imprisonment for twelve months in default of payment.

‡ 245. No candidate shall at any election, nor shall any other person at the expense of such candidate, either provide or furnish drink or other refreshments to any elector during such election, or pay for, procure or engage to pay for any such drink or other refreshment.

246. Any person offending against any of the provisions of the six preceding sections shall incur a fine, not exceeding two hundred dollars or imprisonment not exceeding six months in default of payment.

XXX. Qualification of Candidates.

120. A deed given to transfer property to a candidate merely to qualify him, and with the intention that the property shall for all other purposes remain in the possession of the transferee, is insufficient under sec. 124 of the Quebec Elections Act,* even though it be clothed with all the formalities required for the valid transfer of the property. *Hamilton & Beauchesne*, 3 Q. L. R. 75, S. C. 1876.

121. And where there is only a simulated payment of the price, and no delivery or putting in possession, that will be sufficient evidence of the intention. *Ib.*

122. The petitioner complained of the election of respondent, as a member of the Legislature of the Province of Quebec, on the ground *inter alia* that he was not duly qualified. By the evidence it appeared that the property which respondent had declared upon in the terms of the statute had been given to him by the person acting as his counsel at the trial, for the express purpose of qualifying him; that it was so given *à titre d'atimens* and with prohibition to sell, or in any way alienate, except with the express consent of the donor; that further that in case the donee should die before the donor the property should, in any case, return to the donor, and further, the donor admitted that he should consider the donee bound in conscience to make him some return for it, whenever his means permitted him to do so. The evidence also showed that the property had been especially purchased by the donor for the purpose of transferring it to the respondent, and had cost only $1700. *Held*, that even if the property were worth, as was alleged, $2,000, the rights of the respondent, restricted as they were, could not be said to be worth that amount, and the election was set aside. *Beaudry & Brosseau*, 2 L. N. 218, S. C. R. 1879.

XXXI. Qualification of Elector.

123. The date of the qualification of an elector is that of the election list, and it is at the time of the making of the list by the secretary-treasurer that the qualification should exist and appear. *Election lists of Kamouraska*, 3 Q. L. R. 308, S. C. 1877.

124. A and B possessed conjointly, and by equal parts, a property valued on the roll at from $200 to $300. Neither the one nor the other could be put on the list. Neither could they if they had been, conjointly and by equal parts, tenants of a property, for which they paid annually, according to the roll, $20 to $30. In the first case, that they both might vote, the property would need to be valued at least $400. In the second case, that they both might vote, the rent

---

* No person shall be elected a member of, or vote or sit as such, in the Legislative Assembly of this Province, who is not at least twenty-one years of age, of the male sex, a subject of Her Majesty by birth or naturalization, free from all legal incapacity, and proprietor in possession of lands or tenements in the Province of the value of two thousand dollars, over and above all rents, hypothecs and incumbrances and hypothecary claims thereon.

And every person who shall sit or vote without having the qualification required by this section shall incur a penalty of two thousand dollars for each day he shall have so voted or sat.

would need to be at least $10. But if A and B possessed together property of the value of $300, A for a third and B for two-thirds, B could vote but not A, and the same as to rent. *Ib.*

125. If a property has been rented, ceded, or transferred for the sole purpose of giving a right to vote, the name of the person will be struck from the list.* *Ib.*

126. So also if a person is subject to any disqualification which does not appear by the roll or by the list, such as an alien, an imbecile or a felon. *Ib.*

127. So also if the secretary-treasurer has put on the list some one who has not the right to vote according to articles 11, 267 and 270 of the Election Act, or by section 14, amended by 39 Vic. cap. 13, sec. 2.† *Ib.*

128. So also from facts which affect the right, but which does not appear on the roll as where a tenant does not hold *feu et lieu*. *Ib.*

129. And the curé, as occupying the presbytery, is not an occupant in the sense required by the Election Act, as the presbytery is not a taxable property, for it is on taxable property only that the voting qualification is based. *Ib.*

XXXII. Rule of Practice.

130. By a rule of practice, made and promulgated in Quebec, the cost of printing the evidence in election cases under the Quebec Act may be taxed against the taxing party. *Robert & Bertrand*, 2 L. N. 309, S. C. 1879.

---

* Act 1875, sec. 33 If, upon proof, the council is of opinion that a property has been leased, assigned or made over, under any title whatsoever, with the sole object of giving to a person the right of having his name entered on the list of electors, it shall strike the name of such person from the said list, upon complaint in writing being made to that effect.

† The following persons can in no case be electors or vote:

1. The judges of the Court of Queen's Bench and of the Superior Court, the judge of the Vice-Admiralty Court, the judges of the Sessions, District Magistrates, Recorders;

2. Officers of the Customs, clerks of the Crown, clerks of the Peace, registrars, sheriffs, deputy sheriffs, deputy clerks of the Crown and the officers and men of the Provincial or Municipal police force;

3. Agents for the sale of Crown lands, postmasters in cities and towns, and all officers employed in the collection of any duties payable to Her Majesty, in the nature of duties of excise, including collections as well of federal as of local revenue.

If any of the persons set forth in this section vote, save in the case of section 205, he shall incur a penalty of not more than five hundred nor less than one hundred dollars, or imprisonment not exceeding twelve months in default of payment, and his vote shall be null and of no effect. Q. 38 Vic. cap. 7, sec. 11.

If it is proved before any court or judge for the trial of election petitions that any corrupt practice has been committed by or with the actual knowledge and consent of any candidate at an election, his election, if he have been elected, shall be void.

And such candidate shall, during the seven years next after the date of such decision, be incapable of being elected to, and of sitting in the Legislative Assembly, and of voting at any election of a member of that house, or of holding an office in the nomination of the Crown, or of the Lieutenant Governor in the Province. Ib., sec. 267.

Any person other than a candidate found guilty of any corrupt practice in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during the seven years next after the time at which he is so found guilty, be incapable of being elected to, and of sitting in the Legislative Assembly, and of voting at any election of a member of such house, or of holding any office in the nomination of the Crown or of the Lieutenant Governor in the Province. Ib., sec. 270.

XXXIII. Services under.

131. When the defendant, in a controverted election case, has not made election of domicile, service of papers may be made at the office of the prothonotary, and not at the elected domicile of the attorneys. *Bruneau & Massue*, 10 R. L. 112, S. C. 1879.

XXXIV. Suspension of proceedings during the Sitting of the Legislature.

132. It being enacted by 239 V. c. 14, s. 2,* that all proceedings respecting the trial of an election petition shall be suspended during the sessions of the Legislature of the Province, and during the eight days which precede and the three days which follow such sessions, on the mere application of the sitting member—*Held*, that the hearing of an election petition, not only as being "a proceeding respecting the trial" of such petition, but as being part of the trial itself, must be suspended during a session of the Legislature, if an application to that effect be made by the sitting member. *Perrault & Langelier*, 5 Q. L. R. 242, S. C. R. 1879.

XXXV. Treating.

133. Where the charge in the petition and in the particulars is merely "treating," either corrupt treating or unlawful treating on polling day may be proved. *Deslauriers & Larue*, 6 Q. L. R. 100, S. C. 1880.

134. As to what is evidence of corrupt treating. *Ib.*

135. It is treating within the meaning of sec. 257 of the Quebec Election Act† for a candidate to give a glass of liquor to a number of people, comprising adherents of both candidates, and to the deputy returning officer in the poll on the day of polling, saying: "Gentlemen, if you wish to take a glass of brandy, there is some in the room, go and help yourselves, but before you go go and vote for whom you like. *Hamilton & Beauchesne*, 3 Q. L. R. 75, S. C. 1876.

XXXVI. Undue Influence.

136. On appeal from a judgment of the Superior Court of the Province of Quebec, dismissing the petition of the appellant against the return of the Hon. H. L. Langevin, as member of the House of Commons—*Held*, that the election of a member of the House of Commons, guilty of clerical undue influence by his agents, is void, and that sermons and threats by certain parish priests amounted in the case in

---

* 56a. All proceedings respecting the trial of an election petition shall be suspended during the sessions of the Legislature of this Province during the eight days which precede and the three days which follow such sessions, on the mere application of the sitting member.

† The giving or causing to be given to any elector on the nomination day or day of voting, on account of such elector having voted or being about to vote, any meat, drink or refreshment, or any money or ticket to enable such elector to procure refreshment, shall be deemed an unlawful act, and whoever shall have been guilty of such unlawful act shall for each offence be liable to a penalty of ten dollars or imprisonment of one month in default of payment.

question to undue influence, and were in contravention of the 95th sec. of the Dominion Election Act, 1874.* *Brossard & Langevin*, 1 S. C. Rep. 145, Sup. Ct. 1877.

137. A threat by a Catholic priest to refuse the sacraments to those who should vote for a candidate constitutes an act of undue influence, within the terms of sec. 258 of the Quebec Election Act.† *Hamilton & Beauchesne*, 3 Q. L. R. 75, S. C. 1876.

ELECTION OF DOMICILE.

I. By Attorneys ad Litem, *see* ATTORNEYS.

ELECTORS.

I. Qualification of, *see* ELECTION LAW.

EMBEZZLEMENT—*See* CRIMINAL LAW.

EMPHYTEUSIS—*See* RENT.

EMPIÉTEMENT—*See* BOUNDARIES.

EMPLOYERS AND EMPLOYEES—*See* MASTER AND SERVANT.

EMPLOYMENT.

I. Of Wife's Money by Husband, *see* MARRIAGE CONTRACTS.

* Reversing S. C. *See* I. Dig. p. 467, Art. 88, per Ritchie, J. A clergyman has no right in the pulpit or out, by threatening any damage, temporal or spiritual, to restrain the liberty of a voter, so as to compel him to vote or abstain from voting otherwise than as he freely wills.

† Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens the infliction by himself or by or through any other person of any injury, damage, harm or loss of employment, or in any manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election; and every person who by abduction, duress or any fraudulent device or contrivance impedes, prevents or otherwise interferes with the free exercise of the franchise of any elector, or thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at any election, shall be deemed to be guilty of the offence of "undue influence," and shall be punishable accordingly by a penalty of two hundred dollars, or imprisonment for six months in default of payment.

ENCROACHMENT—*See* BOUNDARIES.

ENDORSER.

I. Of Composition Notes, *see* INSOLVENCY, Composition Notes.

ENDORSEMENT.

I. Of Payments on Note, etc., *see* PRESCRIPTION.
II. Of Note, etc., *see* BILLS, etc.

ENFANTS.

I. Interpretation of Term, *see* WILLS.

ENJOYMENT—*See* POSSESSION.

ENQUETE—*See* PROCEDURE.

ENTAIL—*See* SUBSTITUTION.

ENTRIES.

I. In Merchant's Ledger, *see* EVIDENCE.

EQUITIES.

I. On Bills and Notes, *see* BILLS OF EXCHANGE, ETC.

ERASURES—*See* PROCEDURE.

ERECTION OF PARISHES—*See* PARISHES.

ERROR—*See* CRIMINAL LAW.

I. In Receipt may be Proved by Witnesses, *see* RECEIPT.

II. Principal Bound by Error in Transmission of Telegram to Agent, *see* INSURANCE.

III. Writ of.

138. Motion on behalf of prisoner that the original bill of indictment be sent up with writ of error—*Held*, unnecessary. *Ling* v. *The Queen*, 2 L. N. 409, Q. B. 1879; 32 & 33 Vic. cap. 29, sec. 77.

ERRORS.

I. In Cadastre, *see* SEIGNIORIAL RIGHTS.
II. In Deeds, *see* DEEDS.
III. In Judgments, *see* JUDGMENTS.
IV. In Warrant of Arrest for Extradition, *see* EXTRADITION.

ERROR AND APPEAL—*See* APPEAL, CRIMINAL LAW.

ESQUIRE.

I. Description of Party by Title of, *see* PROCEDURE.

ESTATE.

I. Of Insolvent, *see* INSOLVENCY.

EVICTION—*See* SALE.

I. Pleading fear of, *see* PLEADING.

EVIDENCE.

I. Adduced without Objection at Trial cannot afterwards be Rejected.
II. Admissibility of.
III. Admissions.
IV. Burden of Proof.
V. By
Entries in Merchants Books.
Interrogatories Pro Confessis.
VI. Commencement of Proof in Writing.
VII. Decisory Oath.
VIII. Documentary.
IX. In Actions Exparte.
X. In Criminal Cases.
XI. In Maritime Cases.
XII. Judicial Notice.
XIII. Oath of Master, *see* MASTER AND SERVANT.
XIV. Of
Agency at Elections, *see* ELECTION LAW.
Attorney of Record.
Bailiff.
Character of Plaintiff may be Admitted in Action of Damages for Malicious Prosecution, *see* DAMAGES.
Civil Status, *see* CIVIL STATUS.
Consorts.
Debt.
Donation.
Endorser.
Master in Action for Wages may be Contradicted by Witnesses, *see* MASTER AND SERVANT.
Theft at Hotel.
XV. Parole.
XVI. Privileged Communications.

XVII. Proof of Death.
XVIII. Proof of Title.
XIX. Secondary.
XX. Serment Supplétoire.
XXI. Statute of Frauds.
XXII. Value of Preliminary Affidavits.

I. Adduced without Objection at Trial cannot afterwards be Rejected.

139. Action for demurrage, founded on a charter party executed at Newcastle, between the plaintiff, owner of the ship *James Dall*, and the Brockville Gas Co. of Ontario. The charter party, after mentioning the number of lying days to be allowed for the discharge of the cargo, said, "the merchant to have the option of keeping the vessel ten days on demurrage, over and above the said lying days, at six pounds per day," and the bill of lading stipulated that the assignees thereof should pay freight for the goods therein mentioned, and "all other conditions as per charty party." At the argument defendants contended that there was no legal proof of the charter party, which was evidenced only by a paper purporting to be a copy, while the non-production of the original was wholly unaccounted for—*Held*, that as no objection had been raised to the evidence when adduced, that none could be raised at the argument. *Thwaites* v. *Coulthurst*, 3 Q. L. R. 104, S. C. R. 1874.

140. The action of the plaintiff, which was dismissed in review, turned on the proof of the endorsation of a note, the signature of which was denied by respondents. Proof by comparison of signature with other signatures of defendant. This evidence, drawn from comparison of writing, was adduced without objection or protest on the part of respondent. The ordinary rule, under the English law, is that inadmissible evidence taken without objection cannot afterwards be objected to. This was held by the Court of Review at Quebec, in Thwaite v. Colthurst, Chief Justice Meredith there citing the authorities sustaining the doctrine. Question, Did the waiver in not objecting to it render it evidence upon which the court can act?—*Held*, that the rule applies to secondary evidence, and should not be carried so far as to render good, evidence which is absolutely illegal. *Paige & Ponton*, Q. B. 1877.

II. Admissibility of.

141. Under a general denial the defendant cannot be permitted to prove that the patent, for which damages are sought, was known and in use before the plaintiff's was obtained. *Baril & Dionne*, 3 L. N. 86, S. C. 1880.

III. Admissions.

142. The allegations of an election petition may be admitted by respondent, so as to cause him to lose his seat. *Langlois* v. *Valin*, 6 Q. L. R. 18, C. C. 1879.

143. In an action to set aside an assessment roll it is not necessary that the roll be produced, if the irregularities complained of can be established by the omissions of the adverse party. *Bisson & City of Montreal*, 10 R. L. 100, & 2 L. N. 341, Q. B. 1879.

144. Admissions, whether judicial or extra judicial, cannot be divided against the party making them. *Sauvé & Veronneau*, 24 L. C. J. 308, & 3 L. N. 75, Q. B. 1880.

145. In February, 1876, a writ of attachment under the Insolvent Act, 1875, was issued against F. C. and S. J. M., carrying on business as printers and publishers at Montreal, and appellant was appointed assignee to the estate of the firm, as well as to the individual estates of each partner. In March, 1876, the respondents presented a petition to the Superior Court, praying that the appellant, as assignee of C. & M., be ordered to deliver to them certain plant and machinery, which respondents claimed to be their property in virtue of a deed of sale in their favor by the insolvent C. passed before a Notary Public on the 3rd May, 1875. In their petition the respondents alleged, "That the said purchase was made by your petitioners in good faith, and that they paid for the said articles above enumerated the sum of $5000, but that the said deed erroneously states the price to have been $7,148.40." Appellant in his answer admitted the sale, but alleged that the price stated in the deed and schedule annexed was the real price of the articles sold, and that the respondents were only entitled to the goods on the payment of $2,188.40, the difference between the amount paid and the price mentioned in the deed. In order to establish that the amount mentioned in the deed had not been paid, appellants had to rely on the answers of respondents—*Held*, that the appellant could not divide the respondent's answer in order to avail himself of what was favorable and reject what was unfavorable, and judgment of court below confirmed. *Fulton & McNamee*, 2 S. C. Rep. 470, Su. Ct. 1878.

146. The appellant was sued for $105, money lent. On being examined as a witness he admitted he had borrowed $100. On cross-examination, however, he stated that he had since returned the money, and at the time the action was instituted owed defendant nothing. On re-examination he said the amount was included in a larger amount paid to a third person—*Held*, that as he had not told the same story throughout, that his admissions were divisible. *Cotnoir & Parenteau*, 3 L. N., Q. B. 1880.

147. Admissions in answer to interrogatories *sur faits et articles* cannot as a rule be divided. *O'Brien & Molson*, 2 L. N. 310; & *Christin & Valois*, 3 L. N. 59, Q. B. 1879.

148. Judicial admissions cannot be divided against the party making them. *O'Brien* v. *Molson*, 21 L. C. J. 287, S. C. 1877; 1243 C. C.; & *O'Brien & Thomas*, 24 L. C. J. 43, Q. B. 1879.

149. The *aveu* of a party to a cause cannot be divided against him. *McNichols & Badeau & Canada Guarantee Co.*, 3 L. N. 133, S. C. 1880; & *Johnson & Longtin*, 3 L. N. 86, & 24 L. C. J. 292, C. C. 1880.

IV. Burden of Proof.

150. Where a farmer brings action against a neighbor for damage caused by a fire which existed in the neighbor's clearing—*Held*, that it is for the plaintiff to prove that the fire was started by the defendant, or by some one for whom he is responsible. *Turcotte & Rioux*, 9 R. L. 363, Q. B. 1876.

151. Where to an action on a promissory note the defendant pleads that the stamps on the note were not placed there at the time the note bears date, and files an affidavit to that effect, the burden of proof is still on the defendant to show that that was the case. *National Insurance Co.* v. *St. Cyr*, 5 Q. L. R. 258, S. C. 1877.

152. On a petition to quash a capias—*Held*, that it was for the defendants to show that the allegations of the affidavit were false. *McNamee* v. *Jones*, 3 L. N. 371, S. C. R. 1880.

153. Action by a depositor against the bank for a balance of deposit. Plea, that the balance sued for had been withdrawn by cheque of plaintiff. Plaintiff denied the cheque which was filed—*Held*, reversing court below,* that the burden of proof was on the bank to show that he had signed it. *Clarke & Exchange Bank*, 3 L. N. 45, Q. B. 1880.

V. By.

154. *Entries in Merchants' Books.*—In an action against executors to account—*Held*, that entries in merchants' books regularly kept and unchanged during a term of years, with an annual rendering of accounts conforming to such entries to creditors, make proof against such merchants, particularly after the death of the creditors. *Darling & Brown*, 21 L. C. J. 169 & 2 S. C. Rep. 26, Su. Ct. 1877.

155. *Interrogatories Pro confessis.*—The plaintiff claimed $5000 damages for verbal slander. The defendant was a foreigner, and during the pendency of the case left the Province. The only proof the plaintiff had then of this case was by serving interrogatories, and having them taken *pro confessis*. Case proved but not entitled to so much favor as if proved otherwise. Damages $11 and costs. *Fortin & Say*, 3 L. N. 331, S. C. 1880.

VI. Commencement of Proof in Writing.

156. The only point in this case was whether there was sufficient evidence in the defendant's admissions and letters to let in parol testimony. *Per Curiam*—I have already intimated my opinion that the relation of vendor and vendee being once established, the evidence of C. and the other witnesses is to be looked at to see the terms of this contract, and whether it has been fulfilled or not, and whether the plaintiff has proved damages. *Barron & Coultry*, S. C. 1877.

157. The answer of a party examined on *faits et articles* cannot be divided so as to obtain a *commencement de preuve* sufficient to let in parole evidence. *Christin & Valois*, 3 L. N 59, & *Sauvé & Veronneau*, 3 L. N. 75, & 24 L. C. J. 308, Q. B. 1880.

158. The action set up a verbal sale of land, which the defendant himself had recently purchased for $1400 cash, and asked that in default of defendant passing a title to him, plaintiff, that

* 2 L. N. 124.

judgment go in place of it. Defendant denied the sale, and said that there had only been some conversations on the subject, not by him but by another. Plaintiff produced two letters, one bearing the signature of defendant, the other that of his advocate, but both written by the defendant himself, who, when examined as a witness, admitted them, but swore that the proposition to the plaintiff and the conversations with him were in the name of the other person referred to and on his behalf. Plaintiff admitted that the deposition of the defendant taken alone could not be a commencement of proof in writing, but contended that the contradictions between it and his plea, aided by the two letters, made a commencement of proof sufficient to admit verbal evidence—*Held*, that there was no sufficient commencement of proof. Action dismissed. *Anctil* v. *Dechene*, 6 Q. L. R. 318, S. C. R. 1880.

VII. Decisory Oath.

159. An acknowledgment sufficient to interrupt prescription, in an action in which the amount demanded exceeds $50, cannot be proved by the oath of the party to be charged either affirmatively given or negatively taken *pro confessis* on default. *Fuchs* v. *Legaré*, 3 Q. L. R. 11, C. C. 1876.

VIII. Documentary.*

* Act to amend the law respecting documentary evidence in certain cases.

Assented to 21st March, 1881. Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada enacts as follows:

1. *Prima facie* evidence of any proclamation, order, regulation or appointment, made or issued before or after the passing of this Act by the Governor General or by the Governor in Council, also of any proclamation, order or regulation or appointment, made or issued before or after the passing of this Act, by or under the authority of any minister or head of any Department of the Government of Canada, may be given in all Courts of Justice established by the Parliament of Canada, and in all legal proceedings whatsoever, civil or criminal, over which the Parliament of Canada has legislative authority, in all or any of the modes hereinafter mentioned, that is to say:

1. By production of the *Canada Gazette* purporting to contain a notice of such proclamation, order, regulation or appointment.

2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Queen's printer for Canada.

3. By the production in the case of any proclamation, order or regulation, issued by the Governor General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk or assistant or acting clerk of the Queen's Privy Council for Canada; and in the case of any proclamation, order, regulation or appointment, made or issued by or under the authority of any such minister or head of a Department, by the production of a copy or extract purporting to be certified as true by the minister or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides.

2. *Prima facie* evidence of any proclamation, order, regulation or appointment, made or issued before or after the passing of this Act by a Lieutenant Governor of any Province in Canada, or by his Executive Council, being the head of any Department of the Provincial Government of the Province, may be given in all Courts of Justice established by the Parliament of Canada, and in all legal proceedings whatsoever, civil or criminal, over which the Parliament of Canada has legislative authority, in all or any of the modes hereinafter mentioned, that is to say:

1. By the production of a copy of the official *Gazette* for the Province, purporting to contain a notice of such proclamation, order, regulation or appointment.

2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Government printer for the Province.

3. By the production of a copy or extract of such proclamation, order, regulation or appointment certified to be true by the clerk or assistant or acting clerk of the Executive Council, or by the head of any Department of a Provincial Government, or by his deputy or acting deputy as the case may be.

3 No proof shall be required of the handwriting or official position of any person certifying in pursuance of this Act to the truth of any copy of or extract from any proclamation, order, regulation or appointment, and any copy or extract may be in print or in writing, or partly in print and partly in writing.

4. If any person,

1. Prints any proclamation, order, regulation or appointment or notice thereof, and causes the same falsely to purport to have been printed by the Queen's printer or the Government printer for any Province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; —or,

2. Forges or tenders in evidence, knowing the same to have been forged, any certificate authorized to be made or given by this Act, or by any Act of Parliament, or by any Act of a Provincial Legislature, for the purpose of certifying or verifying any copy or extract of any proclamation, order, regulation, appointment, paper, document or writing of which a certified copy may lawfully be offered as *prima facie* evidence he shall be guilty of felony, and shall in conviction be liable to be imprisoned in the Penitentiary for five years, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years.

5. The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute or existing at common law.

6. This Act may be cited as "The Documentary Evidence Act, Canada, 1881."

* Acte a l'effet d'amender la loi de la preuve dans les causes criminelles, quant a la maniere de prendre et faire servir les depositions de personnes qui ne peuvent assister au proces.

Sanctionné le 7 mai 1880.

Considérant qu'il peut arriver qu'une personne dangereusement malade et incapable de voyager soit en mesure de fournir des renseignements essentiels et importants au sujet d'une offense poursuivable par voie d'acte d'accusation, ou d'une personne qui en est accusée, et qu'il est désirable dans l'intérêt de la vérité et de la justice que l'on prouve les moyens de perpétuer ce témoignage et de s'en servir si la personne qui l'a donné vient à mourir.

A ces causes Sa Majesté par et de l'avis et du consentement du Sénat et de la Chambre des Communes du Canada, decrète ce qui suit:

1 Chaque fois que l'on démontrera, à l'instance de la Couronne ou du prévenu ou défendeur à la satisfaction d'un juge de toute Cour de juridiction criminelle compétente en Canada, qu'une personne dangereusement malade et qui dans l'opinion d'un médecin pratiquant, licencié, ne relèvera probablement de cette maladie, et en mesure de donner et consent à donner quelque renseignement essentiel au sujet de quelque offense poursuivable par voie d'acte d'accusation, ou au sujet de quelque personne prévenue de quelque offense de cette nature, il sera loisible au dit juge par ordonnance signée de sa main de nommer un commissaire pour prendre par écrit la déposition sous serment ou affirmation de la personne malade; et ce commissaire prendra cette déposition et la signera et y ajoutera les noms des personnes présentes (s'il y en a) lorsqu'elle a été prise, et si cette déposition a trait à quelque offense poursuivable par voie d'acte d'accusation pour laquelle quelque personne prévenue de cette offense est déjà emprisonnée, ou à fournir caution pour sa comparution au procès, il la transmettra avec les

IX. In Actions Exparte.

160. In an action founded upon a detailed account the court cannot give judgment in favor of the plaintiff without any other evidence than that of the plaintiff himself. *Plante* v. *Carrier*, 5 Q. L. R. 351, S. C. 1879.

X. In Criminal Cases.*

* 2. By the production of a copy of such proclamation, order, regulation or appointment purporting to be printed by the Government printer for the Province.

3. By the production of a copy or extract of such proclamation, order, regulation or appointment certified to be true by the clerk or assistant or acting clerk of the Executive Council, or by the head of any Department of a Provincial Government, or by his deputy or acting deputy as the case may be.

3 No proof shall be required of the handwriting or official position of any person certifying in pursuance of this Act to the truth of any copy of or extract from any proclamation, order, regulation or appointment, and any copy or extract may be in print or in writing, or partly in print and partly in writing.

4. If any person,

1. Prints any proclamation, order, regulation or appointment or notice thereof, and causes the same falsely to purport to have been printed by the Queen's printer or the Government printer for any Province of Canada, as the case may be, or tenders in evidence any copy of any proclamation, order, regulation or appointment which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; —or,

2. Forges or tenders in evidence, knowing the same to have been forged, any certificate authorized to be made or given by this Act, or by any Act of Parliament, or by any Act of a Provincial Legislature, for the purpose of certifying or verifying any copy or extract of any proclamation, order, regulation, appointment, paper, document or writing of which a certified copy may lawfully be offered as *prima facie* evidence he shall be guilty of felony, and shall in conviction be liable to be imprisoned in the Penitentiary for five years, or for any term not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years.

5. The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any existing statute or existing at common law.

6. This Act may be cited as "The Documentary Evidence Act, Canada, 1881."

161. Where the prisoner, a clerk and assistant to a country postmaster, was indicted for stealing a registered letter and forging the name of the person to whom it was addressed, and also for embezzling from his employer, and it was sought by the evidence of the postmaster to prove a confession of the prisoner made after the witness had intimated to him that he had better confess—*Held*, that notwithstanding the conversation begun about the embezzlement, that evidence of the confession could not be received on the other indictments. *Regina & Wyllie*, 3 L. N. 139, Q. B. 1880.

162. And in the same case, a new witness having been discovered after the retirement of the jury, whose evidence would, if true, be conclusive of the prisoner's innocence of the theft and forgery, application was made that the jury be recalled and the evidence submitted to them —*Held*, that the application could not be granted, but that the remedy would be the discharge of the jury at the instance of the Crown with the prisoner's consent. *Ib.*

XI. In Maritime Cases.

163. The court will not receive as evidence depositions of persons professing to be skilled in nautical affairs as to their opinion in any case. "*Attila*," *The*, 5 Q. L. R. 340, V. A. C. 1879.

XII. Judicial Notice.

164. The judges of the Superior Court are held to take notice and to know the localities in which the Commissioners Courts are situated, inasmuch as the establishment of these courts is published in the "*Quebec Official Gazette*." *Dubois & Fauteux*, 7 R. L. 430, S. C. 1875.

165. Where, in a case to which the attorney general was a party, a change of attorney general took place *pendente lite*, and motion was made that proceedings be stayed until the new attorney general should take up the instance, the motion was granted, the court holding that it would take official notice of the fact published in the Quebec *Gazette*, that the opposant *pro regina* had ceased to be attorney general. *Simms* v. *The Quebec, Montreal, Ottawa & Occidental Railway Co. & Angers, Attorney General*, 1 L. N. 151, & 22 L. C. J. 20, S. C. 1878.

XIII. Oath of Master.

166. Art. 1669 of the Civil Code* concerning the oath of the master does not apply to an action for wages by a boy employed as carter. *Denis* v. *Poitras*, 3 Q. L. R. 162, S. C. 1877.

XIV. Of.

167. *Attorney of Record.*—The attorney of record, even in a non-commercial case, may be heard as a witness on behalf of his client if parole evidence be admissible. *Rev. Dames Ursulines* v. *Egan*, 6 Q. L. R. 38, C. C. 1879.

168. The evidence of the attorneys *ad litem* to be rejected whenever possible. *Molson & Carter*, 3 L. N. 258, Q. B. 1880.

169. *Bailiff.*—A bailiff who has acted in a case may be examined as a witness, provided that it is not to prove conversations or admissions made at the time of the service. *Garneau* v. *Courchêne*, 6 Q. L. R. 34, C. C. 1879.

170. *Consorts.*—Under the Quebec Act 35 Vic. cap. 6, sec. 9,† the right to examine a consort as a witness is conferred upon the adverse party only. *Lareau & Beaudry*, 22 L. C. J. 336, S. C. 1878.

171. Sec. 9 of cap. 6 of the Statute of Quebec 35 Vic., providing that where consorts are separate as to property, and one of them as agent has administered property belonging to the other, the consort who has so administered may be examined in relation to any facts connected with such administration, must be interpreted in the interests of the adverse party only. *Fourquin & McGreevy*, 9 R. L. 383, S. C. 1877.

172. *Debt.*—Action by respondent to recover a first instalment of $3,000, on an obligation to pay $18,000, as being a claim against the North Shore Railway Co., of which appellant was contractor. The respondent was to obtain a resolution from the directors of the company acknowledging the debt. By his action he ordered that the appellant had rendered it impossible for him to obtain this resolution, inasmuch as he had abandoned his contract with the company, which had ceased to exist, the Provincial Government having assumed the line, and made a new contract with appellant, by which the latter was to pay all the debts of

---

dits ajoutés à l'officier compétent de la Cour devant laquelle doit avoir lieu le procès de la personne prévenue ainsi emprisonnée ou ayant fourni caution; et dans tous les cas, il la transmettra au greffier de la paix du comté, de la division, ou de la cité où il aura pris cette déposition lequel est par le présent requis de la conserver et déposer dans les archives et sur l'ordre de la Cour ou d'un juge, de la transmettre à l'officier compétent de la Cour dans laquelle elle devra servir de preuve: si ensuite lors du procès du prévenu ou de l'offense à laquelle a trait cette déposition, il est prouvé que la personne qui l'a faite est morte ou s'il est prouvé qu'il n'y a aucune probabilité raisonnable que cette personne soit jamais en état d'assister au procès pour y rendre témoignage à charge ou à décharge de l'accusé, sans plus ample preuve de son authenticité que l'apparente signature du Commissaire, par ou devant lequel elle paraîtra avoir été prise; et sur production de l'ordonnance du juge nommant ce Commissaire, et pourvu qu'il soit prouvé à la satisfaction de la Cour qu'avis raisonnable de l'intention de prendre cette déposition a été signifié à la personne (qu'elle soit poursuivante ou accusée) contre laquelle on se proposera de la lire comme preuve et de cette personne ou son conseil ou procureur, a eu ou aura pu avoir si elle eût voulu y assister, toute liberté de faire subir un contre interrogatoire à la personne qui l'a faite.

2. Lorsqu'un prisonnier en état d'arrestation aura signifié un avis ou reçu signification d'un avis de l'intention de prendre quelque déposition, telle que ci-dessus mentionnée, le juge qui aura nommé le Commissaire tel que mentionné dans la section précédente, pourra par un ordre écrit, ordonner au geôlier ayant la garde du prisonnier de le conduire à l'endroit désigné dans le dit avis, afin qu'il soit présent à la déposition; et ce geôlier y conduit a le prisonnier en conséquence, et les frais de ce transp rt seront payés à même les fonds affectés aux autres dépenses de la prison d'où le prisonnier aura été conduit.

3. Tout juge d'une Cour Supérieure de droit et les juges des Cours de comtés exerçant juridiction criminelle auront le droit de décerner tout ordre, que ce soit en vertu des sections précédentes du présent acte.

---

*In any action for wages by domestics or farm servants in the absence of written proof the master may offer his oath as to the conditions of the engagements, and as to the fact of payment, accompanied by a detailed statement.

If the oath be not offered by the master it may be deferred to him, and is of a decisory nature as regards the subjects to which it is limited.

† See I. Digest, p. 494, Note.

the extinguished company—*Held*, that without proof of the debt respondent could not recover. *McGreevy & Vanasse*, 4 Q. L. R. 55, & 1 L. N. 32, Q. B. 1877.

173. *Donation.*—A writing is not necessary to establish a donation for public uses, where the public have been in actual possession for a number of years. *Guy & City of Montreal*, 3 L. N. 402, Q. B. 1880.

174. *Endorser.*—In an action on a note, the evidence of an endorser not sued was offered to prove that the signature of appellant, another endorser, was genuine. Evidence refused, and action dismissed, but *held* in appeal, that the evidence was perfectly good. *McLeod & The Townships Bank*, 2 L. N. 239, Q. B. 1879.

175. *Theft at Hotel.*—The evidence of a traveller is sufficient to establish not only the value, but the fact that things have been stolen from his room at a hotel. *Grannis & Geriken*, 21 L. C. J. 265, Q. B. 1876.

XV. Parole.

176. In an action against a principal on a power of attorney, parole evidence is not admissible to show that the agent was authorized to do more than was expressed in the written instrument. *Serré dit St. Jean et vir & Metropolitan Bank*, 21 L. C. J. 207, S. C. 1876.

177. In an action on a policy of marine insurance, the plaintiff wished to prove a conversation between himself and the agent of the defendants, when the policy in question was applied for, the object of proving that conversation being to show the meaning which the parties themselves attached to the words "the vessel to go out in tow"—*Held*, that although ambiguous terms in a written instrument may be explained by parole evidence of a usage, they cannot be explained by parole evidence of a conversation which took place when the contract was made. *Connolly* v. *Provincial Insurance Co.*, 3 Q. L. R. 6, S. C. 1876

178. On an action for calls on stock to which misrepresentation was pleaded—*Held*, that verbal evidence could not be received to contradict the written consent of the party. *National Insurance Co.* v. *Chevrier*, 1 L. N. 591, S. C. 1878.

179. Under Art. 1690 C. C.,* a builder cannot make proof, either by parole evidence or the oath of defendant, of the making or furnishing of extras in a contract for the erection of a building. *Beckham* v. *Farmer*, 21 L. C. J. 164, S. C. 1877.

180. Parole evidence of a compromise cannot be admitted for the purpose of proving interruption of peremption. *Phaneuf* v. *Cochrane*, 22 L. C. J. 106, S. C. 1877.

181. In an action in which the defendant had occasion to set up a certain lease, and the plaintiff wished to disparage it, the defendant himself was called as a witness, and was asked if he had not executed the lease in question in order to give the lessee (the plaintiff) the right to vote at an election then imminent—*Held*, that the question would be allowed, seeing that it was the party himself interrogated. *Bonin* v. *Bonin*, 9 R. L. 372, S. C. 1877.

182. Parole evidence will be admitted to show that a promissory note was not paid, although the debtor has the note in his hands. *Grenier* v. *Pothier*, 3 Q. L. R. 377, Q. B. 1877.

183. A guarantee by the agents of a joint stock company, to take payment of a subscription of shares in merchandize, cannot be proved by parole. *Compagnie de Navigation Union* v *Christin & Valois*, 2 L. N. 27, S. C. 1878.

184. Parole evidence may be admitted to prove the value of an architect's services. *Roy* v. *Huot*, 2 L. N. 347, S. C. 1879.

185. Plaintiff sued hypothecarily for $37, balance due upon a notarial obligation for $72—*Held*, that payment could be proved by parole evidence. *Massé* v. *Coté*, 5 Q. L. R. 145, S. C. 1879.

186. In a suit between rate-payers and school commissioners to set aside a sale of land for school taxes, the fact that the ratepayers are dissentients, and the organization of a Corporation of dissentient school trustees may be proved by verbal testimony, where it is evident by receipts for school taxes granted by such dissentient Corporation in favor of said ratepayers during a series of years and by other circumstances, that such a Corporation has *de facto* existed, and claimed payment of school taxes in that capacity during many years. *School Commissioners of Roxton & Boston*, 3 L. N. 20, & 24 L. C. J. 122, Q. B. 1879.

187. The respondent, a broker, sued appellant for $695 62, the alleged amount of loss on a purchase and resale of 500 tierces of lard, made as respondent alleged on an order given him by appellant, who afterwards refused to accept, and respondent was obliged to re-sell at a loss, which, with his commission, amounted to the sum claimed. At the trial appellant acknowledged taking the order, but alleged that it had been executed after the time limited, and contrary to his instructions in other respects. Respondent's son was then called to prove the purchase of the lard, and that appellant had expressed himself satisfied with it and promised to settle—*Held*, overruling the decision of the Superior Court, that verbal testimony of the purchase of the lard could not be received so as to bind the principal to the agent, nor could the brokers note avail for that purpose. *Trenholme & McLennan*, 3 L. N. 35, & 24 L. C. J. 305, Q. B. 1879.

188. Action by the *cessionnaire* of a builder against the representatives of a person deceased for work done for him. The defendants pleaded prescription, and the plaintiffs answered by alleging an interruption of the prescription by an acknowledgment which the deceased had made. This acknowledgment was proved only by the verbal testimony of one who had been agent and subsequently testamentary executor of deceased—*Held*, that his evidence after he had ceased to be agent and executor could not be received. *Pinsonneault & Desjardins*, 3 L. N. 29, & 24 L. C. J. 100, Q. B. 1879.

---

* When an architect or builder undertakes the construction of a building or other works by contract upon a plan and specifications at a fixed price, he cannot claim any additional sum, upon the ground of a change from the plan and specifications, or of an increase in the labor and materials, unless such change or increase is authorized in writing, and the price of them is agreed upon with the proprietor.

189. The engagement by a railway company of a civil engineer for the construction of the railway is a commercial matter, and may be proved by verbal testimony. *Legge & Laurentian Railway Co.*, 3 L. N. 23, & 24 L. C. J. 98, Q. B. 1879.

190. Parole evidence is not admissible to prove that a subscription of stock in a company was conditional when the writing contains on the face of it an absolute promise. *Wilson* v. *La Société de Construction de Soulanges & Divers garnishees*, 3 L. N. 79, S. C. 1880.

191. In an action against the transferor of a claim with guarantee—*Held*, that the property of the debtor should have been first discussed, as the insolvability of the debtor could not be proved by witnesses. *Labelle & Sayer*, 10 R. L. 545, S. C. R. 1880.

192. Payments of a sum exceeding fifty dollars, as the total arrears of interest on two obligations, and the creditor's acknowledgment to that effect, cannot be proved by verbal testimony. *Montchamps & Perras*, 3 L. N. 339, S. C. 1880.

193. The plaintiff placed a horse with defendant to pasture, and while there a person who had been in the employ of plaintiff came and representing that he had authority from plaintiff, took it away and ran off to the States. Defendant being examined acknowledged the depot, but set up these facts as exempting him from liability—*Held*, that as it was not a commercial case, neither the depot nor the restitution could be proved by witnesses, and the answer of the defendant could not be divided against him. *Johnson & Longtin*, 3 L. N. 86, & 24 L. C. J. 292, C. C. 1880.

XVI. Privileged Communications.

194. During the trial of a controverted election petition, a witness, a farmer of the village of Berthier, was asked the following question—"*Pendant cette election avant la rotation vous "êtes-vous présenté pour vous confesser au "Reverend Messire J. B. C., prêtre curé de la "Ville de Berthier, et pour quelle raison a-t-il "refusé de vous confesser.*"—*Held*, on objection, that what passed at the confessional between the witness and his *curé* was privileged, and proof of it could not be permitted. *Massé & Robillard*, 10 R. L. 527, S. C. 1880.

XVII. Proof of Death.

195. In an action for an account of a community commenced between the grandmother of plaintiff and the defendant, her second husband, in which it was necessary for the plaintiff to prove the death of the first husband, her grandfather, who was drowned in an uninhabited part of the Province, where there were no priests or ministers, magistrates or coroner, and no registers of civil status—*Held*, that proof by witnesses was sufficient. *Cutting & Jordan*, 10 R. L. 401, Q. B. 1879.

196. An affidavit of the death of a person out of Lower Canada purporting to be sworn before a foreign notary does not make proof of its contents. *Quinn & Dumas*, 23 L. C. J. 182, Q. B. 1874.

XVIII. Proof of Title.

197. In an action *negatoire* the plaintiff is not bound to prove the registration of the will under which he claims. *Tetu & Gibb*, 10 R. L. 483, Q. B. 1880.

XIX. Secondary.

198. Prisoner was accused of having set fire to his workshop, which was insured for $400 in the Citizens Fire Insurance Co. of Montreal. The only proof against him was his confession to three witnesses. The agent of the company was put in the box to prove the insurance and produced a memorandum of the policy, the original policy having after the claim was paid been sent to the head office of the company in Montreal—*Held*, that no secondary proof of the contents of an insurance policy will be allowed when the original policy itself, though deposited in another district, could have been obtained. *Regina* v. *Bourassa*, 3 Q. L. R. 359, Q. B. 1877.

XX. Serment Suppletoire.

199. In an action against a husband separate as to property from his wife, defendant pleaded that he should have been credited with a payment of $90 which he had made, but which had been credited to an account of his wife's previous to her marriage. There being no evidence but that of the defendant himself as to the particulars of this payment the *serment suppletoire* was deferred to the plaintiff. *Oakes et al.* v. *Clements*, 2 L. N. 271, S. C. 1879.

200. On the contestation of an opposition to the seizure and sale of household furniture, bought by the wife of the defendant, the opposant brought evidence of her ownership of all the things seized, with the exception of three or four articles. Concerning these the official oath (*serment judicaire*) was submitted by the court, and the contestants appealed on the ground, that as there was no proof concerning these things on which to base the official oath, that it was improperly taken—*Held*, that the oath was properly submitted, and judgment confirmed. *May & L'heureux*, 3 L. N. 110, Q. B. 1880.

XXI. Statute of Frauds.

201. A sale by an agent in a matter over $50 cannot be proved without a memorandum in writing, so as to defeat the right of the principal to recover the subject matter of the sale. *Lynn & Nivin*, 23 L. C. J. 235, Q. B. 1874.

XXII. Value of Preliminary Affidavits.

202. Affidavits to procure revendication, capias or attachment are completely exhausted by the issue of the writ, and are of no value as proof in the case. *Crehen* v. *Hagerty*, 3 Q. L. R. 322, S. C. 1877.

EXCEPTION DILATOIRE, Costs of *See* COSTS.

EXCEPTION DECLINATOIRE—*See* PROCEDURE.

EXCEPTION TO THE FORM—*See* PROCEDURE.

EXCHEQUER COURT.

I. Security for Costs in, *see* COSTS.

EXECUTION.

I. Against Lands.
II. Against Railways.
III. Appointment of Guardian.
IV. Damages for Illegally Proceeding with.
V. Exemptions.
VI. For more than is Due, *see* OPPOSITION.
VII. Not stopped by Appeal.
VIII. Of Bank Shares.
IX. Of Judgments.
Against universal legatee.
Ordering an account.
Which have been settled.
X. Removal of Effects.
XI. Second Seizure.
XII. Writ Lapsed by Delay.

I. Against Lands.

203. In a suit for $45, dismissed with costs, a writ of *fieri facias de terris* may issue from the non-appealable side of the Circuit Court against the plaintiff's lands to satisfy the defendant's costs taxed at a sum exceeding $40. *Moore* v. *Keane*, 6 Q. L. R. 378, S. C. R. 1880.

204. And in a case of $500 dismissed, in which the defendant's costs were taxed at an amount exceeding $40, the same order was made by the Court of Review at Montreal. *Charbonneau* v. *Charbonneau*, 6 Q. L. R. 383, S. C. R. 1880.

II. Against Railways.

205. Railways may be seized and sold like other property in execution of a judgment. *Corporation of the County of Drummond & South Eastern Counties Railway*, 3 L. N. 2, & 24 L. C. J. 276, Q. B. 1879.

III. Appointment of Guardian.

206. A seizure in execution is not invalidated by the appointment of a minor as guardian. *Coté* v. *Jacob*, 3 Q. L. R. 5, C. C. 1876.

IV. Damages for Illegally Proceeding with.

207. No damages will be allowed for disregarding an opposition where the opposition was false and frivolous. *Guertin* v. *Nolan*, 3 L. N. 182, S. C. 1880.

V. Exemptions from.

208. Notwithstanding the terms of the Act Q. 38 Vic. cap. 12*, the salaries of employees and officers of the Federal Government are exempt from seizure, the local Legislature having no power over them. *Evans* v. *Hudon & Browne*, 22 L. C. J. 268, S. C. 1877.

209. The goods and effects of Noel Dion, one of the defendants, were seized under a writ of execution, and on the day of sale he produced and filed an opposition on the ground that he had occupied, since the month of March, 1874, as a settler in good faith and with the permission of the Crown and in virtue of legal titles, lots Nos. 8 and 9, situated in range B of the Township of Wotton; that he so occupied the said lots at the time of the seizure and still so occupied them; and that in virtue of 31 Vic. cap. 20† of the Province of Quebec the goods and effects seized in the cause were exempt from seizure, and could not be seized nor sold in virtue of any writ of execution whatever, and that therefore the execution in question was null. At the enquête the only proof made was the production by the opposant of the Crown Land Agent for the Arthabaska division, setting forth that in 1874 one Abraham Dion had asked permission of the agent to occupy lot 8 of range B in the Township of Wotton, to which the agent had answered that he had no objection; a certificate of the secretary-treasurer of the municipality of Wotton declaring that lot 8 was assessed in the name of Noel Dion since the assessment of 1875, and finally a legal permit of occupation in favor of opposant for the said lot No. 8 of range B of Wotton, signed by A. Gagnon, agent, and dated at Arthabaska, 26th April, 1877, nearly two months and a half after the seizure. Opposant admitted that he had never resided on the lot in question. The plaintiff contestant made no proof. Opposition dismissed with costs. *Vigneaux* v. *Poulbriant*, 7 R. L. 703, Mag. Ct. 1877.

---

* *Vide Supra.*

† Act to encourage settlers.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

1. From and after the passing of this Act public lands which shall be conceded or granted to *bona fide* settlers in virtue of and in conformity with the provisions of chap. 22 of the Con. Stats. of Canada, intituled, "An Act respecting the sale and the management of the public lands," and in conformity with the orders in Council and regulations arising from the said Act, shall not, except for the price of such land, be mortgaged or hypothecated by judgment or otherwise, nor seized nor sold under authority of law for any debt or debts contracted previous to the grant or concession of such lands, arts. 2034 and 2121 of the Code of Civil Procedure to the contrary notwithstanding; and further, no one shall seize or sell under authority of law for any such debt the right, title or interest of any settler in or upon any land which shall have been so conceded to him.

2. From the time of the occupation of any lot of land, and during the ten years following the issue of patents for the lands of settlers conceded and granted as aforesaid, the following chattels shall, without prejudice to art. 556 of the Code of Civil Procedure, be exempt from seizure under any writ of execution issued out of any court whatsoever in this Province, viz:

1. The bed, bedding and bedsteads in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

210. An employee of the Government at so much a day is not an employee whose salary is seizable under Q. 38 V. c. 12.* *Lepine & Gauthier*, 5 Q. L. R. 217, C. C. 1879.

3. One stove and pipes, one crane and its appendages and one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use and ten volumes of books, one axe, one saw, one gun, six traps and such fishing nets and seines as are in common use.

4. All necessary fuel, meat, fish, flour and vegetables provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for three months.

5. Two horses or two draught oxen, four cows, six sheep, four pigs, eight bundles of hay, other forage necessary for the support of these animals during the winter, and provender sufficient to fatten one pig and to maintain three during the winter.

6. Vehicles and other implements of agriculture.

7. The debtor may select from any larger number of the same kind of chattels the particular chattels to be exempt from seizure in virtue of this section. But nothing in this section contained shall exempt from seizure any of the chattels enumerated in subsections three, four, five or six of this section in payment of any debt contracted in respect of such chattels.

3. Nothing in this Act shall be held as exempting any land from the payment of or being sold for the rates or taxes which now are or in future shall be legally imposed thereon.

4. All patents which shall issue for any lands conceded or granted as hereinabove set forth, shall state the name of the person to whom such was so conceded or granted originally, and the date of such grant or concession.

5. If a settler occupy for more than five years a lot of land before the issue of a patent, the time over and above those five years shall be subtracted from the delay of ten years following the issue of the patent mentioned in section two of this Act.

6. The provisions of this Act shall apply to the widow, children and heirs of the settler as constituting his representatives.

* ACT TO RENDER LIABLE TO SEIZURE A PORTION OF THE SALARIES OF PUBLIC OFFICERS AND EMPLOYEES.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

In future the salaries due and to become due to all public servants and employees in the Province of Quebec shall be liable to seizure, in the proportions hereinafter set forth, for any debt incurred subsequently to the coming into force of this Act, notwithstanding any provision to the contrary contained in Arts. 558 and 628 of the Code of Civil Procedure of Lower Canada.

2. The portions of such salaries liable to seizure shall be:

1. A fifth of every monthly salary not exceeding one thousand dollars per annum.

2. A fourth of every monthly salary exceeding one thousand dollars but not exceeding two thousand dollars per annum.

3. A third of every monthly salary exceeding two thousand dollars per annum.

3. The seizure of each such portion of the said salaries shall be made and adjudicated upon in the manner usual in relation to attachments by garnishment after judgment before any competent court.

4. A copy of the writ of attachment shall be served upon and left with the head or deputy head of the department or office in which the public servant or employee defendant is employed and paid. The bailiff or seizing officer must endorse on such copy a declaration of the day of service, and affix his signature at the foot of such declaration.

5. The head or deputy head of the department or office in which the salary attached by garnishment is paid in lieu of making a declaration under oath shall make a report to the court under his signature, establishing the amount of the salary due at the time of the service of the writ of attachment, and the amount of the salary to become due each month, if such servant or employee continues his employment under the same conditions.

6. Notwithstanding what precedes it shall be lawful for any creditor of any public servant or employee, before entering an attachment or issuing a writ of attachment by garnishment, to produce a sworn statement of his debt or a copy of judgment at the office or department in which such public servant or employee receives his salary. If such public servant or employee acknowledges himself to be indebted in the sum demanded, and in writing authorizes the payment thereof out of the portion of his salary liable, the head or deputy head of such office or department shall pay the creditor according to such authorization at each period of payment of salaries. If several creditors present themselves at the same time they shall be paid concurrently in proportion to their claims.

7. Nothing in the preceding section shall have the effect of preventing the attachment by garnishment of the part of the salary liable to seizure under section one of this Act, and in the event of such attachment the authorization given under the preceding section shall become null and of no effect.

211. On an opposition based on a clause in a will by which the property seized was declared to be exempt from seizure—*Held*, that as the judgment was for money advanced to pay the debts of the testatrix herself, and as she had no power to prevent the property of her succession from being liable for her debts, that the opposition must be dismissed. *Ontario Bank* v. *Lionais & Papineau*, 1 L. N. 279, S. C. 1878.

212. Under the Indian Act of 1876, 39 Vic. cap. 18,* the moveable effects of Indians are exempt from seizure, and the fact that an Indian is a trader and trades with whites does not render his effects liable to seizure. *Lepage & Watzo*, 22 L. C. J. 97, & 8 R. L. 596, & 1 L. N. 322, & 4 Q. L. R. 81, C. C. 1878; & *Haming & Turcotte*; 8 R. L. 708, & *Durand & Lioni*, 4 Q. L. R. 93, C. C. 1878.

213. Where, by a clause in a lease, all the furniture without exception is made liable for the rent, the lessee cannot invoke the exemption set out in Art 556 et seq. of the Code of Procedure. *Robitaille & Bolduc*, 4 Q. L. R. 179, C. C. 1878.

214. Pensions granted to infirm pilots in virtue of 45 Geo. III. cap. 12, sec. 11; and 12 Vic. cap. 14, sec. 61, are exempt from seizure in execution. *Shaw & Bourget, & Corporation of Pilots*, 4 Q. L. R. 181, C. C. 1878.

215. The plaintiff having a judgment against the defendant, seized a balance due him on a contract with the Government in the hands of the Minister of Public Works. The defendant opposed, on the ground, among others, of exemption from seizure, and the opposition was maintained. *Gingras* v. *Vézina*, 5 Q. L. R. C. 237, C. 1879.

216. In action for rent with *saisie gagerie* —*Held*, that the proprietor of a stove, a bedstead and a table, even though these constituted his only property, could not prevent their seizure and sale for rent in the hands of another, and that the exemption of such things established by law is only in favor of the defendant. *Bélanger* v. *Roy & Dorion*, 10 R. L. 19, S. C. 1879; 566 C. C.

VII. NOT STOPPED BY APPEAL.

217. The issue and service of a writ of appeal does not stay execution unless security be given,

* No presents given to Indians or non-treaty Indians, nor any property purchased or acquired with or by means of any annuities granted to Indians, or any part thereof or otherwise howsoever, and in the possession of any band of such Indians or of any Indian of any band or irregular band, shall be liable to be taken, levied or distrained for any debt, matter or cause whatsoever. Sec. 69.

and an opposition founded on the issue and service of such writ without security will be rejected on motion. *Booth* v. *Bastien & Bastien*, 1 L. N. 130, & 22 L. C. J. 41, S. C. 1878.

VIII. Of Bank Shares.

218. Bank shares cannot be taken in execution by means of *saisie arrêt* after judgment, but should be seized conformably to Art. 566 of the Code of Procedure.* *Hudon & Trudelle*, 7 R. L. 229, Q. B. 1875.

IX. of Judgment.

219. *Against universal legatee.*—The respondents obtained a judgment against the appellant, a widow, in her quality of universal usufructuary legatee of her husband. A writ of execution in the English language issued under such judgment, in which the appellant was described as widow of * * * *in her quality of universal usufructuary legatee of her late husband.* To the seizure made under such execution she opposed, on the ground that the property seized belonged to her personally, having been purchased by her with her own proper money since the death of her husband, and that it was not liable under a judgment against her in her quality, and that further that being condemned as universal usufructuary she could not be seized under a writ describing her as universal legatee. *Held*, dismissing the opposition on both these grounds, but without costs, as the execution had issued for more than was due. *Trudelle & Hudon*, 24 L. C. J. 171, Q. B. 1875.

220. *Ordering an account.*—The plaintiff obtained judgment ordering an account to be rendered within thirty days, and condemning the defendant in default of doing so to pay a certain sum. The defendant rendered an account which was rejected on motion as irregular. Some time after he filed another, which was also rejected. That was in July. In November plaintiff issued execution, and subsequently the defendant obtained leave to file another account. *Held*, on opposition, that execution did not lie *de plano* in such case, and the seizure was set aside. *Les Curé*, etc., v. *Robillard*, 2 L. N. 236, Q. B. 1879.

221. *Which have been settled.*—Where a judgment creditor has accepted notes in settlement of his claim there is no novation, but the creditor must file the notes with his fiat before he can take execution. *Dawson & Defosses*, 10 R. L. 127, Q. B. 1876.

X. Removal of Effects.

222. Order granted the bailiff to remove the effects seized from the possession of a person who claimed he had bought (the defendant who was appointed guardian having left the country), "*et pour ce d'employer et de se faire assister de toute la force necessaire,*" a copy of the order to be served on the *detenteur*, with notice

* The seizure of shares in any financial, commercial or industrial company or association duly incorporated is made by serving such company with a copy of the writ of execution, together with a notice that all the shares held by the defendant in such company are placed under execution. A similar notice is served upon the debtor.

to him to appear and to show cause why he should not be condemned personally in the costs of the petition and removal of the effects. *Cantwell* v. *Madden*, 2 L. N. 38, & 23 L. C. J. 77, S. C. 1878.

XI. Second Seizure.

223. Judgment declaring absolute a rule against the assignee for *contrainte par corps*. The assignee inscribed for review. The assignee had been ordered by judgment of the 21st of July to sell the effects of the insolvent within fifteen days; and at the expiration of that time he was called upon to shew cause why he should not be held to be in contempt of court. He answered that the petitioner had seized the goods and chattels of the insolvent by *saisie gagerie* in two cases, and that they were in the possession of a guardian. The suits for rent had been met by incidental demands for damages arising out of the inexecution by the lessor of his obligations; and these proceedings had had the effect of dispossessing the assignee of the things seized, and he could not obey the order of the court. The petitioner's reply to this was that it was quite true the seizures had taken place, but that the assignee himself was made a party in the case, and they had been seized in his possession. The only point was whether the *saisie gagerie* dispossessed the assignee who was in possession at the time of the seizure. *Held*, that it did not. Judgment confirmed with costs against the party inscribing. *Blouin* v. *Doutre & Craig*, S. C. R. 1877.

224. Where a seizure of land was opposed on the ground of an existing seizure, which it appeared had also been opposed, and the writ returned into court pending the contestation of the opposition—*Held*, that the second seizure should be maintained. *McLaren & Drew*, 2 L. N. 388, S. C. 1879.

225. But in another case—*Held* by the same court that the sheriff should have noted the second writ as an opposition, and that the seizure under it would not hold. *Fuller* v. *Smith*, *Ib.*

226. Where a bailiff, holding a warrant of a district magistrate for a fine and costs, seized and sold, but the sale not realizing the amount to be levied seized again under the same warrant—*Held*, that the second seizure was good. *Prime & Perkins*, 2 L. N. 256, & 23 L. C. J. 250, S. C. R. 1879.

XII. Writ Lapsed by Delay.

227. A writ of execution issued on the 16th April, returnable on the 31st May. On the 18th April the seizure was made and oppositions were filed, which on the 13th May were dismissed on motion for informality. On the 17th July the plaintiff issued a *venditioni exponas*. The return day of the first writ had expired, and more than two months had elapsed between the return day and the date of the *venditioni exponas*—*Held*, that if the seizing party does not proceed before the return day, the writ lapses unless prolonged by a judge's order, which not having been done the *venditioni exponas* must be quashed. *Fletcher & Smith*, 2 L. N. 117, S. C. R. 1879.

228. But in a subsequent case between the same parties, in which the same point arose, but in which the plaintiff appeared to have made all due diligence, and to have been prevented only from taking his *venditioni exponas* by oppositions which the defendant had interposed to the execution of the writ—*Held*, that *venditioni* was properly issued although the return day of the first writ had passed. *Ib.*, 3 L. N. 117, S. C. R. 1880.

EXECUTIVE COUNCIL.

I. Liability of Members, *see* ACTION EN GARANTIE.

EXECUTORS.

I. Account of.
II. Action by for Legacy due themselves may be set off by Debt due by them personally.
III. Destitution of.
IV. Inventory made by.
V. Investments made by.
VI. Liability of.
VII. Powers of under Wills, *see* WILLS.
VIII. Rights of.

I. Account of.

229. Action by appellant, as universal legatee of his wife, for an account to be rendered by the respondents of their administration of the property of the deceased, and for the partage of a certain immoveable belonging to the succession of his deceased wife's mother—*Held*, that as to the immoveable, which was alleged to belong to various commercial partnerships, the appellant could have no rights therein, so long as the affairs of the said commercial firm had not been liquidated. *Chevalier & Cuvillier*, 2 L. N. 239, Q. B. 1879.

230. And *held*, also, that as to certain real estate alleged to belong to his deceased wife's father, and to have been sold by the sheriff at the suit of the respondents, and to have been bought in by themselves, the appellant could have no right therein so long as the said decrêt had not been set aside. *Ib.*

II. Action by for Legacy due themselves may be set off by Debt due by them personally.

231. Action by a testamentary executor for the dividend on shares, the usufruct of which was bequeathed to himself and his sister. The defendants tendered the part due the sister, but as to the part due the plaintiff set up in compensation a debt due by him to defendants—*Held*, that although the action was brought in his quality as executor, the defense was well founded, notwithstanding there was no partition of his share from his sister's. *Gray & Quebec Bank*, 5 Q. L. R. 92, S. C. R. 1879.

III. Destitution of.

232. Action to deprive of their office four executors appointed by a testator for the administration of his succession. Reasons alleged were incapacity of some of the defendants, refusal to act on the part of two of them, negligence and bad administration—*Held*, dismissing action, that the evidence would require to be very plain to justify the destitution of the executors from their office a few months after they had entered upon their administration. *Gingras* v. *Brillon et al.*, 3 L. N. 183, S. C. 1880.

IV. Inventory made by.

233. An inventory made by a testamentary executor or universal legatee in perfect good faith is not invalidated by the omission of unimportant formalities. *Archambault & Citizens Insurance Co.*, 3 L. N. 416, & 24 L. C. J. 293, S. C. 1880.

V. Investments by.*

VI. Liability of.

234. Respondents, representing one of the universal residuary legatees of W. D., sen., sued appellants, as joint testamentary executors of the said W. D., sen., to render an account and pay over the balance of the estate in their hands. On a *debats de compte* the total value of the estate was proved to be worth $44,525.65. Of this amount appellants, in their said capacity, as appeared by an account rendered by them, took possession of $14,510.33. The balance, $30,015.33, appeared by the books of W. D. & Co. to be due to the estate of W. D., sen., by W. D., jun., one of the executors, and to have never come into the possession of the other executors—*Held*, that under Art. 913 of the Civil Code,† appellants were jointly and severally responsible only for the amount they took possession of in their joint capacity, and therefore that W. D., jun., alone was responsible for the amount of such balance. *Darling & Brown*, 2 S. C. Rep. 26, & 21 L. C. J. 125, Su. Ct. 1877.

---

*See Administrators *Supra*, p. 39.

†If there be several joint testamentary executors, with the same duties to perform, they have all equal powers, and must act together, unless the testator has otherwise ordained. (Nevertheless if any of them be absent, those who are in the place may perform alone acts of a conservatory nature, and others requiring dispatch.) The executors may also act generally as attorneys for each other, unless the intention of the testator appears to the contrary, and subject to the responsibility of the one who grants the power. The executors cannot delegate generally the execution of the will to others than their co-executors, but they may be represented by attorney for determinate acts. Executors exercising these joint powers are jointly and severally bound to render one and the same account, unless the testator has divided their functions, and each of them has kept within the scope assigned to him. They are responsible only, each for his share, for the property for which they took possession in their joint capacity, and for the payment of the balance due, saving the distinct liability of such as are authorized to act separately.

235. But testamentary executors cannot be legally charged with more than six per cent. interest on the moneys collected by them after their account has been demanded, in the absence of proof that they realized a greater rate of interest by the use of such moneys. *Ib.*

236. But an action for the moneys they have received, or ought to have received, in such capacity, cannot be prescribed otherwise than by the long prescription of thirty years. *Ib.*

VIII. Rights of.

237. A testamentary executor, for the purpose of the execution of the will, is seized of the moveable property of the succession, and may claim possession of it against the legatee. *Archambault & Citizens Insurance Co.*, 3 L. N. 416, & 24 L. C. J. 293, S. C. 1880.

238. And a life assurance policy is a moveable, and as such is payable to the testamentary executor and not to the legatee. *Ib.*

EXEMPTIONS.

I. From Execution, *see* EXECUTION.
II. From Taxation, *see* RELIGIOUS INSTITUTIONS.

EXHIBITS —*See* PROCEDURE.

I. In Election Cases, *see* ELECTION LAW.

EXPARTE PROCEDURE—*See* PROCEDURE.

EXPENSES.

I. Lien of Legatee for, *see* LEGACY.
II. Lien of Pledgee for, *see* PLEDGE.
III. Of Elections, *see* ELECTION LAW.

EXPERTS.

I. Effect of Reference to.
II. Evidence of, not received in Maritime Cases, *see* MARITIME LAW.
III. Powers of.
IV. Report of.

I. Effect of Reference to.

239. A report of experts, unlike an award of arbitrators, does not, by including the whole question in dispute, exclude other evidence. *Scott & Payette*, 2 L. N. 335, Q. B. 1879.

III. Powers of.

240. Experts when they have made their report are *functi officio*, and cannot of their own motion make a new report on the ground that the first is imperfect. *Beckham v. Farmer*, 21 L. C. J. 38, S. C. 1877.

IV. Report of.

241. *Delay to file.*—The delay for filing a report of experts is not governed by Art. 337 C. C. P., as a report of experts and a report of arbitrators are not the same thing. *Chanteloup & Dominion Oil Cloth Co.*, 2 L. N. 314, S. C. 1879.

242. A report of experts is no bar to the adduction of evidence generally in the case. *Scott v. Payette*, 24 L. C. J. 141, Q. B. 1879.

EXPERTISE.

I. May be Dispensed with in Action of Partition, *see* PARTITION.
II. May be ordered in Cases of Improbation, *see* IMPROBATION.

EXPROPRIATION.

I. Assessment of Cost.
II. Deposit of Amount awarded.
III. Duty of Commissioners.
IV. For Railways, *see* RAILWAYS.
V. Petition for.
VI. Principle of Valuation of Land in Cases of.
VII. What is, *see* STREETS.

I. Assessment of Cost.

243. Action was brought to set aside a roll on which plaintiff was assessed for his share of the cost of an improvement in the widening of a street, on the ground of irregularities in the expropriation. The commissioners had fixed the amount of indemnity to be paid for the land, and plaintiff had received his share. They had also made an assessment roll which was not based on the last assessment roll of the city as required by 37 Vic. cap. 51. When the corporation discovered the error it abandoned the collection of the amounts assessed, and applied to the Legislature to have another roll made This was granted, and by Q. 39 Vic. cap. 52 sec. 6, commissioners were empowered to make a new roll in accordance with sec. 187 of 37 Vic. cap. 51. It was this new roll plaintiff sought to have set aside—*Held*, that as notices had not been posted in accordance with the new Act passed after the expropriation had taken place, that the new roll must be set aside. *Demers & The City of Montreal*, 2 L. N. 226, Q. B. 1879.

244. And *held*, also, that the fact of plaintiff having received his share of the indemnity was not an acquiescence in the assessment roll. *Ib.*

II. Deposit of Amount awarded.

245. Mandamus will not lie to compel a railway company to deposit an amount awarded by arbitrators in expropriation. *Bourgoin & Q. M. O. & O. Railway Co.*, 21 L. C. J. 217, S. C. 1876.

III. Duty of Commissioners.

246. Commissioners of expropriation, appointed under 27-28 Vic. cap. 60, must, under 29 and 30 Vic. cap. 56, sec. 12,* at the same time that they determine the amount of and indemnity for expropriated land, assess and appropriate that indemnity upon the different persons benefited by the improvements. Such assessment and apportionment cannot be made after the report of the commissioners has been homologated, and they have become *functi officio*. *Mayor, etc., of Montreal & Stephens*, 3 L. R. 605, P. C. 1878.

V. Petitions for.

247. Petitions for expropriation under the Railway Act of 1869 must contain the description required by Art. 2167 C. C.† *Commissioners of Q. M. O. & O. Railway & O'Neil*, 4 Q. L. R. 216, S. C. 1876.

VI. Principles of Valuation of Land in Cases of.

248. Respondents and one M. having been appointed commissioners in expropriation under Q. 27-28 Vic. cap. 60, made their valuation of certain land which had been expropriated. On petition to the Superior Court by certain contributories and the appellants the respondents were removed from office, on the ground that they had in their valuation adopted a principle which was so palpably erroneous that its adoption amounted to a want of diligence, which justified the court in ordering their removal—*Held*, on appeal to Privy Council, that it was not a palpably erroneous principle in valuing land under the above mentioned Act to take into consideration its prospective capabilities, nor does the adoption of such a principle justify a finding of want of diligence under sec. 13, ss. 9 of said Act.* *Mayor, etc., of Montreal & Brown et al.*, 2 L. R. 168, P. C. 1876.

* The 22nd and 25th sections of the Act 27 and 28 Vic. ca. 60, are hereby repealed; and it is enacted that the said commissioners at the same time that they determine and fix upon the amount of the price, indemnity or compensation for each and every the pieces or parcels of ground required by the corporation of the said city (Montreal) for purposes of improvements, shall also proceed to assess and apportion, in such manner as to them may appear most reasonable, the price or compensation, indemnity or damage and costs of such expropriation or improvement in whole, or in part, conformably to the resolution of the said council upon all and every the pieces or parcels of land or real estate which shall have been benefited by such improvement; and the said commissioners shall have the exclusive power or privilege to determine what pieces of land or real estate shall have been or may be benefited, and to what relative or comparative amount, and the said commissioners shall, for the purposes of the said improvement, base their valuation upon the actual value of the said pieces or parcels of land or real estate irrespective of buildings thereon erected, taking into account the size of the said pieces or parcels of ground or real estate and the benefit to be derived from the said improvement; and two of the said commissioners shall have full power to act for the purposes of the said special assessment in case of a diversity of opinion, and their decision shall have the same force and effect as if the three commissioners had concurred therein.

† Such plan must be accompanied by a copy of book of reference in which are set forth:

1. A general description of each lot of land shewn upon the plan;

2. The name of the owner of each lot so far as it can be ascertained;

3. All remarks necessary to the right understanding of the plan. Each lot of land shewn upon the plan is designated thereon by a number which is one of a single series, and is entered in the book of reference to designate the same lot. 2167 C. C.

EXPULSION—*See* EJECTMENT, LESSOR AND LESSEE.

I. Of Members of Benefit Societies, *see* BENEFIT SOCIETIES.

II. Right to Eject a Person from a Building, *see* AUCTION.

EXTRADITION.

I. Power of Judge in Cases of.
II. Requirements of Act.
III. Warrant of Commitment.

I. Power of Judge in Cases of.

249. On a petition for *habeas corpus*, by one who had been committed for extradition—*Held*, that the judge is required to decide whether he deems the evidence adduced before him sufficient to justify the apprehension and commitment for trial of the person accused, if the crime had been committed in Canada. If he finds in the affirmative he should so state it in his commitment, and certify the fact to the proper executive authority. His functions do not extend to determining whether the accused should be extradited, as that rests with the Governor General after the evidence has been reported to him, but if the judge fails to state in the commitment that he deems the evidence sufficient the commitment will be defective and insufficient. *Zink exp.*, 6 Q. L. R. 260, Q. B. 1880.

II. Requirements of Act.

250. On a petition for *habeas corpus*, by a person committed for extradition to the United States—*Held*, that the Extradition Act merely requires that the fugitive be charged with having committed, within the foreign jurisdiction, one of the crimes enumerated in the treaty, and that the evidence of criminality be such as according to the laws of this country would justify his apprehension and trial if the crime had been committed here, and when the authorities of the country where the offence was committed has declared by the issue of a warrant for the apprehension of an offender that the acts complained of constitute an extradition offence, according to their law it only

* If one or more of said commissioners at any time after their appointment shall fail in the due performance of the duties assigned in and by the present Act, or shall not fulfil the said duties in a faithful, diligent and impartial manner, it shall be lawful for the corporation of the said city (Montreal), by its attorney, to apply by summary petition to the said Superior Court, or to a judge thereof as the case may be, to stay the proceedings of the said commissioners, and to remove and replace the commissioner or commissioners who may have forfeited or violated his or their obligations; and upon such petition the said court or judge may issue such orders as may be deemed conformable to justice.

remains for the authorities here to examine whether the same acts if committed here would under our law justify the arrest and trial of the accused for the same offence. *Worms exp.*, 22 L. C. J. 109, Q. B. 1876.

251. Nor is it necessary that the depositions be taken before the magistrate who issued the original warrant. *Ib.*

252. And an error in the warrant of arrest in an extradition case does not affect the warrant of commitment, if the latter be in accordance with the charge and the evidence adduced. *Ib.*

253. And the expressions "forgery" and "utterance of forged paper" in the extradition treaty include every crime falling under that description, whether it amounts to a felony or is only a simple misdemeanor. *Ib.*

254. The Imperial Extradition Act of 1870 applies to Canada, and is not inconsistent with sec. 132 of the British North America Act. *Ib.*

III. Warrant of Commitment.

255. On the petition and affidavit of the petitioner confined in the common gaol of the district of Quebec on a charge of uttering a forged bank cheque, and a forged acceptance thereof—*Held*, that a warrant of commitment should in its terms conform to the requirements of section 1 of the Dominion Statute 31 Vic. cap. 94,* in directing the person accused to be committed until surrendered on the requisition of the proper authority or duly discharged according to law. *Zink exp.*, 6 Q. L. R. 260, Q. B. 1880.

* Upon complaint made under oath or affirmation (in cases where affirmations can lawfully be taken instead of oaths), charging any person within the limits of Canada with having committed within the jurisdiction of the United States of America any of the crimes enumerated or provided for by the said treaty, it shall be lawful for any judge of Her Majesty's Superior Court in Canada, or any recorder of a city in Canada, or any police magistrate or stipendiary magistrate in Canada, or any judge of the Sessions of the Peace in the Province of Quebec, or any inspector and superintendent of police empowered to act as a justice of the peace in the Province of Quebec, or any commissioner appointed for the purpose by the Governor under the great seal (which appointment the Governor is hereby authorized to make, and under which commission such commissioner shall, for the purposes of this Act, have all the powers of a judge of one of Her Majesty's Superior Courts), to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge, commissioner or other officer to examine upon oath any per on or persons touching the truth of such charge, and upon such evidence as according to the laws of the Province in which he has been apprehended would justify the apprehension and committal for trial of the person so accused if the crime of which he is so accused had been committed therein, it shall be lawful for such judge, commissioner or other officer to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until surrendered according to the stipulation of the said treaty, or until discharged according to law; and the judge, commissioner or other officer shall thereupon forthwith transmit or deliver to the Governor a copy of all the testimony taken before him, that a warrant may issue upon the requisition of the United States for the surrender of such person pursuant to the treaty.

(This Act was repealed and replaced by the Act of the Parliament of Canada, 40 Vic. cap. 25, which contains all the provisions now in force for the extradition of persons charged with crime, as well as a list of the states with which there is a treaty of extradition and the offences, etc., to which the Act applies.) Ed.

256 And where a person charged with crime is committed in pursuance of a special authority, the commitment must be special and must exactly pursue that authority. *Ib.*

257. And if the commitment does not on its face show that the case of the accused falls within the terms of the extradition treaty and the statutes authorizing the proceedings in extradition, or fails to contain the proper statutory conclusions, no sufficient cause of detention will have been shown, and he will be liberated on *habeas corpus*. *Ib.*

258. On a petition for *habeas corpus*—*Held*, that in a demand of extradition for forgery the prisoner will not be liberated, because the warrant of imprisonment does not contain the word *feloniously* as found in the warrant of arrest issued in the United States, nor because the judge who issued the warrant of imprisonment inserted the words *well knowing the same to be forged* which were not found in the accusation. *Worms exp.*, 7 R. L. 320, Q. B. 1876.

259. That depositions taken at Washington before a justice of the peace, and certified before another justice of the peace, who issued the first writ in the States, may make proof against the prisoner. *Ib.*

260. That a warrant of the Governor General is not necessary to authorize the arrest. *Ib.*

EXTRAIT DE BAPTEME.

I. What is, *see* ACTION en Declaration de Paternité.

EXTRAIT MORTUAIRE—*See* CERTIFICATE OF BURIAL.

EXTRAS.

I. Evidence of, *see* BUILDERS.

EXTRA REMUNERATION.

I. Right to, *see* MASTER AND SERVANT.

F.

SUMMARY OF TITLES.

	Page
FABRIQUES	331
FACTOR	331
FACTUM IN APPEAL	331
FAITS ET ARTICLES	331
FALSE ARREST	331
FALSE BIDDING	331
FALSE IMPRISONMENT	331
FALSE PRETENCES	332
FALSE RETURNS	332
FALSE STATEMENTS	332
FAMILY COUNCIL	332
FATHER	332
FEAR	333
FEES	333
FELONY	335
FENCES	335
FEUDAL RIGHTS	335
FIDUCIARY LEGATEE	335
FIERI FACIAS	335
FILIATION	336
FIN DE NON RECEVOIR	336
FINES	336
FIRE	336
FIRE INSURANCE	336
FIRM	336
FISH	336
FIXTURES	336
FOG	336
FOLLE ENCHÈRE	336
FOOTPATHS	336
FORCE MAJEURE	336
FORECLOSURE	337
FOREIGN ASSIGNMENT	337
FOREIGN ENLISTMENT ACT	337
FOREIGNERS	337
FOREIGN JUDGMENT	338
FOREIGN MARRIAGE	338
FORFEITURE	338
FORGED DOCUMENTS	338
FORGED DRAFTS	339
FORGERY	339
FORM	339
FORMALITIES	339
FORTUITOUS EVENT	339
FORWARDER	339
FRANC ET QUITTE	339
FRANCHISE	339
FRAUD	340
FRAUDULENT CONVERSION	340
FRAUDULENT TRANSFER	340
FREIGHT	340
FROST	340

FABRIQUES—*See* CHURCH FABRIQUES.

FACTOR—*See* AGENCY.

FACTUM IN APPEAL—*See* APPEAL.

FAITS ET ARTICLES—*See* PROCEDURE.

FALSE ARREST.

I. Damages for, *see* DAMAGES.

FALSE BIDDING—*See* FOLLE ENCHERE, SALE, Bids.

FALSE IMPRISONMENT.

I. Damages for, *see* DAMAGES.

FALSE PRETENCES.

I. Obtaining Money by, *see* CRIMINAL LAW.

FALSE RETURNS.

I. Indictment for Making, *see* CRIMINAL LAW, Indictment.

FALSE STATEMENTS.

I. Indictment for Making, *see* CRIMINAL LAW.

FAMILY COUNCIL.

I. Advice of, *see* TUTORSHIP.

FATHER.

I. Action by, for Wages Due Minor Son, *see* ACTION.

FEAR.

I. Death Caused by, will Support an Indictment for Manslaughter, *see* CRIMINAL LAW.

FEES.

I. For Measuring Timber.
II. Of Advocates.
III. Of Attorneys.
IV. Of Bailiffs.
V. Of Guardian.
VI. Of High Constables.
VII. Of Surveyors.

I. For Measuring Timber.

1. A suit for fees for the measuring of timber by licensed cullers, acting under the supervisor of cullers at Quebec, pursuant to C. S. C. cap. 46, is properly brought in the name of the Crown. *Laflamme* v. *Prendergast*, 4 Q. L. R. 285, S. C. 1878.

II. Of Advocates.

2. Plaintiff having demanded payment of his account from defendant without effect employed the services of an advocate, who wrote him the ordinary letter and added $1.35 therefor. The defendant then sent to plaintiff $6.23, the bare amount of the debt, but sent nothing for the attorney's letter. Plaintiff then sued for $1.35, calling it a balance due on the account after deduction of the costs of the letter—*Held*, that the plaintiff had a right to recover the costs of the letter, but that $1.00 was a sufficient charge therefor. *Heroux* v. *Clement*, 10 R. L. 589, C. C. 1880; *& Lighthall & Jackson*, 3 L. N. 37, C. C. 1879.

3. In an action by an attorney against his client for professional services a *quantum meruit* was allowed over and above the taxed bill. *Desjardins* v. *Ducasse*, 2 L. N. 270, S. C. 1879.

4. In the Supreme Court advocates arguing their own case are not allowed fees. *Langlois & Valin*, 3 L. N. 336, Su. Ct. 1880.

5. During the progress of an action the client paid his attorneys $239.75 on account of costs. The case was won and carried to appeal, where the judgment was confirmed. The attorneys having been paid their costs by the losing party, the appellant brought action to recover his $239. The attorneys had had an unusual amount of labor in connection with the case, and there was evidence that they were to be paid some $50 extra, which, in fact, they had received and given a receipt for as in full. The action in the first instance was maintained, except as to the fifty dollars. In review this judgment was reversed, and the action was dismissed altogether, and in appeal the judgment of the first instance was restored, cost of appeals divided. *Larue & Loranger*, 2 L. N. 155, S. C. R., & 3 L. N. 284, Q. B. 1880.

III. Of Attorneys ad Lites.

6. The formality of a judgment is not necessary to give the attorney *ad litem* a right to recover his just fees and disbursements against his client, if the proof and the circumstances establish that there has been a settlement out of court and that the litigation is at an end. *O'Farrell* v. *Reciprocity Mining Co*, 4 Q. L. R. 198, S. C. R. 1869.

7. The fee for rehearing will be allowed when the *delibéré* is discharged without the fault of the attorneys and a rehearing ordered. *Grosleau & Quebec N. S. T. Road Trustees*, 4 Q. L. R. 203, S. C. 1878.

8. The attorney of an incidental defendant, upon an incidental demand brought by the plaintiff under Art. 149 of the Code of Procedure for the addition of new grounds of action, and dismissed upon a demurrer of the incidental defendant, has no right to fees. *Bougé* v. *Bonnet*, 5 Q. L. R. 72, 1879.

9. Where an attorney in Quebec receives instructions from an attorney in Ontario to take action, and does so, he cannot come upon the client of his correspondent for his fees and costs. *Keller & Watson*, 2 L. N. 400, C. C. 1879.

IV. Of Bailiffs.

10. A bailiff not residing in the chef-lieu of his district is not entitled to charge for travel from his residence to the Court house and back to the place of service, the latter being between his residence and the Court house. *La liste électorale de la Paroisse de Berthier in re & Ralston*, 8 R. L. 748, S. C. 1878.

11. Unless there is agreement to that effect, or the attorney has received the money from his client, he is not liable personally to the bailiff for his fees for services. *Getinas* v. *Dumont*, 10 R. L. 229, C. C. 1880.

12. Action against an attorney for balance of an account for bailiff's fees for services. Defendant pleaded a special agreement that plaintiff should have no right to look to defendant until and unless defendant himself had received the fees; that defendant had fully paid all that plaintiff was entitled to receive for the said services. Concerning the alleged agreement the plaintiff denied that he agreed to it, but admitted that in practice he observed it in order to obtain the defendant's practice. The joint prothonotary proved that according to the records in his custody the plaintiff performed the services mentioned in certain schedules, amounting, according to the tariff, to somewhat more than the amount for which credit was given—*Held*, that the proof thus adduced was insufficient. That admitting that an attorney is personally liable for the fees of the latter, it does not therefore follow that a bailiff who has performed services in a case can hold the attorney of record, merely as such, liable for the bailiff's fees without proof of any kind that the bailiff had been employed by the attorney. *Theroux* v. *Pacaud*, 6 Q. L. R. 14, S. C. R. 1879.

V. Of Guardian.

13 Action by a guardian for fees. The action was directed against both the bailiff who appointed him and the plaintiff in the case in which the appointment had been made. The latter made default, but the bailiff contested on

the ground that he was not liable—*Held*, that there was no doubt of the liability of the bailiff towards the guardian, and that his proper recourse in such case was by an action *en garantie* against those who had employed him. *Bernard & Quesnel*, S. C. 1877.

VI. Of High Constable.

14. By order in council of the Quebec Government costs of summoning witnesses, and their taxation and other expenses attending the preliminary investigation of criminal offences, including constable's fees, are chargeable to the party prosecuting and not to the Crown in cases where the prisoner is not committed or held to bail to stand his trial. The defendant having obtained the services of plaintiff as high constable in connection with an information for a misdemeanor specially undertook to pay plaintiff's fees therefor "according to the Government regulations now existing," it appearing that the prisoner had been sent for trial—*Held*, that the defendant, could not be made liable for the fees due the plaintiff on account of the services so rendered by him. *Gailloux & Bell*, 4 Q. L. R. 264, S. C. R. 1877.

VII. Of Surveyor.

15. A surveyor filed his report with a prohibition endorsed thereon to its being opened until his fee was paid—*Held*, that although he was entitled to protection under Art. 344 C. C. P.,* that the report must nevertheless be opened and the bill taxed, but no use to be made of it until paid. *Decary & Poirier*, 21 L. C. J. 27, S. C. 1876.

FELONY—*See* CRIMINAL LAW.

FENCES—*See* CONTRACTS, Interpretation of.

I. Liability for, *see* MUNICIPAL CORPORATIONS.

FEUDAL RIGHTS—*See* SEIGNIORIAL RIGHTS.

FIDUCIARY LEGATEE—*See* LEGATEE.

FIERI FACIAS—*See* EXECUTION.

* Experts, accountants, practitioners and arbitrators may demand that the amount of their remuneration, costs and disbursements be paid into court previously to the opening of their report, and subject to the order of the court. If they do not demand this deposit they have a recourse against all the parties to the suit jointly and severally. 344 C. C. P.

FILIATION.

I. Of Illegitimate Children, *see* ACTION en Declaration de Paternité.

FIN DE NON RECEVOIR—*See* PLEADING.

FINES—*See* PENALTIES.

FIRE.

I. Damages for Destruction of Crops by, *see* DAMAGES.

FIRE INSURANCE—*See* INSURANCE.

FIRM—*See* PARTNERSHIP.

FISH.

I. Inspection of, *see* INSPECTION LAW.

FIXTURES.

I. Nature of, *see* PROPERTY, Description of.

FOG.

I. No fixed Rate of Speed for Vessels Sailing in, *see* MARITIME LAW.

FOLLE ENCHÈRE.

I. Motion for, *see* SALE, Judicial.

FOOTPATHS.

I. Liability for, *see* DAMAGES, MUNICIPAL CORPORATIONS.

FORCE MAJEURE.

I. What is, *see* DAMAGES for Accidents.

16. Action of damages for injuries occasioned to plaintiff in consequence of having been run into by a runaway horse, which in turn had

been frightened by a fall of snow from a church roof. The defendants were trustees of this church, and proved that there had been a heavy snow storm just previous to and up to ten o'clock of the morning of the day on which the accident occurred. They proved further that the Corporation rules forbid the removal of snow after 9 a.m.—*Held*, in review and appeal (reversing the judgment of the Superior Court, 2 L. N. 344), not to be *force majeure*, and $150 damages and costs allowed. *Trestler & Dawson*, 3 L. N. 76, S. C. R., & 5 L. N. 114, Q. B. 1881.

FORECLOSURE—*See* PROCEDURE.

FOREIGN ASSIGNMENT.

I. Has no Effect to Transfer Immoveable Property in Canada, *see* INSOLVENCY.

17. A bankrupt assignment made under the provisions of an Act of Congress of the United States of America will not transfer immoveable property in Canada. *Macdonald & Georgiaa Bay Lumber Co.*, 2 S. C. Rep. 365, Su. Ct. 1878.

FOREIGN ENLISTMENT ACT.

I. Arrest under.

18. Upon the representations of the Consul General of Spain for Canada an American vessel was detained, unloaded and searched by virtue of a warrant under the hand of the Governor General of Canada, upon a charge of having on board arms and munitions of war destined for the use of Cuban insurgents, contrary to the provisions of the "Foreign Enlistment Act, 1874" —*Held*, that the charges against the vessel were not supported by facts to justify her detention, and that hearsay evidence could not be received under such circumstance. The "Atalava," 6 Q. L. R. 174, V. A. C. 1880.

19. *Held*, also, that an indemnity to the owner was payable by the commissioners of the Imperial Treasury under the provisions of the Act. *Ib.*

FOREIGNERS.

I. Capias against.
II. Capias by.
III. Summons of.

I. Capias against.

20. A capias will not lie against a person who is in this Province temporarily, and is about to return home, if no other grounds of fraud are alleged. *Renaud* v. *Vandusen*, 21 L. C. J. 44, Q. B. 1872.

II. Capias by.

21. A capias by one alien against another will not lie, both parties being only temporarily in this Province, and the alleged debt arising out of a contract entered into in a foreign country, where the allegation in the affidavit upon which the capias issued alleges the immediate departure of defendant with intent to defraud. *Ventini* v. *Ward & Roome* v. *Ward*, 2 L. N. 133, & 23 L. C. J. 267, S. C. 1879.

III. Summons of.

22. The plaintiff in Montreal purchased a cargo of oysters from a dealer from New Brunswick, paying him therefor partly by cash and partly by a *bon*. The oysters having turned out worthless plaintiff notified the seller, and, receiving no satisfaction, brought action for damages. Defendant having no domicile here, plaintiff made affidavit as to the *bon*, and called him in by advertisement under Art. 68 C. C. P. Judgment was taken by default and defendant appealed. *Held*, that while a *bon* or note was property within the meaning of said article, there was no sufficient proof that it belonged to defendant at the date of the action, and the judgment was set aside. *Poirier & Lareau*, 21 L. C. J. 48, Q. B. 1876.

FOREIGN JUDGMENT.

I. Action on.

23. Where a defendant is served personally or appears to an action in Ontario, he cannot be allowed to plead here to an action to enforce such judgment what he might have pleaded in the first instance. *Bates & Lauzon*, 2 L. N. 117, S. C. R. 1879.

FOREIGN MARRIAGE.

I. Effect of, *see* MARRIAGE CONTRACTS, Community.

FORFEITURE.

I. Of Life Insurance Policy, *see* INSURANCE.
II. Of Joint Stock Companies Charter, *see* COMPANIES.

FORGED DOCUMENT.

I. Burden of Proof Concerning
II. Liability for Payment of.

I. Burden of Proof Concerning.

24. Where a bank supports an [illegible] of "no funds" with a cheque by which [illegible] ons that the amount claimed was with[illegible] he onus is on it to prove the cheque [illegible]ge. *Clark & Exchange Bank*, 3 L. N. 45, Q. B. 1880.

II. Liability for Payment of.

25. Where a stranger obtained from the Union Bank at Quebec a draft on its branch at Montreal, without advice, for $25, which he raised to $5,000, and then deposited it to his account at the Ontario Bank, Montreal, which, after presentation and payment by the branch on which it was drawn, allowed him to draw part of the proceeds—*Held*, that the Union Bank must suffer the loss. *Union Bank of Lower Canada & Ontario Bank*, 2 L. N. 132, & 23 L. C. J. 66, S. C., & 3 L. N. 386, & 24 L. C. J. 309, Q. B. 1880.

FORGED DRAFTS.

I. Liability for, *see* BILLS AND NOTES.

FORGERY—*See* CRIMINAL LAW.

I. Meaning of Term in Extradition Treaty.

II. Pleading in Action on Note.

I. Meaning of Term in Extradition Treaty.

26. The expressions *forgery* and *utterance of forged paper* as used in the extradition treaty include every crime falling under that description, whether it amounts to a felony or is only a misdemeanor. *Worms exp.*, 22 L. C. J. 109, Q. B. 1876.

FORM.

I. Of Donation, *see* DONATION.

FORMALITIES.

I. In Sale of Land, *see* SALE, Judicial.

FORTUITOUS EVENT—*See* FORCE MAJEURE.

I. What is, *see* PAWNBROKERS, Liability of.

FORWARDER—*See* CARRIERS.

FRANC ET QUITTE—*See* SALE, WARRANTY.

FRANCHISE.

I. Use of, *see* STREET RAILWAY.

FRAUD.

I. Cannot be Pleaded by the Party Guilty.
II. Goods Purchased in, *see* INSOLVENCY.
III. Receipt set aside as made by.
IV. Resiliation of Donation Procured by, *see* DONATION.

I. Cannot be Pleaded by the Party Guilty.

27. Action to set aside two deeds of sale of an immoveable property. The declaration of the plaintiff alleged that he, plaintiff, in November, 1861, being insolvent, and having nothing left but the immoveable in question, transferred by deed of sale to his brother-in-law, a person of no means, in order to save it from his creditors, and with the understanding that as soon as plaintiff should be relieved from his embarrassments the property should be re-transferred to him. The respondent, who was aware of all this, and who had a judgment against the plaintiff and a mortgage on the property in question, took an execution against it, which was opposed by the holder, and afterwards took a deed of sale of the property from the holder for a nominal sum. The action in question was then taken to annul both transfers on the ground of fraud and simulation—*Held*, that no one can allege his own fraud to avoid his own deed. *Gareau & Gareau*, 24 L. C. J. 248, Q. B. 1877.

III. Receipt set aside as made by.

28. Action by an assignee in insolvency for a sum of money due insolvent under a deed of sale. Plea of payment and receipt filed. Answer, that the receipt was simulated and fraudulent. Proof, that payment was only by a promissory note which had been transferred to defendant's wife—*Held*, setting aside the receipt. *Melançon v. Bessener*, 2 L. N. 280, S. C. 1879.

FRAUDULENT CONVERSION.

I. Evidence of, *see* CRIMINAL LAW.

FRAUDULENT TRANSFER.

I. By Insolvent, *see* INSOLVENCY.
II. Liability of Transferee, *see* TRANSFER.
III. What is, *see* SECRETION.

FREIGHT.

I. Liability for, *see* AFFREIGHTMENT.
II. Lien for, *see* CARRIERS.

FROST.

I. Liability of Builders for.

29. A builder is liable for damages occasioned to his work by frost, if he agreed to execute the work at a season when it was liable to injury from that cause. *St. Louis v. Shaw*, 1 L. N. 65, S. C. R. 1877.

SUMMARY OF TITLES.

	Page
GAMBLING TRANSACTIONS	341
GARANTIE	341
GARNISHMENT	341
GAZETTE OFFICIELLE	341
GIFTS	341
GOLD	341
GOODS	341
GOOD-WILL	341
GOVERNMENT	342
GRAND JURY	343
GREAT SEAL	343
GROSSES REPARATIONS	343
GUARANTEE	343
GUARDIAN	343

GAMBLING TRANSACTIONS.

I. What are.

1. Action to recover money advanced by plaintiff for the purchase of pork in the Chicago market for defendant through a firm there. Defendants pleaded that all their dealings with plaintiff were gambling transactions on margin, no property passing—*Held*, that the plaintiff was only an agent and not a party to a gambling transaction, and ought therefore to recover money so advanced by him. *Jones* v. *Shea*, 1 L. N. 163, S. C. 1878.

GARANTIE—*See* SURETYSHIP, WARRANTY.

GARNISHMENT.

I. Attachment by, *see* ATTACHMENT.

GAZETTE OFFICIELLE—*See* OFFICIAL GAZETTE.

GIFTS—*See* DONATION.

GOLD.

I. Value of, *see* CURRENCY.

GOODS.

I. Lien on, for Freight, *see* CARRIERS.
II. Right of Action on Sale of, by Commercial Traveller, *see* ACTION, Right of.

GOOD-WILL.

I. Includes Trade Mark.
II. Of Business.

I. Includes Trade Mark.

2. Where a stock in trade "with the good-will and all advantages pertaining to the name and business" was sold—*Held*, that the exclusive right to use the trade mark of the vendor passed to the purchaser without express mention thereof in the contract. *Thompson* v. *McKinnon*, 21 L. C. J. 335, S. C. R. 1877.

II. Of Business.

3. Appellant and respondent carried on business as wholesale confectioners. By deed 15th December, 1871, respondent retired from the firm, and sold to appellant his interest in the assets, receiving $1,000 additional for his share of the good-will. The clause relating to the good-will was as follows: "The said Thomas McWilliam shall retire from the said firm, and the said Jonathan Findlay shall pay him for his good will therein, and for the unexpired term of the lease of the premises in which the said business is carried on, the sum of $1,000." The appellant charged the respondent with having violated his agreement, by starting in the same line of business in the same street, one shop being No. 514 and the other No. 540 St. Paul st., Montreal, and entering into competition with him by sending circulars to the customers of the late firm, and in other ways creating the impression that he had succeeded to the business of the firm—*Held*, that a sale by a retiring partner to his co-partner of the good-will of the business implies an obligation on the part of the retiring partner to abstain from undue competition with the purchaser of the good-will, and that under the circumstances he must be held to have violated the obligations imposed upon him by the sale of such good-will. *Findlay & McWilliam*, 23 L. C. J. 148, Q. B. 1875.

GOVERNMENT.

I. Power of with Respect to Public Works, *see* INJUNCTION.
II. Wages of Persons Employed by, at so much a Day, not Seizable, *see* EXECUTION, Exemptions.

GRAND JURY.

I. Referring Bill back to, *see* CRIMINAL LAW.

GREAT SEAL—*See* SEALS.

GROSSES REPARATIONS.

I. Liability of Lessor for, *see* LESSOR AND LESSEE.

GUARANTEE.

I. Acceptance of, *see* SURETYSHIP.

GUARDIAN.

I. Discharge of.
II. Imprisonment of.
III. Liability for Fees of.
IV. Liability of.
V. Liability of Defendant as.
VI. Minor may be a Guardian.
VII. Must Sign Proces-Verbal.
VIII. Rights of.

I. Discharge of.

4. A guardian is discharged by the lapse of a year after his appointment without proceedings. *Beaudry & Brown*, 3 L. N. 413, S. C. 1881.

II. Imprisonment of.

5. The appellant appealed from a judgment which ordered his imprisonment on a rule in the following terms. "That the said guardian "is ordered to produce and hand over to the "sheriff the said moveables, goods and effects "seized in this cause, and placed in his care "and keeping, and described in the said schedule "hereunto annexed, and that in default of his "so doing he be *contrainte par corps* and in- "carcerated in the common gaol of this dis- "trict until he has produced the said moveables, "goods and effects mentioned and described in "the *procès-verbal* of the seizure thereof, and "also in the said schedule hereunto annexed, or "pay the value thereof, to wit, $539.42 currency, "being the amount of the debt and all the costs "in this cause with interest," etc.—*Held*, that the wording of the rule was sufficient, but the guardian could not be condemned to pay more than was due by the defendant, and the amount therefore would be reduced by the costs of an opposition, which had been added to it, with costs of appeal to the guardian, but that he would remain imprisoned until payment of the balance. *McCaffrey & Claxton*, 3 L. N 292, Q. B. 1880.

III. Liability for Fees of.

6. Q., one of the present defendants, was plaintiff in a case of Q. vs. O., and seized a barge; and the other defendant, A., was the bailiff entrusted with the writ, and appointed the plaintiff in the present case guardian to the seizure. By the court: There is no doubt of the right of action under the old law; and our Code reproducing the statute only gives a privilege to the sheriff or the bailiff to demand payment in advance from time to time, without at all interfering with the guardian's right to get payment from both of them; for they are jointly and severally liable since, according to the authority of Pothier, the bailiff, if he is called on to pay, has an action *en garantie* against the party that employed him. The defendant, Q., makes default. The bailiff is examined and says it was Q., and not he, who appointed the guardian; but he admits he signed the *procès-verbal* which is sufficient to charge him. I must give judgment for the amount taxed by the prothonotary, which is $124.50. The plaintiff asks for $8.50 besides for expenses in endeavoring to get paid; but there is no proof of this. Judgment for $124.50 and costs; interest from service of process might have been given, but it is not prayed for. *Benard* v. *Quesnel*, S. C. 1877.

IV. Liability of.

7. A judicial guardian refusing or neglecting to deliver the effects seized to the bailiff, charged with a writ of *venditioni exponas*, is not liable to *contrainte par corps* until after a judgment ordering him to deliver up the things has been duly served upon him. *Gauvreau* v. *Longobardi*, 3 Q. L. R. 195, C. C. 18 .

8. The 29th July, 1877, the plaintiff seized the moveables of the defendant, and named A. as voluntary guardian. After various proceedings had been had, the effects seized were advertised for sale the 7th June, 1879. The guardian not being able to find them, they were not forthcoming at the sale, and the plaintiff presented a petition for a *contrainte par corps*—*Held*, that the guardian was discharged by the lapse of a year from his appointment. *Hallé* v. *Hallé*, 5 Q. L. R. 390, C. C. 1879.

9. The respondents, under a judgment obtained by them in the Circuit Court at Three Rivers, seized a barge, named the "Lafrenière & St. Onge," then in the hands of one M. B. A judicial guardian was at first appointed, but afterwards the plaintiffs (now respondents) consented that M. B. should continue using the barge until an opposition filed by him to the sale of the barge should be decided. To this end the parties entered into a notarial agreement, and the appellants became parties to the agreement as sureties, taking the place of the judicial guardian, who was thereupon liberated from his charge. The opposition was dismissed, and M. B. was thereupon called upon to deliver up the barge to be sold by the bailiff, but in the meantime other oppositions had been filed, accompanied with an order of the judge not to proceed, and M. B. refused to deliver up the barge. Hence the present action against the sureties or voluntary guardians—*Held*, in the

court of first instance, that the sureties had nothing to do with the subsequent oppositions, and that the opposition of M. B., their principal, having been dismissed, they were bound to deliver up the barge according to the terms of the agreement or pay the amount due; but this judgment reversed in appeal, on the ground that the opposition still pending stopped all proceedings. *Beaupré & Bourbault*, 10 R. L. 331, Q. B. 1880.

10 The appellant had been named guardian of a quantity of pine wood seized in revendication, but had not signed the *procès-verbal*, and in the court of first instance a rule for *contrainte* had been obtained against him for failure to produce—*Held*, in appeal, that the liability of the guardian to *contrainte par corps* must result from an observance of the formalities required by law, regularly established by the *procès-verbal*, which is an authentic document, and as it did not appear by the *procès-verbal* that the appellant had signed or had declared his inability to do so, that the rule should have been discharged. *Hamel & Marchildon*, 10 R. L. 245, Q. B. 1880.

V. Liability of Defendant as.

11. A defendant who becomes voluntary guardian of effects seized under a writ of execution is liable as such to *contrainte par corps*. *Beaudry & Brown*, 3 L. N. 413, S. C. 1880.

VI. Minor may be Guardian.

12. A defendant filed an opposition to a seizure and sale of his things, on the ground that the guardian appointed was a minor—*Held*, dismissing the opposition, and that where the guardian is a voluntary guardian, and the things seized have remained in the possession of the defendant, that the seizure is not affected by the minority of the guardian, notwithstanding he be not subject to *contrainte par corps*. *Côté* v. *Jacob*, 3 Q. L. R. 5, C. C. 1876.

VII. Must sign Procès-Verbal.

13. On the contestation of a rule *nisi* against a voluntary guardian to things seized—*Held*, that the consent of the person sought to be held to become guardian must appear by his signature or its equivalent on the *procès-verbal*, and not so appearing the rule was discharged. *McMillan & Bethune*, 3 L. N. 325, C. C. 1880; *& Hamel & Marchildon*, 10 R. L. 245, Q. B. 1880.

VIII. Rights of.

14. A guardian who has lost possession of the effects placed in his care may reclaim them by a *saisie revendication*. *Moisan & Roche*, 1 L. N. 33, & 4 Q. L. R. 47, & *Gilbert & Coindet*, 4 Q. L. R. 50, Q. B. 1877.

15. A seizure had been made of goods and a guardian appointed. Subsequently the seizure had been quashed, and a rule having been taken against the guardian to produce the goods, he offered them on condition of payment of his fees and disbursements—*Held*, that the guardian's pretensions were unfounded, and the rule was made absolute. *Bedard* v. *Lusignan & Desjardins*, 3 L. N. 86, S. C. 1880.

H.

SUMMARY OF TITLES.

	Page
HABEAS CORPUS	347
HANDWRITING	350
HARBOR COMMISSIONERS	350
HEIRS	350
HIGH CONSTABLE	352
HIGH SEAS	352
HIGHWAYS	352
HIRE	352
HIRING TEAMS	352
HOMOLOGATION	352
HORSES	352
HOTELKEEPERS	353
HOURS	353
HOUSEHOLD EXPENSES	354
HOUSES	354
HUSBAND AND WIFE	354
HYPOTHEC	354

HABEAS CORPUS.

I. Grounds of.
II. In Civil Matters.
III. Power of Court to Examine Evidence in Cases of.
IV. Review from Judgment on.
V. When Lies.
VI. When Petitioner is at Large.

I. Grounds of.

1. Petitioner was a defendant in a case in the Superior Court in which judgment had been rendered against her, and was imprisoned under Art. 782 of the Code of Procedure for resisting execution against her goods. Her release was asked for on the ground that the judgment was bad—*Held*, that the judgment could only be reviewed or revised in appeal or revision, and that unless there was clear evidence of excess of jurisdiction *habeas corpus* would not lie. *Scanderson exp.*, 8 R. L. 108, Q. B. 1876.

2. Two brothers, named respectively Joseph and Louis Durocher, made depositions in a prosecution for selling liquor without a license, and the prosecution being dismissed the party prosecuted brought an accusation of perjury against Joseph Durocher, on which the petitioner was arrested. Petitioner filed affidavits establishing that he was Louis not Joseph Durocher, which were uncontradicted—*held*, that he must be liberated. *Durocher exp.*, 7 R. L. 436, Q. B. 1876.

3. And, *Semble*, that the omission of a voluntary examination of the accused would also justify his release on *habeas corpus*. *Ib.*

4. Where the conviction or which a commitment was ordered for insulting language did not specify time, place or circumstance, and did not state such acts to have been illegally done, the commitment was quashed on *habeas corpus*. *Dallaire exp.*, 4 Q. L. R. 201, Q. B. 1877.

5. And in such case, the commitment appearing to be bad, a certified copy of the conviction was allowed to be produced, to show that there was no valid conviction to support such commitment. *Ib.*

6. *Habeas corpus* will lie where a person is committed in default to find sureties to keep the peace, and the commitment does not allege that the complainant has declared that he fears bodily injury on account of the threats of the accused. *Gauthier exp., & Caya*, 10 R. L. 536, Q. B. 1880.

7. But the accused having been arrested again on the ground that he had not paid the costs of the first conviction, a new writ of *habeas corpus* was refused. *Ib.* 10 R. L. 556, S. C. 1880.

8. The petitioner was convicted of having, in the Village of St. Jean Baptiste, sold intoxicating liquors in contravention of the License Act of 1878, and condemned to a fine of $75 and $8.70 costs. The conviction also ordered the arrest and imprisonment of the defendant if the fine and costs were not paid. Not having been paid a warrant of commitment was issued, and defendant sent to gaol for three months, unless sooner paid, with the costs in addition of conveyance to prison, amounting to some $2.70. Petition for *habeas corpus*, on the ground that the judge of sessions had exceeded his jurisdiction, as it did not appear that the village of St. Jean Baptiste was an organized municipality, and because the costs of arrest and conveyance to prison should not exceed $2.00—*Held*, dismissing the first ground, inasmuch as the Village of St. Jean Baptiste had been incorporated by proclamation under the General Act, which incorporation had been since recognized by statute; but maintaining the petition and discharging the prisoner on the ground that there was no authority for including in the commitment the costs of arrest and conveyance to prison. *Archambault exp.*, 10 R. L. 211, & 3 L. N. 50, Q. B. 1880.

9. Petitioner had been condemned by two justices of the peace to pay $75 fine and costs, and in default three months imprisonment under the License Act of Quebec 41 Vic. The warrant of commitment mentioned only that the petitioner had neglected and failed to pay the fine and costs without saying that the prosecutor had made option of imprisonment—*Held*, granting the petition, that the warrant should state that the prosecutor had made option of imprisonment, or that a warrant of distress had issued, and the accused did not possess sufficient property to pay the fine and costs. *Trepanier exp.*, 10 R. L. 191, S. C. 1880.

10. Prisoner was discharged on *habeas corpus*, where it was shown that in the conviction the presiding magistrate was described as police magistrate, whereas he was only a justice of the peace acting under Q. 33 Vic. cap. 12. *Sénécal exp.*, 3 L. N. 267, S. C. 1880.

II. In Civil Matters.

11. Where a person imprisoned on a civil process applied for a writ of *habeas corpus* on the ground of minority, the application was refused, as there was no notice to the party interested, and as the affidavit which only contained a general reference to the allegations of the petition was insufficient, inasmuch as it did not disclose any reasonable or probable ground for the issue of the writ. *Gauvreau exp.*, 1 L. N. 53, Q. B. 1878.

12. A person imprisoned under a process in a civil matter is not entitled to be discharged on *habeas corpus* if no excess of jurisdiction is shown. *Cutler exp.*, 22 L. C. J. 85, Q. B. 1877.

13. And that the writ of execution under which he was arrested appears to be irregular. *Healy exp.*, 22 L. C. J. 138, Q. B. 1878.

14. But the petitioner may show that there is no judgment ordering his imprisonment, and in such case he is entitled to his discharge. *Ib.* 86.

15. And a judgment ordering imprisonment of a defendant until payment of debt, interest and costs, and also the costs of a rule, will not justify a commitment which includes also sheriff's costs, and the defendant under such circumstances is entitled to be discharged on *habeas corpus*. *Martin exp.*, 22 L. C. J. 88, Q. B. 1877.

16. But, in another case, in which there was a general condemnation to costs by the words "the whole with costs"—*held*, that this would include the necessary future costs of executing the judgment. *Thompson exp.*, 22 L. C. J. 89, Q. B. 1877.

17. And where the court from which the process issued is a Superior Court, having jurisdiction over the subject matter, there is a presumption that its jurisdiction has been rightfully exercised, and it is not necessary that the cause of imprisonment be specified in the warrant of commitment so as to show that the court had jurisdiction. *Ib.*

18. Petition for, on several grounds of irregularity, in case of a guardian imprisoned for failure to produce goods refused. *Ex Jaffrey exp.*, 3 L. N. 106, Q. B. 1880.

III. Power of Court to Examine Evidence in Case of.

19. On a petition for *habeas corpus* the judges have not the power to consider the proof made, for the purpose of liberating the prisoner, except in cases of extradition. *Narbonne exp.*, 10 R. L. 63, & 3 L. N. 14, Q. B. 1879.

IV. Review from Judgment on.

20. It is competent to a party to inscribe in review from a judgment rendered on a writ of *habeas corpus*. *Regina* v. *Hull*, 3 Q. L. R. 156, S. C. R. 1876.

V. When Lies.

21. As a general rule where a minor is brought up before the court by *habeas corpus*, if he be of an age to exercise a choice, the court leaves him to elect as to the custody in which he will be. *Regina* v. *Hull*, 3 Q. L. R. 136, S. C. R. 1876.

22. But, *semble*, that this rule would not apply in the case of a girl under sixteen years of age leaving the house of her father, mother or other person having lawful charge of her. *Ib.*

23. Nor in the case of a refractory child under fourteen years of age, liable to be sent to an industrial school under 32 Vic. cap. 17. *Ib.*

24. A *habeas corpus* will not be granted where the petitioner is detained in a suit for a civil matter before a court having jurisdiction over such matter. *Thompson exp.*, 1 L. N. 102, Q. B 1877.

25. And, in another case, *held*, that a writ of *habeas corpus* will not be granted to liberate a prisoner charged with process in a civil suit, even though the writ of execution in virtue of which he was arrested appear to be irregular, if it is within the scope of the jurisdiction of the court from which it issued. *Healy exp.*, 1 L. N. 103, Q. B. 1878.

VI. When Petitioner is at Large.

26. The appellant imprisoned under executions for penalties for selling liquor without license applied under Rev. Stats. 4 Series cap. 99 for a discharge. The order was made returnable before the Supreme Court of Nova Scotia, and the discharge was refused. Before instituting an appeal from the judgment the appellant, whose time of imprisonment had expired, was at large. On motion to dismiss the appeal for want of jurisdiction—*Held*, that an appeal will not lie in any case of proceedings upon a writ of *habeas corpus*, when at the time of bringing the appeal the appellant is at large. *Fraser & Tupper*, 3 L. N. 394, Su. Ct. 1880.

HANDWRITING.

I. Comparison of, *see* COMPARISON OF HANDWRITING. *

HARBOR COMMISSIONERS.

I. Injunction against, should be in Name of Attorney General, *see* INJUNCTIONS.
II. Powers of.
III. Quorum of.

II. Powers of.

27. On a petition for certiorari—*Held*, that the Harbor Commissioners have authority under their by-laws, made under 36 Vic. cap. 54, sec. 18, ss. 6 and 7, to suspend the license of a pilot guilty of a dereliction of duty. *Lisé exp.*, 3 L. N. 338, S. C. 1880.

III. Quorum of.

28. The petitioner complained that he had been illegally sentenced to three months suspension from his functions as pilot by a tribunal composed of three members of the Board of Harbor Commissioners for Montreal—*Held*, on certiorari, that a quorum of five is required under 36 Vic. cap. 61, for the trial of charges against pilots. *Belleisle & Allan*, 3 L. N. 142, S. C. 1880.

HEIRS—*See* SUCCESSIONS, WILLS

I. Contestation of Report of Distribution by.
II. Liability of.
III. May bring Petitory Action for an Undivided Share in an Immoveable.
IV. May take up Instance in Action of Damages for a Delit.
V. Rights of, *see* SUCCESSION.

I. Contestation of Report of Distribution by.

29. Where a widow contested a report of distribution in her quality of universal legatee and testamentary executrix of her late husband, claiming a balance of a *bailleur de fonds*, a property sold by him some years previous to his decease, and it was shown that she was in community with her husband, and would have been entitled to one-half of the amount due in that capacity if she had so pleaded—*Held*, that her claim could only be maintained to the extent of one-half. *Amiot* v. *Tremblay & Reid*, 2 L. N. 196, S. C. 1879.

II. Liability of.

30. An action by a physician against the tutor to a minor, heir by will of his deceased mother, for professional services rendered to the latter. The tutor had accepted for the minor

* And also the case of *Paige & Ponton*, p. 116, Art. 3, just reported at greater length in the last issue of the *Jurist*, vol. 26, p. 166.—Ed.

the personal property of the deceased, but had renounced the community which existed between the deceased and her husband. The claim was resisted on the ground that the debt belonged to the community which the minor had renounced—*Held*, that although a debt of the community, it was also a natural debt of the child who had been constituted heir. *Perrault* v. *Etienne*, 1 L. N. 471, & 22 L. C. J. 210, C. C. 1878.

31. Property given to children which reverts to an ascendant under Art. 630 of the Civil Code* is a succession, and liable for the debts of the deceased donee; and such property may be seized by a creditor in execution of a judgment for a debt of the succession without first calling upon the ascendant, who has accepted the succession under benefit of inventory, to render an account. *Corse* v. *Drummond*, 3 L. N. 341, S. C. 1880.

III. May bring Petitory Action for an Undivided Share of an Immoveable.

32. Petitory action respecting a lot of land upon which valuable buildings had been erected. The plaintiff was the owner of an undivided eighth of the real estate in question, and the defendant, who had been in possession of the whole of it up to the time of the institution of the action, denied the right of the plaintiff to any part of it. The plaintiff thereupon brought petitory action. In review the defendant admitted the right of the plaintiff to an eighth, but argued that the rights of the parties being undivided petitory action would not lie—*Held*, that as the defendant had denied the right of the plaintiff to any part of it, and as her rights must be co-extensive with her interest, which might not be served by a partition, that she was not confined to an action *en partage*, but that she could bring action to establish her undivided right, as she had done. *Armitage* v. *Evans*, 4 Q. L. R. 300, S. C. R. 1878.†

IV. May take up instance in action of damages for a delit.

33. Action of damages by an ex-volunteer for imprisonment and hardship suffered by him at the hands of the officers of the regiment after the expiration of his term of engagement—*Held*, that though the right to such action was purely personal and could not be instituted by his heirs, that nevertheless it could be continued by them, where it had been instituted by the person himself previous to his death, and that they could succeed to the claim. *Thompson* v. *Strange*, 5 Q. L. R. 205, S. C. 1879.

*Ascendants inherit to the exclusion of all others property given by them to their children or other descendants who die without issue, where the objects given are still in kind in the succession, and if they have been alienated the price, if still due, accrues to such ascendants. They also inherit the right which the donee may have had of resuming the property thus given. 630 C. C.

†Cannon v. O'Neill, 1 L. C. R. 160; Hart v. McNeil, 4 L. C. J. 8; McAdam v. Kingsbury, 1 L. C. J. 287, and Gauthier v. Gladu, 7 L. C. J. 99, referred to and commented on. See 1 Digest, p. 44.

HIGH CONSTABLE.

I. Fees of, *see* COSTS in Criminal Matters.

HIGH SEAS.

I. Larceny Committed upon, *see* CRIMINAL LAW, Indictment.

HIGHWAYS—*See* ROADS.

HIRE—*See* LESSOR AND LESSEE, MASTER AND SERVANT.

I. Of Work and Labor.

34. Action for the value of work done in paving the cellar of defendant's house with stone. Defendant admitted that the work had been done, but pleaded that it had been done without his knowledge, order or consent during his absence, and that plaintiff had said when doing it that he did not intend to charge for it, but that it was to be a gift to the defendant. He offered to allow plaintiff to take away the stone on condition of replacing the premises in the condition in which they were before. Plea maintained. *Piton & Lepage*, 7 R. L. 603, Q. B. 1876.

HIRING TEAMS.

I. At Elections, *see* ELECTION LAW, Corrupt Practices.

HOMOLOGATION.

I. Of Report of Distribution, *see* DISTRIBUTION.

HORSES.

I. Action for Redhibitory Vice in.
II. Liability for when out at Pasture.

I. Action for Redhibitory Vice in.

35. Appellant bought a horse from respondent on the 6th May, on the 9th he took the horse home. On the 26th, 17 days after taking the horse home, he brought action for a *vice redhibitoire*—*Held*, in appeal, confirming the judgment of the court below, that while the court would not be bound by the nine days rule laid down in the custom, and followed in the judgment of the court below, that the delay was too long, and the action was properly dismissed. *Donihee & Murphy*, 2 L. N. 94, Q. B. 1879.

II. Liability for when out at Pasture.

36. A person who takes a horse to pasture is liable for injury to the horse by accident, such as having its leg broken, unless he can prove that he was no way in fault. *Belanger* v. *Quinet*, 9 R. L. 530, S. C. 1879.

HOTELKEEPERS—*See* BAILMENTS.

I. Liability of.
II. Liability of Boarders.
III. Privileges of.
IV. Rights of.

I. Liability of.

37. A hotelkeeper is liable for the value of things missing from the room of a guest, where he fails to prove that the loss was caused by a stranger and the contributory negligence of the owner. *Geriken & Grannis*, 21 L. C. J. 265, Q. B. 1876.

II. Liability of Boarders.

38. A boarder in a boarding house cannot take away his things until he pays his board. *Downie & Barrie*, 9 R. L. 513, S. C. 1879.

III. Privilege of.

39. Action of revendication to recover possession of two zinc covered boxes containing boot and shoe samples, valued at $150, the property of the plaintiffs, and alleged to be unlawfully detained by the defendants. Plea, that the defendants, as innkeepers, had a lien upon the said goods for a sum of $30, due them for board and lodging by the plaintiff's traveller, who had brought the goods to the hotel with him, and who, leaving without settling his board bill, had left the goods in defendant's hands. Plaintiff proved ownership of the effects revendicated and the value of the goods, and that they had been demanded of defendants before suit. From the evidence it appeared also that they were placed in the sample room, while the traveller occupied a private sleeping room with his personal baggage, and that on his departure he owed the defendant $30—*Held*, that an innkeeper can exercise his privilege for food and accommodation furnished to a guest upon effects brought into the hotel by such guest, though not his property, and not forming part of his baggage. *Fogarty* v. *Dion*, 6 Q. L. R. 163, S. C. 1880.

IV. Rights of.

40. Where the plaintiff leased a room at $2 a month from defendant, a lodging house keeper, furnished it herself and cooked her own meals in it—*Held*, that she was a lodger within the meaning of Q. 39 Vic. cap. 23,* and that defendant was entitled to retain her effects until payment of rent. *Lalonde* v. *McGlinn*, 3 L. N. 94, C. C. 1880.

HOURS.

I. Of Closing Prothonotary's Office, *see* Prothonotary's Office.

* *Vide* I. Dig. p. 578, Note.

HOUSEHOLD EXPENSES—*See* MARRIAGE.

HOUSES.

I. Are Immoveables though they belong to a different Person from the Ground on which they stand, *see* Property, Description of.

HUSBAND AND WIFE—*See* MARRIAGE.

HYPOTHEC.

I. Action on.
II. Created by Donation.
III. Delaissement.
IV. Delegation of, *see* Obligations. *Acceptance of.*
V. Description of Lands in.
VI. Effect of.
VII. From Husband to Wife.
VIII. Given by Minor.
IX. Given by Wife Separate as to Property, for Household necessaries is null.
X. Liability of Registrar for omission of in Certificate.
XI. Liability of Tiers Detenteur after Delaissement.
XII. Personal Liability on.
XIII. Petition to annul.
XIV. Prescription of.
XV. Priority of.
XVI. Registration of.
XVII. Renewal of, *see* Registration.
XVIII. Resiliation of Sale by reason of, *see* Sale.
XIX. Rights of Hypothecary Creditor.
XX. Rights of Tiers Detenteur.
XXI. Right to Improvements.
XXII. Transfer of during period fixed for Renewal of Registration.
XXIII. Value of as against Vendor's Privilege, *see* Registration.
XXIV. Validity of.

I. Action on.

41. A third party in whose favor charges are made in a deed of donation of real estate may bring hypothecary action against the *detenteur* of the immoveable, although there be no stipulation to that effect in the deed. *Dufresne & Dubord*, 1 L. N. 43, Q. B. 1877.

42. An action in declaration of a hypothec for a sum of $36 cannot be brought in the Circuit Court. *Massé & Coté*, 3 Q. L. R. 322, C. C. 1877.

43. One "C" granted a hypothec to the plaintiff, and also undertook to keep certain property insured by way of collateral security. Plaintiff sued defendant, a third holder, under said hypothec for a balance due, and in computing the balance included four items of six

dollars each for premiums paid for said insurance, and six dollars and fifty cents cost of deed and registration—*Held*, that there was no hypothec for such amounts, and therefore no action against defendant, who was a mere holder and never undertook to pay them. *Michon & Morency*, 6 Q. L. R. 238, S. C. 1877.

43. In a hypothecary action the plaintiff may pray that the defendant be condemned to pay unless he prefers to abandon, although Art. 2061 of the Civil Code says that the hypothecary action is to have the defendant condemned to abandon unless he prefers to pay. *Leclair & Filion*, 7 R. L. 428, C. C. 1875.

44. And where the plaintiff had been a party to an exchange of properties between the donee of the plaintiff and the defendant, and had declared that he accepted the defendant as his personal debtor, as if the donation had been made to him, and in consequence that he discharged the donee personally without novation or derogation—*Held*, that the plaintiff had not thereby deprived himself of his hypothecary recourse against the defendant. *Ib.*

45. The ordinary hypothecary action cannot be exercised against an assignee who is in possession of immoveable property of an estate in his quality as such. *Dawes & Fulton*, 1 L. N. 243, S. C. 1878.

46. *Right to in hands of immediate debtor.*—The plaintiff having taken a mortgage from his debtor in security of his debt, afterwards brought hypothecary action to recover the amount. Defendant pleaded that the hypothecary action could only be brought against the *tiers detenteur*, and not against the original personal debtor. Simultaneously with the filing of this plea plaintiff filed a *desistement* of the hypothecary conclusions, and adhered merely to the demand for a personal condemnation—*Held*, that under the terms of Art. 2058* of the Civil Code the plaintiff had a perfect right to the hypothecary conclusions; but that, having given the defendant the option of paying the amount or abandoning the property, he could not withdraw that option as he had done, and thereby deprive the defendant of his choice. *Lebrun* v. *Bedard*, 21 L. C. J. 157, S. C. 1877.

47. A hypothecary creditor, whatever the amount of his claim, may take an hypothecary action against his debtor, holder of the immoveable hypothecated, although he has already a judgment against the said debtor personally for the same claim. *Dorval & Boucher*, 6 Q. L. R. 197, S. C. 1879.

II. Created by Donation.

48. A hypothec may be created by charges in favor of a third party in a donation of real estate, although there be no stipulation to that effect in the deed. *Dufresne & Dubord*, 1 L. N. 43, Q. B. 1877.

III. Delaissement.

49. The respondent and two associates bought a tract of land, half of which had been purchased by the vendor from the appellant. There was an amount due the appellant by the vendor which respondent and his associates, vendees, undertook to pay. On a hypothecary action being brought against the respondent and his co-vendees the respondent made a *delaissement* of his share. Then the appellant instituted a personal action against respondent who pleaded that as she had chosen to bring a hypothecary action, and the respondent had abandoned the immoveable, she had lost her recourse against the respondent personally—*Held*, that he was no longer personally liable.* *Reeves* v. *Gerken*, 2 L. N. 67, Q. B. 1879.

IV. Delegation.

50. *Acceptance of.*—One of the defendants gave a hypothec to the plaintiffs on a property in the township of Shefford, and afterwards sold the property with right of *remeré* to the other defendant, who undertook to pay to plaintiffs, to the discharge of his vendor, the sum of $3,500 remaining of the hypothec. This deed of sale was registered the 31st May, 1876. On the 23rd August of the same year the purchaser retroceded the property to his vendor. On the 26th March of the following year, the plaintiffs signified their acceptance of the delegation. Action against both defendants jointly and severally—*Held*, that notwithstanding the *delegué* had paid several instalments of the money undertaken to be paid by him in the deed of sale, that the plaintiffs had no rights under it without express acceptance of the delegation, and the acceptance which they had signified was too late as being subsequent to the retrocession.† *La Société Permanente de Construction* v. *Leonard*, 2 L. N. 148, S. C. 1879; 1029 C. C.

V. Description of Land in.

51. By 40 Vic. cap. 16, Art. 2042 of the Civil Code‡ is amended so as to make valid descriptions of land by lot or range.

VI. Effect of.

52. A hypothec given for a credit opened in favor of the mortgagor takes effect from the time it is granted and not from the time the advance is actually made. *Quintal & Lefebvre*, 3 L. N. 347, S. C. 1880.

VII. From Husband to Wife.

53. A mortgage given by a husband to his wife, *separée de biens*, is not necessarily void. *Bank of Toronto & Perkins*, 2 L. N. 252, S. C. 1879.

---

* The hypothecary action is given to creditors whose claims are liquidated, and exigible against all persons holding, as proprietors, the whole or any portion of the immoveable hypothecated for their claim.

* Since reversed in Supreme Court but not reported. See 3 L. N. 383 & 4 L. N. 106.

† Confirmed on appeal. See 4 L. N. 38.

‡ Conventional hypothecs are not valid unless the deed specially describes the immoveable hypothecated, with a designation of the cotermineus land, (or) of the number or name under which it is known (or of the lot and range or part of lot and range), or of its number upon the plan and book of reference of the registry office if such plan and book of reference exist. 2042 C. C.

VIII. Given by Minor.

54. A hypothec given by a minor is not radically null, but is merely subject to be annulled in case of lesion. **Beliveau & Duchesneau*, 22 L. C. J. 37 & 168, S. C. R. 1877; 987 C. C.

IX. Given by Wife Separate as to Property for Household Necessaries.

55. The personal obligation of a wife, separate as to property, with hypothec on an immoveable belonging to her, for a debt of her husband, or even of the community for necessaries for the family, is prohibited by law and is absolutely null as to such immoveable. *Gardner* v. *Arres & Grenier*, 3 L. N. 349, S. C. 1880.

X. Liability of Registrar for Omission of in Certificate.

56. A registrar is responsible to the creditor for any damages caused by the omission of a hypothec in his certificate furnished to the sheriff, and the creditor may proceed against the registrar to recover the amount with interest, without showing that the debtor and others liable on the hypothec are insolvent. *Trust & Loan Co. of Canada* v. *Dupras*, 3 L. N. 332, Q. B. 1880.

XI. Liability of Tiers Detenteur after Delaissement.

57. The company brought a hypothecary action against the *tiers detenteur* of an immovable which had been sold by them, and there were the usual conclusions that the defendant be condemned to pay the amount or abandon the property. Judgment was pronounced in favor of the plaintiff, and this judgment was followed by a *delaissement*. Subsequently a personal action was brought against the defendant, who had bound himself personally to the payment of the debt, but the creditor had not become a party to the deed. The question now was whether this personal action could be brought in view of the abandonment which had been made—*Held*, that the creditor having resorted to the hypothecary action, and the *tiers detenteur* having abandoned, the former was now precluded from bringing a personal action. Judgment of the court below reversed, and action dismissed. *Montreal Permanent Building Society* v. *Desautels*, S. C. R. 1877.

XII. Personal Liability on.

58. The defendant was *tiers detenteur* of a property on which was a hypothec in favor of plaintiff, and which hypothec defendant had assumed. The plaintiff sued in declaration of his hypothec and obtained judgment, and the defendant then made a *delaissement*, but removed some of the blinds and windows which he claimed as improvements. The plaintiffs thereupon took action against him personally accompanied by capias—*Held*, reversing the decision of the court below, that as the plaintiff had already sued hypothecarily and had accepted the *delaissement*, that he had lost his personal recourse, and the defendant had a right to his improvements. *Desautels & La Société de Construction Canadienne de Montréal*, 2 L. N. 147, S. C. R. 1879.

XIII. Petitions to annul.

59. In petitions *en radiation d'hypotheque* the hypothecs to be struck out must be specially described, and each of the discharges or other papers relied on must be described in the same way and a regular list of exhibits filed. *Loranger & DeGaspé*, 4 Q. L. R. S. C. 1877.

XIV. Prescription of.

60. On the contestation of an opposition founded on a constituted rent with hypothec created in 1818, and the last acknowledgment of which was some thirty-three years previous—*Held* that a hypothec being but the accessory of a debt, and has no existence apart from it, and the extinction of the personal debt by prescription carries with it therefore the extinction of the hypothec, even where the latter has been preserved by acts of interruption. *Hamel* v. *Bourgel & Baby*, 4 Q. L. R. 148, S. C. 1878.

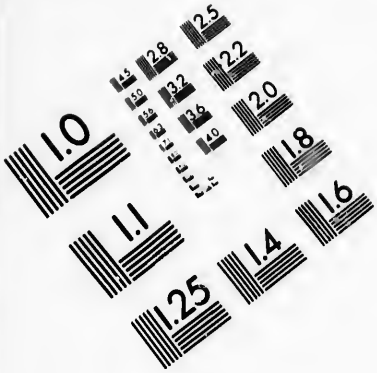
XV. Priority of.

61. Contestation of an assignee's dividend sheet. The insolvent on the 10th September, 1877, acquired a title to the property since sold by his assignee, and the proceeds of which he was about to distribute. The insolvent, however, had been in possession of the property since 1876, when the terms of sale had been agreed upon, and the vendor had allowed him to take possession. The vendor, examined as a witness, said that the deed was not passed in 1876, because the parties could not make it convenient to meet. Before obtaining his title the insolvent, on the 12th June, 1877, gave a mortgage on the property to the contestant, which was duly registered. After obtaining his title he gave two other mortgages, on the property to the parties collocated, which were registered on the 1st of Oct., 1877. The contestation then was between two mortgages, one acquired and enregistered before the mortgagor himself had obtained and registered his title, and one given afterwards. *Held*, that notwithstanding the last clause of Art. 2098 of the Civil Code,* the existence and rank of the first mentioned mortgage were established by the subsequent registration of the mortgagor's title, and as the other was not obtained and registered until afterwards it had no priority. *Begin in re*, 6 Q. L. R., S. C. 1880.

62. Action on a mortgage by which in effect one R. declared among other things that he hypothecated certain real estate for any debt which he might thereafter owe to the plaintiff, and the question was as to the validity of such a mortgage. The date of the deed was the 17th February, 1874, and by it R. declared that he was

* The report of this case is repeated by inadvertence apparently on two different pages of the same volume.—Ed.

* So long as the right of the acquirer has not been registered, all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable are without effect.



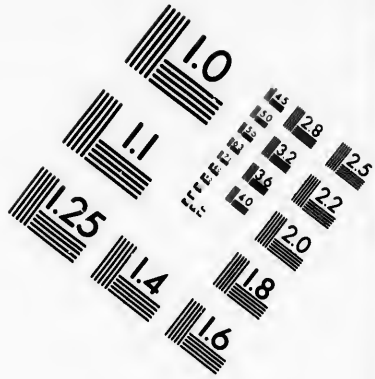
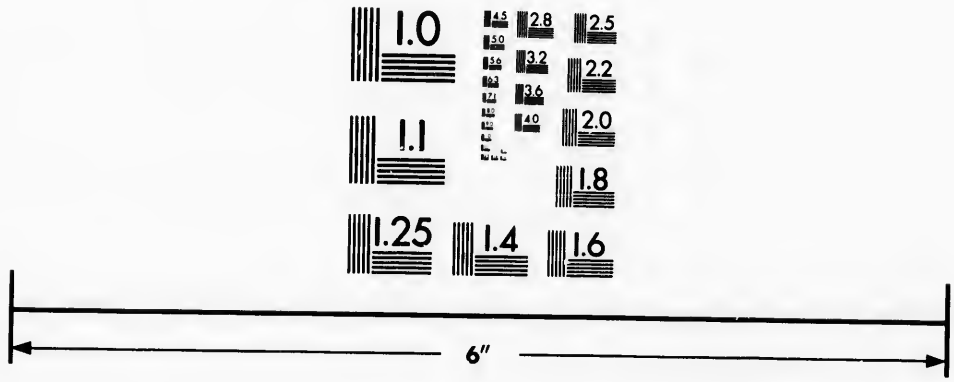
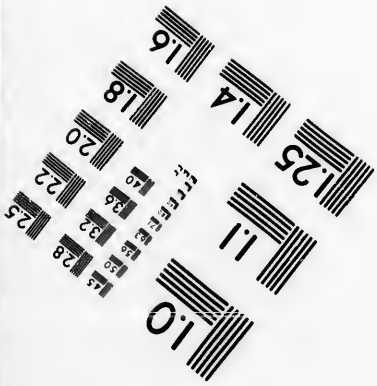
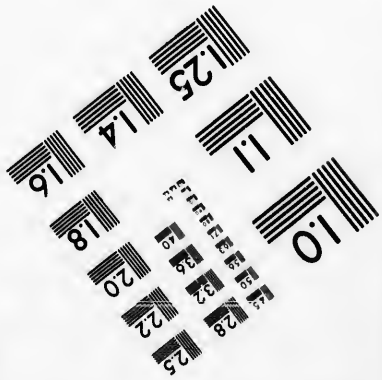


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

then indebted to the plaintiff in the amount of certain promissory notes, and that as collateral security for the payment of the said notes, "*ainsi que de toutes autres sommes qu'il pourra "lui devoir autrement il a par ces presentes "hypothequé en faveur du dit P. O. D., jusqu'a "concurrence de la somme de mille piastres "savoir un certain terrain.*" This deed was registered on the 19th February, 1874. On the 9th of January, 1875, by a deed registered on the 12th of the same month, R. sold the property in question to the defendant. Under a deed bearing date about eight months afterwards, namely, the 9th September, 1875, R. became indebted to the plaintiff in a sum of $90, and the plaintiff sought to enforce payment of that amount and of some smaller debts of the same kind under the mortgage already mentioned. *Held*, that the hypothec had no preference over the sale. *Desilets & Martel*, 5 Q. L. R. 125, S. C. R. 1879.

XVI. Registration of.

63. The claim of children to the share of a deceased wife in a community property, though unregistered, will take precedence of a mortgage duly registered given by the husband subsequent to the death of his wife. *Dallaire & Gravel*, 22 L. C. J. 286, & 2 L. N. 15, Q. B. 1878.

64. The fact of the existence of a first mortgage being mentioned in a second mortgage will not relieve the first mortgagee from the necessity of registration to preserve his priority. *Jeannotte & La Cie. de Prêt & Credit Foncier*, 24 L. C. J. 28, S. C. 1878.

65. A hypothec registered within thirty days of the insolvency of the person granting it is without effect to give to the mortgagee a privilege on the proceeds of the estate of the insolvent. *Dwyer & Fabre & McCarron*, 24 L. C. J. 174, S. C. 1879.

66. A hypothec of the Corporation of Three Rivers for moneys advanced under the authority of 20 Vic. cap. 130, does not require registration in order to preserve its privilege. *Peloquin & La Société de Construction St. Jacques*, 3 L. N. 348, S. C. 1880.

XIX. Rights of Hypothecary Creditor.

67. A purchased a lot of land at sheriff's sale without paying the purchase money. He subsequently exchanged it with B, who agreed to give to the sheriff the required security and to pay the mortgages. After security was given to the sheriff the property was irregularly sold at the *folle enchère* of A, and again resold by the sheriff on the second purchaser. B then claimed the proceeds of this sale as the price of his property. C, a mortgage creditor anterior to the first sheriff's sale, claimed the amount of his mortgage. His opposition was contested by B, and dismissed. *Held*, reversing the judgment of the Superior Court, that as it did not appear that B had paid the mortgage of C, the latter had the right to be paid in preference to B the amount of his mortgage on the moneys levied which represented his *gage*. *Garon & Tremblay*, 1 L. N. 43, Q. B. 1877.

68. And *held*, also, that as there was evidence of the insolvency of B, the opposition of C could be sustained as an opposition *en sous ordre*. *Ib.*

69. In no case can a hypothecary creditor be collocated and paid interest beyond the date of adjudication of the property hypothecated. *Généreux & Gordon & La Soc. de Construction Metropolitaine*, 2 L. N. 134, & 23 L. C. J. 221, S. C. R. 1879.

XX. Rights of Tiers Detenteur.

70. The defendant being sued in declaration of hypothec offered to abandon the property on condition that he be liberated from all personal obligation on account thereof to the creditor, and that the plaintiff give him security as well against all such indebtedness as for the amounts paid by him in discharge of previous hypothecs. *Held*, that he was entitled to security on account of the money he had paid in discharge of hypothecs having precedence to that on which the action was brought, but not on account of his personal liability to the plaintiff, as that was discharged by the abandonment, and failing the offer of such security by the plaintiff the action was dismissed. *Perrault & Desjardins*, 24 L. C. J. 178, S. C. 1877.

XXI. Right to Improvements.

71. The defendant bought a property which was mortgaged to the plaintiffs for $7,000, which obligation he assumed. Subsequently the plaintiff sued *en declaration d'hypothec* and obtained judgment. The defendant then made a *delaissement*, but between the judgment and the *delaissement* took away a number of double windows and blinds. The plaintiff thereupon issued a capias against defendant on the ground of deterioration. The capias was quashed on petition, on the ground that by the evidence taken on the petition there was no concealment. On the merits, however—*Held*, that the defendant, being both charged with the hypothec and personally liable for the payment of the debt, could not plead the exception of *impenses and ameliorations*, and as by article 2075 C. C. the property should be surrendered in the condition in which it was at the time of the judgment, which was not done, that the plaintiff must have damages. *La Société de Construction Canadienne de Montréal* v. *Desautels*, 2 L. N. 47, S. C. 1879; 2065 & 2075 C. C.

XXII. Transfer of during Period fixed for Renewal of Registration.

72. A transfer of a hypothecary claim during the period fixed for the renewal of real rights, even when the transfer conforms to all the conditions prescribed by Art. 2168 of the Civil Code, will not give to the transferee the rank of such hypothec, unless the transfer is accompanied by the notice prescribed by Art. 2172. *Roussat & Bureau*, 5 Q. L. R. 369, S. C. R. 1879.

XXIV. Validity of.

73. A valid legal or judicial hypothec may be obtained against a property which has been sold by the debtor, as long as such sale has not been registered. *Lefebvre* v. *Branchaud*, 1 L. N. 230, & 22 L. C. J. 73, S. C. R. 1878.

I.

SUMMARY OF TITLES.

	Page
ILLEGAL ARREST	361
ILLEGITIMATE CHILDREN	361
ILL-TREATMENT	363
IMMOVEABLES	363
IMPENSES AMELIORATIONS	363
IMPRISONMENT	363
IMPROBATION	366
IMPROVEMENTS	368
IMPUTATION	368
INCIDENTAL DEMAND	368
INDECENT ASSAULT	368
INDEMNITY	368
INDIANS	368
INDICATION DE PAIEMENT	368
INDICTMENT	368
INFANTS	368
IN FORMA PAUPERIS	369
INFRINGEMENT	369
INHERITANCE	369
INJUNCTION	369
INJURES VERBALES	375
INJURY	375
INNKEEPERS	375
INSCRIPTION	375
INSCRIPTION EN FAUX	375
INSOLVENT	375
INSOLVENCY	375
INSPECTION LAW	398
INSTRUMENTS	398
INSURANCE	398
INTERDICTION	416
INTEREST	416
INTERFERENCE	420
INTERIM RECEIPT	420
INTERLOCUTORY JUDGMENT	420
INTERPRETATION	420
INTERROGATORIES	420
INTERRUPTION	420
INTERVENTION	420
INTOXICATING LIQUOR	422
INVENTORY	422
INVESTMENTS	422
IRREGULARITIES	422

ILLEGAL ARREST.

I. Damages for, *see* DAMAGES.

ILLEGITIMATE CHILDREN.

I. Maintenance of.
II. Filiation of.

I. Maintenance of.

1. The defendant, father of an illegitimate child, had been condemned to pay an alimentary pension for the support of the child until it attained 14 years of age. At the age of 17 the child, a girl, being of weak intellect and unable to support herself, the mother sued as tutrix for an alimentary pension of ten dollars, to begin five months prior to the institution of the action. Judgment went for the plaintiff, and in appeal the following reasons were urged: 1st, That the tutorship of the mother was not registered. 2nd, That appellant ought to be tutor, and was willing to take charge of the child and to place her in an asylum; and 3rd, That in any case he could only be condemned to pay aliment from the institution of the action—*Held*, dismissing the appeal on all these points. *Poissant & Barrette*, 3 L. N. 12, Q. B. 1879.

2. An action in declaration of paternity and for maintenance for the child may be joined with an action of damages for the mother resulting from the seduction. *Kingsborough & Powud*, 4 Q. L. R. 11, Q. B. 1878.

3. And *held*, also, that such action may be brought by the mother in her own name. *Ib.*

II. Filiation of.

4. Action by plaintiff, a minor, assisted by his tutor in declaration of his paternity. Plaintiff was the illegitimate child of one Martha Dawson, by whom he was born in January, 1865, according to her story; but, according to a Doctor Lawrence, in January, 1874. In order to corroborate the statement of the mother, a pretended certificate of baptism was produced, which stated that the child was baptized in May, 1875, by a Rev. M. Woodrich, but did not state of what church, parish or congregation, nor as to the register in which it was entered, nor whether any was kept by the minister, nor as to his official character. The paper was not signed by the minister, but by one Chapman. Such was not an *extrait de baptême* according to Art. 45 of the Civil Code.* Action dismissed *sauf à se pourvoir et sans frais*. *Osgood & Goodenough*, 7 R. L. 719, S. C. 1877.

ILL-TREATMENT.

I. Of Sailors on Sea, *see* MARITIME LAW.

IMMOVEABLES.

I. Donation of, *see* DONATION.
II. Formalities in Sale of, *see* SALE.
III. Houses are, though owned by a Different Person from the Property on which they stand, *see* PROPERTY.
IV. Hypothecation of, *see* HYPOTHEC.
V. Minor cannot Transfer without Authorization, *see* MINORITY.
VI. Prescription of, *see* PRESCRIPTION.
VII. Registration of, *see* REGISTRATION.
VIII. Sale of, *see* SALE.
IX. Seizure of before Judgment.
X. Transfer of after Action brought, *see* TRANSFER.
XI. What are, *see* PROPERTY, Description of.

IX. Seizure of before Judgment.

5. Under a writ of *saisie arrêt* before judgment the immoveable property of the debtor may be seized. *Corbeil* v. *Charbonneau*, 3 L. N. 381, S. C. 1881.

IMPENSES ET AMELIORATIONS —*See* HYPOTHEC.

IMPRISONMENT.

I. Action for False.
II. Alimentary Allowance.
III. Contrainte par Corps.
IV. For Fraud under Insolvent Act, *see* INSOLVENCY.
V. Of Minor.
VI. Of Persons over Seventy Years of Age.
VII. Warrant of.

I. Action for False.

6. An action will not lie against a justice of the peace by an individual who has been illegally condemned to fine and imprisonment if the justice of the peace does not appear under the circumstances to have acted wilfully and without sufficient and probable cause. *Marois & Boldue*, 7 R. L. 148, Q. B. 1875

7. And the judgment or conviction rendered by the justice of the peace protects its author from all liability in damages as long as it remains in force. *Ib.*

8. There is no action of damages for false imprisonment simply because the person arrested is innocent; it is also necessary to establish that the person who caused the arrest was without reasonable ground for doing so. *Lefebvre & La Cie. de Navigation à Vapeur de Beauharnois*. 9 R. L. 547, S. C. 1879.

9. Respondent obtained judgment in damages for slander against the wife of appellant, and on such judgment sued out a *contrainte par corps*, which was set aside on the tierce opposition of appellant, who then took action of damages for false imprisonment—*Held*, that defendant having acted in good faith no such action would lie. *Langlois & Normand*, 6 Q. L. R. 162, Q. B. 1880.

II. Alimentary Allowance.

10. A person imprisoned for contempt of court has no right to an alimentary allowance. *Vermette* v. *Fontaine*, 6 Q. L. R. 159, C. C. 1880.

11. The defendant was in gaol under a judgment of *contrainte par corps*. The debt arose on a surety bond for costs in appeal. Defendant applied for an alimentary allowance under C. C. P. 790*—*Held*, that a judicial surety was not entitled to an alimentary allowance under said article. *Cramp & Coquereau*, 3 L. N. 332, S. C. 1880.

III. Contrainte par Corps.

12. A judgment condemning the defendant to pay certain costs specified, and concluding with the words "the whole with costs," includes the necessary future costs of executing the judgment, and a commitment including such additional costs is not in excess of the judgment. *Thompson exp.*, 1 L. N. 102, Q. B. 1877.

13. And a *habeas corpus* will not be granted where the petitioner is detained in a suit for a civil matter before a court having jurisdiction over such matter. *Ib.*

14. After a rule had been declared absolute, and a warrant issued against two persons on a security bond, one of them who had already contested presented a petition to a judge setting forth that the rule had been contested without his knowledge, and by an attorney whom he had

* Any person thus imprisoned may upon petition to the court or to a judge, previously served upon the creditor, and accompanied with an affidavit that he is not worth fifty dollars, obtain an order commanding the creditor to pay him as an alimentary allowance during the period of his imprisonment a sum not less than seventy cents and not exceeding one dollar per week 790 C. C. P.

not employed, thereby incurring a large and unnecessary bill of costs, and that the sum due was in reality paid, and praying for an order staying the proceeding under the warrant, and that it be declared that the warrant had issued illegally, and that petitioner be discharged from all liability. The order was granted, and on the merits of the petition—*Held*, that under the rule *non bis in idem* these questions could not be raised by such a petition, and it must therefore be dismissed. *Généreux* v. *Howley et al. & Jones*, 21 L. C. J. 162, S. C. in C. 1877.

15. And, *semble*, that a judge in chambers is without jurisdiction to try the merits of such a petition. *Ib.*

16. Where a bailiff, resident in another district, and charged with the execution there of a writ issued in the district of Montreal, fails to comply with the exigencies of the writ, he is liable to imprisonment in the district of Montreal. *Guaedinger et al.* v. *Devouin et al.*, 21 L. C. J. 220, S. C. 1877.

17. A defendant is liable to coercive imprisonment under C. C. P. 782,* for conveying away and secreting his effects under seizure, where said effects have been transferred to his father-in-law by a sale through the medium of an assignee, and which sale is manifestly fraudulent and simulated. *Jacques Cartier Permanent Building Society* v. *Roy*, 3 L. N. 314, C. C. 1880.

18. Against his imprisonment under a rule the petitioner, among others, urged that the judgment by which he was imprisoned should have simply ordered him to appear and show cause; that the judgment itself did not order the imprisonment, but that a writ should issue *condemning the defendant to be* imprisoned; that the *procès-verbal* of arrest by the sheriff did not show that a copy of the *procès-verbal* had been served upon defendant. Petition dismissed on all grounds. *Lozeau* v. *Charbonneau*, 3 L. N. 255, S. C. 1880.

19. Judgment went against the defendant for a certain amount of damages for assault. The plaintiff moved for his commitment, in default of payment. The plaintiff did not say anything about signification of copy of the judgment. He should have set up that four months had elapsed since the copy of the judgment had been served on the defendant. For want of that allegation, the application for contrainte dismissed. *Simard & Marsan*, S. C. R. 1880.

20. In a rule against a guardian for failure to produce goods, it is not necessary to give him the option of paying the value as the law reserves that right to him at any time.† *McCaffrey* v. *Claxton*, 3 L. N. 292, Q. B. 1880.

21. The plaintiff obtained judgment against the defendant in $200 damages, for having caused his arrest without probable cause. On a rule for *contrainte par corps*, in satisfaction of the judgment—*Held*, that the imprisonment of the defendant may be asked for by motion after judgment, though imprisonment was not asked for by the action. *Barthe* v. *Dagg*, 3 L. N. 316, S. C. 1880.

22. A guardian, imprisoned for failure to produce the goods of which he was appointed guardian, petitioned for *habeas corpus*, because, 1. He was not given the option of paying the value of the goods. 2. Because more than two months had elapsed since his appointment. 3. Because he was held for certain costs not ordered by the judgment. Petition dismissed on all the grounds. *McCaffrey exp.*, 3 L. N. 106, Q. B. 1880.

V. Of Minor.

23. The petitioner was imprisoned for failing, as *gardien*, to produce goods seized, and he asked for *habeas corpus* in order to be liberated as he was a minor. The application was refused, on the ground that there was no notice to the party interested in maintaining the *contrainte*, and as the affidavit which only contained a general reference to the allegations was insufficient, inasmuch as it did not disclose any reasonable or probable ground for the issue of the writ. *Gauvreau exp.*, 1 L. N. 53, Q. B. 1878.

VI. Of Persons over Seventy Years of Age.

24. See remarks of His Honor Judge Ramsay in *Ouimet & Desjardins*, 3 L. N. 108, Q. B. 1880.

VII. Warrant of.

25. A warrant of imprisonment issued against a person who has not been able to furnish sureties to keep the peace must allege that the complainant declares he fears the accused will do him bodily harm, and that he has threatened to do him bodily harm, and if it does not contain such allegations the accused will be liberated on *habeas corpus*. *Gauthier exp. & Caya*, 10 R. L. 536, Q. B. 1880.

26. But, *held*, that he could be arrested again and committed *de nouveau*, on the ground that he had not paid the costs of conviction, and that such costs need not be detailed in the new commitment. *Ib.*, 10 R. L. 557, S. C. 1880.

---

* In all cases of resistance to the orders of the court respecting the executing of the judgment by seizure and sale of the property of the debtor, as well as in all cases in which the defendant conveys away or secretes his effects, or uses violence or shuts his doors to prevent the seizure, a judge out of court may exercise all the powers of the court and order the defendant to be imprisoned until he satisfies the judgment. 782 C. C. P.

† The guardian or depository may be condemned, even on pain of coercive imprisonment, to produce the property he took in charge, or pay the amount due to the seizing creditor. He may, however, upon establishing the value of the effects which he fails to produce, be discharged upon payment of such value. 597 C. C. P.

IMPROBATION.

I. Appeal by Notary in Support of.
II. Evidence in Support of.
III. Expertise.
IV. Grounds of.
V. Of Sheriff's Report, *see* SALE, Judicial.
VI. Of Sheriff's Title.
VII. Peremption Suspended by, *see* PEREMPTION.
VIII. When necessary.

I. Appeal by Notary in Support of Deed.

27. Where, by a judgment of the Superior Court, a deed was declared *faux*, the notary before whom it was executed, and who was one of the witnesses in the suit, was allowed to appeal on becoming *cessionnaire* of the debt. *Defoy & Forte*, 3 L. N. 36, Q. B. 1879.

II. Evidence in Support of.

28. In an action in a deed the defendant inscribed *en faux* against it. The deed was very badly and illegibly written, and the subscribing witness swore positively that he was not present and did not sign it. The notary's daughter on the contrary swore that the witness was present and did sign it—*Held*, that the evidence of the witness should prevail, and the inscription was maintained. *Defoy & Forte*, 3 L. N. 36, Q. B. 1879.

III. Expertise.

29. In an action in improbation of a deed—*Held*, that where, in consequence of a deed having been drawn up and the different parts of it put together in an unusually slovenly way, there is room for doubt as to the genuineness of part of it, an expertise may be ordered as to the genuineness of that part of the deed to which such doubt relates. *Hamel & Panet*, 3 Q. L. R. 173, P. C. 1876.

IV. Grounds of.

30. The plaintiff sold the defendant by deed before notary a lot of land in the district of Bedford, on the north side of Pike River. About a year afterwards he discovered, for the first time, as he alleged in his declaration, that the deed omitted to contain a reservation of a mill site which he stated he had not intended to sell. Action in improbation, praying to be allowed to inscribe *en faux* against the deed in question, and that it be declared "false, erroneous and "null, save and except as modified, restricted "and qualified by the insertion after the description of the lands therein mentioned of a clause containing a reservation of the mill site in question, and that the said clause be adjudged to form part of the said deed, and the defendant ordered to correct the deed, and in default of his doing so that the judgment do stand in lieu of such correction. Action dismissed as unfounded in law. *Sabine & Kraus*, 3 L. N. 267, S. C., & S. C. R. 1872.

VI. Of Sheriff's Title.

31. Improbation may be brought against a sheriff's title, even after it has been registered and after the property has passed into other hands by titles also enregistered, if the sheriff's title is false in any particular, and that at the instance of an interested creditor who has a hypothec for an annual rent omitted in the sheriff's title. *Carpenter & Dery*, 5 Q. L. R. 311, Q. B. 1877.

VIII. When Necessary.

32. An inscription *en faux* is not necessary in order to attack a notarial deed. *Dufresne et al.* v. *Lalonde et al.*, 21 L. C. J. 105, S. C. 1876.

IMPROVEMENTS.

I. Lien of Legatee for, *see* LEGACY.
II. Right of Lessee to Carry away at Termination of Lease, *see* LESSOR AND LESSEE.
III. Right to, *see* HYPOTHEC.

IMPUTATION.

I. Of Payments, *see* PAYMENT.

INCIDENTAL DEMAND—*See* PROCEDURE.

I. Fees on, *see* ATTORNEY AD LITEM.

INDECENT ASSAULT—*See* CRIMINAL LAW.

INDEMNITY.

I. Proprietors entitled to, for Change of Street Level, *see* STREETS.

INDIANS.

I. Effects of, Exempt from Seizure, *see* EXEMPTION.

II. For Recent Acts Concerning, *see* DOMINION STATUTES 43 Vic. Cap. 28 & 44 Vic. Cap. 17.

INDICATION DE PAIEMENT—*See* HYPOTHEC, DELEGATION, PAYMENT.

I. Acceptance of, *see* ACCEPTANCE.

INDICTMENT—*See* CRIMINA LAW.

INFANTS—*See* CHILDREN, MINORITY.

IN FORMA PAUPERIS.

I. Procedure by, *see* PROCEDURE.

INFRINGEMENT.

I. Of Patent, *see* PATENTS.

INHERITANCE—*See* HEIRS, SUCCESSION, &c.

INJUNCTION—*See* PROHIBITION.

I. Amendment of Petition.
II. Appeal from.
III. Disregard of.
IV. Form of.
V. Grounds of.
VI. Power of Court to Order.
VII. Prior to Quebec Injunction Act.
VIII. Right to.
IX. Security in Cases of.
X. Under Merchants Shipping Act.

I. Amendment of Petition.

33. Where an injunction issued against the Commissioner of Public Works, who was about to take possession of a railway in the hands of a contractor, and who disregarded the injunction—*Held*, that the petitioner might be allowed to add to his conclusions a prayer that he be reinstated in possession. *Macdonald* v. *Joly et al.*, 1 L. N. 466 S. C. 1878.

II. Appeal from.

34. The Government engineer of the Province of Quebec, under authority of a warrant from the Lieut.-Governor, was proceeding to take possession of the M. O. & W. Railway, for which respondent was the contractor, when the latter, claiming that a large amount was still due him for the construction of said work, obtained a writ of injunction to restrain the Commissioner from interfering further until cause shown. The Commissioner disregarded, and a motion to dissolve the injunction being rejected by the Superior Court—*Held*, that notwithstanding the appellant had disregarded the writ, he might, in the discretion of the court, be permitted to appeal. *Joly et al. & Macdonald*, 1 L. N. 448, Q. B. 1878.

35. And *held*, also, that under these circumstances, an order to suspend the injunction until the appeal could be heard should be granted, notwithstanding the fact that the injunction had been disregarded. *Ib.* 1 L. N. 462, & 23 L. C. J. 16, Q. B. 1878.

III. Disregard of.

36. A rule for contempt of court will not lie against the secretary of a railway company, because the company disregards an injunction ordering it to cease certain works. *Tiernan* v. *Cie. de Chemin de Fer de M. O. & O.*, 8 R. L. 374, Q. B. 1876.

IV. Form of.

37. Action by plaintiffs against the defendants, the Quebec Railway Commissioners, to prevent them proceeding with the expropriation of the plaintiffs' property. The Commissioners had served the plaintiffs with a notice that they had decided to proceed, and the plaintiffs then took out an ordinary action asking that they be ordered to desist. The Commissioners, of whom there were three, appeared separately, and filed separate exceptions to the form of the action, on the ground, among others, that the action was irregular, inasmuch as it was in the nature of a proceeding by mandamus or injunction, and was not accompanied with an affidavit as required by law. *Held*, that as an ordinary action, it must be held to be perfectly regular whatever the nature of the demand. *Bourgoin & Malhiot*, 8 R. L. 396, S. C. 1876.

V. Grounds of.

38. The petitioners asked for an injunction against the respondents to restrain them from commuting the dues collected on floating steam elevators. The Harbor Commissioners objected that under Art. 997 C. C. P.* the proceeding should have been taken in Her Majesty's name, because it complained that a public Board was violating the provisions of the Act by which it was governed. *Held*, that as the evidence failed to disclose any damage suffered by petitioners, and as the proceedings should have been taken in Her Majesty's name, the injunction must be dissolved. *The St. Lawrence Steam Elevating Co.* v. *The Harbor Commissioners*, 2 L. N. 197, S. C. 1879.

39. On a motion to dissolve the injunction issued by petitioner to restrain the respondents from dealing with the funds of the Board, on the ground that petitioner's rights and interest in the fund were fully secured—*Held*, that as the capital of the fund had been materially diminished since the passage of the Act, Q. 38 Vic cap. 64, transferring it to the new Board, the petitioner was entitled to the injunction, notwithstanding it was a serious inconvenience to those

---

* In the following cases:

1. Whenever any association or number of persons acts as a corporation without being legally incorporated or recognized:

2. Whenever any corporation, public body or board violates any of the provisions of the acts by which it is governed, or becomes liable to a forfeiture of its rights, or does or omits to do acts, the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law, it is the duty of Her Majesty's Attorney General for Lower Canada to prosecute in Her Majesty's name such violations of the law, whenever he has good reason to believe that such facts can be established by proof in every case of public general interest; but he is not bound to do so in any other case, unless sufficient security is given to indemnify the Government against all costs to be incurred upon such proceeding 997 C.C.P. (And in such case the special information must mention the name of the person who has solicited the Attorney General to take such legal proceedings, and of the person who has become security for costs.) Q. 41 Vic, cap. 13.

By Q. 41 Vic, cap. 14 other and more special provisions are made for the issue of writs of injunction.

interested in the fund. *Dobie* v. *Board of Management of Temporalities Fund, &c.,* 2 L. N. 278, & 9 R. L. 574, S. C. 1879.

40. The petitioner, a holder of 107 shares in the Montreal, Portland & Boston Railway Co., alleged that the Company, respondents, had summoned a meeting for the purpose of sanctioning a lease of a portion of its railway to the South Eastern Railway Co., but had at the annual meeting then just passed, refused to submit such a statement of the Company's affairs as would enable petitioner and others to judge of the advisability of the proposed lease, and asking that they be restrained from holding said meeting and sanctioning said lease until they should have submitted to the shareholders of said Company, at a meeting duly called, full and detailed accounts and statements of the affairs of said Company, etc. Evidence that the report as submitted and the proposed lease were approved of by the holders of a large majority of the shares, and also that the shares of petitioner had no pecuniary value. *Held*, that while the court would interfere to protect an individual member, if the proceedings of the majority constitute an injustice, yet as the majority appeared to be acting with regularity and *bonâ fides*, and without improper or corrupt influence, that the court would not interfere, and the petition was therefore dismissed. *Angus* v. *Montreal, Portland & Boston Railway Co.,* 2 L. N. 203, & 23 L. C. J. 161, S. C. 1879.

41. Appeal from a judgment of the Superior Court at Montreal, dismissing a motion to quash an injunction. The injunction was taken by the respondent, who was the contractor for the construction of the Montreal, Ottawa and Occidental Railway, to prevent the Government from taking possession of the road or interfering with it, under an order in council passed at Quebec on the 28th August, 1878, addressed to the sheriffs of the districts of Montreal, Terrebonne and Ottawa respectively, commanding them to take possession of and hold the same on behalf of the Commissioner of Public Works. The injunction issued, but the Government proceeded with the work of taking over the railway. On a motion for contempt of court against the sheriff of Montreal and the Government engineer, and a motion to quash the injun tion heard at the same time, judgment was rendered maintaining the injunction and holding the Government engineer to be in contempt of court. In appeal, *held*, reversing this judgment as regards the motion to quash, that it should have been granted, on the ground that the writ of injunction had issued irregularly and without sufficient cause, there being no right of injunction against the Crown. *Joly & Macdonald*, 10 R. L. 391, Q. B. 1879.

42. The plaintiff asking an injunction had addressed a letter to the defendants, his co-partners, proposing a dissolution on certain terms. That was on the 14th November, and he gave them until the 24th at 4 p.m. to accept. They made a declaration of acceptance before a notary on the 22nd of November, and that declaration was notified to the petitioner on the 24th. Plaintiff wishing to withdraw the offer asked for an injunction to restrain them from going on with the business. Order refused. *Demers & Lamarche*, 3 L. N. 117, S. C. R. 1880.

VI. Power of Court to Order.

43. Application to a judge of the Queen's Bench in Chambers was made for an injunction to restrain the City of Montreal from executing a judgment of the Recorder's Court, pending an appeal from a judgment of the Superior Court affecting the same matter. Application rejected, on the ground *inter alia* that the Queen's Bench had no power to issue such an order. *Mallette & City of Montreal*, 2 L. N. 379, Q. B. 1879.

44. But, on a subsequent application to the Superior Court—*Held*, that that court had the power to issue such order, but would not exercise it unless the party petitioning were without other remedy and exposed to irreparable injury, especially if the issue of the injunction would cause serious injury to the party enjoined. *Ib.* 2 L. N. 399, & 24 L. C. J. 264, S. C. 1879.

VII. Prior to Quebec Injunction Act.

45. For a full discussion of the law of injunctions prior to Quebec Act, 41 Vic. cap. 14. *See Tansey & Board for the Management of Temporalities Fund*, 8 R. L. 3, Q. B. 1876.

VIII. Right to, *see* Grounds of.

46. The Corporation of the city of Montreal, on the 3rd April, 1872, by virtue of the Act Q. 34 Vic. cap. 37, sec. 5, which authorized the Corporation of Montreal, through the Council, to subscribe to such number of shares as the Corporation should deem expedient in any railway company, passed a by-law which provided that, subject to the consent of the qualified electors of the city, the Mayor should be authorized to subscribe for one hundred thousand shares of stock in the Montreal Northern Colonization Railway Company, and that a special rate or assessment was to be imposed upon all rateable real property in the city for the purposes contemplated by the by-law. This by-law was published for the first time on the fifth of April, 1872, and was to be submitted to the vote of the ratepayers on the 27th. Previous to latter date the plaintiff took action against the Corporation, setting up these facts, and asking that the Corporation and its officers be ordered to abstain from taking further proceedings until final judgment in the cause, and that the by-law be annulled as illegal and *ultra vires* of the Corporation. *Held*, on demurrer, that while a Corporator suffering an actual injury might have an action in his own name to restrain a Corporation, that under the circumstances, the by-law not having been approved by the electors, no injury had been done, and the action was premature.* *Molson & The Mayor, &c., of Montreal*, 23 L. C. J. 169, Q. B. 1876.

47. In an action *en partage et licitation* after the return of the writ, a petition, supported by affidavits, was presented, alleging that the defendant was in possession of the entire of the pro-

* The by-law in question was subsequently confirmed by the Act of the Quebec Legislature 36 Vic. cap. 49, while the Injunction Act of Quebec, 41 V. c. Cap. 14, makes special provisions for the issue of injunctions on the demand of private persons.—Ed.

perties whereof the plaintiff and her minor children and the defendant were co-proprietors *par indivis*; that the plaintiff was credibly informed and verily believed that the defendant was continuing to trade with the assets of the firm as if he was the sole owner thereof, and was using a saw mill, part of the common property, as if it were his sole property; that in thus dealing with the assets he was meditating and practising a fraud upon her and her minor children, with a view to convert their common property to his individual use, and the petitioner concluded that the said defendant be enjoined from further dealing with the said property pending the present action brought for the petition thereof, and that injunction do issue to that effect, ordering him to discontinue the working of the said mill, the common property of the plaintiffs and the defendant, and to desist from sawing up any portion of the logs, their common property, and from disposing of the assets of the firm. *Held*, that the writ of injunction is a civil remedy, provided and regulated by the laws of England for the protection of property and the maintenance of civil rights, and the Imp. Stat. 14 Geo. III. cap. 83, sec. 8, having enacted in effect that, in the Province of Quebec, *in all matters of property and civil rights, resort should be had to the laws of Canada as the rule for the decision of the same*, and that all suits respecting such property and civil rights should *be determined agreeably to the said laws and customs of Canada*, until changed by subsequent legislation, and the proceeding by injunction not having been established by any subsequent legislation applicable to the said Province, it cannot be allowed as a general remedy in a case such as the present. *Carter & Breakey*, 3 Q. L. R. 113, S. C. 1877.

48. And the powers of a civil nature of the Court of King's Bench, and of the judges thereof, as created, defined and regulated by the Provincial Stat. 34 Geo. III. cap. 6, sec. 8, and now vested in the Superior Court and in the judges thereof, do not include the power of granting writs of injunction. *Ib.*

49. And, although the prerogative writ of mandamus, which is generally used *for public purposes, and to compel the performance of public duties*, has at all times, since this Province became a British Colony, been a legal remedy therein as an incident to the public law of the empire, yet the writ of mandamus and the writ of injunction, although they may in some cases produce "nearly identical effects," are not in principle nor generally speaking the same, and therefore Art. 1022 of the Code of Civil Procedure,* expressly allowing the writ of mandamus in certain cases, cannot be considered as tacitly allowing the writ of injunction in the same cases. *Ib.*

50. And even if the writ of mandamus and the writ of injunction ought to be considered as substantially the same, nevertheless, the plaintiff would not be entitled to a writ of injunction in the case described, it not being one in which a writ of mandamus would lie, and quite distinguishable from the case of Bourgouin v. The M. N. C. Ry. Co. *Ib.*

* *See* MANDAMUS *Infra.*

51. And as it does not appear that a writ of injunction has ever been enforced in this Province by final judgment in a case such as the present, that, however desirable it may be that the procedure by injunction should be established by the Legislature, an attempt to introduce it by merely judicial authority would be both dangerous and illegal. *Ib.*

52. Petition for an injunction under the following circumstances. The petitioners were creditors of the insolvent, particularly for goods and materials which they had reason to believe had been used in the construction of the ship or vessel which was the subject of the injunction. The vessel was mortgaged to a certain firm for advances for its construction, and the petitioners alleged that they had reason to believe that the said mortgagees, in connivance with the assignee in possession, who had not been legally elected, and the insolvent were about to enregister the vessel and dispose of her in fraud of and to the injury of the other creditors. They therefore asked for an order to prohibit all transactions concerning the said vessel. *Held*, that under the circumstances the injunction should be granted. *Dinning in re & Wurtele*, 4 Q. L. R. 37, S. C. 1877.

53. And also that the powers conferred upon the court by sec. 36 et seq. of the Merchants' Shipping Act may be exercised by a judge in chambers, and he could grant an injunction prohibiting any transaction affecting the vessel for any period within his jurisdiction. *Ib.*

54. An injunction issued at the instance of a contractor against the Commissioner of Public Works of the Province of Quebec and the Government engineer, to restrain them from resuming possession of a public work which the contractor was constructing, was *held* to have been improperly allowed, it appearing that the Government acted under express authority of the Legislature, and also that the terms of the contract permitted the Government to cancel it if the works were not duly prosecuted. *Joly & Macdonald*, 2 L. N. 2, Q. B. 1878; Q. 32 Vic. cap. 15.

55. The respondent was the contractor with the Government for the construction of the M. O. & W. Railway. The work was to be completed October, 1877. Nearly a year later, the line not being yet finished, the Government determined to resume possession of the work. A warrant for this purpose was accordingly issued under the Public Works Act (32 Vic. cap. 15), directing the Government engineer to take possession. The respondent claiming that a large amount was still due him, obtained an injunction to restrain the Commissioner of Public Works from proceeding under the warrant. The Commissioner disregarded the injunction, and a motion was granted in the Superior Court against the Government engineer for contempt. *Held*, in appeal, that under the circumstances the injunction had improperly issued, and all the proceedings thereon were set aside. *Joly et al. & Macdonald*, 1 L. N. 461, & 23 L. C. J. 16, Q. B. 1878.

IX. SECURITY IN CASES OF.

56. A demand for security for costs under the ordinary procedure is not a waiver of defen-

dant's right to ask for increased security under thi Injunction Act, and an application for such encreased security within any reasonable time after the return of the writ.* *Dobie* v. *Board of Management of Temporalities Fund of the Presbyterian Church of Canada*, 2 L. N. 277, & 23 L. C. J. 71, & 9 R. L. 574, S. C. 1879.

X. Under Merchants' Shipping Act.

57. An injunction will lie under the Merchants' Shipping Act of 1854 (Imp.), sec. 65, with regard to a ship to be built or about to be built registered under the provisions of the Act of the Parliament of Canada, 36 Vic. cap. 128, s. 36. *Dinning & Wurtele et al.*, 1 L. N. 33, Q. B. 1877.

INJURES VERBALES—*See* LIBEL AND SLANDER.

I. Damages for, *see* DAMAGES.

INJURY.

I. Damages for, *see* DAMAGES.

INNKEEPERS—*See* HOTEL-KEEPERS.

INSCRIPTION—*See* PROCEDURE.

INSCRIPTION EN FAUX—*See* IMPROBATION.

INSOLVENT.

I. Action by, against Inspector, *see* DAMAGES.

INSOLVENCY.

I. Action against Assignee.
II. Action for Penalty under.
III. Affidavit in.
IV. Appeal from Judgment in.
V. Assignee.
Costs of.
Liable to Contempt of Court.
May Sell by Deputy.
Powers of.
VI. Assignment by Non-trader.
VII. Attachment in.
VIII. Attestation of Claims.
IX. Building and Jury Fund.

* See Q. 41 Vic. cap. 14, sec. 4.

X. Capias Against Insolvent.
XI. Claim of Wife on Insolvent Estate of Husband, *see* DOWER.
XII. Claims in.
XIII. Collocation of Claims in.
XIV. Collusion in.
XV. Compensation in Matters of.
XVI. Compensation of Advances made by Assignee.
XVII. Composition.
XVIII. Composition Deed.
Rights of Creditors in.
XIX. Composition Notes.
Liability of Endorser on.
XX. Composition and Discharge.
XXI. Contestation of Claims.
XXII. Contestation of Writs.
XXIII. Costs of Insolvent's Discharge.
XXIV. Costs of Proceedings in.
XXV. Creditors not Individually Liable for Costs of Action by Assignee.
XXVI. Demand of Assignment.
XXVII. Discharge.
XXVIII. Discontinuance of Proceedings in.
XXIX. Duties of Assignee.
XXX. Effect of.
XXXI. Effect of Filing Claim.
XXXII. Effect of, on Appeal Pending, *see* APPEAL.
XXXIII. Effect of Repeal of Act.
XXXIV. Foreign Assignment.
XXXV. Fraud under Act.
XXXVI. Fraudulent Preference.
XXXVII. Hypothec given by Insolvent.
XXXVIII. Imprisonment under Act.
XXXIX. Insolvent Continuing Business.
XL. Issue of Writ.
XLI. Jurisdiction in Matters of.
XLII. Lease not Terminated by.
XLIII. Liability of Insolvent after Discharge.
XLIV. Liability of Sureties of Assignee Appointed by Creditors.
XLV. Meetings of Creditors.
XLVI. Of Banks, *see* BANKS.
XLVII. Of Partnership.
XLVIII. Of Party to Appeal.
XLIX. Payment within Thirty Days.
L. Petition against Insolvent.
LI. Petition to Quash.
LII. Power of Insolvent.
LIII. Power of Interim Assignee.
LIV. Preferential Payments.
LV. Privilege of Employees.
LVI. Privilege of Vendor.
LVII. Proof of Claims in.
LVIII. Registration of Hypothec during.
LIX. Registration of Marriage Contracts, *see* MARRIAGE CONTRACTS.
LX. Remuneration of Assignee.
LXI. Repeal of Act.
LXII. Reprise d'Instance.
LXIII. Retransfer of Estate.
LXIV. Return of Writ.
LXV. Review from Order in.
LXVI. Right of Action on Behalf of Insolvent Estate in Assignee.
LXVII. Rights of Creditors.
LXVIII. Rights of Holder of Negotiable Paper.

LXIX. Rights of Insolvent.
LXX. Right of Review from Judgment on Assignee's Bill, *see* REVIEW.
LXXI. Sale made in Contemplation of.
LXXII. Sale of Book Debts.
LXXIII. Sale of Insolvent Estate.
Description of Immoveables.
LXXIV. Security for Costs in, *see* COSTS.
LXXV. Transfer by Insolvent.
LXXVI. Voting at Meetings.

I. Action against Assignee.

58. Where the assignee to an insolvent estate, under the Insolvent Act of 1875, sold a portion of the insolvent's real estate, and the purchaser was sued by the neighboring proprietor by reason of a building which had been erected by the insolvent against said neighbor's wall, without having acquired the right of *mitoyenneté*, the assignee was properly called in as *garant* by the purchaser, and this notwithstanding that the original action, which was maintained by the court below, was apparently not well founded, inasmuch as the legal effect of the sale by the assignee was to discharge the property from the real rights which were the basis of the principal action. *Stewart & Farmer*, 3 L. N. 33, & 24 L. C. J. 79, Q. B. 1879.

59. And the effect of a condemnation *en garantie* against an assignee under such circumstances, is to give the plaintiff *en garantie* a claim against the insolvent's estate, either to recover the price paid or a portion thereof, or to rank upon the estate for the indemnity awarded by the judgment. *Ib.*

II. Action for Penalty under.

60. Action was taken in the Circuit Court, Quebec, for $27, accompanied with a demand for imprisonment unless the amount was paid, under the 136 and 137 secs. of the Insolvent Act, 1875—*Held*, that such action should, in the districts of Quebec and Montreal, be brought before the Superior Court, and the action was dismissed. *Ross* v. *Webster*, 5 Q. L. R. 356, C. C. 1879.

III. Affidavit in.

61. It is not necessary that the affidavit, under section 9 of the Insolvent Act of 1875, should state that the debt is not secured. *Thibodeau* v. *Jasmin & Gendron*, 1 L. N. 242; & *Barbeau* v. *Larochelle*, 3 Q. L. R. 31, & 187, S. C. 1878.

62. The affidavit required for a writ of attachment under the Insolvent Act may be sworn before the prothonotary or his deputy, notwithstanding the omission to include this officer in the enumeration in section 105 of the Act. *Hilyard* v. *Harmburger*, 1 L. N. 100, S. C. 1878.

63. The affidavit for compulsory liquidation is sufficient if it follow the statutory form, and it is not necessary for the plaintiffs to state in such affidavit what guarantees they hold for the payment of their claim. *Thibodeau* v. *Jasmin*, 22 L. C. J. 228, S. C. R. 1878.

64. Under the Insolvent Act, 1875—*Held*, that the affidavit for attachment was insufficient and irregular, and the writ issued thereunder would be quashed, and the attachment set aside, when such affidavit merely states the alleged debt to be "for the balance due on a note of $140," without showing whether the note referred to is or is not a negotiable instrument, nor disclosing the nature of the defendant's liability thereon. *Home* v. *Connolly*, 5 Q. L. R. 259, S. C. 1879.

65. Under the Insolvent Act of 1875, where the writ was contested on the ground of the insufficiency of the affidavit—*Held*, an acknowledgment by the defendant of his inability to pay his liabilities *in cash* was insufficient to justify the writ, which was therefore quashed. *Milloy & O'Brien*, 3 L. N. 101, S. C. R. 1880.

IV. Appeal from Judgment in.

66. Motion on part of respondent to dismiss the appeal as having been taken after the expiration of the eight days under the Insolvent Act. On the part of appellant it was contended that the Federal Legislature had no right to shorten the delay fixed by the ordinary procedure—*Held*, that the Dominion Parliament has a right to legislate on matters of procedure incidental to a subject assigned to it, and appeal dismissed. *Girouard & Germain*, 3 L. N. 109, Q. B. 1880.

67. There was no appeal from interlocutory judgments under the Insolvent Act, 1875. *St Lawrence Salmon Fishing Co.* v. *Mackay*, 7 R. L. 572, Q. B. 1876.

68. As regards banks there is an appeal from every order, judgment or decision of a judge or court in insolvency, but when such order or judgment is an interlocutory one appeal can only be had after leave granted in the usual way. *Mechanics Bank & St. Jean & Wylie*, 2 L. N. 315, Q. B. 1879; C. 39 Vic. cap. 31.

69. No appeal lies in matters of insolvency to the Supreme Court from the Court of Queen's Bench since the passing of the Dominion Stat. 40 Vic. cap. 27. *Borrowman & Angus*, 2 L. N. 131, & 23 L. C. J. 59, Q. B. 1879.

V. Assignee.

70. *Costs of.*—Appeal from a judgment taxing an assignee's bill of costs. The insolvent presented a petition for an order on the assignee to return him his estate, on payment of $100 allowed him for his account by the inspectors. The assignee on his part presented a petition that his account be taxed at $168.96, which was done—*Held*, that the judge had power under the Act to tax the bill as he had done. *Deladurantaye & Beausoleil*, 3 L. N. 355, S. C. R. 1880.

71. And *held*, also, that the assignee is entitled to the costs of obtaining his discharge, even where the insolvent has obtained from his creditors a deed of composition and discharge. *Ib.*

72. *Liable to Contempt of Court.*—Under Insolvent Act, 1875—*Held*, that an assignee who receives from the court an order to sell the moveables of an insolvent in order to pay a privileged claim, and who refuses to obey such order, will be condemned to imprisonment for

contempt of court. *Blouin & Bouchard in re & Doutre & Craig*, 7 R. L. 445, S. C. 1876.

73. *May Sell by Deputy.*—Under the Insolvent Act, 1875—*Held*, that an assignee to an insolvent estate might sell the property of the estate by deputy. *Benard & Dupuy & Bury*, 3 L. N. 93, S. C. R. 1880.

74. *Powers of.*—Under the Insolvent Act, 1875—*Held*, that the assignee did not require to be authorized by the inspectors to contest the claim of a creditor, and that in any case such want of authorization could only be raised by a preliminary plea. *Stafford* v. *Darling*, 10 R. L. 24, S. C. R. 1879.

VI. Assignment by Non-trader.

75. Where a person who was sued made an assignment in insolvency, and judgment having gone against him, and his effects having been sold by the sheriff, the assignee petitioned that the sheriff be ordered to deliver over to him the moneys levied by the sale—*Held*, that as it was plain that the defendant was not a trader, and the other creditors ignored the assignment, the assignment was clearly a fraud and the petition of the assignee was dismissed. *Mongeau et vir.* v. *Larocque & Gibault*, 1 L. N. 78, S. C. R. 1877.

76. And in a similar case in which a writ of attachment was sued out by a father against his son, who was not a trader, and a creditor intervened—*Held*, that the insolvency proceedings were evidently in fraud of the other creditors and were set aside. *Turgeon & Coupal*, 1 L. N. 77, S. C. R. 1878.

VII. Attachment in.

77. *Contestation of.*—A creditor desiring to attack an attachment under sec. 14 of the Insolvent Act, 1875, does not require to allege that he is an unsecured creditor for an amount exceeding $100. *Langevin & Grothé et al.*, 21 L. C. J. 237, Q. B. 1876.

VIII. Attestation of Claims.

78. A commissioner to receive affidavits to be used in the Supreme Court of Judicature in England is an officer duly authorized to receive the oath of a creditor to a claim to be filed in insolvency under secs. 104 & 105 of the Insolvent Act, 1875. *Murphy & Connolly in re Dinning*, 4 Q. L. R. 368, Q. B. 1878.

IX. Building and Jury Fund.

79. By sec. 145 of the Insolvent Act of 1875, it was provided that one per cent. should be payable by the assignees in insolvency on all moneys realized by them on real estate in their hands—*Held*, that it was the duty of the assignee to retain that amount out of the first payment on account of the price of sale, though a term had been given for the balance. *Chauveau* v. *Evans*, 3 L. N. 78, & 24 L. C. J. 343, S. C. 1880.

X. Capias against Insolvent.

80. A capias will lie against a person who has made an assignment under the Insolvent Act. *Robertson* v. *Hale*, 21 L. C. J. 38, S. C. 1877.

XII. Claims in.

81. On the contestation of certain claims in insolvency—*Held*, that the names of the partners must be given in full, but when an individual trades alone, under the assumed name of a partnership, it need not be specially stated that he has no partners, unless the plural be used to designate the claimant in the body of the claim. *Dinning in re & Samson*, 4 Q. L. R. 26, S. C. 1877.

82. And a claim should contain a sufficient exposure of the cause of demand within the meaning of Art 50 of the Code of Procedure, but need not allege more than an action in the Circuit Court. *Ib.*

83. And must be accompanied by the vouchers on which they are based or other evidence to justify the absence of such vouchers. *Ib.*

84. And secured creditors must specify the nature of their security, and give a description of the several properties and effects, not *en bloc* but separately, and a claim not giving such description is irregular and informal and should be rejected. *Ib.*

85. And a claim made in Great Britain, and there attested under the provisions of the loss substituting attestation for an oath in certain cases, is not a proved claim under our Statute, saving the case of a person objecting to be sworn from conscientious motives. *Ib.*

86. And a power of attorney by a president, cashier or manager of a bank to a person not an employee of the bank is invalid in the absence of anything to show the power of those officers to grant the same. *Ib.*

87. And a creditor who, by reason of informalities in his claim, has no legal status at a meeting of creditors, cannot petition against resolutions there adopted, and his petition will be dismissed with costs. *Ib.*

88. Under the Insolvent Act, 1875—*Held*, that a claim (attested under oath and accompanied by vouchers), if contested, must be substantiated by legal evidence on the points raised, and if claimant requires further particulars of contestation than those stated, he must demand them before evidence gone into, but a mere plea of general issue will not throw the *onus probandi* on the claimant. *Watson & Samson*, 4 Q. L. R. 365, Q. B. 1878.

89. Under the Insolvent Act, 1875—*Held*, that in the case of a promissory note the claim of the bearer was sufficiently indicated in the statement furnished to the assignee by the insolvent, if given in the name of a third party, endorser of the note. *Merchants Bank* v. *Samson*, 4 Q. L. R. 375, S. C. 1878.

90. And in such case the bearer who has not received notice nor filed a claim is represented for all the purposes of the insolvency by the endorser whose name is thus given, in the place of his own, as a creditor of the insolvent, and the signature of the endorser to the deed of composition and discharge binds the bearer for all legal purposes. *Ib.*

XIII. Collocation of Claims.

91. The respondent had been the cashier of a bank, and having advanced money on account

of the bank to one I, on promissory notes which he himself took a mortgage from T. to protect. T. becoming insolvent, the bank ranked on the notes and respondent ranked on the mortgage. On being asked to file a statement of his claim, he filed the notes on which he had already ranked and received a dividend—*Held*, that the collocation would be maintained less the amount received by the bank. *Thibadeau & Beaudoin*, 3 L. N. 306, Q. B. 1880.

XIV. Collusion.

92. On evidence of collusion, writ of attachment under Insolvent Act, 1875, quashed and set aside. *Nowell & Reeves & Kilby*, 2 L. N. 301, S. C. 1879.

XV. Compensation in Matters of.

93. Under sec. 107 of the Insolvent Act, 1875, compensation accrues in respect of debts falling due after the insolvency, when the transactions leading thereto began prior to the insolvency. *Miner & Shaw*, 23 L. C. J. 150, S. C. 1879.

94. The appellant was a creditor of the insolvent estate represented by the respondent as assignee. The stock in trade of the insolvent being sold, appellant endorsed the notes of the purchaser, who failing, appellant became a debtor of the estate to an amount greater than the dividend due him by the estate. Subsequently appellant failed also, and respondent having, in his quality of assignee, received a dividend on his claim against appellant's estate, sought to set up the dividend due appellant by the balance due from his estate—*Held*, that compensation did not arise in such case. *Walker & Doutre*, 23 L. C. J. 317, Q. B. 1878.

XVI. Compensation of Advances made by Assignee.

95. An assignee making advances to a claimant on an insolvent estate, on the understanding that he is to be repaid such advances from the dividends which may be declared on the borrower's claim, does so at his own risk, and in the event of such claimant subsequently and before a dividend is declared becoming insolvent, the assignee cannot set up such advances as a reason for refusing to pay the dividend to the assignee of the claimant. *Gareau & Perkins & Court*, 23 L. C. J. 64, S. C. 1878.

XVII. Composition.

96. Where a composition is unpaid the debt revives in full. *Rolland & Seymour & Smith*, 2 L. N. 324, S. C. 1879.

97. Under the Insolvent Act, 1875—*Held*, that an insolvent co-partnership could not offer two compositions, one to the creditors of the co-partnership and the other to the creditors of the co-partners individually, or any of them, and that irrespective of this objection the deed before the court could not be confirmed, because it was not assented to by a majority of the co-partnership creditors, because even as regards the composition offered to the creditors of the co-partners individually the creditors of the co-partnership had a right to vote, and the last mentioned compositions were not assented to by the required majority of the separate creditors and co-partnership creditors counted together. *Gelinas & Drew*, 3 Q. L. R. 361, S. C. R. 1877.

XVIII. Composition Deed.

98. *Rights of Creditors.*—Where an insolvent had entered into a composition of 45 cents in the dollar, which he was to pay to the assignee in notes, and thereupon to be discharged and to receive back his estate, but the assignee refused to deliver to petitioner the notes for the amount of his dividend, on the ground that his claim had not been filed until after the dividend sheet had been prepared, and had been homologated by lapse of time—*Held*, that the assignee was wrong, and was bound to furnish him with a note covering the amount of his dividend. *Murray & Stewart & Auerbach*, 21 L. C. J. 123, S. C. 1877.

XIX. Composition Notes.

99. *Liability of Endorser on.*—The endorser of a composition note, given by a debtor to his creditor in carrying out a settlement (not under the Insolvent Act) for fifty cents in the dollar, was held not liable for the amount of such note, where it appeared that the debtor for whom he endorsed the note, and from whom he had taken a transfer of his estate as collateral security, had secretly given the plaintiff (a creditor) his own notes for the balance of his claim, in order to obtain his assent to the composition, which notes had been paid. *Arpin & Poulin*, 22 L. C. J. 331, & 1 L. N. 290, Q. B. 1878.

XX. Composition and Discharge.

100. Where the name of an endorser of a note was filed as a creditor in insolvency under the Insolvent Act of 1875, instead of the name of the bearer, it was *held* that the endorser would represent the holder, and his signature to a deed of composition and discharge would bind the holder. *Merchants Bank & Samson*, 4 Q. L. R. 375, S. C. 1878.

101. And a creditor could not attack the deed of composition and discharge after its confirmation if he knew of the insolvency in time to oppose the confirmation. *Ib.*

102. Under Insolvent Act, 1875—*Held*, that the assignee had not the right to retake possession of the property of the insolvent, because he has not paid the instalments due under his composition deed, unless such a condition is contained in the deed. *Piton in re*, 6 Q. L. R. 33, S. C. 1880.

103. And in the absence of an express stipulation to that effect, the discharge contained in a deed of composition is absolute, notwithstanding the failure of the insolvent to pay the amount of his composition. *Ib.*

104. And in the case in question the deed of composition contained no such condition. *Ib.*

XXI. Contestation of Claims.

105. A note given by the insolvent to her brother seven days prior to her insolvency was contested, but as consideration was proved the contestation was dismissed without costs. *Garon & Globensky*, 3 L. N. 182, S. C. 1880.

106. Leave granted to contest collocation of claim in dividend sheet after expiration of delay fixed. *Thibadeau & Beaudoin*, 3 L. N. 306, Q. B. 1880.

XXII. Contestation of Writ.

107. Where the proof showed that the claim upon which the attaching creditor had founded his demand for a writ was trumped up for the purpose, the writ was set aside. *Logan & Kearney*, 2 L. N. 386, S. C. 1879.

XXIII. Costs of Insolvent's Discharge.

108. The insolvent, who had obtained his discharge from the court after the lapse of a year, asked that the assignee be ordered to pay over to him the costs of his discharge under sec. 118 of the Insolvent Act of 1875—*Held*, that sec. 118 was amended by 40 Vic. cap. 41, sec. 25, the effect of which was to strike out the provisions for the costs of the insolvent's discharge, and as this amendment became law on the 28th April, 1877, and as it did not appear that the proceedings for discharge began before this date, the insolvent was not entitled to costs. *Lortie & Evans*, 2 L. N. 126, & 23 L. C. J. 56, S. C. 1879.

XXIV. Costs of Proceedings in.

109. Where the imprisonment of the defendant was demanded under sec. 136 of the Insolvent Act, 1875, and judgment was obtained for the defendant simply, costs as in an *exparte* case only were granted. *Brown* v. *Mullen*, 2 L. N. 344, S. C. 1879.

XXV. Creditors Individually not Liable for Costs of an Action by Assignee.

110. Under the Insolvent Act, 1875—*Held*, that an assignee had no power to bind creditors personally for the costs of an action which he had caused to be discontinued. He was subject to certain limitations, and for certain purposes the agent of the estate of the insolvent, but he is not for any purpose the agent of the creditors individually, and therefore cannot bind them. *Crépeau* v. *Glover*, 5 Q. L. R. 235, S. C. R. 1879.

XXVI. Demand of Assignment.

111. To a demand of assignment by the respondent the appellant answered that the demand was not made within three months following the protest of the notes upon which the claim was founded; that the Bank of Montreal had previously made a similar demand, which was still, and had the effect of estopping others, and that the bills on which the respondents were proceeding were made before the coming into force of the Insolvent Act of 1875, and therefore the proceedings in insolvency should have been under the Act, 1869. Judgment dismissing answer on all these grounds approved in appeal. *Knight & La Banque Nationale*, 9 R. L. 724, Q. B. 1876.

112. Demand of assignment by respondent upon appellant the 13th January, 1875. Petition against the demand alleging that the stoppage of payment was only temporary, his assets being more than sufficient to meet his liabilities; objections to the form that the demand of assignment was dated the 11th January (having been signed in Montreal), but the affidavit was deposited in the prothonotary's office on the 13th only, date of service of the demand; that the demand was signed by the attorney *ad negotia* of the creditor (notarial power of attorney produced); that the bill of exchange on which the demand was made was not duly stamped (bill on its face properly stamped); that the demand was vexatious, and used only as a means of enforcing payment. Petition dismissed on all grounds and judgment confirmed in appeal. *Fontaine exp. & Rooney*, 8 R. L. 415, Q. B. 1876.

113. Under the Insolvent Act, 1875—*Held*, that a demand of assignment would be set aside unless it were distinctly proved that the defendant had failed to meet his liabilities generally as they became due. *Beard* v. *Thompson*, 21 L. C. J. 299, S. C. R. 1877.

XXVII. Discharge.

114. Where an insolvent, who was indebted to Duhamel, Rainville & Rainville, merely put the name "Duhamel" in his list of debts, without specifying any amount—*Held*, that he was not discharged from the claim by his discharge under the Act. *Duhamel & Payette*, 1 L. N. 162, S. C. 1878.

115. In an action concerning a draft which defendant claimed had been given as collateral security and to induce him to sign plaintiff's composition and discharge, the court said it did appear likely that this was the case, but under the circumstances the court ought not to interfere. If plaintiff did say, "I will see you paid some day," it was a good promise, for the moral obligation to pay in full remained, notwithstanding the discharge in bankruptcy. Judgment confirmed. *Amos & Moss*, S. C. R. 1879.

116. Discharge under Insolvent Act, 1875, contested on the ground *inter alia* that the insolvent had kept no cash book. Insolvent contended that the bank book answered all the purposes of one—*Held*, that the want of a properly kept cash book was sufficient to justify the suspension of the discharge. *Donovan & McCormick*, 2 L. N. 322, S. C. 1879.

117. A shareholder's liability to calls on stock held by him in a Joint Stock Co., if not included in the list of liabilities furnished to the assignee, was held not covered by a discharge under the Act. *La Compagnie d'Assurance de Stadacona* v. *Rice*, 2 L. N. 244, S. C. R. 1879.

118. On an application for discharge by an insolvent who had made a voluntary assignment under the Act of 1869—*Held*, that as nothing had been done after his assignment, no meeting had been held, and his estate would not pay a cent on the dollar, he was not entitled to his discharge. *Chester in re & Poirier*, 7 R. L. 673, S. C. 1879.

119. Under Insolvent Act, 1875—*Held*, that a creditor of an insolvent had a right to oppose the granting of a discharge to the insolvent, on the ground that he had recklessly granted or endorsed accommodation paper. *Johnson & Leaf*, 23 L. C. J. 160, S. C. 1879.

120. A discharge from insolveney, under the Insolvent Act of 1864, was held not to be invalidated by the omission to state in the list of creditors that the debt sought to be recovered was due to the creditor in her quality of tutrix. *Levy & Barbeau*, 2 L. N. 53, & 23 L. C. J. 216, Q. B. 1879.

121. A claim that was not filed, and did not appear among the insolvent's list of debts, was held not to be covered by the discharge, and the insolvent was still liable for it. *Royal Institution for the Advancement of Learning & Simpson*, 3 L. N. 413, S. C. 1880.

XXVIII. Discontinuance of Proceedings in.

122. Under the Insolvent Act, 1875—*Held*, that a writ of attachment in insolvency, which was not returned, must be treated as a nullity, and no other creditor of defendant could found any proceedings on it. *Quebec Bank* v. *Kapp & Kapp*, 2 L. N. 412, S. C. 1879.

123. An attachment in insolvency is for the benefit of the creditors generally, and a plaintiff cannot discontinue at will as in an ordinary action. *Ford* v. *Short*, 21 L. C. J. 198, S. C. 1877.

XXIX. Duties of Assignee.

124. Under Insolvent Act, 1875—*Held*, that the assignee to an insolvent estate could not be compelled to take up the instance under sec. 39 of the Act. *Belair & Lajoie*, S. C. 1877.

XXX. Effect of.

125. Where a writ of compulsory liquidation issues against a firm, the individual estates of the co-partners vest in the assignee as well as the co-partnership estate. *Hamilton & Roy*, 1 L. N. 592, S. C. 1878.

126. Where a writ of attachment in insolvency issued under the Insolvent Act of 1875, the same day that a conservatory attachment issued against the insolvent—*Held*, on an opposition by the assignee, that the privilege of plaintiff on the goods sought to be revendicated had lapsed, notwithstanding plaintiff had obtained judgment on his attachment, and that such judgment must be set aside. *Robertson & Smith & Fair*, 23 L. C. J. 207, S. C. 1879.

127. The appointment of an assignee, under the Insolvent Act, to a defendant against whom a hypothecary action was pending, was held not to revoke the power of a sequestrator appointed during such hypothecary action. *Heritable Securities* v. *Racine & Bourbonniere*, 3 L. N. 199, S. C. 1880.

128. Where a seizure of an immoveable was opposed on the ground that at the time the writ issued the defendant had been divested of it by a writ of attachment in insolvency, and it was proved on contestation that the attachment in insolvency was at one time contested and was afterwards set aside—*Held*, the seizure in execution was valid, and the opposition was dismissed. *Lefebvre & Turgeon*, 3 L. N. 20, Q. B. 1880.

XXXII. Effect of Filing Claim.

129. The fact that an insolvent has included a claim in his list of liabilities does not prejudice his defence to such claim. *Hood* v. *Barsalou*, 1 L. N. 621, S. C. 1878.

XXXIII. Effect of Repeal of the Act.

130. The repeal of the Insolvent Act, 1875, did not take away the right of a defendant to security for costs from an undischarged insolvent plaintiff. *Garean* v. *Cinq Mars*, 3 L. N. 242, S. C. 1880.

XXXIV. Foreign Assignment.

131. A bankrupt assignment, made under the provisions of an Act of Congress of the United States of America, will not transfer immoveable property in Canada. *Macdonald & Georgian Bay Lumber Co.*, 2 S. C. Rep. 365, Su. Ct. 1878.

XXXV. Fraud under Act.

132. A debtor who, having failed to meet his liabilities, gives accommodation notes knowing his insolvency, buys goods on credit without disclosing these facts to his creditors, and having become insolvent afterward, within the meaning of the Insolvent Act, 1875, is presumed to have done so with the intent to defraud his creditors, and must be held to be guilty of fraud and liable to imprisonment for such time as the court may order, not exceeding two years, unless the debt and costs be sooner paid. *Watson et al.* v. *Grant*, 21 L. C. J. 222, S. C. 1877.

XXXVI. Fraudulent Preference.

133. *Nullity of Note given as.*—A note given to a creditor to induce him to sign a deed of composition, or a note given in renewal of such note, is null, and the nullity may be pleaded by the maker to an action by the creditor. *McDonald* v. *Senez*, 21 L. C. J. 290, S. C. 1876.

134. And a note given either by an insolvent or by a creditor to induce the payee to consent to the insolvent's discharge is null. *Decelles* v. *Bertrand*, 21 L. C. J. 291, S. C. R. 1877.

135. Action on a note given by an insolvent in payment of a composition of twenty-five cents in the dollar, and endorsed as security by the defendant contesting. Plea, that in obtaining security the plaintiffs acted fraudulently and collusively with the insolvent, and beyond what was contained in the deed of composition, and that they signed the deed of composition upon the express condition previously agreed upon secretly between them and the insolvents, that their claim would be secured, and this in fraud of and in preference over the other creditors. The proof was that the plaintiffs were the last to sign the deed of composition; that three other banks and two other creditors had likewise obtained security by the endorsation of the notes, and that the plaintiffs in signing

understood that all the other creditors were receiving security—*Held*, to be no evidence of fraud, collusion or unjust preference; and that moreover there is no principle of common law, statutory provision or rule of public policy, sanctioned by jurisprudence, requiring that all creditors, being parties to a deed of composition, should, irrespective of the existence of good or bad faith, detriment, injustice or inducement or otherwise, be in exactly the same position, to the extent of invalidating security given to one or more creditors because others had not received it. *Bank of Montreal* v. *Audette*, 4 Q. L. R. 254, S. C. 1878.

XXXVII. Hypothec given by Insolvent.

136. The registration of a hypothec within thirty days of the insolvency of the person granting it is without effect. *Dwyer & Fabre & McCarron*, 24 L. C. J. 174, S. C. 1879.

XXXVIII. Imprisonment under Act.

137. The demand for the imprisonment of the insolvent, under sec. 136 of the Insolvent Act, 1875, should be made by ordinary suit and not by petition in insolvency. *Gear & Sinclair & Furniss*, 21 L. C. J. 279, S. C. 1877.

138. In an action for imprisonment, under sec. 136 of the Insolvent Act of 1875, it is not necessary to bring a separate action on each separate invoice of goods, but one action will suffice as respects all the purchases. *Caldwell & Macfarlane*, 22 L. C. J. 78, Q. B. 1877.

139. In an action against a trader, under the Insolvent Act, 1875, for obtaining goods on credit, knowing himself to be insolvent, two years was ordered unless the debt was sooner paid. *Wilkes & Beaudry*, 2 L. N. 157, S. C. 1879.

140. An action was brought against insolvent, under sec. 136 of Insolvent Act of 1875, alleging 26 different purchases of goods, with intent to defraud, but concluding with a single prayer for the imprisonment of defendant—*Held*, reversing the judgment of the Superior Court, that it was not necessary to charge each purchase as a distinct offence. *Caldwell & Macfarlane*, 1 L. N. 4, Q. B.; & *Watson & Grant*, 1 L. N. 65, S. C. R. 1877.

141. And *held*, also, that where the court finds the evidence insufficient to justify an order for imprisonment, the plaintiff in such proceeding is nevertheless entitled to judgment for the debt if proved. *Ib.*

142. A merchant who purchased goods knowing himself incapable of paying for them—*Held*, guilty, and condemned to two years imprisonment under sec. 136 of Insolvent Act, 1875. *Gault & Fauteux*, 10 R. L. 62, S. C. 1879.

143. Declaration that on the 2nd August, 1878, and on the 6th August of the same year, defendant purchased goods from plaintiff, and went into an insolvency on the 20th of same month. Conclusion, that defendant be declared to have known at the time these purchases were made that he was insolvent, and that he be imprisoned under sec. 136 of the Act (1875). Evidence, that defendant did not know plaintiff at all, but had been solicited by an agent to purchase, that he had refused, and that the agent, after long solicitation, had taken down an order without his consent. That the goods were sent, but never put into stock or taken possession of by defendant. Demand for imprisonment rejected. *Hird* v. *Fauteux*, 2 L. N. 222, S. C. 1879.

144. But, in another case, against the same defendant, in which he had bought goods on credit in March and April, 1878, and it was established that his business had shown a deficit of $2,300 in 1876—*Held*, liable to imprisonment under the 136th section of the Act. *Leclaire* v. *Fauteux*, 10 R. L. 109, S. C. 1879.

145. Action under sec. 136 of the Insolvent Act, 1875. Action was brought in August, 1880, and the things charged against the defendant in the declaration are charged as having occurred between 19th February and the 12th April, 1878. Under the law, therefore, as it stood at the time of the bringing of the action, and at the time of the acts complained of as constituting the fraud, it was necessary, before the defendant could be found guilty of fraud, and be imprisoned for it, that he should be alleged and proved to have done one of five things: 1st, purchasing goods on credit; 2nd, procuring an advance in money; 3rd, procuring an indorsement or acceptance of negotiable paper without consideration; 4th, inducing any person to become security for him; and, 5th, obtaining by false pretence a term of credit for the payment of an advance or loan of money, or for the price of goods. And it was further necessary that he should be charged and proved to have done some one of these five things with intent to defraud his creditor, and to have known or had reasonable or probable cause to believe himself unable to meet his engagements, and to have concealed the fact. That is to say, there are five distinct heads or acts of fraud mentioned, and every one of them must be accompanied and characterized by these three conditions of intent to defraud, knowledge of insolvency or probable grounds for such knowledge, and concealment of the fact. The only two acts alleged by the plaintiff out of the five mentioned in this section are those of purchasing goods on credit and obtaining a term of credit by false pretences for the purchase of these same goods. There are several purchases alleged, and at all the times they were made, it is averred that the defendant knew or believed himself to be unable to meet his engagements, and concealed the fact, and had the intent to defraud his creditor—*Held*, that under the evidence, the judgment must be confirmed. Defendant's affairs showed in January, 1876, that there was a deficiency of about $2,400, but his menage had not been entered among his assets. He continued on in 1877, and in January, 1878, he had a stock of about $10,000. From February, 1878, to August, 1878, he bought for over $35,000, and in September he failed, with liabilities up to $64,000, and assets of $32,000. All his purchases in 1878 were unaccounted for, and in his evidence he was unable to account for any loss. Imprisonment reduced from two years to nine months. *Gault & Fauteux*, S. C. R. 1880; & *Leclaire & Fauteux*, S. C. R. 1880.

146. The company in their declaration alleged that on the 12th October last the defendant made an assignment of his estate as an insolvent; that on the 6th, six days before, he bought from them on credit a certain quantity of coals, 52 tons, for $252; that the understanding was that the defendant was to pay for the coals immediately on delivery; but though he got delivery on that day, he never paid any of this money; that he represented to the party acting for the company that he was quite able to pay, and would pay immediately, and referred to a certain property that he had in Montreal. The defendant pleaded simply the general issue, saying that all this was untrue. The question simply was, what was the proof in the case? On the 6th of October this individual, representing himself to be quite able to pay for this coal, got delivery of the goods. Six days after he made a voluntary assignment of his estate as an insolvent. He made no explanation of the circumstances, how such a change took place between the 6th and the 12th as rendered it impossible for him to pay what he promised to pay; and the court therefore found, in the terms of the Insolvent Act of 1875, that the defendant knew and believed himself to be unable to meet his engagements when he made this purchase, and that he did conceal this fact from the plaintiffs, who then became his creditors, that the amount had not been subsequently paid, and under the circumstances it was the duty of the court to pronounce a condemnation against the defendant, and also to order his imprisonment. Judgment, that the defendant be imprisoned for three months, unless he sooner pay the debt and costs. *Delaware & Lackawanna Western Railway Co.* v. *Healy*, S. C. 1879.

147. The fact that an insolvent purchases on credit, and does not divulge to the seller the position of his affairs, is not in itself sufficient from which to presume an intention to defraud, and the hope of recovering himself, which a buyer may have, and the fact that he purchases half for cash which he pays, and the other half at three months, will relieve him from liability under the Insolvent Act of 1875. *Convey* v. *Renauf*, 5 Q. L. R. 224, S. C. R. 1879.

XXXIX. Insolvent Continuing Business.

148. On a petition by an insolvent, praying to be allowed to continue his business pending the contestation of the writ—*Held*, reversing the judgment of first instance,* that the court or a judge might permit him to do so on giving security for the value of his stock in trade and assets. *Anderson* v. *Gervais*, 1 L. N. 579, & 22 L. C. J. 277, S. C. R. 1875; & *Fisher* v. *Malo*, 22 L. C. J. 276, S. C. 1876.

XL. Issue of Writ.

149. Where a trader carries on business in more places than one, a writ of attachment under the Insolvent Act can only issue at his chief or one of his principal places of business. *Brockville & Ottawa Railway Co.* v. *Foster*, 21 L. C. J. 107, S. C. 1877.

*1 L. N. 566.

XLI. Jurisdiction in.

150. The insolvent court alone has jurisdiction to set aside a writ of attachment in insolvency. *Clement* v. *Heath*, 22 L. C. J. 54, C. C. 1878.

151. In an insolvent case, under the Act, 1875—*Held*, that the writ of garnishment is not a mode of execution which belongs to the insolvent court, and if it did its jurisdiction would not permit it to take cognizance of contestations of *tiers saisie* declarations, nor to pronounce on their merits. *St. Pierre in re & Rainville & Ouellet & The Canada Guarantee Co.*, 6 Q. L. R. 40, S. C. R. 1879.

XLII. Lease not Terminated by.

152. In cases of insolvency where no demand of rescission is made the lease continues. *Rolland & Tiffin*, 22 L. C. J. 161, Q. B. 1877.

XLIII. Liability of Insolvent after Discharge.

153. Rule against a guardian, insolvent, for refusing to return his books to the assignee to his estate, with a demand for his imprisonment under sec. 25 Insolvent Act, 1875—*Held*, that the insolvent, having received a confirmation of his discharge from insolvency, was no longer subject to the summary jurisdiction of said section. *Scath & Fair*, 3 L. N. 167, S. C. 1880.

XLIV. Liability of Sureties of Assignee when Appointed by Creditors.

154. Where, at a meeting of creditors under Insolvent Act of 1875, an official assignee, other than the one to whom the writ was addressed, was appointed creditors' assignee, and afterwards absconded with the funds of the estate—*Held*, that his sureties were liable. *Delisle & Letourneux*, 3 L. N. 207, S. C. 1880.

XLV. Meetings of Creditors.

155. A meeting adjourned at the call of the assignee is adjourned *sine die*, and new notices are necessary before meeting again. *Consolidated Bank* v. *Davidson & Stanley*, 2 L. N. 348, S. C. 1879.

XLVII. Of Partnership.

156. Under Insolvent Act, 1875—*Held*, that the insolvency of a partnership involved the insolvency of the individual partners. *Knight & Ross*, 10 R. L. 208, Q. B. 1876.

XLVIII. Of Party to Appeal.

157. Under Insolvent Act, 1875—*Held*, that an appellant could not demand on the insolvency of the respondent that his assignee should take up the *instance*, or demand security for costs. *McKinnon & Thompson*, 23 L. C. J. 95, Q. B. 1878.

XLIX. Payment within Thirty Days.

158. The defendants received from D. a payment of money within thirty days next preceding the issue of a writ of attachment in insolvency against him. They knew that D. had, during the previous two months, obtained large advances of money from them on forged warehouse receipts, and they had compelled him to take up certain paper long before maturity. In view of these facts, and of all the circumstances of the case as disclosed by the evidence—*Held*, that the defendants had reason to presume that the finances of their debtor were in a bad condition, and they had, therefore, probable cause for believing that he was unable to meet his engagements in full within the meaning of sec. 134 of the Insolvent Act of 1875, and the payment in question was consequently void. *Murphy* v. *Stadacona Bank*, 5 Q. L. R. 321, S. C. 1879.

L. Petition against Insolvent.

159. Petition under Insolvent Act, 1869, sec. 150, charging that the bankrupt had always failed to disclose the assets belonging to his estate; that within thirty days before the attachment he had received moneys for which he had failed to account, etc. Petition rejected, but without costs, seeing the grossly negligent way in which the insolvent kept his books and mismanaged his business, to the detriment of his creditors, and seeing also the character of the insolvent's answer to the petition, and the charges contained in it against the petitioner. *Bowie & Whyte*, 7 R. L. 228, S. C. 1877.

LI. Petition to Quash.

160. An insolvent, six months after his insolvency, petitioned to have the proceedings in insolvency set aside, on the ground that he had never been a trader—*Held*, that he was too late to raise such a pretension. *Fulton es qual.* v. *Lefebvre & Lefebvre*, 21 L. C. J. 23, S. C. 1877.

LII. Power of Insolvent.

161. An assignment in insolvency does not deprive the defendant in a suit of the right to continue his defence in his own name. *Morin* v. *Henderson*, 21 L. C. J. 83, S. C. 1876.

LIII. Power of Interim Assignee.

162. An interim assignee, under the Insolvent Act of 1875, did not possess the power of bringing suit on behalf of the insolvent estate without permission of the court or judge. *Evans es qual.* v. *Généreux*, 2 L. N. 194, S. C. 1879.

LIV. Preferential Payments.

163. In an action to recover $149.86, as having been paid by the insolvent within the thirty days next previous to his assignment—*Held*, that it was sufficient to void the payment, if, within thirty days thereafter, the debtor is unable to meet his engagements to the knowledge of the creditor, or if the latter has probable cause to believe such inability. *McArthur & Mulholland*, 2 L. N. 211, Q. B. 1879.

LV. Privilege of Employees.

164. Where all the assets of a master painter insolvent had been absorbed by privileged creditors, so that there was nothing left but the book debts due the insolvent, and the painters in his employ at the time of the insolvency sought to be collocated by privilege on the proceeds of such debts—*Held*, that journeymen had no privilege under the Insolvent Act, 1875, on the proceeds of the sale of book debts for the payment of their wages. *Beaulieu & Dupuy*, 21 L. C. J. 304, & 9 R. L. 380, S. C. R. 1877.

165. Under the Insolvent Act, 1875—*Held*, that a person employed by the day had no privilege for wages on the insolvent estate. *Vanalstyne & Gray & Stewart*, 2 L. N. 302, S. C. 1879.

LVI. Privilege of Vendor.

166. Under sec. 82 of the Insolvent Act of 1875, the privilege of the vendor was held to cease from the delivery of the goods. *Fauteux & Fisher*, 2 L. N. 132, & 23 L. C. J. 211, S. C. 1879.

167. A *saisie conservatoire* had been issued by the plaintiffs as unpaid vendors, under which certain goods were seized in the hands of the defendants the very day the latter were put into insolvency. The case went on to judgment, and the seizure was maintained. The assignee then filed a tierce opposition, on the ground that he was duly vested with the estate of defendant, including the goods seized under the writ of *saisie conservatoire*—*Held*, maintaining the opposition. *Robertson & Smith & Fair*, 2 L. N. 141, S. C. 1879.

LVII. Proof of Claim in.

168. Where a claim in insolvency was contested, the only proof of which claim was a debtor and creditor account produced by the plaintiff showing a balance against the insolvent—*Held*, insufficient and claim dismissed. *Davidson & Riddel & Stanley*, 3 L. N. 55, S. C. 1880.

LVIII. Registration of Hypothec during.

169. The registration of a hypothec within the thirty days previous to an assignment, under the Insolvent Act, 1875, is without effect, and especially when the hypothec was granted by the debtor while insolvent, to the knowledge of the creditor receiving such hypothec. *McGaurran & Stewart*, 3 L. N. 323, Q. B. 1880.

LX. Remuneration of Assignee.

170. The claimant contested the dividend sheet, which collocated the assignee, for a commission of $250, besides all the disbursements and charges therein, and for a further sum for costs of discharge of assignee and insolvents. Contestant alleged that assignee was only entitled to 7½ per cent. upon the net proceeds of the estate of the insolvent, and further that the collocation of the assignee for expenses and disbursements, other than his commission, was illegal, and so also of the collocation for $138

en bloc, for costs of assignee and insolvent's discharges. The contestant, therefore, prayed that these items be struck out, and that the compensation of assignee be reduced to 7½ per cent. on the net proceeds of the estate, etc. The assignee answered that the charges made were reasonable ones; that he was named assignee in this matter under the Act of 1869, and that his remuneration should be governed by the provisions of that Act. *Per Curiam.*—I am of opinion that the remuneration to the assignee is to be regulated under the Act of 1869. It was under that Act that the assignee undertook the gestion of the estate. There is, however, nothing to show a compliance with the provisions of the Act of 1869. Section 52 says "no sum of money shall be inserted as a remuneration to the assignee, unless the question of such remuneration shall have been previously brought before a meeting of creditors competent to decide it." Section 135 governs the question of costs of discharge. I think, therefore, that a new dividend sheet should be prepared and the items complained of struck out. I give no costs. *Grose & Boynton & Whyte*, S. C. 1877.

LXI. Repeal of Act.*

171. Action by assignee of an insolvent estate, under sec. 133 of Insolvent Act of 1875, alleging that certain goods of the insolvent had been delivered to the defendants, creditors of the insolvent, by way of illegal preference. Defendants demurred on the ground that the remedy was under the Insolvent Act which had been repealed prior to the institution of the action. Demurrer dismissed. *Darling & McIntyre*, 3 L. N. 381, S. C. 1880.

LXII. Reprise d'instance.

172. An assignee under the Insolvent Act, 1875, could not be compelled to take up the *instance* in a suit pending at the time of the insolvency against the insolvents, of whose estate he was assignee. *Plessis* v. *Lajoie*, 23 L. C. J. 213, & 1 L. N. 327, S. C. 1878.

---

*Acte pour abroger les lois de faillite actuellement en vigueur en Canada.

Sanctionné 1er. Avril 1880.

Considérant qu'il est expédient d'abroger les actes ci-dessous mentionnés sauf les dispositions ci après énoncées; A ces causes Sa Majesté par et de l'avis et du consentement du Sénat et de la Chambre des Communes du Canada décrète ce qui suit:

1. L'Acte de Faillite de 1875 et les actes qui l'amendent passés ou les trente-neuvième et quarante-cinq années du régne de Sa Majesté intitulés respectivement "*Acte pour amender l'Acte de Faillite de* 1875" et "*Acte pour amender l'Acte de Faillite de* 1875 *et l'acte qui l'amende*" seront et sont par le present abrogés, et nul acte abrogé par les actes precipités, ou l'un ou l'autre de ces actes ne sera par là remis en vigueur; mais toutes les procédures adoptées en vertu de "l'Acte de Faillite de 1875" et ses amendements susdites dans les cas où les biens d'un failli ont été confiés à un syndic officiel avant la passation du présent acte pourront être poursuivies et menées à terme sous leur empire; et les dispositions des dits actes par le présent abrogés continueront de s'appliquer à ces procédures et à tout failli intéresse et à ses biens et effets, et à tous syndics et syndics officiels nommés ou agissant à leur égard de la même manière et au même effet que si le présent acte n'eût pas été passé.

LXIII. Re-transfer of Estate.

173. Under Insolvent Act, 1875—*Held*, that the assignee could not be compelled to re-convey the estate to the insolvent until the confirmation of the deed of composition by a meeting of creditors. *Beattie & Riddell*, 2 L. N. 302, S. C. 1879.

174. An assignee who had received from an insolvent a deed of composition and discharge, signed by a majority in number and three-fourths in value of the creditors, it was *held* might restore to the insolvent his estate, after the deed of composition and discharge had been ratified by a meeting of creditors, and it was not necessary to wait until the discharge should be ratified by the court. *Fabre & Perrault & Leslie*, 8 R. L. 629, S. C. 1875.

175. Under Insolvent Act of 1875—*Held*, that so soon as a deed of composition and discharge has been executed in accordance with the provisions of sec. 52 of the Act, the assignee is bound under sec. 60 of the Act to re-convey the estate to the insolvent, without waiting for the confirmation of the deed by the court or judge. *Hatchette & Bury*, 22 L. C. J. 245; & *Hatchette in re & Robertson*, 1 L. N. 532, S. C. R. 1878.

176 Under Insolvent Act of 1875—*Held*, that an assignee could not refuse to return an estate to an insolvent, in accordance with his deed of composition on the ground that the instalments of his composition had not been paid, and that as a matter of fact the insolvent could not be compelled to pay them until he had got back his estate. *Pilon in re*, 6 Q. L. R. 15, S. C. 1879.

LXIV. Return of Writ.

177. The return day of a writ of attachment under the Insolvent Act must not be later than five days after service of the writ. *Brockville & Ottawa Railway Co.* v. *Foster*, 21 L. C. J. 107, S. C. 1877.

LXV. Review from Order in.

178. Where a creditor obtained authority from the court to prosecute an appeal in the name of the assignee, who refused, an inscription in review from such order was discharged. *Bélanger & Archambault*, 3 L. N. 243, S. C. R. 1880.

LXVI. Right of Action on behalf of Insolvent Estate in Assignee.

179. Under the Insolvent Act of 1875, action was brought to have the sale of a sloop, called the Emma, by S. L. to F. L. declared a fraud against plaintiff, creditor of S., at the time of the sale. Both S. and F. since the time of the sale had become bankrupt—one in 1875, one in 1876; and G., one of the plaintiffs, was their assignee. The plaintiff fyled a claim against S. L.'s estate. The action had been dismissed upon the only contestation there was, viz., of G., on the ground that under the Bankruptcy Acts of 1869 and 1875, each and both of them, such an action had to be brought only by the assignee; or, if he refused to bring it, by a creditor authorized specially by the Bankruptcy Court. The plaintiff had never been authorized, and

was suing without any regard to the assignee's rights, or the bankruptcy system. His action was dismissed; and judgment confirmed. *Martineau & Laparrière*, S. C. R. 1877.

LXVII. Right of Creditor.

180. Under Insolvent Act, 1875—*Held*, that a creditor under $500 is without quality to petition against resolutions passed at meetings of creditors, or against the appointment of an assignee. *Morgan in re*, 3 Q. L. R. 376, S. C. 1877.

181. Where a creditor objected to certain proceedings had by the assignee—*Held*, that as his claim was on notes which were filed he had no status to object. *Consolidated Bank* v. *Davidson & Stanley*, 2 L. N. 348, S. C. 1879.

182. Under Insolvent Act, 1875—*Held*, that one or more creditors whose claims exceed in the aggregate $500, and who are dissatisfied with a resolution of the creditors appointing an assignee, may, in virtue of sec. 37 of the Act, apply to a judge of the Superior Court in chambers that the resolution be annulled or modified at the discretion of the judge, and that the election of assignee be set aside. *Watson & Samson & Dinning*, 8 R. L. 607, Q. B. 1877.

183. And on such petition the judge may reject the votes of certain creditors whose claims have not been contested before the vote, or whose claims have been contested for other reasons than those for which they are rejected by the judge. *Ib.*

184. And the court may declare the election of the assignee null, and order a new meeting of creditors for the election of an assignee and of inspectors by the creditors entitled to vote. *Ib.*

185. Where a creditor, under the Insolvent Act of 1875, asked for an injunction to prevent other creditors, in collusion with the assignee in possession, from dealing with a certain ship, the property of the estate of the insolvent—*Held*, that sec. 68 of the Insolvent Act requires, in order that a creditor may take proceedings in his own name, first, a demand upon and refusal by the assignee to take such proceeding, and then the permission of a judge; that, nevertheless, such conditions are to enable the creditor to secure for himself all the advantages derived from these proceedings, and by the common law any creditor may take, at his own risk, in the common interest of the creditors, all such proceedings as will tend to bring into the common fund anything which it is attempted to direct from it, and that there is nothing in the Insolvent law differing from the common law on this point. *Dinning in re & Wurtele*, 4 Q. L. R. 38, S. C. 1877.

186. A creditor under the Insolvent Act, 1875, who had not produced his claim, but whose name had been included in the list furnished by the insolvent, did not lose his recourse for payment according to the terms of a composition against the surety of the insolvent when the insolvent failed anew. *Boissonnault* v. *Archer*, 5 Q. L. R. 352, S. C.; C. C. 1899.

187. And this recourse remained, although he had not been included in the composition sheet, and had not been paid by the insolvent according to its terms. *Ib.*

188. A commercial firm, being creditors of an insolvent, took action in the name of the assignee, under sec. 68 of the Insolvent Act of 1875, to recover money which had been paid by the insolvent after his insolvency to the defendants—*Held*, that they had a right to the whole amount recovered, and that without showing the amount of their interest in the insolvent's estate. *Beausoleil* v. *La Banque Jacques Cartier*, 2 L. N. 253, S. C. R. 1879.

LXVIII. Rights of Holder of Negotiable Paper.

189. Under Insolvent Act, 1875—*Held*, that the holder of negotiable paper, the maker and endorser of which have both become insolvent, and who has received a dividend from one of them, cannot prove his claim against the estate of the other for the full amount mentioned in the paper, but must deduct the amount of the dividend received from the estate of the other party. But if, after proof made, dividends are received from the estate of another party the creditor is nevertheless entitled to dividends upon the whole amount proved, provided the dividend does not exceed 100 cents in the dollar on the balance really due. *Rochette & Louis & Migner*, 3 Q. L. R. 97, S. C. 1877.

LXIX. Rights of Insolvent.

190. Application under Insolvent Act of 1875 by an insolvent, alleging injury to the estate pending the contestation of the writ, to be allowed to manage the property, to reap crops, etc., and for an allowance of $20 a week maintenance—*Held*, that the court had no power to grant such an order. *Milloy* v. *O'Brien*, 2 L. N. 372, S. C. 1879.

191. Where, after the filing of an opposition to a seizure, the plaintiff failed, and his estate passed into the hands of an assignee under the Insolvent Act of 1875—*Held*, that he had a right before receiving his discharge to file a contestation, and continue proceedings to judgment on the opposition on giving security. *Pacaud & Huston*, 8 R. L. 169, Q. B. 1877.

LXXII. Sale of Book Debts.

192. Where a person had been a trader and secretary-treasurer of the school commissioners of his parish and failed, and his book debts were sold by the assignee to the plaintiff—*Held*, that the book debts did not include any balance due him as secretary-treasurer of the school commissioners, and not included in the list of book debts sold. *Dorais* v. *School Commissioners of Warwick*, 9 R. L. 161, Q. B. 1877.

LXXIII. Sale of Insolvent Estate.

193. The assignee of an insolvent estate under the Insolvent Act, 1875, sold it *en bloc* by inventory, in which certain shares of a company were set down at $5642.76. The purchaser paid the total amount of the purchase money, on the condition that the assignee would pay for any deficiency in the assets sold according to the pencil estimate on the inventory. It appeared that the $5642.76 represented the amount paid

on $15,000 of stock, that the balance was unpaid, and that paid up stock could not be delivered to the purchaser—*Held*, that the assignee was bound to return the proportionate value of paid up stock to the amount of $5642 76, and in the absence of any allegation that $2000, the pencil estimate on the inventory, was not a fair estimate, the assignee was condemned to return that sum. *Dixon & Perkins*, 3 L. N. 364, & 1 Q. B. R. 1, Q. B. 1880.

194. *Description of Immoveable.*—An assignee in his minutes of seizure and advertisements of a sale of land, under the Insolvent Act, 1875, omitted the name of the street on which the immoveable was situated—*Held*, following *Forteux & Montreal Loan and Mortgage Co.*,* that the omission was fatal, and the adjudication was declared void. *Rolland & Dupuy & Franey*, 3 L. N. 256, S. C. 1880.

LXXIV. Security for Costs.

195. Where an insolvent contested the collocation of a creditor under the Insolvent Act, 1875—*Held*, that he was bound to give security for costs. *Gervais & Heywood*, 2 L. N. 322, S. C. 1879.

196. The obligation of an insolvent plaintiff to give security for costs in accordance with section 39 of the Insolvent Act, 1875, was not limited to forty-four days, and a motion to stay proceedings until he had given such security made before plea filed was not confined to the delay of four days mentioned in Art. 107 of the Code of Procedure. *Terreau & Lacoursiere*, 5 Q. L. R. 354, S. C. 1879.

LXXV. Transfers by Insolvent.

197. Where an insolvent, just before he called a meeting of creditors, transferred the bulk of his property to different parties, some of whom were his relations, the transfers were presumed to be fraudulent and set aside. *Fair & Baldwin*, 1 L. N. 77, S. C. R. 1878.

LXXVI. Voting at Meetings.

198. A creditor who had proved his claim according to section 104 of the Insolvent Act, 1875, was *held* entitled to vote for the appointment of an assignee, although his claim was still under contestation. *Murphy & Connolly in re Dinning*, 4 Q. L. R. 368, Q. B. 1878.

199. And where a part of a creditor's claim was secured, and he had specified the value of the securities he held as required by section 84, he was held entitled to vote as a creditor on that portion of his claim which was in excess of the value of such securities. *Ib.*

200. And a creditor who has proved his claim as being unsecured, and who has not claimed any privilege, is entitled to vote for the appointment of assignee as an ordinary creditor, more particularly if the claim does not appear on its face to be a privileged claim. *Ib.*

*22 L. C. J. 284.

INSPECTION LAW.

I. Contravention of.
II. Oil Measure.
III. Pickled Fish.

I. Contravention of.

201. Appeal from a judgment rendered by the judge of Sessions at Quebec, on the 17th January, 1878, in virtue of which appellant was condemned to pay a fine of $10 and costs for having, on the 3rd September, 1877, illegally stamped and offered for sale a side of leather. This offence is set out in C. 37 Vic. cap. 45, sec 89,* which prohibits all persons, except the inspector, under penalty of a fine, from stamping leather or marking the superficial measure on it.—*Held*, that in the present cause the offence had not been proved. *Delisle & Fortier*, 4 Q. L. R. 289, Q. B. 1878.

II. Oil Measure.

202. In an action for certain fees claimed by the inspector of fish and fish oils, under 37 Vic. cap. 45, sec. 68—*Held*, that a tierce of oil is a third of a pipe, and contains 42 to 63 Winchester gallons or wine measures. *Morin v. Lord*, 22 L. C. J. 211, & 7 R. L. 43, C. C. 1874.

203. And that the inspector had a right to a fee of twenty cents for each tierce of oil that he inspected. *Ib.*

204. That the provision of 36 Vic. cap. 47, sec. 4, that in the future the imperial gallon should be the only liquid measure, did not apply to tierces. *Ib.*

III. Pickled Fish.

205. Defendant was convicted of having sold a certain quantity of salted fish cured for market, to wit, green codfish, contained in a certain package or barrel without previously having had the same inspected.—*Held*, that pickled fish may be sold without inspection at the place where pickled or packed. *Auld & Fraser*, 6 Q. L. R. 157, S. C. 1880.

INSTRUMENTS—*See* DEEDS.

INSURANCE.

I. Action to Recover Premiums.
II. Against Negligence or Dishonesty.

* Any person except the Inspector or Deputy Inspector, who shall stamp or number any of the raw hides or leather above mentioned, and shall expose them for sale, shall be liable to a fine not exceeding twenty dollars; but he shall be at liberty to mark on the said raw hides or leather, in ordinary and legible figures, the weights of the said raw hides or leather, and in such cases the words "Not inspected" shall be marked above the said figures in letters of the same dimensions, and as legible as the said figures, and any person who shall expose for sale any raw hides or leather, the weights of which shall be so marked, without the words "Not inspected," as above prescribed, shall be liable to a fine not exceeding twenty dollars. C. 37 V. c. 45, s. 87.

III. Agent may Bind Company by Acting on Instructions Erroneously Delivered.
IV. Agent's Commission.
V. Agent's Powers.
VI. Assignment of Policy.
VII. Concealment of Risk.
VIII. Conditions of Policy.
IX. Fire.
Misrepresentation.
Notice of Loss.
Statement of Loss.
Violation of Policy.
Waiver of Conditions.
X. Insurable Interest.
XI. Interim Receipt.
XII. Jurisdiction.
XIII. Law which Governs.
XIV. Liability of Company for Acts of Agent.
XV. Liability of Company to Repay Stamp Duty under Q. 39 Vic. cap. 7.
XVI. Life.
Forfeiture of.
Insurable Interest.
Rights of Holder of Policy.
XVII. Marine.
XVIII. Misrepresentation.
XIX. Mutual Companies.
XX. Nature of.
XXI. Of Cattle in Transport.
XXII. Of Goods in Hands of Assignee.
XXIII. Payment of Premium.
XXIV. Prescription of Claim for.
XXV. Right of Action on Policy.
Place of.
XXVI. Right of Insurers to Sue in Name of Owner.
XXVII. Secured to Wife and Children.
XXVIII. Transfer of Policy.
XXIX. Winding up of Companies.

I. Action to Recover Premiums.

206. The judgment below dismissed the action, which was to obtain a return of premiums paid. It appeared that L. had insured the life of a man who owed him a sum of money, but instead of limiting the amount of insurance to what was owed him, he insured for a large amount, and paid considerable sums for premiums. He found that he could not keep this up, and, besides, that the insurance would have to be limited to the amount of the debt. There were *pour parlers;* the company offered to reduce the insurance, but declined to pay back the amount of premium paid. The company pleaded that it insured the man for the $10,000, and that the plaintiff must suffer the loss of the premiums, whether it was his fault or an error. The Code declared that a person could not effect an insurance for more than the amount of his interest.—*Held*, that there was no fraud on the part of the insured, but good faith; the plaintiff was entitled to succeed in his action for the recovery of what he had overpaid. The court referred to Boulay Paty and Pothier. It was not proved that the company knew that Lapierre's claim was only $600, but it received $700 in premium without being liable for the amount insured, as it could easil have pleaded that it was not liable for the excess over the $600. Judgment reversed, and action maintained. *Lapierre & London & Lancashire Life Insurance Co.*, S. C. R. 1877.

II. Against Negligence or Dishonesty.

207. The Bank of Toronto obtained a policy of assurance from the European Assurance Society, insuring them against such loss as might be occasioned to the bank by the want of integrity, honesty or fidelity, or by the negligence, defaults or irregularities of A. M., their agent at Montreal. M. subsequently allowed N. & R. to overdraw their account to the amount of $47,841, whilst he knew they were not able to pay that sum, and whilst mixed up with them in broking transactions.—*Held*, confirming the judgment of the Queen's Bench,* that the Assurance Society was responsible to the bank for the irregularity. *European Assurance Society & Bank of Toronto*, 7 R. L. 57, P. C. 1875.

208. An employee of the Grand Trunk Railway left a large sum of money in two bags in his room, the door of which was insecurely locked, while he went to lunch. On his return from lunch the most of the money had been carried off.—*Held*, that as there were various means of safe keeping open to him, which he neglected to avail himself of, that he was guilty of negligence, so as to constitute a breach of a guarantee policy, the condition of which was that he should diligently and faithfully discharge his duty as employee. *Grand Trunk Railway Co.* v. *Citizens Insurance Co.*, 1 L. N. 485, & S. C. & 3 L. N. 311, Q. B. 1880.

III. Agent may Bind the Company by Acting on Instructions Erroneously Delivered.

209. To an action on a policy of Fire Insurance the company pleaded that the insured had violated one of the conditions of the policy, obliging him to notify the company of any additional assurance effected on the same property. The respondent representing the assured as assignee, answered that the company had waived that by a settlement made through their agent. The difficulty arose from an error in the transmission of a telegram sent by the company from Toronto to its agent at Quebec. The various companies interested were to meet and agree as to a settlement of the claims, and the company telegraphed their agent instructing him to *decline* to join in the meeting or the settlement. The telegram, by error in transmission, was made to read *decide* instead of *decline*, and the agent accordingly joined in the settlement. —*Held*, that the company must be bound by it as the agent was acting within the scope of his instructions at the time. *Provincial Assurance Co. & Roy*, 10 R. L. 643, Q. B. 1879.

* I. Dig. p. 649, Art. 330.

IV. Agent's Commission.

210. Appellant, in February, 1869, agreed to serve respondents as manager of the Life and Guarantee Departments of the respondents' business at a salary of $2,000 and a commission of ten per cent. on the net balance carried over on the 31st December of each year in the Life and Guarantee Insurance Department, after payment of all losses and expenses therein, the said agreement to date from and after the first of May, 1869, with a free dwelling on the premises of the respondent. Appellant entered into the service of respondent as manager under such agreement, and continued to act for them from May, 1869, to May, 1870. The appellant then contended that the net balance in the guarantee department which should have been carried over, and upon which he was entitled to his commission of ten per cent. from the 31st Dec., 1869, was $12,469.68, and in lieu the respondent erroneously made the net balance $7,154.61, by deducting therefrom certain losses, etc.—*Held*, that he was not entitled to his 10 p. c. on accounts unsettled on the 31st Dec., and his claim must be reduced in proportion. *Rawlings & Citizens Insurance & Investment Co.*, 8 R. L. 398, Q. B. 1876.

V. [illegible]'t's Powers.

211. An agent of an insurance company, whose powers are limited to receiving applications for insurance for transmission to the head office, and to the collecting of premiums, has no power to waive any of the conditions of the policy. *Baillie* v. *Provincial Insurance Co.*, 21 L. C. J. 274, S. C. R. 1877.

VI. Assignment of Policy.

212. The transferee of certain glass works, having a policy of insurance on the works, and the transferor having failed, the transferee assigned the policy to the assignee of the transferor, subject to the following terms and conditions: "I will therefore, as soon as you are ready to "accept the same, transfer to you all the insur- "ance which I hold for the benefit of the unse- "cured creditors of the estate, not including "claims for Davies' (the transferor) debts out- "side of his glass business. *It must be perfect- "ly understood that the insurance in question is "transferred for the benefit of the unsecured "creditors, and more especially for the benefit of* "(names omitted). I wish it to be distinctly "understood that I do not intend, nor will I "consent, that any part or portion of the insur- "ance thus to be transferred shall be taken as "covering or in any way whatever securing "Molson's claim or certain pretended mortgages "and other claims of Mulholland & Baker, "nor those of certain workmen claiming wages, "etc. *The above express conditions and stipu- "lations understood and agreed to, I will trans- "fer the insurance in question to you as official "assignee in the matter of Richard Davies "(Clarke & Co.), for the benefit of the creditors "above mentioned w[illegible] or you are ready to "accept such transfer, [illegible] shall consider you: "acceptance of the transfer as being an accept- "ance of the conditions and stipulations above "set forth without exception." The policy of insurance was not made on account of Davies, nor had he any interest in it. Nor was there any consideration given by the plaintiff to the assignee for the assignment of the policy to him which was merely a gift—*Held*, that this was not an assignment in insolvency for the general benefit of the creditors, but an assignment in trust within the terms of a condition of the policy, which stipulated that "in case the policy should be assigned in trust, or as collateral security, when loss or damage arises, it shall be the duty of the assignor to make and furnish the necessary proofs in support of the claim before the same shall be recognized and payable." *Whyte & The Western Assurance Company*, 22 L. C. J. 215, P. C. 1875.

213. And such a condition was a condition precedent to the right by the assignee to recover the amount of the loss. *Ib.*

VII. Concealment of Risk.

214. An insurance was effected on a saw mill, without disclosing the fact that the building contained a planing machine—*Held*, this was a material fact which it was incumbent on the insured to disclose, and the concealment of it rendered the insurance null and void. *Aitkin & The National Insurance Co.*, 1 L. N. 531, Q. B. 1878.

VIII. Conditions of Policy.

215. Where a condition of a fire policy requires the making and furnishing of proofs of loss within a specified time, and declares that until they are furnished the loss shall not be payable, the delay is a material part of the condition, and consequently (in the absence of waiver) the assured cannot recover unless he sends in the proper proofs within the prescribed delay. *Whyte & The Western Assurance Co.*, 22 L. C. J. 215, P. C. 1875.

216. And the mere silence of the company, with regard to proofs sent in after the delay prescribed by the condition of the policy, does not amount to a waiver of the condition by the company nor does the declaration by the company at that time that it did not consider itself liable amount to a waiver by the company of the benefit of the condition, *Ib.*

217. This was an action on a policy of insurance bearing date at Hartford, Conn. It was a policy on the life of M., in favor of E. M., and purported to be in consideration of a sum of $73.76 in gold duly paid, and the conditions were that the policy was to become due three months after notice to the company of the death of M. A claim being made under the policy, the defendants resisted payment on the ground that E. M. never paid them any money at all; that it was the insured, her brother, who sent to the office of the company and succeeded in getting the insurance on giving a note for the premium, and the note went to protest and was tendered back to him. The policy could not be delivered, according to the rules of the company, without the premium being paid—*Held*, that the plaintiff, however, had proved enough to

show apparently a right of action. But there was a fatal defect in the case. There was no notice and proof of the death of the insured as required by the conditions of the policy—nothing to show that the time for payment had arrived. So that while the defendants failed upon their other pleas, they must succeed upon the general issue. The plaintiff might sue the company again, and succeed upon making the proper proof. Action dismissed *sauf recours*. *Maybury* v. *Phœnix Life Insurance Co.* S. C. 1876.

218. Action under a policy of insurance to recover a loss by fire. The plaintiff was assignee in insolvency to one McK. There were several pleas filed, the first of which admitted the execution of the policy subject to the conditions contained in it, and also the possession of the estate of the insured by the plaintiff as assignee at the time of the fire; but set up that the insurance was effected on the mutual principle, and that one of its conditions was that it was made subject to the provisions of the Statutes of Ontario regulating the organization of mutual insurance companies, which were to be used to ascertain the rights and obligations of the parties. *Per Curiam:* It is a distinct proviso in the body of this policy that "this policy is "made and accepted subject to the Statutes "above mentioned," that is to say, the Statute of Ontario, 36 Vic. C. 44, and those consolidated and amended by it. This is the contract between the assurer and the assured. Now, section 39 of this Statute enacts that the policy shall be void if it be alienated by insolvency or otherwise, and shall be surrendered to the company to be cancelled; but upon making application to the directors, and giving security for the payment of the premium note, the assignee may have the policy transferred to him, if the directors give their consent within thirty days. The assignee, therefore, might have had a right of action if he had done this, but not otherwise. The basis of the contract of the parties was the Statute; if the assignee wished to avail himself of it, he had three things to do: to make application; to give security; and wait 30 days for the company's answer. First plea maintained and action of plaintiff dismissed with costs. *Sanboken* v. *Canada Mutual Insurance Co.*, S. C. 1876.

219. The warranty "to go out in tow" in a policy of insurance, without its being specified how far, is complied with by towing the vessel out from the wharf where she was lying, the expression not being technical and having no special meaning by usage in the port of Quebec. *Connolly & The Provincial Insurance Co.*, 1 L. N. 33, Q. B. 1877.

220. One M. (represented by his assignee, the appellant) effected an insurance on his stock with the respondents, and in the policy there was a condition that insurances elsewhere would make the policy void, unless the company received notice of such subsequent insurances. M. failed by some inadvertence to give the required notice of an insurance effected subsequently in the Commercial Union Insurance Co. —*Held*, that he could not recover on the policy. *Beausoleil & Canadian Mutual Fire Insurance Co.*, 1 L. N. 4, Q. B. 1877.

221. A condition in a policy of a Mutual Fire Insurance Co. provided that in case any promissory note for the first payment on any deposit note should remain unpaid for thirty days after it was due, the policy should be void as to claims occurring before payment—*Held*, that the company in accepting a note for such first payment, but acknowledging receipt by the policy as for cash paid, waived the condition. *Massé* v. *Rochelaya Mutual Insurance Co.*, 1 L. N. 338, & 22 L. C. J 124, S. C. 1878.

222. A person effected an insurance against fire for one month, the insurance being subject to the fire insurance policies of the company. He asked for a policy, but was told that it was not customary to issue policies for short dates. Among the conditions of the fire policies of the company was one requiring notice of any other insurance effected on the property, and endorsation of such insurance on the policy. The insured failed to give such notice—*Held*, that the non-delivery of a policy to the insured was a waiver on the part of the company of the condition cited. *Layleur & The Citizens Insurance Co.*, 1 L. N. 518, & 22 L. C. J. 247, Q. B. 1878.

223. A manufacturer effected an insurance on his stock as being in premises Nos. 319 and 317, and during the lifetime of the policy moved part of it into No. 315 adjoining, by piercing the division wall and closing the front entrance of No. 315, which was reached only by the entrance to the original premises, and the agent of the company at the expiration of the policy visited the premises, inspected the change that had been made, and renewed the policy—*Held*, reversing the judgment of the Court of Review,* that the policy did not cover the goods in No. 315 as well as those in the original premises, and that a new trial should be ordered. *Citizens Insurance Co. & Rolland*, 1 L. N. 604, Q. B. 1878.

224. Action for $800, amount of a fire policy. Plea, that the property insured was after the issue of the policy sold for taxes under the Municipal Code, and the ownership having become vested in the purchaser, the insured had lost all insurable interest therein. Special answer, that the municipal sale never finally divested the insured of the ownership, that before the fire he had under the provisions of the Municipal Code redeemed his property, and had never ceased to have an insurable interest in it —*Held*, that the sale of the property for municipal taxes under the Municipal Code, followed as it was by the redemption under the said Code, was not such an alienation as would avoid the policy, either under the conditions endorsed upon it or under the provisions of Art. 2576 of the Civil Code.† *Paquet & Citizens Insurance Co.*, 4 Q. L. R. 230, S. C. 1878.

---

*21 L. C. J. 262.

† The insurance is rendered void by the transfer of interest in the object of it from the insured to a third person, unless such transfer is with the consent or privity of the insurer. The foregoing rule does not apply in the case of rights acquired by succession, or in that specified in the next following article. It is subject to the special provisions contained in the Insolvent Act of 1864. The insured has in all cases a right to assign the policy with the thing insured subject to the conditions therein contained. 2576 C. C.

225. Where a fire policy had been endorsed to another for advances, who was accepted by the company—*Held*, that a condition that notice and proof should be given by the insured was satisfied by notice and proof given by the endorsee. *Stanton* v. *Home Fire Insurance Co.*, 21 L. C. J. 211, S. C., & 2 L. N. 238, & 21 L. C. J. 38, Q. B. 1879.

226. The insured cannot recover upon a policy which contains a condition making the contract void if the premises be left unoccupied for more than fifteen days without notice to the company, and it appears that the premises were vacant at the time of the fire, and had been so for a much longer time than fifteen days without notice. *Cardinal & Dominion Fire & Marine Insurance Co.*, 3 L. N. 367, S. C. 1880.

227. Action to recover the amount of a fire policy—and the defendants being a mutual society pleaded the statute which voids an insurance contract where there has been another insurance effected without their consent; and also a special condition of the policy (No. 5) to the same effect. This was the principal point in the case. *Per Curiam:* A variety of circumstances were adverted to tending to show a knowledge by the defendants of the existence of another contract. That, however, does not appear to me, under any reasonable view of the law, to be enough. There must be a consent. The words of the statute are: "Unless the double insurance subsists with the consent of the directors signified by indorsement on the policy, signed by the manager or secretary, or other officer authorized to do so, or otherwise acknowledged in writing." This is not satisfied by evidence of mere knowledge on the part of the insurers of other contracts. Besides, the evidence seems to me to show that the company only took the risk because they understood the application to the other office had been withdrawn. There are other points raised; but I do not enter upon them, because I am of opinion to maintain the defendant's first plea, and dismiss the action. *Dustin* v. *Hochelaga Mutual Fire Insurance Co.*, S. C. 1880.*

228. The defendants' agent issued to the plaintiff a thirty days interim receipt, subjecting the insurance to the conditions of the defendants' printed form of policy then in use, the fourth condition being as follows: "If the property insured is assigned without a written permission endorsed thereon by an agent of the company duly authorized for such purpose, the policy shall thereby become void." Before the expiration of the thirty days, and before the issue of a policy, plaintiff assigned to M. and others in trust for his creditors, and notified the company's agent of the assignment, who assented thereto, and stated that no notice to the company was necessary as the policy would be made payable to the assignees. The policy was issued, and the loss, if any, was made payable to M. and others as creditors of the plaintiff, as their interests might appear—*Held*, that the notice to the defendants' agent of the assignment, while the application was still under consideration, was sufficient, and that the words "loss payable if any to M., etc.," operate to enable the company

* Confirmed in Review. See 4 L. N. 295.

in fulfillment of that covenant to pay the parties named; but as they had not paid them, and the policy expressly stated the appellant to be the person with whom the contract was made, he alone could sue for a breach of the covenant. *McQueen & Phœnix Mutual Insurance Co.*, 3 L. N. 336, Su. Ct. 1880.

IX. Fire.

229. *Misrepresentation.*—To an action on a fire policy, the company pleaded misdescription and breach of condition. The application described the house as "isolated," which term in a foot note underneath the signature was explained to mean 100 feet distant from other buildings—*Held*, reversing the judgment of the Superior Court, that the applicant was not bound by such a clause, and there being no proof that the application was in bad faith he was entitled to recover. *Pacaud & The Queen Insurance Co.*, 21 L. C. J. 111, Q. B. 1876.

230. Nor was there any misrepresentation in the fact that the applicant had overvalued the property, no bad faith being shown. *Ib.*

231. Action for insurance under a policy insuring the stock and fixtures in plaintiff's saloon to the extent of $650. After the fire plaintiff swore to the amount of his loss in the sum of $669, and claimed the full amount of the insurance. The question of value was submitted without prejudice on either side to arbitrators who valued the loss at $291.75. Plaintiff brought action for $361.50—*Held*, that on the evidence plaintiff's first claim was grossly exaggerated, being more than double the amount subsequently ascertained by the arbitrators, and that thereby the plaintiff under his policy had forfeited all claim to indemnity. *Lavergne* v. *The Royal Insurance Co.*, 23 L. C. J. 217, S. C. 1878.

232. And *held*, also, that the reference to arbitration did not constitute a waiver on the part of the company of the condition of forfeiture. *Ib.*

233. *Notice of Loss.*—When, in a policy of insurance against accidents by fire, a condition is inserted to the effect that the proofs of the fire should be sent in within thirty days, the thirty days are a material part of the condition, so that, unless there is a waiver, the assured cannot recover unless he sends in the proper proofs within thirty days. *Whyte & The Western Assurance Co.*, 7 R. L. 106, P. C. 1875.

234. Where an insurance company set up in answer to an action on a fire policy that the assured had not given notice of loss within the delay required by the policy—*Held*, that as the company, when it refused to pay, did not object to the informalities in the notice, it had waived its right to obtain any other or better one. *Garceau & Niagara Mutual Insurance Co.*, 3 Q. L. R. 337, S. C. R. 1877.

235. To an action for insurance the company pleaded irregularities in the notices and preliminary proofs of loss—*Held*, that as the company had joined in an arbitration with knowledge of all the facts, it had waived the right to object, and could not raise the point afterwards. *Canadian Mutual Fire Insurance Co. & Donovan*, 2 L. N. 229, Q. B. 1879.

236. Where an insurance company *inter alia* pleaded want of sufficient notice—*Held*, that as, since the delay had expired, the defendants had agreed to submit the claim of the insured to another company for adjustment, they had waived their right to complain of the delay. *Black* v. *National Insurance Co.*, 3 L. N. 29, & 24 L. C. J. 65, Q. B. 1879.

237. Where a company received the information given by the insured without objection, and afterwards furnished him with a printed form in which to make his claim—*Held*, that they had waived their right to plead want of notice. *Kelly* v. *Hochelaga Mutual Fire Insurance Co.*, 2 L. N. 347, & 3 L. N. 63, S. C. R. 1880.

238. *Statement of Loss.*—Where it is impossible for the assured to give a detailed statement under oath of his loss supported by books and vouchers, owing to their having being burnt, the condition of the policy requiring such statement will be satisfied by affidavits as to the value of the property lost. *Perry* v. *Niagara District Fire Insurance Co.*, 21 L. C. J. 257, S. C. 1877.

239. *Violation of Policy.*—Action on a fire policy effected with the appellants in 1864. The insurance was described as being upon certain goods, "whether their own property, held on trust or on consignment," contained in the basement and third storey of a house known as the Western Chambers, occupied by the assured as a bonded and general warehouse, St. John street, Montreal, and was for the sum of $15,000. The conditions of the policy provided that goods *on storage* must be separately and specifically insured, and also, as is not unusual in such cases, that notice should be given to the insurance company of any previously existing policies, and that such should be endorsed on the policy in question or acknowledged in writing, otherwise the policy to be of no effect; and further, that any subsequent policies effected should be communicated to the insurers. The goods insured were goods that were contained in the third storey and in the cellar of the building, the occupation of which was described as being that of the assured. The goods were also described as being the property of the insured. A fire took place on the 7th December following the date of the policy, and the goods contained in the third storey of the building were totally destroyed, whilst the goods covered by the policy in the cellar portion of the building were damaged, but not destroyed. Between the date of the policy and the occurrence of the fire, certain changes took place which caused all the subsequent litigation. The assured having occasion to raise a sum of money pledged the goods in question as collateral security, that is, those contained in the upper portion of the building. In order to that end, and so as not to change the actual possession of the goods, a nominal lease of the premises was made to one B., with a view of making him a warehouseman, upon whose receipt the goods could be dealt with. The place where the goods were stored being a bonded warehouse, one key was delivered to B. and the other held by the locker of the customs. The only approach to the bonded store was through the premises occupied by the respondents—*Held*, reversing the judgment of the Superior Court* and confirming that of the Queen's Bench, that the lease to B. did not void the policy, and that the non-disclosure of a previous policy can be waived by transactions and special circumstances. *Lancashire Insurance Co.* & *Chapman*, 7 R. L. 47, P. C. 1875.

240. *Waiver of Conditions.*—A condition in a policy of insurance to the effect that all persons insured shall, as soon after a fire as possible, deliver in a particular account of their loss or damage, signed with their own hand and verified by oath or affirmation, is waived by the fact of the agent of the company and the person insured each choosing valuators, who make a valuation of the loss, and by the fact of the company offering the company a loss amount than the valuation in settlement, showing that they only disputed the amount to be paid. *Converse* v. *The Provincial Insurance Co. of Canada*, 21 L. C. J. 276, S. C. R. 1877.

X. Insurable Interest.

241. Action by the appellant against the respondents for $2,552, being the amount of a promissory note by T. R. to order of appellant, endorsed by W. M. & Co. This note was dated 27th April, 1867, and payable four months after date. The appellant alleged that about 10th of December, 1866, one R., a broker, or some other person acting through him, owned and possessed 1,000 barrels of refined coal oil, which were in M.'s warehouses, that is, 700 in warehouse No. 1 and 200 in warehouse No. 2, for which M. delivered warehouse receipts to R. under the authority of the owners; that on 26th December, 1866, R. assigned to appellant the warehouse receipts and the oil they represented by endorsing them; that on the 30th of April, 1867, appellant re-transferred to R. 500 barrels then stored in said warehouse, with the understanding that upon R. paying on the 2nd of September, 1867, his note of $2,500, he would re-convey to R. the remaining 500 barrels of oil, whereupon he surrendered the two receipts for the 1,000 barrels, and received back a warehouse receipt made by M. in the name of the appellant. Appellant on 1st May insured with respondents these 500 barrels for a period of four months, for $4,000, in warehouses Nos. 1 and 2. On 18th August, 1867, the store No. 1 was destroyed by fire, and the oil consumed, whereupon he claimed the insurance to the extent of the note of the principal and interest of R.'s note. Respondents pleaded R. was never the owner of the oil—that the oil was never stored by R. or anyone else giving R. or appellant control thereof, and that it was not there when the store No. 1 was burned. 2nd. That supposing M. & Co. were the owners of the oil, under ch. 2 of 24th Viet. they could only give a warehouse receipt that would be a document of title in the hands of R. by making it in his own favor, and indorsing it to the second holder. 3rd. That at the time of effecting the insurance, appellant represented the oil to be in No. 1 and No. 2, and never notified respondents of the increased risk by its removal into No. 1. The court below dismissed the action on the ground that R. had no oil of the

---

* I Dig. p. 659, Art. 386.

Victoria brand in store No. 1—*Held*, distinguishing from *Wilson & Citizens Insurance Co.** and confirming the judgment of the court below, that it was proved appellant never had any oil there, but that on the contrary it was proved that there was no oil there of the description mentioned in the warehouse receipt, either at the time the insurance was effected or at the time the fire occurred. *Hood & Western Assurance Co.*, Q. B. 1877.

242. A policy of life insurance was made out in the name of G., who never paid a premium. The agent of the company retained the policy in his own hands, and subsequently induced L., who had no interest whatever in G.'s life, to take an assignment of the policy by way of speculation, and L. then paid the premiums—*Held*, that as L. had no interest, and as the transaction was really an insurance by L. of G.'s life for his own benefit, that no action could be maintained on the policy.† *Vezina & New York Life Insurance Co.*, 3 L. N. 322, Q. B. 1880.

XI. Interim Receipt.

243. In an action for an insurance premium to which payment had been pleaded—*Held*, that the form known as an interim receipt did not establish payment. *Canadian Fire Insurance Co.* v. *Keroack*, 2 L. N. 272, S. C. 1879.

XII. Jurisdiction in Cases of.

244. The right of action on a fire insurance policy is where the property is and where the application was taken, and not where the office of the company is. *Tourigny* v. *Ottawa Agricultural Insurance Co.*, 3 L. N. 196, Q. B. 1880.

XIII. Law which Governs.

245. Plaintiff, a widow, sued defendant, as trustee of the insolvent succession of her late husband, and the other defendant, the Sun Mutual Life Insurance Company, to annul the transfer of a policy of $2,000 on her husband's life, which she had transferred before his death for the benefit of his creditors, and asking that the money be paid over to her. The suit was brought in Montreal, where defendant resided. Defendant thereupon instituted proceedings in the Court of Chancery, Ontario, to enjoin the insurance company from paying the amount to plaintiff. The insurance company in turn prayed that the other defendant be enjoined to desist from his proceedings before the Court of Chancery—*Held*, that the court had no jurisdiction. The Act Q. 41 Vic. cap. 14 limited the issue of injunctions to the cases specially mentioned therein. *Parent* v. *Shearer*, 2 L. N. 125, & 23 L. C. J. 42, S. C. 1879.

246. *Held*, also, that the *créance* resulting from the insurance was a *meuble incorporel*, and whether it were considered the property of the wife or of the succession of the husband was governed by the law of Ontario, and would be more properly discussed in the Court of Chancery of that Province. *Ib.*

* *Vide* I. Dig. p. 656, Art. 369.

† Reversed in Supreme Court, but not reported. Ed.

XIV. Liability of Company for Acts of Agents.

247. Plaintiff demanded from the defendants delivery of a policy of insurance in the usual form, in performance of an agreement for an insurance previously made. The defendants pleaded that they had not been paid the premium of insurance, and that there was no contract with the plaintiff. By the court: The plaintiff was brought to the defendants' office by a canvasser for insurance business of the name of L. The defendants agreed to insurance. The interim receipt was prepared and signed by the company, and they delivered it to L. to collect the amount and hand over the receipt to the party entitled, who was in this instance a building society which had lent money to the plaintiff. L. collected the money and delivered the receipt to the building society. By the Court: Was the payment to L. a payment to the company? The company say L. was not our agent, but the agent of the plaintiff, and until he had paid the money over to us we were not bound. The plaintiff, on the other hand, says that the company in delivering the interim receipt to L. and telling him to bring them the money, have made him *pro hac vice* their agent. The court thinks so, too, and the order will go as the plaintiff prays. *Duval & Northern Assurance Co.*, S. C. 1877.

248. Action to recover the amount of insurance on a property at the Tanneries. The defendants pleaded that they never insured the property, the alleged receipt being given by a clerk without the knowledge of the company, and without any authority to do so, and that the company never received the premium. Further, that if the company could be considered bound by the receipt, the plaintiff had not conformed to the conditions of insurance as to notice, proof of loss, etc. It appeared that the property was burnt before any policy had been issued—*Held*, that the company must be held responsible for the act of their employee, who gave the receipt for the premium, and judgment would go in the plaintiff's favor for $800. *Paré* v. *Scottish Imperial Insurance Co.*, S. C. 1879.

XV. Liability of Company to Repay Amounts paid for Stamps under Q. 39 Vic. Cap. 7.

249. Action for $1.80, amount paid by plaintiff for stamps, under the Act of the Quebec Legislature with regard to stamps on Insurance Policies, which Act was afterwards declared by the Privy Council to be unconstitutional. The defendants pleaded that the stamps being transferable the plaintiff should have produced or have tendered them to defendants, so that the latter might claim the amount from the Government. It was further pleaded that the defendants had paid the amount over, the Government acting as it were as the agents of the Government, and had not profited in any way by the payment but simply did what they were required by law to do. Plaintiff answered and produced stamps to the amount claimed with his answer—*Held*, that the plaintiff had a good claim against the insurance company for the

amount charged to him for the stamps, but as plaintiff had not produced the stamps with his action he would have to pay costs. *David* v. *Stadacona Insurance Co.*, 3 L. N. 118, S. C. 1880.

XVI. Life.

250. *Forfeiture of.*—The question was whether the amount of insurance claimed on the life of deceased was forfeited by the non-payment of the premium. The company after 1st May ceased to do business in Lower Canada, and to have an agent there to whom payments could be made. The plaintiff urged that it was not his duty to go to England, where the head quarters were, to pay the amount—*Held*, that, under the circumstances, the contention of plaintiff would be maintained. *Dorion* v. *Positive Life Assurance Co.*, 1 L. N. 268, S. C. 1878.

251. *Insurable Interest.*—A creditor obtained an insurance on the life of his debtor for an amount greatly in excess of his real interest. Both the creditor and the agent of the insurance company were ignorant that such extra insurance was invalid—*Held*, that the insured was entitled to recover the excess of premium paid on the larger sum, and that in the absence of proof to the contrary the court would assume that the premium for the smaller sum was proportional to that paid for the larger sum. *London & Lancashire Life Insurance Co. & Lapierre*, 1 L. N. 506, Q. B. 1878.

252. *Right of Holder of Policy.*—A creditor who takes out a policy of insurance for his own protection, and at his own expense, on his debtor's property, is not bound to account to the debtor for any portion of the amount paid to him under such policy. *Archambault & Gaburneau*, 22 L. C. J. 105, S. C. 1877.

XVII. Marine.

253. In an action for insurance on cargo—*Held*, that if a vessel be portworthy at the time a marine insurance is effected, her becoming unportworthy shortly afterwards by the act of those in charge of the vessel will not render the insurance void. *Cross & The British American Insurance Co.*, 22 L. C. J. 10, Q. B. 1877.

254. To an action for the insurance on a cargo of pease from Vaudreuil, the defendants pleaded that the risk did not attach until after the completion of the loading, and the evidence was that the vessel was unseaworthy when she started, and leaked all the way—*Held*, dismissing the action. *Leroux & Merchants Marine Insurance Co.*, S. C. 1880.

255. Action to recover $1,000, insurance on a vessel and freight lost on a voyage from Mingan to Montreal. The insurance was effected at Mingan, where its cargo from Montreal was discharged, after which it proceeded to Cow Bay, where it was loaded with a cargo of coal. After leaving Cow Bay it was found to be sinking, and was obliged to put into Sydney for repairs. Shortly after leaving Sydney, however, it again sprung a leak and was abandoned—*Held*, that the circumstances raised a presumption of unseaworthiness at Mingan, where the insurance was effected, which was not rebutted by the plaintiff, and the judgment dismissing the action was confirmed. *Leduc & Western Assurance Co.*, 3 L. N. 124, Q. B. 1880.

256. In a subsequent action arising out of the same circumstances it was held that the vessel was not proved to have been unseaworthy, and the judgment dismissing the action was reversed. *Ib.* 1 Q. B. R. 273, Q. B. 1881.

XVIII. Misrepresentation.

257. Where, by the terms of a policy of insurance, the statements and representations contained in the application for the policy are made part of the contract, and by the policy all such statements and representations are warranted to be true, and the application contains false representations and fraudulent suppressions to the knowledge of the insured, an action will lie to have the policy cancelled and delivered up, and that without return of the premiums paid. *New York Life Insurance Co.* v. *Parent*, 3 Q. L. R. 163; & *New York Life Insurance Co.* v. *Talbot*, 3 Q. L. R. 168, S. C. 1876.

258. And *held*, also, that in the case in question the party assured was but a *prête nom*, that it was in the hands of the defendant nothing more than a wager or speculative policy, and that the assignment of it to defendant could convey no greater rights than the assured himself had. *Ib.*

259. The action was to recover $2,141.16, compensation for loss by fire to buildings in which insolvent St. J. was interested as creditor of the proprietor, B. U. The action was in the name of the assignee of the insolvent. The plea alleged false representation and concealment of a material fact, namely, that there was at the time of the insurance being made another insurance on the property. Evidence that there was another insurance on the property, and that the applicant, who was St. J., for the proprietor, declared that there was no other insurance on the property—*Held*, that it was material to the insurers to know whether the applicant was interested with them in the preservation of the property, which he was if there was no other insurance, Angell on Fire Insurance, p. 174 a, and the defendant was entitled to the conclusion of his plea, praying that the insurance be declared null for false representation. *Lymburner* v. *Stadacona Insurance Co.*, S. C. 1877.

260. Action for $1,000, insurance on a house, furniture, etc. Plea, that by his application, which formed the basis of the insurance, plaintiff had falsely declared that there was no encumbrance on the property, whereas there was a hypothec exceeding $107. In the application the 12th question was, "what encumbrance, if any, is now on said property?" Answer: "Not any." Plaintiff examined as a witness admitted that the last $100 of the purchase money with interest was only paid on the 26th of August, 1878, the fire having taken place on the 3rd January, 1878. He subsequently sold the land for $232—*Held*, dismissing the plea, that as the mortgage did not affect the risk, and as there was no evidence of bad faith on the part of plaintiffs, that he was entitled to recover. *Duharme* v. *The Mutual Fire Insurance Co. of the Counties of Laval, Chambly & Jacques Cartier*, 2 L. N. 115, S. C. 1879.

261. And *held*, also, that the company had waived its right to object on account of delay in giving notice, as the board by its resolution of March 26th, 1878, had resisted the claim on other grounds alone. *Ib.*

262. Where the insured, at the time the insurance was effected, omitted to disclose the fact that four months previously, on the occasion of a political election, he was informed that the people there threatened that if the people of Paspebiac came up there to beat the people, they, the people of New Carlisle, would burn his store and hang him. The fire which occurred shortly after the insurance was effected was supposed to be the work of an incendiary, but in no wise connected with the election or the threat—*Held*, not a material fact. *Kelly & The Hochelaga Mutual Fire Insurance Co.*, 2 L. N. 347, & 3 L. N. 63, & 24 L. C. J. 298, S. C. R. 1880.

XIX. Mutual Companies.

By Q. 42-43 Vic. caps. 39 and 40, and 44-45 Vic. caps. 24-25, provision is made for the establishment and regulation of Mutual Assurance Companies.

XX. Nature of.

263. A life insurance policy is a moveable, and as such is payable to the testamentary executor of the deceased. *Archambault & Citizens Insurance Co.*, 3 L. N. 416, & 24 L. C. J. 293, S. C. 1880.

XXI. Of Cattle in Transport.

264. Action for the recovery of a thousand dollars, amount of insurance on a stud horse brought across the Atlantic. The horse had been shipped in good condition, and was proved to have died from the roughness of the passage, the weather being stormy. Defendants pleaded that the loss did not arise from any of the perils insured against, that the horse became sick and died on board the vessel, and that therefore the defendants could not be held liable. Also urged that the owners were responsible for the absence of proper precaution to prevent the horse from being injured. The plea, however, was not sustained by the evidence, while the plaintiff had established the facts set up. The question was, did the policy cover the case?—*Held*, that it did, and judgment accordingly. *Limer* v. *Western Assurance Co.*, 7 R. L. 242, S. C. 1874.

XXII. Of Goods in Hands of Assignee.

265. The defendants, an insurance company, insured an official assignee in the amount of $3,600, against loss to that amount upon a stock of tweeds, etc., in a building occupied by C. H. C. as a residence and tailor's store, for three months only (loss, if any, payable to the estate of C. H. C.). Afterwards the creditors appointed the plaintiff assignee to the estate. In an action on the policy—*Held*, reversing the judgment of the Superior Court, that the assignee of the creditors (to wit, the plaintiff) was entitled to bring action for the amount of the policy, and that the change of assignee was not such a change of ownership or possession as required to be notified to the insurance company, under a stipulation that if the property be sold or transferred, or any change take place in title or possession, whether by legal process or judicial decree or voluntary transfer or conveyance, or if the policy shall be assigned before a loss without the consent of the company thereon, then and in every such case the policy shall be void. *Elliott & National Insurance Co.*, 23 L. C. J. 12, & 1 L. N. 450, Q. B. 1878.

XXIII. Payment of Premium.

266. Action on a life policy to recover a certain amount claimed to be due thereunder. The question was, whether the amount of insurance claimed on the life of deceased was forfeited by the non-payment of the premium. The company, a foreign Corporation, ceased to do business in Lower Canada after the 1st May, 1877, and to have an agent there to whom payment could be made. The plaintiff urged that it was not his duty to go to England, where the head office of the company was, in order to pay the premium.—*Held*, maintaining the action. *Dorion* v. *The Positive Government Life Assurance Co.*, 23 L. C. J. 261, S. C. 1878.

267. The respondent obtained an insurance from the appellants' company for $430, and the premium was paid by a promissory note for $4.30, payable three months after date. The policy was delivered to the insured, and by its terms the sum of $4·30 was acknowledged to have been received. A fire occurred and the company refused to settle the loss, because the promissory note had not been paid at maturity. —*Held*, that the company having by the policy acknowledged payment of the premium, could not be permitted to plead non-payment in defence to the action. *La Cie. d'Assurance des Cultivateurs & Grammont*, 3 L. N. 19, & 24 L. C. J. 82, Q. B. 1879.

XXIV. Prescription of Claim for.

268. A claim for insurance under a policy is prescribed in five years. *Jones* v. *Sun Mutual Insurance Co.*, 7 R. L. 387, S. C. 1875.

269. Where action was brought on a policy of fire insurance, and the defendants pleaded the prescription of one year under the policy—*Held*, that an unaccepted tender of money in settlement was not an interruption of such prescription. *Bell* v. *Hartford Fire Insurance Co.*, 1 L. N. 100, S. C. 1878.

XXV. Right of Action on Policy.

270. *Place of.*—An insurance company, having its domicile at Montreal and issuing its policies at Montreal, takes risks at Quebec by means of its agent resident there—*Held*, that the company could be sued at Quebec, as the right of action arose there. *O'Malley* v. *Scottish Commercial Insurance Co.*, 4 Q. L. R. 226, S. C. 1878.

271. Action on a premium note given for insurance in a Mutual Insurance Company. The action was taken at Waterloo, in the district of Bedford, where the head office of the company

was situated, and served on defendant in Verchères, in the district of Montreal, where he resided, and where the note was executed.—*Held*, that the action should have been in the district of Montreal. *Eastern Townships Mutual Fire Insurance Co.* v. *Bienvenu*, 2 L. N. 363, & 23 L. C. J. 316, S. C. 1879.

272. Action on a premium note in a Mutual Insurance Co. The application was made or taken in the district of Bedford to a company having its head office in Sherbrooke, in the district of St. Francis. The note was made payable at Sherbrooke and the policy issued there—*Held*, that the action was properly brought in Sherbrooke. *Mutual Fire Insurance Company of Stanstead* v. *Galiput*, 3 L. N. 239, S. C. R. 1880.

273. Motion for leave to appeal from a judgment dismissing a declinatory exception. The action was against an insurance company, by the *cessionaire* of a policy of insurance upon property in the district of Arthabaska. The application was taken in Victoriaville, in said district, by an agent of the company, and the action was instituted there. By the exception the defendants contended that the action should have been brought at Quebec, where the policy was issued to the respondent. Appeal refused. *Tourigny* v. *Ottawa Agricultural Insurance Co.*, 3 L. N. 196, Q. B. 1880.

XXVI. Right of Insurer to Sue in Name of Owner.

274. Action to recover the value of a cargo of peas lost on the scow Maria Joseph, in consequence of a collision with a steamboat belonging to defendants in Lachine Canal. Plea, that plaintiff had been paid the value of the peas by the insurers, for whom plaintiffs were a mere *prête nom* and had no interest—*Held*, confirming the judgment of the court below, that, notwithstanding the payment by the insurers, the latter had no right to sue until notice of the transfer and subrogation, and the action was properly brought. *Richelieu & Ontario Navigation Co. & Lafrenière*, 2 L. N. 204, Q. B. 1879.

XXVII. Secured to Wives and Children.

275. By Quebec statute 41-42 Vic. cap. 13, provision is made for securing to wives and children the benefit of assurances on the lives of their husbands and parents.

XXVIII. Transfer of Policy.

276. Action for $3,280, under a policy issued in favor of one who, on the 23rd Aug., 1876, transferred to appellant. The fire occurred 27th September, 1876. Plea, that the transferor obtained the policy on the representation that he was proprietor of the property, which was untrue. By the evidence it appeared that in 1871, some years previous to the issue of the policy, the transferor sold the property to appellant, with the stipulation that he would be at liberty to take back as soon as he had repaid appellant the amount he owed him, he himself remaining in possession. At the time of the issue of the policy this relation was made known to the agent, and a policy made out and transferred to appellant for the whole amount of the insurance, although his interest amounted only to $1,510.—*Held*, reversing the judgment of the court below, that he should have judgment for that amount. *Sheridan & Ottawa Agricultural Insurance Co.*, 2 L. N. 206, Q. B. 1879.

277. Two of the plaintiffs were mortgagees of a property belonging to the other plaintiff, who insured the property, and for the security of the mortgagees made the loss, if any, payable to them to the extent of their claim. The buildings in question were destroyed by fire a couple of months afterwards. The company on demand refused to pay, and on action brought pleaded *inter alia* a violation of one of the conditions of the policy, in that the assured had, without the consent of the insurers, insured the premises in another company—*Held*, reversing the decision of the court below, that the rights of the mortgagees could not be affected by the acts of the mortgagor. *Black & National Insurance Co.*, 3 L. N. 29, & 24 L. C. J. 65, Q. B. 1879.

XXIX. Winding up of Companies.

278. Provision for the winding up of insolvent incorporated Fire or Marine Insurance Companies is made by the Dominion Statute, 41 Vic. cap. 21.

INTERDICTION.

I. Action against Interdict, *see* ACTION.

INTEREST.

I. Agreement to Pay.
II. Distinct from Capital in Action, *see* ACTION.
III. In Insurance, *see* INSURANCE.
IV. Jurisdiction over.
V. On Bank Deposit.
VI. On Hypothec.
VII. On Interest.
VIII. On Loss in Cases of Collision, *see* MARITIME LAW.
IX. On Money Paid in Error.
X. On Open Account.
XI. On Taxes.
XII. Power of Companies to Pay.
XIII. Prescription of.
XIV. Proof of Payment by Verbal Evidence.
XV. Right to.
XVI. What is.
XVII. When Payable, *see* DEEDS, Interpretation of.

II. Distinct from Capital.

279. Annual interest is distinct from the capital from which it arises, and if accrued under the Code will be regulated by the Code, even when the claim to which it is accessory accrued prior to the Code. *Herbert & Menard*, 10 R. L. 6, S. C. 1876.

IV. Jurisdiction over.

280. The Legislature of Quebec has no power to deal with interest though in the terms of an Act passed prior to Confederation, and by it repealed. *Ross* v. *Torrance & City of Montreal* 2 L. N. 186, & 9 R. L. 565, S. C. 1879.

V. On Bank Deposit.

281. Plaintiff, a merchant, having a deposit account with the defendants, claimed the sum of $168 98, as the balance due him, including interest at a stipulated rate of six per cent. The question arose as to the interest on $15,131, amount of two cheques, one for $10,000, presented August 7th, and the other for $5,131, presented August 8th, and certified good by the bank, but not paid until October 8th following. Plaintiff contended that he was entitled to interest until payment, while the bank said the interest stopped at the time the cheques were presented and certified—*Held*, that the plaintiff had no right to interest after the certification of the cheque. *Wilson & La Banque Ville Marie*, 3 L. N. 71, S. C. 1880.

VI. On Hypothec.

282. The defendant purchased an immoveable from the opposant, who had previously given a hypothec on the same property. The price of sale was stipulated payable in instalments *without interest*. The immoveable in question was afterwards sold at judicial sale in the hands of the defendant, and on a report of distribution of the proceeds, the vendor was collocated for the balance due on the price of sale, with interest on the overdue instalment—*Held*, that notwithstanding the stipulation without interest, he was entitled to interest on overdue instalments *ex naturae rei*. *Arpin* v. *Lamoureux & Boivin*, 7 R. L., S. C. 1875.

VII. On Interest.

283. In an action for the amount of overdue coupons on bonds—*Held*, that interest on such coupons only ran from the institution of the action. *Macdougall* v. *Montreal Warehousing Co.*, 3 L. N. 64, S. C. 1880.

IX. On Money Paid in Error.

284. Where action is brought for the recovery of money paid in error, and the defendant is proved to have been in good faith, interest will be allowed from date of service of process only. *Buckley & Brunelle et vir*, 21 L. C. J. 133, Q. B. 1873; 1051 C. C.

285. In an action to recover money paid under an illegal assessment roll, interest will be allowed only from the date of the institution of the action and not from date of payment. *Baylis & City of Montreal*, 2 L. N. 340, & 23 L. C. J. 301; *Wilson* v. *City of Montreal*, 3 L. N. 282, & 24 L. C. J. 222, Q. B. 1880.

X. On Open Accounts.

286. Action was brought in assumpsit on an account extending over several years, which had been frequently rendered, with interest added from time to time at seven per cent. Defendant pleaded *non assumpsit* to pay interest, which could only be charged on special agreement—*Held*, that the conduct of defendants in accepting without objection the accounts as rendered must be held to be an admission that the accounts were truly stated, and judgment went for the whole amount claimed. *Greenshields* v. *Wyman et al.*, 21 L. C. J. 40, S. C. 1876.

XI. On Taxes, &c.

287. Since the repeal of the Act 14 & 15 Vic. cap. 128 by Q. 37 Vic. cap., the city of Montreal has no right to charge ten per cent. interest on arrears of taxes. *City of Montreal* v. *Perkins*, 2 L. N. 371; & *Ross & Torrance*, 2 L. N. 186, & 9 R. L. 565, S. C. 1879.

XII. Power of Companies to Pay.

288. A joint stock company may be authorized by the Local Legislature to pay a rate of interest greater than six per cent. *Macdougall* v. *Montreal Warehousing Co.*, 3 L. N. 64, S. C. 1880; & *Royal Canadian Insurance Co.* v. *Montreal Warehousing Co.*, 3 L. N. 155, S. C. 1880.

XIII. Prescription of.

289. Interest arises from law and not from the contract, and, therefore, questions of prescription or otherwise concerning interest are governed by the law in force at the time the interest accrued. *Hebert* v. *Menard*, 23 L. C. J. 331, S. C. 1876.

290. Interest accrued before the coming into force of the Code is not subject to a shorter prescription than thirty years; interest accrued since, though on a title anterior, is subject to a prescription of five years. *Smallwood* v. *Allaire*, 21 L. C. J. 106, S. C. 1877.

291. Interest on obligations is prescribed by five years. *Montchamps & Perras*, 3 L. N. 339, S. C. 1880.

XIV. Proof of Payment by Verbal Evidence.

292. And proof of payment of such interest to an amount exceeding fifty dollars cannot be made by verbal evidence. *Ib.*

293. Nor can the creditor's acknowledgment to that effect. *Ib.*

XV. Right to.

294. In 1864 the Grand Trunk Railway Company leased, for 21 years, the railway property of the Montreal & Champlain Railroad Company, with power to purchase said property for $500,000, above incumbrances. In 1872 this sale was effected under the authority of an Act passed in the 27th and 28th Vic. cap. 85, authorizing it, and was confirmed by the 35th Vic. cap. 64. This transaction was carried through by the Boards of Directors of the two companies, and by the terms of the agreement the price of $500,000 was made payable at the

Bank of Montreal on the 1st of July, 1872. The Grand Trunk Company deposited the amount at the bank according to agreement—together with the rents due on their leases up to the first of July. The appellant, owner of 81 shares in the capital stock of the Montreal & Champlain Railroad Company, was entitled to $7,168.50, being at the rate of $88.50 per nominal share of $200, or $44.25 per hundred dollars, plus $648 for his proportion of rent to 1st of July, in all $7,816.50. On the 14th of June, 1872, the president of the Montreal & Champlain R. R. Co., by a circular addressed to each shareholder, informed the appellant that on presentation of his certificates of stock at the Bank of Montreal, on the 1st July then next, and on signing a proper discharge, he would be paid his stock at the above rate of $44.25 per hundred, and in addition his dividend on the rent then due. This circular was in the terms of the agreement entered into between the two companies and of the Acts of Parliament authorizing them. The appellant never called for his money until the 2nd August, 1875, when he received the sum of $7,816.50, deposited for him. This he did under protest that he was entitled to interest on the same since the first day of July, 1872. Action for $1,353.33 is for those interests which the appellant claimed to be due to him *ex natura rei* on his share of the price of the realty transferred to the respondents, and which interests he contended continued to run in his favor in default of a proper tender of the money as required by the Code to stop the accruing of interest—*Held*, that the price of real estate bears interest *ex natura rei*, and without any stipulation to that effect in favor of the vendor until it is paid or duly tendered. But in this case the Board of Directors of the Montreal and Champlain Railroad Company, who alone were authorized to make the sale for the stockholders, having agreed that the price should be paid into the Bank of Montreal; and respondents paid it at the time and place stipulated in their agreement, and having done so they had fulfilled their obligations, and could not now be called upon to pay interest which they had never agreed to pay. And that the appellant, by accepting the principal, had ratified the action of the Board of Directors, who acted in this transaction for the shareholders, and could not now accept the price of the sale and repudiate the conditions on which it was made. Judgment confirmed. *Ramsay & Grand Trunk Railway*, Q. B. 1877.

295. In an action against a *caution solidaire*, under an obligation made in 1864—*Held*, that the plaintiff was entitled to the interest stipulated up to 1st August, 1866, when the Civil Code came into force, and *thence for five years*, and also that due on the amount sued for from the date of the action.* *Bourassa* v. *Roy*, 2 L. N. 247, & 9 R. L. 553, S. C. 1879.

* These words in italics would seem to have been used unadvisedly, either by the learned judge or the reporters, as the interest not prescribed would be that for five years back from the date of action, and not that on from the date of the Code. The words of the Code are, "with the exception of what is due to the Crown, all arrears of rents, including life rents, all arrears of interest * * * are prescribed by five years. 2250 C. C.

XVI. What is.

296. Where ten per cent. per annum on arrears of taxes was imposed by the city of Montreal under the names *increase*, *addition* or *penalty*, and by authority of a statute of the Quebec Legislature—*Held* to be interest, and to be *ultra vires*. *Ross* v. *Torrance & City of Montreal*, 2 L. N. 186, & 9 R. L. 565, S. C. 1879.

INTERFERENCE.

I. Of Clergy at Elections, *see* ELECTION LAW.

INTERIM RECEIPT—*See* INSURANCE.

INTERLOCUTORY JUDGMENT—*See* JUDGMENTS.

INTERPRETATION.

I. Of Contracts, *see* CONTRACTS.
II. Of Deeds, *see* DEEDS.
III. Of Term "Property," *see* PROPERTY.

INTERROGATORIES.

I. On Articulated Facts, *see* PROCEDURE.

INTERRUPTION.

I. Of Prescription, *see* PRESCRIPTION.

INTERVENTION.

I. In Appeal.
II. In Insolvency.
III. Pleading in.
IV. Power of Court to Order.
V. Procedure in.
VI. Right to Intervene.
VII. Service of.

I. In Appeal.

297. An intervention will be allowed in appeal for sufficient cause. *Mechanics Bank* v. *St. Jean & Wylie*, 2 L. N. 315, Q. B. 1879.

II. In Insolvency.

298. An intervention in insolvency, filed without application to be admitted, rejected *sans recours*. *Merino & Ouimet & Bonin*, 2 L. N. 346, S. C. 1879.

III. Pleading in.

299. An intervenant cannot plead matters of form that are personal to the defendant. *Hutchinson* v. *Ford & Short*, 22 L. C. J. 279, S. C. 1878.

IV. Power of Court to Order.

300. Motion in appeal to compel the Eastern Townships Bank to intervene and take up the place of appellant, on the ground that the bank was the person really interested—*Held*, that the court had no power to order the bank to come in. *Maher & Aylmer*, 2 L. N. 378, Q. B. 1879.

V. Procedure in.

301. Where the intervenant foreclosed the parties from pleading to a case, and inscribed it *exparte* on the merits without producing any proof of the allegations of his intervention, obtained judgment granting the conclusions of the intervention, the judgment was set aside in review on these grounds. *McGreevy & Gingras & Coté*, 4 Q. L. R. 203, S. C. R. 1876.

VI. Right to Intervene.

302. An intervention allowed, filed and served between the service and entry of the principal action is not premature, the principal action being pending within the meaning of Art. 154 of the Code of Procedure* from the moment of the service of the writ and declaration constituting the demand. *Rees* v. *Morgan & Baillie*, 4 Q. L. R. 184, S. C. 1878.

303. An intervention will not be allowed to stay proceedings incidental to an action for the appointment of a sequestrator. *Crossley & McKeand & Baylis*, 3 L. N. 263, S. C. 1880.

* Every person interested in the event of a pending suit is entitled to be admitted a party thereto in order to maintain his rights. 154 C. C. P.

VII. Service of.

304. The service of an intervention upon the plaintiff's attorney is a sufficient service upon the plaintiff. *Rees* v. *Morgan & Baillie*, 4 Q. L. R. 184, S. C. 1878.

305. A demand in intervention was served upon the parties before allowance—*Held*, that a service after allowance was unnecessary. *Banque Ville Marie & Lauria*, 3 L. N. 347, S. C. 1880.

INTOXICATING LIQUOR.

I. Action for, *see* ACTION.
II. Regulation of Traffic in.

306. The regulation of the traffic in intoxicating liquors is within the power of the Parliament of Canada. *Corey exp. & The Municipality of the Co. of Brome*, 21 L. C. J. 182, S. C. 1877.

INVENTORY.

I. Made by Executors, etc., *see* EXECUTOR.

INVESTMENTS.

I. By Administrators, etc., *see* ADMINISTRATORS.

IRREGULARITIES.

I. In Arbitration, *see* ARBITRATION.
II. In Opposition, *see* OPPOSITION.

J.

SUMMARY OF TITLES.

	Page
JETTISON	423
JOINT AND SEVERAL	423
JOINT STOCK COMPANIES	423
JOURNEYMEN	423
JUDGES	423
JUDGMENTS	424
JUDICIAL ADVISER	428
JUDICIAL NOTICE	429
JUDICIAL OATH	429
JURISDICTION	429
JURY	433
JUSTICES OF THE PEACE	436

JETTISON.

I. Liability for Freight on Goods Jettisoned, *see* AFFREIGHTMENT.

JOINT AND SEVERAL—*See* OBLIGATIONS.

JOINT STOCK COMPANIES—*See* COMPANIES.

JOURNEYMEN—*See* MASTERS AND SERVANTS.

I. Privilege of under Insolvent Act, 1875, *see* INSOLVENCY.

JUDGES.

I. Charge of to Jury in Civil Cases, *see* JURY, IN CIVIL CASES.
II. May be Allowed to Plead in Case of Prohibition, *see* PROHIBITION.
III. Order of, *see* PROCEDURE.
IV. Powers of.
During Long Vacation.
In Chambers.
V. Recusation of.

IV. Powers of.

1. A judge of the Superior Court has power to appoint a sequestrator *pendente lite* in an action to remove executors under a will from office for maladministration. *Brooke & Bloomfield*, 23 L. C. J. 140, Q. B. 1875.

2. A judge has no power on a *requête civile* to set aside the judgment of another judge on the ground of errors in the entry or record of such judgment. *Carter* v. *Molson & Holmes*, 21 L. C. J. 210, S. C. 1877.

3. *During Long Vacation.*—During the long vacation a judge has the same powers that he has at any other time of the year with respect to matters to be done out of term. *Nolan* v. *Dastous*, 4 Q. L. R. 335, S. C. R. 1878.

4. *In Chambers.*—Semble, that one judge in chambers has no power to revise an order of another judge in chambers. *Heritable Securities & Mortgage Association* v. *Racine*, 2 L. N. 287, S. C. 1879.

5. A judge of the Queen's Bench in chambers may extend the delay for giving security on appeal to the Privy Council beyond the delay ordered by the court, whenever he is seized of the matter prior to the expiration of such delay. *The Mayor, &c., of Montreal & Hubert et al.*, 21 L. C. J. 85, Q. B. 1877.

V. Recusation of.

6. In a controverted election case motion made to reject certain particulars from the petition, charging an agent of the defendant with corrupt practices. Judge before whom the motion was made considered himself incompetent to hear the motion, inasmuch as the agent in question was his father-in-law.* *Massé & Robillard*, 10 R. L. 226, S. C. 1880.

JUDGMENTS.

I. Acquiescence in.
II. By Default.
III. By Prothonotary.
IV. Cannot be Attacked by Verbal Evidence.
V. Chose Jugée.
VI. Errors in.
VII. In Chambers.
VIII. Interlocutory.
What are.
IX. Not Executory.
X. Of Commissioners for Erection of Parishes, *see* COMMISSIONERS.
XI. Of District Magistrates.
XII. Security for Costs after, *see* COSTS.
XIII. Set Aside for Fraud.
XIV. Suspension of Execution of.
XV. Ultra Petita.
XVI. Will not be Set Aside on Account of Technical Irregularities in Procedure.

I. Acquiescence in.

7. Motion to reject an appeal on account of acquiescence. The appellant was condemned by the court below to pay a certain debt, he not having made his declaration as *tiers saisi*. In fact he was domiciled in another district, and had there made a declaration that he owed nothing, within the proper delay. He then moved the court in Arthabaska to revise this judgment, and to allow him to make his declaration anew. The court granted the petition, but condemned him to all costs. Appellant moved for leave to appeal, but in the meantime so far conformed himself to the amended order as to make a new declaration—*Held*, that this was not an *acquiescement*. *Marquis & Van Courtlandt*, 1 L. N. 278, Q. B. 1878.

---

* Any judge may be recused:
1. If he is related or allied to one of the parties within the degree of cousin german inclusively.
2. If he has a suit depending upon the same question as that in issue in the case.
3. If he has given advice upon the matter in dispute, or has previously taken cognizance of it as an arbitrator; if he has acted as solicitor for either of the parties, or has made known his opinion extra judicially.
4. If a suit is pending in his name before a court in which one of the parties will sit as judge.
5. If he has made verbal or written threats against one of the parties since the beginning of the suit or within six months previous to the recusation, or if there has been mortal enmity between them without reconciliation.
6. If he is the manager or patron of any order, corporation or community which is a party to the suit, or the tutor, honorary tutor, subrogate tutor or curator, heir or donee of either of the parties.
7. If he has any interest in favoring either of the parties. 176 C. C. P.

II. By Default.

8. A judgment rendered in term by default in a non-appealable case will be set aside in opposition, if the case was not called in open court and default entered in the ordinary manner. *Gravel* v. *Clement*, 8 R. L. 319, C. C. 1876.

III. By Prothonotary.

9. Judgment was pronounced by the prothonotary, in the absence of the judge, in the District of Richelieu, on the 24th of January last, in favor of the defendant, and plaintiff's action was dismissed. The plaintiff, by factum, urged that the judgment had not been legally rendered or pronounced, to wit: on a day not regularly appointed, and out of term, by the prothonotary publishing it, as sent to him by the judge, absent, on a day on which the parties could not expect it, and were therefore absent—*Held*, that the objection by the plaintiff had to be maintained, and the judgment complained of set aside, with costs in revision to plaintiff. *Société Permanente de Construction de la Baie de Febvre* v. *Parent*, S. C. R. 1878.

IV. Cannot be Attacked by Verbal Evidence.

10. The draft of judgment in a case as paraphed by the judge is the true record, and cannot be contradicted by verbal evidence offered in support of a *requête civile* attacking the correctness of the entries thereon so paraphed by the judge. *Carter* v. *Molson & Holmes*, 21 L. C. J. 210, S. C. 1877.

V. Chose Jugée.

11. A judgment on one part of a contract is not *chose jugée* for a different part of the same contract. *Tait & Nield*, 7 R. L. 224, S. C. 1874.

12. By one judgment a petition to quash a capias was rejected, when notwithstanding this judgment the petitioner inscribed anew on his petition, and by a second judgment the capias was quashed, and the petition granted—*Held*, on appeal, that all the proceedings subsequent to the first judgment were null. *Major & Chadwick*, 8 R. L. 685, Q. B. 1876.

VI. Errors in.

13. The action was for rent due and to fall due. Judgment was for rent due, but owing to some inadvertence was entered up according to conclusions. Execution issued on judgment as entered and appeal was instituted. The prothonotary then entered up the proper judgment on another page, supposing himself authorized to do so by 474 C. C. P.* Appellant moved for a *certiorari* to bring up the first judgment. Motion granted, the court at the same time intimating that 474 C. C. P. would not cover an alteration of this kind. *Hardy* v. *Scott*, 1 L. N. 278, Q. B. 1878.

* In the case of difference between the draft and the entry thereof in the register the draft is to be followed, and the court may without any formality order the rectification of the register. 474 C. C. P.

14. Where a judgment was pronounced on the 17th, but not paraphed until the 19th, it was held to have been rendered on the 17th, and the draft of such judgment, which was dated the 17th, was the true record of such judgment and could not be set aside on a *requête civile* by another judge of the same court, or contradicted by oral testimony offered in support of such *requête civile*. *Holmes* v. *Carter*, 23 L. C. J. 50, Q. B. 1878.

15. Defendant was sued in the Superior Court, Montreal, for $800, of which $600 were capital and $200 interest. There was plea of compensation. When the day came for *enquête* and hearing, the case was called and the presiding judge made note, that both parties declared to have settled, and that judgment was to go for plaintiff for $200, with costs of the action as instituted, and with stay of execution for a month. The judge then pronounced "draw judgment." The prothonotary engrossing the judgment added to it the words, "with interest on it from the first of November, 1870," just before the words "and costs of the action as instituted," &c., and the judge to whom an engrossed judgment was presented on the seventh of November endorsed it with his initials, supposing all to be conformable to what had passed. The defendant applied to the Court of Revision to put things right, and to alter the judgment as last engrossed and entered, to make it conform to the court's earlier and original record of 5th of November—*Held*, that the court does not exist for such purpose, that the defendant must be referred for remedy to the court of first instance. Inscription is discharged without costs. *Roy* v. *Dagen*, S. C. R. 1878.

16. On application for leave to appeal to the Privy Council the respondent consented to show cause immediately, as the appellant was in jail under the capias which was the subject of the appeal, but in the judgment it was stated that respondent had consented to the appeal—*Held*, that this would be corrected by a supplementary judgment. *Goldring & Bank of Hochelaga*, 2 L. N. 410, Q. B. 1879.

VII. In Chambers.

17. A judge in *banco* cannot revise and annul a judgment in chambers, granting possession to plaintiff on giving security of goods revendicated, such judgment in chambers having by law the force of a judgment of the court. *Canada Paper Co.* v. *Cary*, 4 Q. L. R. 215, S. C. 1878.

VIII. Interlocutory.

18. An interlocutory judgment rejecting an inscription for *enquête* and merits, as having been filed before articulation and answers, is a judgment from which an appeal will lie. *Bellay & Guay*, 4 Q. L. R. 91, Q. B. 1874.

19. And where there has been a *desistement* of the judgment without a tender of costs the Court of Appeals will condemn the respondent in the costs of both courts. *Ib.*

20. The judge who renders the final judgment in a case can reverse all interlocutory judgments. *Archer* v. *Lortie*, 3 Q. L. R. 159, S. C. R. 1877.

21. A judgment maintaining a demurrer to a part of a declaration is an interlocutory judgment, and therefore cannot be revised by three judges in Review. *Lottinville* v. *McGreevy*, 4 Q. L. R. 242, S. C. R. 1878.

22. A judgment maintaining a motion to dismiss a special answer it was held could not be revised at the hearing on the merits. *Casey & Shaw*, 3 L. N. 90, S. C. 1880.

23. *What are.*—Defendant moves to reject the inscription by plaintiff, on the ground of the judgment being an interlocutory one and not therefore susceptible of Review. The judgment orders the plaintiff to make option within days between two incompatible causes of action—*Held*, to be interlocutory, and consequently not subject to revision. *Fair & Cassils*, 3 L. N. 183, S. C. R. 1880

24. A judgment setting aside the verdict of a special jury, and ordering a new trial, is not such an interlocutory judgment as may not be appealed to the Privy Council *Lambkin* v. *South Eastern Ry. Co.*, 21 L. C. J. 325, P. C. 1877.

X. Not Executory.

25. No judgment will be rendered which cannot be enforced. *Lang & Board for the Management of the Temporalities Fund*, 8 R. L. 3, Q. B. 1876.

XIII. Set Aside for Fraud.

26. Where a claimant on an insolvent estate, by reason of the fact that certain receipts were mislaid and could not be found, and by false statements, obtained an order of the court for the possession of certain goods, the judgment was set aside on *requête civile*. *Cable & Stewart & Bayard*, 21 L. C. J. 121, S. C. 1877.

XIV. Suspension of Execution of.

27. An application of plaintiff for an order against defendants, enjoining them not to execute a judgment obtained by them in the Recorder's Court on the 11th September previous, whereby plaintiffs were condemned to pay certain sums of money assessed against their property for the costs of the construction of a certain drain. The present action had been instituted to have the judgment set aside, as well as the assessment roll on which the judgment was based. Application granted. *Molson & The City of Montreal*, 3 L. N. 382, S. C. 1880.

XV. Ultra Petita.

28. Respondent instituted an action against appellant to recover four cars for a wooden railway, alleging himself to be the lawful proprietor thereof, and further alleging that the same were sold to appellant, to be paid for on delivery at the price of $1174.26, accompanying his demand with an attachment in revendication, and concluding that he be declared proprietor of said cars, and that appellant be condemned to abandon them to him, unless he preferred to pay the said sum of $1174.26. Appellant pleaded that respondent was not and never had been proprietor of said cars, but merely had them to make certain repairs thereon and additions thereto, and that respondent was to have them ready and deliver them to appellant on a certain date, and had failed to do so; and appellant had suffered loss to the amount of five hundred dollars by reason of respondent's failure to have the cars done in time, which he reduced to $208, which deducted from the price of repairs and additions left $892, which was the sum due respondent, and this sum he had tendered to respondent before action, and asked dismissal of respondent's action. Appellant repeated his tender and offered confession of judgment for $892. The judgment of the court below declared the respondent not to be proprietor of the cars, and quashed the attachment, but condemned the appellant to pay respondent $1151.11, as the price of the work done on the cars—*Held*, in appeal, dismissing the action *sauf à se pourvoir*, that the demand being in the alternative an absolute judgment could not be given, and the judgment of the court below was therefore *ultra petita* and must be set aside, but inasmuch as the pleadings on both sides were wrong no costs were awarded in the court below. *Sénécal & Peters*, 7 R. L. 308, Q. B. 1874.

XVI. Will not be Set Aside on Account of Technical Irregularities in Procedure.

29. Action by respondent against appellant for $611, balance alleged to be due for carpenter's and joiner's work. The defendant pleaded that the work was badly done, and that the loss therefrom exceeded the balance claimed by the plaintiff. The court below gave judgment for $511, being the amount claimed less $100. Besides the question as to the work, there was a point of procedure raised by the appellant. The cause was inscribed for hearing in October. In November the *delibere* was discharged. In December the cause was re-inscribed for hearing on the 20th, and that day it was continued to the 16th January by error, that day being a Sunday. The appellant contended that the inscription lapsed, and that the judgment, which had been rendered on the 31st January without any further inscription or hearing, was irregular—*Held*, that the defendant was to blame in allowing the case to go on, and the judgment being good on the merits the court was not disposed to send the record back on account of the irregularity in procedure. It was true that this court had pronounced a judgment bad which had been rendered by error on a non juridical day, but the two cases were not analogous. The judgment condemning the defendant was sustained by the evidence, and it would, therefore, be confirmed. *McKinnon & Tradel*, Q. B. 1876.

JUDICIAL ADVISER.

I. Assistance of.

30. Where a trader, to whom a judicial adviser had been appointed, signed a promissory note for the purposes of his trade, without the consent or assistance of his adviser, the note was held valid. *Deliste* v. *Valade*, 21 L. C. J. 250, S. C. 1877.

JUDICIAL NOTICE—*See* EVIDENCE.

JUDICIAL OATH—*See* PROCEDURE.

JURISDICTION.

I. Acquiescence in.
II. In Cases Commenced by Capias.
III. In Cases of Libel.
IV. In Criminal Charges for Injuring Property Ousted by Plea of Title, *see* CRIMINAL LAW.
V. In Election Cases.
VI. In Insolvency, *see* INSOLVENCY.
VII. In Lessor and Lessee Cases.
VIII. Of Circuit Court.
IX. Of Court of Appeal.
X. Of Court of Review.
XI. Of District Magistrate.
XII. Of Dominion Parliament, *see* ACTS OF PARLIAMENT.
XIII. Of Inferior Tribunal.
XIV. Of Judge.
XV. Of Justice of the Peace.
XVI. Of Magistrate's Court.
XVII. Of Queen's Bench.
XVIII. Of Superior Court.
XIX. Of Supreme Court of Canada.
XX. Of Vice-Admiralty Court.
XXI. Pleading Want of, *see* PLEADING.
XXII. Under License Act, *see* LICENSE LAW.
XXIII. Under Merchant Shipping Act, *see* MERCHANT SHIPPING.

I. Acquiescence in.

31. A cause which should have been tried in one district was removed to another on account of the recusation of the judge. The defendant appeared and pleaded, filing *inter alia* an inscription *en faux*, but finding no fault with the jurisdiction—*Held*, that the question of jurisdiction could not be raised afterwards in Review. *Dufour* v. *Beaugrand*, 2 L. N. 180, S. C. 1879; 42 C. C. P.

II. In Cases Commenced by Capias.

32. Where an action for $67 was originated in the Superior Court by capias *ad res.* duly executed, but of which a *desistement* was subsequently filed by plaintiff on the return day—*Held*, that such action could not be then continued before the said court for want of jurisdiction, and must be dismissed, saving the recourse of the plaintiff before another court. *Turcotte* v. *Reginer*, 1 L. N. 351, & 22 L. C. J. 132, S. C. 1878.

III. In Cases of Libel.

33. The Superior Court at Quebec has jurisdiction in an action for libel contained in a newspaper mailed in Montreal to Quebec and circulated and read there. *Irvine* v. *Duvernay*, 1 L. N. 138, S. C. 1878.

V. In Election Cases.

34. An action for a penalty under the Elections Act 37 Vic. cap. 9, sec. 92, is not confined to the district where the election took place and the offence was committed, as in a misdemeanor. *Tarte & Cimon*, 3 L. N. 195, Q. B. 1880.

VI. In Insolvency.

35. The Circuit Court has no jurisdiction to interfere with a seizure under a writ of attachment in insolvency, though it appeared that the writ issued against a non trader, and the same goods were under seizure in a suit in the Circuit Court. *Clement* v. *Heath & Bacon*, 1 L. N. 53, C. C. 1878.

VII. In Lessor and Lessee Cases.

36. The Circuit Court in Montreal has jurisdiction to rescind a lease of a house rented for $195 per annum, where the amount of damages asked for is within the jurisdiction of the Court. *Choquet* v. *Hart*, 21 L. C. J. 305, C. C. 1877.

VIII. Of Circuit Court.

37. The Circuit Court has no jurisdiction by means of certiorari over judgments other than those rendered by the Commissioners' Courts or by justices of the peace. *Long & Blanchard*, 21 L. C. J. 331, & 1 L. N. 43, S. C. 1877.

38. The Circuit Court has no jurisdiction in an action in declaration of a hypothec for $36. *Massé* v. *Coté*, 3 Q. L. R. 322, C. C. 1877.

39. The Circuit Court has jurisdiction to pronounce on the validity of an ordinance for the civil erection of parishes, and an acte of cotisation made thereunder. *La Fabrique de la Paroisse du St. Enfant Jesus & Poirier*, 23 L. C. J. 155, S. C. 1879.

40. The Circuit Court has jurisdiction in cases for municipal taxes, no matter what the amount. *Corporation of Village of Bienville* v. *Gillespie*, 6 Q. L. R. 346, C. C. 1880; & *Les Commissaires & Gingras*, 6 Q. L. R. 355.

IX. Of Court of Appeal.

41. The Court of Appeal has no jurisdiction to entertain an application for change of venue in a criminal matter. *Corwin exp.*, 2 L. N. 364, Q. B. 1879.

X. Of Court of Review.

42. The Court of Review has no jurisdiction to grant a new trial where the plaintiff has been non-suited owing to his absence at the calling of the case for trial. *Bain* v. *White*, 2 L. N. 330, S. C. R. 1879.

XI. Of District Magistrates.

43. An appeal from a judgment of the Superior Court for the District of Bedford quashing a writ of prohibition. Question as to the jurisdiction of district magistrates in civil cases over $50. The majority of the Court of Appeals held that the jurisdiction did not extend

beyond $50. The declaratory Act, limiting the jurisdiction to $50, made it unnecessary to enter into the case. The judgment quashing the writ of prohibition was reversed. *Blinn & Magistrates Court for County of Brome*, Q. B. 1877.

XIII. Of Inferior Tribunal.

44. A writ of prohibition will not lie to restrain an inferior tribunal on the ground of want of jurisdiction, unless it is apparent on the face of the proceeding that there was a want of jurisdiction in such tribunal. *Bergevin & Boulean*, 23 L. C. J. 179, Q. B. 1878.

XIV. Of Judge.

45. The judge in his district has jurisdiction to order the issuing of a writ of prohibition, even though he be not at the *chef-lieu*. *Roy & Fraser*, 6 Q. L. R. 244, S. C. 1877.

46. A judge in chambers is without jurisdiction to try the merits of a petition asking a warrant under a rule for *contrainte* be declared illegal and set aside. *Généreux* v. *Howley et al. & Jones*, 21 L. C. J. 162, S. C. *in chambers* 1877.

XV. Of Justices of the Peace.

47. Two justices of the peace differing in opinion have no power to call in a third, in order to obtain a conviction. *Kelly* v. *Bélanger*, 2 L. N. 334, S. C. 1879.

48. On the merits of a *certiorari* from a conviction for keeping a house of ill-fame in St. Henri, it was agreed that the justices who sat in the case were without jurisdiction. Jurisdiction was only given to them sitting at the *chef-lieu* of the district under C. 32 & 33 Vic. cap. 32, & C. S. C. cap. 105, sec. 31.* *Lavidette exp.*, 3 L. N. 159, & 10 R. L. 237, S. C. 1880.

XVI. Of Magistrates Court.

49. On the merits of a *certiorari*—*Held*, that in civil matters the Magistrates Court has no jurisdiction over persons residing out of the district in which it is held. *Fiset exp.*, 3 Q. L. R. 102, S. C. 1877.

* In this Act the expression "a competent magistrate" shall, as respects the Province of Quebec and the Province of Ontario, mean and include any recorder, judge of a County Court, being a justice of the peace, commissioner of police, judge of the sessions of the peace, police magistrate, district magistrate or other functionary or tribunal invested at the time of the passing of this Act with the powers vested in a recorder by chap. 105 of the Con. Stats. of Canada, entitled "*An Act respecting the prompt and summary administration of criminal justice in certain cases*," and acting within the local limits of his or of its jurisdiction, and any functionary or tribunal invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace; and as respects the Province of Nova Scotia or the Province of New Brunswick, the said expression shall mean and include a commissioner of police and any functionary, tribunal or person invested, or to be invested, by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace. C. 32 & 33 Vic. cap. 32, sec. 1.

XVII. Of Queen's Bench.

50. On an appeal from a conviction for rape —*Held*, that since the passing of C. 32 & 33 Vic. cap. 29, sec. 80,* repealing so much of cap. 77 C. S. L. C. as would authorize any court of the Province of Quebec to order or grant a new trial in any criminal case, and of C. 32 & 33 Vic. cap. 36, repealing sec. 63 of cap. 77 C. S. L. C., the Court of Queen's Bench has no power to grant a new trial, and that the Supreme Court of Canada, exercising the ordinary appellate powers of the court, under secs. 38 & 49 of 38 Vic. cap. 11, should give the judgment which the court whose judgment is appealed from ought to have given, viz., to reverse the judgment which has been given and order prisoner's discharge. *Laliberté & Regina*, 1 S. C. Rep. 117, Su. Ct. 1877.

XVIII. Of Superior Court.

51. The Superior Court has no jurisdiction in an action for school taxes. *Corporation of Township of Acton & Felton*, 24 L. C. J. 115, S. C. R. 1879.

XIX. Of Supreme Court of Canada.

52. The judicial functions of the Supreme Court of Canada took effect and came into operation under C. 38 Vic. cap. 11, sec. 80, and by proclamation issued thereunder by order of the Governor in Council on the eleventh day of January, 1876, and the said court has no jurisdiction when the judgment appealed from was signed or entered or pronounced previous to that date. *Taylor & Regina*, 1 S. C. Rep. 65, Su. Ct. 1876.

53. Nor can the court appealed from or any judge thereof allow an appeal in such case under sec. 26 of the Supreme and Exchequer Court Act.† *Ib.*

54. The statute C. 38 Vic. cap. 11, sec. 17, enacts that no appeal shall be allowed from any judgment rendered in the Province of Quebec in any case wherein the sum or value in dispute does not amount to two thousand dollars. H. brought an action against J., praying that J. be ordered to pull down the wall and

* And so much of * * Chap. 77 of the Con. Stats. for Lower Canada, or of any other Act as would authorize any court in the Province of * * Quebec, to order or grant a new trial in any criminal case, shall be, and so much of any of the said Acts is hereby repealed as regards any conviction had after the coming into force of this Act; and no writ of error shall be allowed in any criminal case unless it be founded on some question of law which could not have been reserved, or which the judge presiding at the trial refused to reserve for the consideration of the court having jurisdiction in such cases; but nothing in this section shall be construed to prevent the subsequent trial of the offender for the same offence in any case where the conviction is decared bad for any cause which makes the former trial a nullity, so that there was no lawful trial in the case. C. 32 & 33 Vic. cap. 29, sec. 80.

† Provided always that the court proposed to be appealed from, or any judge thereof, may allow an appeal under special circumstances, except in the case of an election petition, notwithstanding that the same may not be brought within the time hereinbefore prescribed in that respect; but in such case the court or judge shall impose such terms as to security or otherwise as shall seem proper under the circumstances. C. 38 Vic. cap. 11, sec. 26.

remove all new works complained of, etc., in the wall of H.'s house, and pay £500 damages with interest and costs. H. obtained judgment for $100 damages against J., who was also condemned to remove the works complained of or pay the value of the *mitoyenneté*—*Held*, that in determining the sum or value in dispute in cases of appeal by a defendant, the proper course was to look at the amount for which the declaration concludes and not at the amount of the judgment. *Joyce & Hart*, 1 S. C. Rep. 321, Su. Ct. 1877.

XX. Of Vice-Admiralty Court.

55. Where a statute required the execution of a warrant or process under an order of two justices of the peace for seamen's wages to be authorized by the judge of the Vice-Admiralty Court—*Held*, that the enactment imposed upon that court a duty to supervise the proceedings of the magistrates, and it appearing that a warrant and process of two magistrates which had issued for the sale of an undivided interest in a vessel had not legally issued, a petition to authorize them was refused. *Canadienne, The*, 6 Q. L. R. 91, V. A. C. 1880.

56. And by the Vice-Admiralty Courts Act, 1863, an Admiralty Court has jurisdiction over claims between owners when the ship is registered within the possession for which the court is established, but the Dominion of Canada is not a possession within the meaning of the Act so as to enable an Admiralty Court for one part of it to entertain jurisdiction over a vessel registered in another part for the enforcement of such claims. *Edward Barrow, The*, 6 Q. L. R. 94, V. A. C. 1880.

JURY.

I. Discharge of During Trial not Equivalent to an Acquittal, *see* CRIMINAL LAW, Trial.

II. Error in, a Ground of Mistrial, *see* CRIMINAL LAW.

III. In Civil Cases.
- *Judge's Charge.*
- *Judgment fixing Facts for Jury cannot be Inscribed in Review.*
- *Motion in Arrest of Judgment.*
- *New Trial.*
- *Option of Trial by.*
- *Right to.*

IV. In Criminal Cases.

V. Liability to Serve on.

III. In Civil Cases.

57. *Judge's Charge.*—In addressing the jury the judge has a right to give his opinion upon the whole case, although the jury are the exclusive judges of the facts. *Bailee* v. *Provincial Insurance Co.*, 21 L. C. J. 274, S. C. 1877.

58. *Judgment fixing Facts for Jury cannot be Inscribed in Review.*—Motion by plaintiffs to reject inscription made by defendants for review, on the ground that the judgment is not one susceptible of review. The order complained of was one fixing and defining the facts to be submitted to the jury to be summoned in the cause—*Held*, that while there might be an appeal, there certainly was no right of review. *Dominion Type Founding Co.* v. *Canada Guarantee Co.*, 3 L. N. 77, S. C. R. 1880.

59. *Motion in Arrest of Judgment.*—Appellant sued respondent for $800, amount of a policy of insurance on his property, and obtained a verdict of $600. Respondent moved in arrest of judgment for a variety of grounds, all bearing upon the illegality and insufficiency of the evidence adduced by the appellant. The motion was made before the Superior Court at Sherbrooke on 12th November, 1878, being the second day of the term next after the verdict. Two other notices of motion were served at the same time on the appellant, the one a motion for a new trial and the other a motion for judgment *non obstante veredicto*, to be presented at the next sittings of the Court of Review at Montreal. The parties having been heard on the first motion, the court arrested judgment with costs against appellant—*Held*, that under Art. 423 of the Code of Procedure, as amended by Q. 35 Vic. cap. 6,* and Art. 424 of the same Code, all motions for a new trial, for judgment *non obstante veredicto*, and in arrest of judgment, must be made before three judges sitting in Review and not in the Superior Court. *Fletcher & Mutual Fire Insurance Co. (in Stanstead & Sherbrooke*, 4 L. N. 115, & 1 Q. B. R. 177, Q. B. 1881.

60. And insufficiency and illegality of evidence are not grounds for arrest of judgment. *Ib.*

61. *New Trial.*—The plaintiff moved the Court of Review for a new trial, alleging that he had been non-suited by mistake. The facts were that the plaintiff and his counsel were absent at the time the case was called. That the jury were nevertheless put in the box and sworn. That during this proceeding the plaintiff himself entered, and finding the case called went out to look for his counsel. That the case being again called, neither plaintiff nor his counsel were found present. That the court thereupon ordered judgment of non suit *sauf à se pourvoir* to be entered, and the jury were dismissed—*Held*, that the Court of Review had no power to interfere and grant a new trial. *Bain* v. *White*, 2 L. N. 330, S. C. R. 1879.

62. *Option of Trial by.*—The case was inscribed on the *rôle* for enquete and merits, and the defendants moved that the inscription be declared irregular and discharged, inasmuch as they had made option of trial by jury. The plaintiff resisted the application on the ground that there had been no compliance with Art. 350 of the Code of Procedure†—*Held*, that the words in defendants' pleas "of this defendants put themselves upon the country" were a sufficient option of trial by jury. *Gilman* v. *Dougall*, 3 L. N. 85, S. C. 1880.

* Motions for new trial or for judgment *non obstante veredicto* must be made before the Superior Court sitting in Review, on or before the second day of the next term of such sittings, following the tenth day after the rendering of the verdict, and cannot be received after. 423 C. C. P. as amended by Q. 35 Vic. cap. 6, sec. 13.

† The option is made either in the declaration or in the pleas, or by a special application to the court within four days after issue joined, or if these four days expire out of term, the application may be made on the first day of the next term, provided notice be given to the opposite party within four days after issue joined. If there is no articulation of facts the inscription cannot take place until five days after issue joined. 350 C. C. P.

63. *Right to.*—On appeal from a judgment of a judge of sessions it is in the discretion of the court to grant or refuse a trial by jury. *Syndics des Chemins à barrières de Quebec* v. *Walsh*, 6 Q. L. R. 90, Q. B. 1880.

IV. In Criminal Cases.

64. *Held*, on a reserved case, that in a trial for a felony the jury cannot be allowed to separate during the progress of the trial, and where such separation takes place it is a mistrial, and the court may by its judge, direct that the party convicted be tried again as if no trial had been had in such case. *Regina* v. *Derrick*, 2 L. N. 214, & 23 L. C J. 239, Q. B. 1879; C. S. L. C. cap. 77, sec 63, & 32 & 33 Vic. cap. 29, sec. 57.

V. Liability to Serve on.*

65. A person owning property to the assessed value of $3,000, and whose name is inscribed on the list of petit jurors, and who is summoned as such, cannot claim to be exempt from serving, even though his name is found also on the grand jury list. *Meldibe in re*, 7 R. L. 385, Q. B. 1875.

* By Que. 44-45 Vic cap. 10, the law respecting jurors and juries (32 Vic. cap. 22) is amended and replaced in many important particulars, more especially with regard to the summoning of jurors and the procedure relating thereto. Ed.

JUSTICES OF THE PEACE.

I. Jurisdiction of.

66. On a petition to set aside a conviction for damage done to a wharf, it appeared that the proceedings were had before two justices of the peace who, being divided in opinion, called in a third, who, with one of the others, concurred in a conviction—*Held*, that no jurisdiction had been shown in the justices to try the case, and moreover no authority had been shown for the right of the two justices who differed in opinion to call in a third. *Kelly & Bélanger*, 2 L. N. 334, S. C. 1879.

L.

SUMMARY OF TITLES.

	Page
LABORERS	437
LADING	437
LAND	437
LANDLORD AND TENANT	437
LAPSE	437
LATENT DEFECTS	437
LAW	437
LAWS	437
LAWYERS	438
LAWYER'S LETTERS	438
LEASE	438
LEATHER	440
LEGACY	441
LEGATEES	441
LEGISLATIVE AUTHORITY	442
LEGISLATURES	454
LESION	454
LESSOR AND LESSEE	454
LETTERS OF ATTORNEYS	467
LETTERS OF CREDIT	467
LETTERS PATENT	467
LEVEL OF STREETS	467
LEVIS	468
LIABILITY	468
LIBEL AND SLANDER	468
LICENSE LAW	472
LICITATION	475
LIEN	475
LIEN DE DROIT	475
LIFE INSURANCE	475
LIGHTS	475
LIQUID MEASURE	475
LOAN	475
LOCAL LEGISLATURES	477
LODGING-HOUSE KEEPERS	477
LODS ET VENTES	478
LOSS AND DAMAGE	478
LOTTERY	478
LUGGAGE	478

LABORERS.

I. Privileges of, *see* PRIVILEGE.

LADING.

I. Bills of, *see* BILLS OF LADING.

LAND—*See* IMMOVEABLES.

I. Promise of Sale of, *see* SALE.
II. Title to must be in Good Faith, *see* PRESCRIPTION.

LANDLORD AND TENANT—*See* LESSOR AND LESSEE.

LAPSE.

I. Of Certiorari, *see* CERTIORARI.
II. Of Conditions in Deed of Donation, *see* DONATION.
III. Of Writ of Execution, *see* EXECUTION.

LATENT DEFECTS.

I. Action for, *see* ACTION REDHIBITORY.

LAW.

I. Which Governs Insurance Claims, *see* INSURANCE.

LAWS.

I. Conflict of Between Different Provinces.

1. *Procedure in such Cases.*—Under the Imp. Stat. 22 & 23 Vic. cap. 63, in any case depending in any court within Her Majesty's Dominions, if the law applicable to the facts of the case is the law administered in any other part of Her Majesty's Dominions, and is different from the law of the place in which the court is situate, it is competent to the court in which such action is pending to direct a case to be prepared showing the facts, and to be remitted for reference to the Superior Court administering the law applicable to the facts of the case, and desiring such court to pronounce its opinion upon the questions submitted. *Noad* v. *Noad*, 21 L. C. J. 312, S. C. 1874.

2. And such case is brought before the court, whose opinion upon the law applicable to the facts of the case is desired, by petition of any of the parties to the action praying the court to hear the parties or their counsel, and to pronounce its opinion upon the questions submitted. *Ib.*

3. And *held*, also, that the interpretation of wills is governed by the law of the domicile of the testator. *Ib.*

LAWYERS—*See* ADVOCATES.

I. Should not give Evidence in their own Cases, *see* ATTORNEYS AD LITEM.

LAWYER'S LETTERS.

I. Fee for.

4. An advocate is entitled to add to the amount of an action the fee usually chargeable for a lawyer's letter. *Lighthall* v. *Jackson*, 3 L. N. 37; C. C. 1879 & *Heroux* v. *Clement*, 10 R. L. 589, C. C. 1880.

LEASE—*See* LESSOR AND LESSEE.

I. Alteration of.
II. Emphyteutic.
III. Notice of Termination of.
IV. Resiliation of.
V. Rights of Purchaser of Property Leased.
VI. Sublease.
VII. Tacit Reconduction of.
VIII. Termination of.
IX. With Promise of Sale.

I. Alteration of.

5. Where a lease is so modified as to materially alter the contract, as by changing the rent into an undertaking to make improvements to a considerable amount, the clause in the original lease that the lessee shall not sublet if not repeated in the subsequent contract will be presumed to be abandoned, although there be no express stipulation in the latter contract that the original lease is cancelled. *Rheaume & Panneton*, 2 L. N. 202, Q. B. 1879.

II. Emphyteutic.

6. Appellant instituted an action against respondents in the Superior Court at Arthabaska, under the provisions of the Code respecting lessors and lessees, to set aside a contract containing a lease for twelve years, a stipulation to build a mill of considerable value, and a sale of constituted rents. The action demanded $300 rent, and an order to eject defendants from the leased premises on the ground of non-payment of rent. The respondents pleaded by exception to the form that the delay for summoning them had not been observed, and that they should have had ten days instead of three to answer the action. They alleged that the deed appellant wanted to set aside was not a simple lease, and consequently the case did not come under the provisions of the Code respecting lessors and lessees. The Superior Court adopted that view in conformity with *Lepine*

and the *Jacques Cartier Building Society**—*Held*, that the lease was not an emphyteutic lease, but an ordinary lease for a long term of years, which conveyed no right of property in the immoveables leased, and that consequently the action was properly brought. *Marett & Robitaille*, 9 R. L. 420, Q. B. 1876.

7. In an action on a lease for nine years—*Held*, to be an emphytentic lease, and that Art. 1625 of the Civil Code† did not apply, but that the court could condemn the lessee to pay the amount of rent due, and declare the lease cancelled and rescinded if the lessee did not pay the amount due within the delay fixed by the court. *Poitras & Berger & Lajoie*, 10 R. L. 214, Q. B. 1879.

III. Notice of Termination of.

8. Where a lease has been continued by tacit reconduction it can only be terminated by a three months' notice. *Luke* v. *Wickliffe*, 22 L. C. J. 41, S. C. R. 1877; 1 Dig. 728, 37.

IV. Resiliation of.

9. An action to rescind a lease may be brought against a lessee who has became insolvent during the term of the lease. *Loranger* v. *Clement*, 1 L. N. 326, S. C. R. 1878.

10. Where one of several tenants painted the entire front of the leased building a conspicuous red color, and the defendant who leased the upper flats, and to whom this color was offensive, covered over the red with a neutral tint—*Held*, that the lessor had no ground of rescission against the latter on account of the change. *Deguire* v. *Marchand*, 1 L. N. 326, S. C. R. 1878.

V. Rights of Purchaser of Property Leased.

11. The respondents were lessees of a building used as a public school under a lease made in 1875 and extending to 1st July, 1877. In April, 1876, the lessor became insolvent, and the assignee authorized the appellants, who were mortgagees, to receive the rent. The respondents remained in possession until the end of their lease. The appellants purchased at public sale from the assignee in November, 1876. Subsequently they brought action against respondents, claiming rent from July, 1877, the date at which the lessees delivered up the premises, until the 1st May, 1878, on the ground that the original lease had been broken by the sale either at the time, or at any rate on the first of May following, and the lessees having continued on to the end of their lease were liable for the balance of the year—*Held*, that as it was proved that the plaintiffs had consented to the continuation of the lease subsequently to the sale they had no action. *Metropolitan Building Society & Roman Catholic School Commissioner*, 2 L. N. 205, Q. B. 1879.

* See 1. Dig. p. 728, Art. 32.

† The judgment rescinding the lease by reason of the non payment of the rent is pronounced at once without any delay being granted by it for the payment. Nevertheless the lessee may pay the rent with interest and costs of suit, and thereby avoid the rescission, at any time before the rendering of the judgment.

VI. Sublease.

12. The fact that the lessor has accepted the rent for several terms from a sublessee does not discharge the lessee under the principal lease where there is no express novation. *Boyer* v. *McIver & Craig*, 21 L. C. J. 160, S. C. 1877.

VII. Tacit Reconduction of.

13. In a lease of moveables there is no tacit reconduction. *Canada Paper Co.* v. *Cary*, 4 Q. L. R. 323, S. C. 1878.

VIII. Termination of.

14. In an action of ejectment the question which arose was whether the contract between the parties was such that the plaintiffs could, of their own mere will, terminate the lease to the defendant. By the notarial agreement upon which the action was founded it appeared that the defendant agreed to act as manager and general superintendent of the plaintiffs in the working of a certain paper mill "for five years, to be computed from the twelfth day of May" then last. In consideration thereof the plaintiff agreed to allow the defendant a yearly salary equal in amount to one-half the net annual profits of the mill, but not exceeding $1,000, said salary payable monthly. The agreement also provided that the defendant might leave the situation of manager and superintendent at any time upon giving the plaintiffs six months' notice of his intention to do so, who, upon a like notice to him, might also at any time dispense with his services, in which event, or in the event of the sale of the said properties, all the rights of the parties were to be determined in the same manner as if the said five years had expired. There was also a lease of the house in question to the defendant for $160, payable out of his half of the profits, but without specifying a term—*Held*, that the plaintiffs could not by terminating the contract as to services put an end to the lease. *Reid* v. *Smith*, 6 Q. L. R. 367, S. C. R. 1872.

15. A person who is surety for a tenant holding under a lease terminable on giving six months' notice cannot exercise the right stipulated in favor of the tenant if the latter fails to do so. *Leonard & Lemieux*, 1 L. N. 614, S. C. 1878.

IX. With Promise of Sale.

16. An action under a lease with promise of sale is a personal action, and may be brought in the lessor and lessee court. *Menzies* v. *Bell*, 3 L. N. 159, S. C. 1880.

LEATHER.

I. Stamping of, *see* INSPECTION LAW.

LEGACY—*See* WILLS.

I. Rights of Legatee.

17. The *auteur* of the defendant by his will instituted his wife his universal legatee in usufruct, and his children his universal legatees *en propriété*. He also made a particular legacy by which he bequeathed to his brother, the defendant, a piece of land situated at St. Agathe, and admitted to be of the value of $500. The plaintiff, a creditor of the deceased, obtained judgment against his widow, as well in her own name as tutrix to her children, for a sum of $135, interest and costs; and not being able to realize anything under it brought action against the particular legatee to compel him to abandon the immoveable bequeathed to him for the benefit of the creditors of the succession, and particularly of plaintiff. Defendant pleaded that he had made certain improvements to the immoveable to the extent of $150, and asked that the plaintiff be first ordered to pay him that sum, and that failing to do so his action be dismissed. In the Superior Court the action was dismissed according to the terms of the plea, but in appeal—*Held*, that the right of retention for improvements in such a case did not arise from Art. 419 of the Civil Code* on which defendant relied, but that there was a privilege only on the price according to Art. 2072.† *Matte* v. *Laroche*, 4 Q. L. R. 65, & 8 R. L. 517, Q. B. 1878.

18. The plaintiff's mother having died left a will by which she bequeathed to plaintiff a legacy of $100, and to her sister $300. The sister having died bequeathed her legacy to plaintiff. The legacies were to be paid out of the estate as soon as the incumbrances on it were paid. The brother of plaintiff having taken possession of the estate sold to another sister a portion of it for $25,000, on which were certain mortgages which the purchaser undertook to pay. She also undertook to pay the legacies in question, and her undertaking was accepted by plaintiff. On action for the amount of the two legacies—*Held*, that she could not plead the existence of the mortgages nor yet set up in compensation that she had maintained and educated the children of the deceased sister. *Goodbody* v. *McGrath*, 2 L. N. 165, S. C. 1879.

LEGATEES.

I. Fiduciary.
II. Liability of.
To Account.
III. Execution of Judgment against, *see* EXECUTION.
IV. Rights of.

I. Fiduciary.

19. *Who are.*—Where, by a will, certain bonds were bequeathed to a person "to be used for the support of his family," it was *held*, that the family was the real legatee, and he was a legatee in trust. *Noad* v. *Noad*, 21 L. C. J. 312, S. C. 1874.

20. And *held*, also, that if he was misusing the trust, the family could demand a sequestration. *Ib.*

21. But that the trustee had the right to deposit the bonds or their proceeds in the hands of a depositary, who was bound to return the same on the order of the trustee, and that he could not be held liable for breach of trust, even though he knew of the nature of the trust and the terms of the will, unless fraud and collusion were proved. *Ib.*

II. Liability of.

22. Universal legatees under a will who have not renounced are bound to pay the debts of the testator, notwithstanding he may have appointed executors whom he vested with all his estate. *Beaudry* v. *Rolland*, 22 L. C. J. 72, S. C. 1877; & 2 L. N. 171, & 23 L. C. J. 255, Q. B. 1879.

23. Arrears of taxes due by a deceased person are properly recoverable from his universal legatee. *Corporation of Township of Acton & Felton*, 24 L. C. J. 113, S. C. R. 1879.

24. *To Account.*—In an action to account against the legatees of a tutor deceased—*Held*, that legatees who accept a succession purely and simply may be sued for a debt of the testator, notwithstanding that the testator may have named executors in whose hands the estate still is at the time the action is instituted. *Pierce & Butler*, 3 L. N. 28, & 24 L. C. J. 167, Q. B. 1879.

25. But where an account has been rendered by the tutor, his representatives cannot be sued for a second until the first is declared null. *Ib.*

IV. Rights of.

26. A usufructuary legatee may enforce a contract between the testator and another, and a defense of want of privity of contract will be dismissed. *Brisbin es qual.* v. *Campeau*, 21 L. C. J. 16, S. C. 1877.

LEGISLATIVE AUTHORITY.

I. Division of between the Local and Federal Legislatures.

In Commercial Matters.
In Corporation Matters.
In Criminal Matters.
In Insolvent Matters.
In Judicial Matters.
In Matters of Interest.
In Matters of Navigation.

* And in case the party in possession is forced to give up the immoveable upon which he has made improvements for which he is entitled to be reimbursed, he has a right to retain the property until such reimbursement is made, without prejudice to his personal recourse to obtain repayment, saving the case of surrender in any hypothecary action which is specially provided for in the title of *Privileges and Hypothecs*, 419 C. C.

† The holder against whom the hypothecary action is brought may also demand that the surrender which he may be ordered to make be subject to his privilege of being paid what has been expended upon the immoveable either by himself or by such of the persons from whom he derives his claim as are not personally bound to the payment of the hypothecary debt, the whole in conformity with the rules contained in the title of *ownership* and with interest from the day when such expenditures were liquidated. 2072 C. C.

In Matters of Precedence.
In Matters of Public Order.
In Matters of Taxation.
II. Limits of.

I. Division of between the Local and Federal Legislatures.

27. *In Commercial Matters.*—The License Act of Quebec is constitutional. *Duncan exp. & Marquis exp.*, 4 R. L. 228, S. C. 1872.

28. The petitioner asked for the nullity of a bye-law passed by the Municipal Council of the County of Missisquoi prohibiting the sale of intoxicating liquors within the county, in conformity with the provisions of the Temperance Act of 1864, C. 27 & 28 Vic. cap. 18, on the ground that the provisions of the Act under which it was passed had been repealed by 1086 of the Municipal Code which was in the following terms: "Le chapitre 18 des statuts de la ci-devant Province du Canada 27 et 28 Vic. etc., et touts autres lois de la Province en force au temps de la mise en opération de ce code, sont abrogés dans tous les cas 1o. Où il contient une disposition qui a expressement ou implicitement cet effet; ou elles sont contraires ou incompatibles avec quelques dispositions qu'il contient; et où il contient une disposition exprese sur le sujet particulier de telle loi."—*Held*, that this was a commercial matter, and that the Legislature of Quebec had not the power to legislate concerning commercial matters, except in so far as they might require to do so to raise a revenue for provincial purposes. *Hart & Corporation of Missisquoi*, 3 Q. L. R. 170, 1876.

29. The regulation of the traffic in intoxicating liquors is within the jurisdiction of the Parliament of Canada. *Corey exp. & The Municipality of the County of Brome*, 21 L. C. J. 182, S. C. 1877.

30. And the License Act of Quebec, in so far as it pretends to restrain the sale of liquor, and especially in imposing as a penalty imprisonment with hard labor, is unconstitutional. *Poitras* v. *Corporation of Quebec*, 9 R. L. 531, S. C. 1879.

31. And in another case, the plaintiff being the revenue inspector for the district of Arthabaska brought action under the Quebec License Act (1870), for the penalty imposed by that Act for selling by auction without a license against one of the defendants, an official assignee, for causing the sale by auction of the estate of an insolvent, and against the other defendant, as having actually conducted the said sale, neither having obtained a license as required by said Act—*Held*, that the Insolvent Act of 1869, being exclusively concerned with commercial matters, could not be restrained in its operation by the Quebec Legislature, and that, therefore, the License Act of Quebec, in so far as it pretended to limit the powers of the assignees in carrying out their functions under the Act, was *ultra vires* and void. *Coté* v. *Watson*, 3 Q. L. R. 157, S. C. 1877.

32. *Per Curiam.**—This is a petition in the name of the attorney general of the Province, under the 997th article of the Code of Procedure which reproduced the Statutes previously in force respecting proceedings against corporations violating or exceeding their powers, and against persons usurping public offices; and the object is to set aside as illegal a by-law of this city, being No. 90, concerning private butcher's stalls. I may say at the outset that I had some doubts whether the principal point raised here could come up properly in this manner. The 12th Vic. c. 41, reproduced in the Code, was passed before our present political system was in existence, and it related to the redress to be had against corporations or individuals for misconduct in respect to excess of power in the former, and intrusion into office by the latter. The excess of power complained of here seems to be not that the corporation exceeded the powers professedly given them; but that they have exercised powers wrongly given; in other words, that the Local Legislature had no right to give the powers that have been used, and this proceeding is therefore an attack on the Statute, and not on the by-law, and most assuredly the 12th Vict. had no such object: nor does the Code go any further than the Statute, nor did it come into force after confederation; but though I have no doubt that such a thing was never contemplated by the Statute or by the Code, yet I am clear also that the words both of the Statute and of the Code embrace the present case, for the remedy is given *inter alia*, "*Whenever any* corporation exercises any power, franchise or privilege that does not belong to it;" and the effect of these words, whether contemplated or not, is to subject the by-law to examination with reference to everything that affects the power of the corporation to pass it. Therefore I come at once to consider the principal ground of this application, which is that the British North America Act of 1867 confers the exclusive power to regulate trade and commerce upon the Federal Parliament, and that this by-law, being professedly passed under the authority of Provincial Legislation, is a violation and an excess of power. It is very true that section 91 of the Imperial Act of 1867 does define the powers of the Federal Parliament, and in these words: "It shall be lawful, etc., to make laws for the peace, order and good government of Canada in relation to all matters *not coming* within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces;" therefore before this subject can be said to be within the jurisdiction of the Federal Parliament, it must be shown: 1st, that power to make laws for Canada (that is for the Dominion) is power to make laws for the local purposes of the Provinces; and secondly, that it is a power not assigned exclusively to the Legislatures of the Provinces. Neither of these propositions is true. The trade and commerce of the Dominion is a very distinct thing from the individual trades or callings of persons subject to the municipal government of cities; and the exclusive power of the Provincial Legislatures is specifically extended by section 92 to make laws "in relation to municipal institutions, and also in relation to shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes." Therefore the corporation by this by-law have neither interfered

* Johnson, J.

with the trade of the Dominion, nor exercised power which it was not within the exclusive right of the Provincial Legislature to give them. The by-law is based upon section 123 of the City Charter (37 Vic. c. 51), paragraphs 2, 27, 31 and 32. The 2nd paragraph of this section gives the general power to make by-laws for the health, internal economy and local government of the city. Paragraph 27 gives power to make by-laws "to establish and regulate public markets and private butchers' or hucksters' stalls; and to regulate, license or restrain the sale of fresh meats, vegetables, fish or other articles usually sold on markets." Paragraph 31 authorizes by-laws for the purpose of regulating where and how live stock and provisions may be exposed for sale on the public markets, and specially provides that "the said council may, if they deem it advantageous, by a by-law to be passed for that purpose, empower any person to sell, offer or expose for sale, in any place beyond the limits of the said markets, meat, vegetables and provisions usually bought and sold on public markets, upon such person obtaining a license for that purpose from the said council, for which he shall pay to the city treasurer such sum as may be fixed by such by-law, and by conforming with the rules and regulations contained in the said by-law." Section 81 of the Charter, using the power given by the 92nd section of the B. N. America Act, 1867, makes no distinction between the form of a tax and that of a license. It says: "The said council may also, if they see fit, impose the said tax in the form of a license, payable annually at such time and under such conditions and restrictions as the said council may determine." The power, then, appears to have been constitutionally given by the Provincial Parliament, and properly used by the corporation. As to the argument that this was virtually a prohibition of trade, it need only be observed that it is merely a prohibition of unlicensed trade, the power to license being clearly given. The amount appears by the evidence to be much less than one-half of what was formerly imposed; nor could I properly consider the amount, where there is no specific limit in the law. Dillon, on Municipal Corporations, p. 198, No. 79, says:—"Where there is a clear intent that licenses are imposed as a source of revenue to the city, the court will not mind the amount." These municipal powers, and their exercise, are to be liberally interpreted. See Dillon, p. 440, No. 353, 250 and 251, and in note, the dictum of Chief Justice Eustis; also Harrison, p. 167, note; Angell, p. 372; 1 Wilcock, No. 383, and Grant on Corporations, p. 88. This is the whole of the case, as far as it presents any legal question; and my judgment is that the petition be dismissed with costs for the reasons I have given. *Attorney General* v. *City of Montreal*, S. C. 1876.

33. Petitioner applied for a writ of certiorari from a conviction of the police magistrate for having sold a dozen bottles of beer at one time without having previously obtained a license to do so in terms of the Quebec License Act, on the ground *inter alia* that the conviction was null and void, and beyond the jurisdiction of the police magistrate, because the Quebec Acts, upon which alone the conviction reposes, were *ultra vires* of the Quebec Provincial Legislature, and unconstitutional so far as affecting wholesale dealers, and, again, because the said Acts are in regulation of trade, and therefore *ultra vires* of the Quebec Legislature. The prosecutor relied upon sub-section 9 of section 92 of the B. N. A. Act, by which in each Province the Legislature "may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:—9, shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local, or municipal purposes." *Per Curiam.** I hold that the B. N. A. Act must be interpreted as any other statute. The whole of it must be considered, and if possible force must be given to each clause of it. Though the ninety-first section reads as it does the next one has been enacted. Why? surely not to conflict with the preceding one; but, presumably, to work with it. I think it a qualification of it; as the last statute in point of time controls, so later clauses are held to qualify earlier ones; the last clause is the last expression of the law maker. Cannot sub-section ninety-two be worked without violence against ninety-one? I think that it can. Ninety-one being enacted, 92 expresses a particular intention, in the nature of an exception to it. It is said to be repugnant; no more so than would have been a proviso to the same effect. Ninety-one gives the Dominion the regulation of commerce in the wide sense, but ninety-two allows Quebec Province to make certain regulations affecting purely internal commerce. The Quebec Legislature does not, as I understand, pretend to regulate the trade and commerce of the Dominion; it may concede to the Dominion, exclusively, the right to "regulate trade and commerce" in the wide sense, and yet claim to have right, towards raising revenue for provincial purposes, to lay taxes on shops, saloons, taverns and auctioneers and others. The Dominion Parliament has no power to do *that*, but clearly, I think, power to do it has been conceded to Quebec Province by section ninety-two, and all that is necessary to enable the power to be exercised with effect must be held to have been conceded. Quebec Province would in vain tax shops and taverns, unless sales otherwise than under licenses (such a sale, for instance, as *Leveillé* has made of a dozen bottles of beer) could be ordered by it to expose to penalties. Who would pay for a shop or tavern license if he could sell beer without one, and expose himself to no penalty? "Power to regulate commerce is not at all like that to lay taxes. Power to lay taxes may well be concurrent. Each (that is Congress and any of the States) may lay a tax on the same property; yet without interfering with the other." So says Story. It was meant to be so here, in a degree, I think. If the Quebec License Act be so unconstitutional as petitioner claims, it is strange that the Governor-General has not disallowed it. When the Quebec Legislature, using the powers given to it by ninety-two, exceeds, I make no doubt the Dominion Government will interfere. It is not for me, in

* Mackay, J.

disposing of the present case, to define the exact boundaries of the power of the Quebec Legislature taxing under ninety-two. The power to tax, by means of a system of licensing, exists; that is certain. Within what boundaries can I say that this power is abridged, where and when does the power to tax end? It has limits; at any rate, it ought to have; but what are they exactly? The Quebec Legislature has gone, in words, to the extent of prohibiting sale wholesale of spirits and beer, except by shop or tavern licensed persons, without distinction of liquors imported in bulk, sold in bulk as imported, and other liquors, *e.g.*, manufactured in Quebec Province, and sold here. Ninety-two does not read to prevent them insisting on licenses being taken to sell liquors wholesale. Mr. Justice Strong would hold a license which would amount to prohibition to be an undue interference with the exclusive powers of the Dominion Parliament, and I could agree to hold the same thing. I do not see that he can complain with reason that the Quebec Legislature has exceeded and abused its powers as regards him in the present case. *Certiorari* quashed. *Leveillé exp.*, S. C. 1877.

34. S., after the passing of the Act, O. 37 Vic. cap. 32, entitled, "An Act to amend and consolidate the law for the sale of fermented or spirituous liquors," then being a brewer licensed by the Government of Canada, under c. 31 Vic. cap. 8, for the manufacture of fermented, spirituous or other liquors, did manufacture large quantities of beer, and did sell by wholesale for consumption within the Province of Ontario a large quantity of said fermented liquors so manufactured by him without first obtaining a license as required by the said Act of the Legislative Assembly of the Province of Ontario. The Attorney General of Ontario thereupon filed an information for penalties against S. On demurrer to the information the special matter for argument was that the Legislature of the Province of Ontario had no power to pass the statute under which the penalties were sought to be recovered, or to require brewers to take out any license whatever for selling fermented or malt liquors by wholesale as stated in the information.—*Held*, that the Act of the Provincial Legislature of Ontario 37 Vic, cap. 32, was not within the Legislative capacity of that Legislature, and that the power to tax and regulate the trade of a brewer being a restraint and regulation of trade and commerce falls within the class of subjects reserved by the 91st section of the British North America Act for the exclusive legislative authority of the Parliament of Canada, and that the license imposed was a restraint and regulation of trade and commerce and not the exercise of a police power. *Severn & Regina*, 2 S. C. Rep. 70, Su. Ct. 1878.

35. And the right conferred on the Provincial Legislatures by ss. 9, sec. 92, of the said Act to deal exclusively with shop, saloon, tavern, auctioneer and "other licenses" does not extend to licenses on brewers, or "other licenses" which are not of a local or municipal character. *Ib.*

36. And where the Ontario Legislature passed an Act for the regulation of Fire Insurance Companies carrying on business in that Province, entitled, "An Act to secure uniform conditions in policies of Fire Insurance," this was *held*, not to be an interference with the regulation of "Trade and Commerce" within the meaning of the British North America Act, and was within the powers of the Local Legislature. *Citizens Insurance Co. of Canada & Parsons & Queen Insurance Co. & Parsons*, 4 S. C. Res. 215, Su. Ct., 5 L. N. 25, P. C. 1882.

37. By the B. N. A. Act. 1867, plenary powers of legislation are given to the Parliament of Canada over all matters within the scope of its jurisdiction, and they may be exercised either absolutely or conditionally. In the latter case the legislation may be made to depend upon some subsequent event, and be brought into force in one part of the Dominion and not in the other. *City of Fredericton & The Queen*, 3 S. C. Rep. 505, Su. Ct. 1880.

38. And under B. N. A. Act. sec. 91, ss. 2, "regulation of trade and commerce," the Parliament of Canada alone has the power of prohibiting the traffic in intoxicating liquors in the Dominion or in any part of it, and the court has no right whatever to enquire what motive induced Parliament to exercise its powers. *Ib.*

39. And *held*, in the Privy Council, that such an Act was not a fiscal Act, that it did not properly belong to the class of subjects "property and civil rights," nor to the class of subjects falling under sub-section 16 of section 92—"Generally all matters of a merely local or personal nature in the Province;" and that the local option condition attached to it, by which the inhabitants of a municipality could adopt it or not as they saw fit, did not give it this character. *Ib.* 5 L. N. 234, P. C. 1882.

40. *In Corporation Matters.*—The Provincial Legislature has power to issue letters patent incorporating a navigation company, whose operations are to be confined to the limits of the Province. *Macdougall et al. & The Union Navigation Co.*, 21 L. C. J. 63, Q. B. 1877.

41. The respondents, a Board for the management and administration of the Temporalities Fund of the Church of Scotland, was incorporated by an Act of the Legislature of Canada prior to Confederation, 22 Vic. cap. 66. In 1874 the various Presbyterian churches in Canada were united, and application was made almost simultaneously to the Legislatures of Ontario and Quebec for authority to give effect to this determination, and to enable the new body to deal with and control the property of the churches so united, or in other words with the funds administered by the Temporalities Board, respondents. Acts of the Provincial Legislatures of Quebec and Ontario were passed accordingly. All the property and money of the Temporalities Fund was situated or invested in the Province of Quebec—*Held*, in appeal, by three judges out of five, that the Act of the Quebec Legislature vesting the property of the Board in the United Church was *ultra vires* and unconstitutional. *Dobie & Board for the Management of the Temporalities Fund, &c.*, 3 L. N. 244, Q. B. 1880; & 5 L. N. 58, P. C. 1882.

42. The company respondents were incorporated originally under the name of the Montreal Northern Colonization Railway Co., by an Act of the Legislature of the Province of Quebec, 32 Vic. cap. 55, and was governed by that and a

subsequent statute of the same Legislature 34 Vic. cap. 23, and was, therefore, in its inception a provincial railway. In 1873 the Parliament of Canada by Act 36 Vic. cap. 82 declared the railway to be a federal enterprise for the general advantage of the Dominion, and by a subsequent statute 38 Vic. cap. 68 changed the name of the company to that of respondents—*Held*, that the railway being a federal work, governed by the Canada Railway Act of 1868, the Local Legislature had no power to transfer the property of the company, as it pretended to do by Act 39 Vic. cap. 2, to the Government of the Province. *Bourgoin & La Compagnie de Chemin de fer de Montreal, Ottawa & Occidental*, 3 L. N. 185, & 24 L. C. J. 193, P. C. 1880.

43. *In Criminal Matters.*—The powers conferred on the Corporation of Montreal by the Act of the Province of Quebec 32 Vic. cap. 70, sec. 17, to inflict cumulative punishment as therein enacted are unconstitutional. *Papin exp.*, 15 L. C. J. 334, & 16 L. C. J. 319, S. C. 1871-72.

44. The petitioner was imprisoned by the fire commissioner on the ground of incendiarism, and prayed for release on the ground that the statute creating the office of fire commissioner was contrary to the Confederation Act, inasmuch as it established a criminal procedure, which by the Act is restricted to the Federal Parliament—*Held*, that the statute in question had no reference to criminal procedure, and was perfectly constitutional. *Dixon exp.*, 2 R. C. 231, Q. B. 1872.

45. And in another case—*Held*, by the Privy Council, that the constitution of the court of Fire Marshal by the Quebec Statutes 31 Vic. cap. 31 & 32 Vic. cap. 29, with the powers given to it, was within the competency of the Provincial Legislature. *Regina & Coote*, L. R. 4 P. C. 599, 1872.

46. The Provincial Legislature has jurisdiction to provide procedure for the enforcement of penal acts enacted within its powers, and such penal statutes are not part of the criminal law as contemplated by the British North America Act. *Paye & Griffith*, 17 L. C. J. 302, Q. B. 1873.

47. And the power conferred on the Legislature of Quebec by the British North America Act of fine, penalty and imprisonment does not restrict the power of the Provincial Legislature to the exercise of only one of these modes of punishment at a time by any particular act. *Ib.* & 18 L. C. J. 119, S. C. 1873.

48. But the License Act of Quebec in imposing as a penalty imprisonment with hard labor is unconstitutional. *Poitras* v. *Corporation of Quebec*, 9 R. L. 531, S. C. 1879.

49. *In Insolvent Matters.*—Notwithstanding the 91st section of the British North America Act, by which exclusive jurisdiction is given to the Parliament of Canada in matters of insolvency, an Act of the Legislature of Quebec, changing the constitution of an incorporated benefit society, so as to compel a widow to receive from the society the sum of $200 instead of a life rent of seven shillings and sixpence weekly, on the ground that the society is insolvent, is within the powers of the said Legislature. *L'Union St. Jacques* v. *Belisle*, 20 L. C. J. 29, P. C. 1874.

50. The Quebec License Act, in so far as it pretends to limit the powers of the assignees under the Insolvent Act in selling the estates of insolvents, is unconstitutional. *Coté* v. *Watson*, 3 Q. L. R. 157, S. C. 1877.

51. An Act to provide for the liquidation of the affairs of building societies generally in the Province of Quebec is within the powers and jurisdiction of the Quebec Legislature. *McClanaghan & St. Ann's Mutual Building Society*, 3 L. N. 61, & 24 L. C. J. 162, Q. B. 1880.

52. *In Judicial Matters.*—The Dominion Controverted Elections Act of 1874, imposing on the judges of the Provincial Courts the duty of trying election petitions under such Act, is within the power and jurisdiction of the Parliament of Canada. *Ryan* v. *Derlin*, 20 L. C. J. 77, S. C. R.; & *Owens & Cushing*, 20 L. C. J. 86, S. C. R. 1875.

53. On a petition for *habeas corpus* the question of the respective powers of the local and Dominion Legislatures was brought up. The prisoner was convicted under the Quebec License Act, 34 Vic. cap. 2, sec. 31, before a District Magistrate appointed under the provisions of the Acts of the Legislature of Quebec respecting District Magistrates and Magistrates' Courts in this Province. It was contended that the Legislature of the Province of Quebec had no authority to legislate on these matters, and that even if it had, the Lieutenant Governor had no right to appoint a District Magistrate, for that he is a District Judge, and that the Governor-General has alone the power to appoint such officers. By the court:* The difficulty in this case arises from the partitioning of the legislative powers of the general and local Legislatures. The criminal law is given to the Parliament of Canada, as also procedure in criminal matters, while the constitution, maintenance and organization of criminal courts are given to the local Legislatures. Now, where does the constitution of the court end, and where does procedure begin? The dividing line between these powers is not very distinct. It has already given rise to considerable difficulty. It was questioned whether the local Legislature could make a law for summoning juries for criminal trials, and it was considered expedient to avoid the difficulty by passing an Act of Parliament. We have no such assistance in deciding this case; but one of the learned counsel for the petitioner has abandoned the pretension that the Act was not unconstitutional in so far as it creates Magistrates' Courts, and that the local Legislature has only exceeded its powers in reserving to the local executive the power to appoint the magistrates who are to hold these courts. Whatever difficulty there may be as to the conflict of the powers, as an abstract question, in face of the case of Coote, the learned counsel was fully justified in abandoning the first pretension. The case of Coote, decided in the Privy Council, directly recognizes the powers of the local Legislatures to create new courts for the execution of the criminal law, as also the power to nominate magistrates to sit in such courts. We have, therefore, the

* Ramsay, J.

highest authority for holding that generally the appointment of magistrates is within the powers of the local executives. So much being established, almost all difficulty disappears. The Privy Council recognizes the general principle that the executive power is derived from the legislative power, unless there be some restraining enactment. In this case it is said there is such an enactment (sect. 96, B. N. A. Act). That section specially reserves the nomination of the judges of the Superior Courts, the County and District Courts, save the Courts of Probate in Nova Scotia and New Brunswick, to the Government of Canada. It is quite clear that without this section the appointment of all the judges would be in the hands of the local Governments; and the sole question then is whether a "district magistrate" is a district judge? Some argument was attempted to be drawn from section 130, B. N. A. Act; but that is only a transitory clause providing for the position of those local officers who have federal duties, "*until the Parliament of Canada otherwise provides.*" By that section they are created officers of Canada, and declared to be subject to all the responsibilities and penalties they were subject to before the union. In saying they are federal officers, the Statute must be understood, *quoad* their federal duties, for the Parliament of Canada could not legislate as to their local duties. I don't, then, see that section 130 affects the question before the court, and we are of opinion that a district magistrate is not a district judge within the meaning of section 96, B. N. A. Act. We are, therefore, against the petitioner on this point. *Regina & Horner*, Q. B. 1876.

54. The Act of the Dominion Parliament known as the Dominion Controverted Elections Act of 1874, conferring and imposing upon the courts of the various Provinces the right and duty of trying petitions against the election of members of the House of Commons of Canada, is constitutional.* *Valin & Langlois*, 2 L. N. 364, & 3 S. C. Rep. 1, Su. Ct. 1879.

55. Appeal from a judgment of the Queen's Bench, reversing the judgment of the Superior Court which had been given in appellant's favor in certain proceedings in insolvency instituted under the Insolvent Act, 1875. An application to the Queen's Bench for leave to appeal to Her Majesty in Privy Council was refused on the ground that under the Insolvent Act its judgment was final. Special leave to appeal having been granted by Her Majesty, the question arose whether the appeal to Her Majesty's Council, given *de jure* by Art. 1128 of the Code of Civil Procedure, could be taken away by the Dominion Parliament, as they had pretended to do by 40 Vic. cap. 41 amending the Insolvent Act, 1875. It was contended for the appellant that the provisions of the Insolvency Act, and of this amending clause in particular, were an infringement of the 13th and 14th sub-sections of section 92 of the B. N. A. Act, viz.: "Property and civil rights," and "the administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts both of civil and of criminal jurisdiction, *and including procedure in civil matters in those courts.*"—*Held*, dismissing these pretensions, that "It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates (which by sec. 91 belongs to the Dominion Parliament) without interfering with and modifying some of the ordinary rights of property and other civil rights, nor without providing some mode of special procedure for the vesting, realization and distribution of the estate and the settlement of the liabilities of the insolvent. Procedure must necessarily form an essential part of any law dealing with insolvency. *It is therefore to be presumed, indeed it is a necessary implication, that the Imperial Statute in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency intended to confer on it legislative power to interfere with property, civil rights and procedure within the Provinces, so far as a general law relating to those subjects might affect them.* Their lord-ships therefore think that the Parliament of Canada would not infringe the exclusive powers given to the Provincial Legislatures by enacting that the judgment of the Court of Queen's Bench in matters of insolvency should be final, and not subject to the appeal as of right to Her Majesty in Council allowed by Art. 1178 of the Code of Civil Procedure." *Cushing & Dupuy*, 24 L. C. J. 151, & 3 L. N. 171, P. C. 1880.

56. Motion on part of respondent to dismiss the appeal as having been taken after the expiration of the eight days under the Insolvent Act. On the part of appellant it was contended that the Federal Legislature had no right to shorten the delay fixed by the ordinary procedure—*Held*, that the Dominion Parliament has a right to legislate on matters of procedure incidental to a subject assigned to it, and appeal dismissed. *Girouard & Germain*, 3 L. N. 109, Q. B. 1880.

57. *In Matters of Interest.*—The Act of the Quebec Legislature, 41 Vic. cap. 27, in so far as it purports to authorize the city of Montreal to charge 10 per cent. interest on arrears of taxes, is unconstitutional. *City of Montreal* v. *Perkins*, 2 L. N. 371, S. C. 1879.

58. By the Act of Canada 14 & 15 Vic., cap. 128, sec. 75, the city of Montreal was given the right to impose interest, increase, addition or penalty at the rate of ten per cent. on arrears of taxes and assessments. Subsequently to Confederation the Legislature of Quebec, by the Act 37 Vic. cap. 51, repealed this provision, and substituted another empowering the said Corporation to impose interest at the rate of ten per cent. on such arrears. By a still later Act (41 Vic. cap. 27) the Legislature of Quebec changed the word interest to those of the original Canadian Act, *increase, addition or penalty*—*Held*, that both provisions relating to the imposition of interest either *eo nomine* or by the name of *increase, addition or penalty* were unconstitutional and *ultra vires* of the Quebec Legislature. *Ross* v. *Torrance & City of Montreal*, 2 L. N. 186, & 9 R. L. 565, S. C. 1879.

* For the opinions of the various judges in this important case *vide* ELECTION LAW *supra* p. 296.

59. The plaintiff claimed the sum of $170.33, amount of coupons due on bonds. The defence was that the bonds were issued under Q. 37 Vic. cap. 57,* and that that Legislature could not enact a law authorizing the company to enter into any contract binding on it by which a rate of interest higher than six per cent. was to be paid, and that the coupons being at the rate of seven per cent. the obligation was void, or, at most, good only for six per cent. The answer to this was that the company was authorized to borrow, and could legally agree to pay seven per cent., or such other rate as might be specially agreed upon—*Held*, maintaining the action. *Macdougall* v. *Montreal Warehousing Co.*, 3 L. N. 64. & *Royal Canadian Insurance Co.* v. *Montreal Warehousing Co.*, 3 L. N. 155, S. C. 1880.

60. And *held*, that corporations other than banks may validly lend at any stipulated rate of interest. *Royal Canadian Insurance Co.* v. *Montreal Warehousing Co.*, 3 L. N. 155, S. C. 1880.

61. *In Matters of Navigation.*—Action of damages against the St. Lawrence Navigation Company, for having wintered their boats in the mouth of the River St. Maurice during the winter of 1874-75. The action was based on letters patent granted to the plaintiffs by the Quebec Government, which conceded to them, as proprietors, all rights in the water lots at the point in question extending to low water mark and along the bank of the river. The plaintiffs pretended that the defendants should pay damages for having wintered their boats within the limits of such grant, and having themselves and their employees passed and repassed along the land of the plaintiffs during the winter in going to and from the said boats, the whole without the permission of the plaintiff. The defendants pleaded that the Quebec Government had no right or authority to make such grant, as the shores of the river and extending to the part of the river where their boats had been anchored was under the exclusive control of the Dominion Government as being a navigable and public river, and that therefore the letters patent under which the plaintiffs claimed were null and void. The Superior Court maintained this pretension, but in appeal—*Held*, that the authority of the Quebec Government did extend to the water lots along the bank of a navigable river, but subject to the tacit restriction that they should do nothing which should in any way injure or interfere with the requirements of navigation, and therefore while the letters patent were perfectly good and valid, the plaintiffs could not claim anything or impose anything on the defendants for having wintered their boats, at least so long as they had constructed no quays, wharves or other improvements of which the defendants had availed themselves, and as the plaintiffs had not proved that they had suffered any damage from the passing and repassing of the defendants' employees to and from their boats, that they had no right of action against defendants; but, as defendants had raised a contestation which had not been sustained in appeal, no costs in appeal would be ordered. *Normand & La Cie. de Navigation du St. Laurent*, 4 Q. L. R. 1, S. C.; & 5 Q. L. R. 215, & 10 R. L. 513, Q. B. 1879.

62. *In Matters of Precedence.*—The British North America Act has not invested the Legislatures of the Provinces with any control over the appointment of Queen's Counsel, and as Her Majesty forms no part of the Provincial Legislatures, as she does of the Dominion Parliament, no act of any such Local Legislature can in any manner impair or affect her prerogative right to appoint Queen's Counsel in Canada directly or through Her Representative the Governor General, or vest such prerogative right in the Lieut.-Governors of the Provinces. *Lenoir & Ritchie*, 3 S. C. Rep. 575, & 2 L. N. 373, Su. Ct. 1879.

63. *In Matters of Public Order.*—The exemption of salaries of public employees is a matter of public order, and therefore the Legislature of the Province of Quebec has not the power to declare seizable the salaries of employees of the Federal Government.* *Evans & Hudon & Browne*, 22 L. C. J. 268, S. C. 1877.

64. *In Matters of Taxation.*—The Legislature of Quebec has no power to compel insurance companies doing business in the Province of Quebec to take out a license, the price of which should be paid by stamps affixed to the policies issued, and an Act passed to that effect was held to be unconstitutional, *ultra vires* and void. *Angers, Attorney General pro Regina & The Queen Insurance Co.*, 21 L. C. J. 77, S. C.; 1 L. N. 3, 410, Q. B. & P. C.; & 22 L. C. J. 307, P. C. 1878.

II. Limits of.

65. Except where the constitution has imposed limits on the legislative power, it must be considered practically absolute. *Henderson* v. *St. Michel Road Co.*, 2 L. N. 262, S. C. 1879.

LEGISLATURES.

I. Constitution of.

66. Her Majesty the Queen forms no integral part of the Legislatures of the Provinces as she does of the Dominion Parliament. *Lenoir* v. *Ritchie*, 2 L. N. 373, Su. Ct. 1879.

LESION—*See* OBLIGATIONS.

LESSOR AND LESSEE.

I. Action by Purchaser of Leased Premises.

II. Action for Rent not yet Due.

* It shall be lawful for the said company to pay such rate of interest for such advances as may be agreed upon, and arrangements may be made allowing such interest, either by selling obligations bearing a lower rate of interest below par, or by issuing them at par bearing the agreed rate of interest. Sec. 3.

* The Quebec Act says: In future the salaries due and to become due of all public servants or employees in the Province of Quebec shall be liable to seizure in the proportions hereinafter set forth, etc. Q. 38 Vic. cap. 12, sec. 1.

III. Action Concerning.
IV. Action on Verbal Lease.
V. Apportionment of Taxes.
VI. Compensation of Rent.
VII. Damages for Deterioration.
VIII. Demand of Rent.
IX. Jurisdiction in Cases of, *see* JURISDICTION.
X. Liability for Repairs done.
XI. Liability of Lessee.
XII. Liability of Lessor.
XIII. Liability of Surety.
XIV. Notice to Quit.
XV. Payment of Rent.
XVI. Possession of Premises.
XVII. Privilege of Lessor.
XVIII. Rights of Lessee.
XIX. Rights of Lessor.
XX. Rights of Subtenant.
XXI. Sublease.
XXII. Termination of Lease.
XXIII. Uninhabitable Premises.

I. Action by Purchaser of Leased Premises.

67. The plaintiff and appellant purchased a house of which the defendant had a lease, and in his deed of purchase recognized the lease and undertook to be subject to it. He afterwards took petitory action to gain possession, alleging that the lease had expired—*Held*, that the petitory action was wrongly brought; that, having recognized the lease, his proper recourse was an action in ejectment as between lessor and lessee; and that, moreover, there being no term fixed by the lease, that defendant was entitled to three months' notice. *Boudreau & Dorais*, 10 R. L. 458, Q. B. 1880.

II. Action for Rent not yet Due.

68. In a *saisie gagerie par droit de suite* for rent not yet due, in which the new lessor is *mis en cause*, the seizure will be declared good to the end of the first lease, unless the amount is sooner paid or the lease is cancelled, and the defendant will be condemned to pay the costs. *Sansfaçon* v. *Boucher*, 6 Q. L. R. 384, C. C. 1880.

III. Actions Concerning.

69. The right of the court to hear actions between lessor and lessee in vacation will include a special demand to compel the landlord to secure to the tenant the peaceable and undisturbed enjoyment of his premises. *Attorney General* v. *Coté*, 3 Q. L. R. 235, S. C. 1877; 887 C. C.*

IV. Action on Verbal Lease.

70. Action on a verbal lease made for a year at a rental of $48, payable in monthly payments of $4. Plaintiff claimed $8, being the rent of two months, and asked besides for the resiliation of the lease and the ejectment of the defendant. The plaintiff proved a verbal lease, and also that there were two months rent due, and, further, that there was a stipulation between the parties that in case the defendant failed to pay each month's rent as it became due the plaintiff could the first of the following month, demand the resiliation of the lease—*Held*, dismissing the action *sauf recours*, that plaintiff had no action until three terms were overdue. *Pelletier* v. *Lapierre*, 7 R. L. 241, S. C. 1878.

* Action to annul or to rescind a lease, or to recover damages resulting from the contravention of any of the stipulations of the lease, or the nonfulfillment of any of the obligations which the law attaches to it, or arising from the relation of lessor and lessee, are instituted either in the Superior Court or in the Circuit Court, according to the value or the amount of the rent or the amount of damages alleged. 887 C. C. P.

V. Apportionment of Taxes.

71. The plaintiff, the lessor, sued defendant for his share of the taxes on a building, part of which was rented to defendant for $650 and the other part to another for $1,500. The other tenant sublet his portion for $2150—*Held*, that in distributing the taxes the lessor was not bound to consider the increased rent obtained by the other tenant for his portion. *Bouthillier & Cairns*, 2 L. N. 246, S. C. R. 1879.

VI. Compensation of Rent.

72. Action for $120, two years' occupation of a house and in ejectment. Defendant pleaded that he settled with the plaintiff for the rent of the first year, and as to the rent of the second it was compensated by the greater sum of $500, due from plaintiff to defendant under a notarial obligation, on proof of which action dismissed. *Thymeus & Beautrong*, 9 R. L. 540, S. C. 1879.

VII. Damages for Deterioration.

73. Action against a lessee for deterioration of premises and the bad condition in which they were left, and $200 claimed. Defendant pleaded that he had left them in a better state than when he had received them, but the house was in a defective state, that the roof leaked, and that he suffered damages in consequence to the extent of $130. Question entirely of proof, and a judgment against defendant for $150 was confirmed in appeal. *Rolland & Fergusoa*, 8 R. L. 119, Q. B. 1876.

VIII. Demand of Rent.

74. Where by the lease domicile is elected by the lessee at the premises leased, the rent is payable there, and if no demand of payment have been made prior to suit at such domicile the action will be dismissed, provided defendant show that he was ready to pay his rent there and bring the money into Court. *Hearn & McGoldrick*, 3 Q. L. R. 368, C. C. 1876, & *Whyte & Noonan*. *Ibid.*

IX. Liability for Repairs Done.

75. Where the lessor after a fire told the lessee to get the necessary work done to restore the house, and send the account to him, and it was proved also that the lessor had the house insured and received the insurance money arising from the fire—*Held*, that he was properly sued for the cost of the restoration. *Sulte & Bell*, 8 R. L. 535, Q. B. 1878.

76. Appellant on the 7th April, 1873, was in occupation of a varnish factory, which he had leased from respondent, when a fire orginating in the factory consumed it as well as the adjoining premises belonging to respondent. Action by the latter to recover $8,500 damages occasioned by the fire, which he alleged to have taken place through the negligence and want of skill of appellant and his men in the manufacture of varnish from benzine. —*Held*, confirming judgment of the Queen's Bench, that having failed to establish that the fire occurred without any fault of his or of his men, in accordance with the terms of Art. 1629 of the Civil Code,* he should be condemned to pay the damages caused to the premises leased by him; and, moreover, that respondent having proved that it was through the negligence of appellant's men that the fire occurred, he was liable under Art. 1630 of the Civil Code† for the damages to the adjoining premises. *Jamieson & Steele*, Su. Ct.‡ 1878.

77. The lessee has no right to damages against the lessor, or his representatives, for loss of the use of a barn destroyed by fire where the lessor pleads that the barn was destroyed by the fault or negligence of the lessee, unless the lessee pleads and proves the contrary, as there is a legal presumption in favor of the lessor and against the lessee under such circumstances, under Art. 1629 of the Civil Code.* *Huche & McGaurran*, 10 R. L. 194, S. C. 1879.

78. *After Sale of the Property.*—In 1875 the defendants leased an immoveable by lease to expire the 1st July, 1877. In 1876 the owner of the property failed, and the plaintiffs became the purchasers from the assignee of the property in question. After the adjudication they received the rent from the tenants up to the first of May, 1879, under the terms of the lease. The lease having at that date terminated the defendants quitted the premises. The plaintiffs immediately issued a *saisie gagerie*, on the ground that the failure of the former proprietor and the subsequent sale and adjudication of the property had cancelled the lease, and that the defendants by remaining in the premises after the first of May had bound themselves for another year. —*Held*, that the plaintiffs by receiving the rent under the old lease had tacitly confirmed it, and the defendants had a perfect right to leave the premises. *Société de Construction Metropolitaine & Les Commissaires d'Ecoles Catholiques de la Cité de Montréal*, 24 L. C. J. 25, Q. B. 1879.

79. Plea that defendant was obliged to leave the premises leased by him in consequence of their having been damaged by fire—*Held*, that there was no proof of damages to the premises so as to justify defendant in leaving, and, at all events, defendant was *primâ facie* liable for it. *McDougall* v. *Harmburger*, 2 L. N. 332, S. C. 1879.

* When loss by fire occurs in the premises leased there is a legal presumption in favor of the lessor that it was caused by the fault of the lessee, or of the persons for whom he is responsible, and unless he proves the contrary he is answerable to the lessor for such loss. 1629 C.C.

† The presumption against the lessee declared in the last preceding article exists in favor of the lessor only, and not in favor of the proprietor of a neighboring property who suffers loss by fire which has originated in the premises occupied by such lessee. 1630 C. C.

‡ Not reported.

80. A tenant who in good faith has paid rent in advance to the proprietor of an immoveable, even for a term less than one year, may be compelled to pay the rent a second time to the hypothecary creditor whose claim is not satisfied by the sale of the said immoveable. *Dupuy* v. *McClanaghan*, 3 L. N. 340, S. C. 1880.

XII. Liability of Lessor.

81. On the 2nd of June, 1877, the defendant leased to the Railway Commissioners part of a building of which he (the defendant) occupied a part himself as a wholesale dry goods store, and the centre of the building was leased by him as an auction room. The Commissioners occupied without lease from the 1st November preceding the largest part of the premises described in the lease of the 2nd of June. The lessee of the centre part of the building having set up machines for the manufacture of boots and shoes, to the great inconvenience of the Commissioners and their employees, who were disturbed by the noise and jar, the Commissioners protested the defendant (the lessor), and called upon him to put a stop to the nuisance. The defendant did nothing, and on action brought—*Held*, that a lessor who suffers one of his tenants to change the destination of the leased premises, so as to render them uninhabitable to other tenants of the same building, is responsible, and will be ordered to put an end to the trouble and secure to the others the peaceable enjoyment of the premises. *Attorney General* v. *Côté*, 3 Q. L. R. 235, S. C. 1877.

82. The plaintiff, a grocer, sued his landlord for damages done to his stock of groceries by rain that penetrated through the walls during a storm. The question was as to the liability of a landlord for damages caused by the absence of *grosses* reparations which he had never been called upon to make—*Held*, liable. *Scanlan* v. *Holmes*, 2 L. N. 185, S. C. 1879.

83. But in a subsequent case between the same parties arising out of another flood, the plaintiff complained that on the 21st July, 1880, the leased premises were, through the gross carelessness and neglect of the defendant, flooded with water, by reason of which goods of the tenant were damaged to the extent of $162.25. Defendant pleaded that the plaintiff knew, when he leased the premises, that the flooding was the result of the situation of the premises, arising from the drain which brought the water from the upper part of the street, and entirely owing to the insufficiency of the drain; that all the neighboring properties were subject to the same overflow, and the overflow of the premises in question was not owing to want of repairs; that the water came from the public drain under the control of the City Corporation, which was insufficient to drain off the water and all the neighboring cellars were flooded at the same time; that defendant had the wall of the cellar cemented in 1879, without the possibility of remedying the inconvenience complained of. *Per Curiam.*—The evidence shows that on the 21st July, 1880, when the damage occurred, there was a violent and heavy fall of rain which flooded the streets to the level of the pavement, and the water came into the cellar as well through the walls as through the drain

connecting the cellar with the public drain of the street. At the same time the neighboring cellars were flooded from the same cause, and it is in evidence that the plaintiff had had previous experience of such floods. In July, 1878, he suffered from a flood caused by a heavy fall of rain, and recovered damages from Holmes. (*Vide Supra.*) Since then, while he placed goods as before in the cellar, he placed them above the level of the flood of 1878. Should Defendant pay the damages caused by the last flood? Troplong—Louage, tom. 2, n. 981: "Pour que le locateur soit tenu de garantie, il faut que le preneur n'ait pas eu connaissance de defaut et des vices." So also Pothier—Louage, n. 113; and Duvergier—Louage, tom. 3, n. 341, 2, 3. Here the plaintiff knew by the flood of 1878 of the liability to inundation, to say nothing of the notoriety of the neighborhood and his previous residence in the locality, and he continues the lease beyond the first year into the third. I do not consider that law or equity should hold the proprietors to pay damages caused by an inundation through water flowing down from a higher level. It was held in France in the case of Bourbevelle v. Cronzoz—Cretel, 49 Sirey 2:77, 23 January, 1849, that a tenant had no action of warranty against his landlord for an inconvenience resulting from a fact inherent to the locality in which the premises lay, such as the habitual inundation of cellars, when it was notorious that such a state of things existed. Action dismissed. *Scanlan* v. *Holmes*, S. C. 1881.

XIII. Liability of Surety.

84. The surety of a lessee remains liable under a tacit reconduction of the lease without any new obligation on his part. *Kerr* v. *Hadrill*, 10 R. L. 192, S. C. 1879.

XIV. Notice to Quit.

85. When the rent under a lease is made payable by the quarter, and the lease is not for a term fixed, the lessee is entitled to three months' notice before he can be expelled. *Boudrais & Dorais*, 10 R. L. 458, Q. B. 1880.

86. The defendant was tenant of plaintiff under a lease which had been continued by tacit reconduction, and the plaintiff notified him on the 1st April that the lease would expire on the first of May following, and that he would require possession of the leased premises at that time—*Held*, that as the notice was not from the first of February the lease was continued for another year. *Luke* v. *Wickliffe*, 22 L. C. J. 41, S. C. R. 1877; 1 Dig. 728-37.

XV. Payment of Rent.

87. Payment of rent must be demanded before action brought. *Thymens* v. *Beautrane*, 2 L. N. 264, S. C. 1879.

XVI. Possession of Premises.

88. Action of damages for breach of contract to deliver possession of certain premises leased by the defendant to the plaintiff. There was no pretence of malicious withholding, the defendant being simply prevented from delivering the premises for the reasons stated in his plea—*Held*, following the ruling in *Lepage & Girard*,* and overruling the judgment of the court of first instance, that nominal damages should be awarded, although no special damage was proved. *Mulcair & Jubinville*, 23 L. C. J. 165, S. C. R. 1878.

XVII. Privilege of Lessor.

89. In November, 1875, the respondent issued a *saisie gagerie* against the tenant or lessee of a saw mill belonging to him, and under such writ a quantity of sawn lumber was seized. Appellant intervened, and claimed the lumber as belonging to him and being on the premises for the purpose of being sawn, and was lying there subject to appellant's order. Evidence proved that this was the case, and that plaintiff knew it was the property of intervenant—*Held*, that it was not subject to the landlord's privilege under 1619 of the Civil Code.† *Price & Hall*, 10 R. L. 120, Q. B. 1876.

90. The intervening party purchased an agricultural implement from the defendant, a dealer in such things, with the understanding that it should be removed without delay. Shortly after the sale the intervenant went for it, but, in consequence of snow having fallen and ice formed about the instrument, it was feared that it might be injured by being cut out, and it was allowed to remain until the spring, when it was seized for rent due by defendant—*Held*, that, under the circumstances, it was transiently and accidentally on the premises, and not subject to the landlord's privilege.‡ *McGreevy* v. *Gingras & Coté*, 3 Q. L. R. 196, S. C. 1877.

91. In an action of *saisie gagerie* the opposant claimed certain things as belonging to her and not to the lessee—*Held*, that the privilege of the lessor covered the things claimed. *Belanger* v. *Roy & Dorion*, 2 L. N. 378, S. C. 1879.

92. Intervenant alleged that the sewing-machine seized in the cause for rent belonged to him, and that the defendant would be owner of it only when he had finished paying for it. The plaintiff replied that the defendant was in possession of the sewing machine when he took possession of the premises, that he had ever since been in possession of it and paid part of the price of it. On proof of this intervention dismissed. *Michaud* v. *Guilbault*, 6 Q. L. R. 156, C. C. 1880.

93. The lessor cannot, by an agreement with a third person, extend his privilege on the effects in the possession of the lessee to more than eight days from the time of leaving the leased premises, even where such effects are the property of the third person, his privilege being absolutely extinct after the expiration of eight days. *Hearn* v. *Vezina & D'Orsonnens*, 6 Q. L. R. 93, C. C. 1880.

---

*4 R. L. 554, and *see* I Dig. 392, 152.

† The lessor has, for the payment of his rent and other obligations of the lease, a privileged right upon the moveable effects which are found upon the property leased. 1619 C. C.

‡ Reversed in Review on points of procedure. 4 Q. L. R. 203.

94. A cart voluntarily left in the possession of a tenant by a third party during several months is liable to seizure and sale by the landlord in payment of his rent, in the absence of proof that the landlord had reason to know that the tenant was not proprietor of the cart. *Beaudry & Lafleur & Perry*, 24 L. C. J. 150, S. C. R. 1880.

XVIII. Rights of Lessee.

95. The purchaser of a farm during the pendency of a lease has no right to the hay grown on the farm and harvested by the lessee, and in his possession at the time of the sale. *Brody* v. *Rendall*, 9 R. L. 512, S. C. R. 1878.

96. Defendant had leased a shop to the plaintiff, and had covenanted in the deed of lease to put a window into the building, so as to throw more light into the place, without fixing any time within which it was to be done. On the 10th of August the plaintiff put the defendant *en demeure* to fulfil this obligation under the lease, and the next day took action to rescind the lease, and to get $1,000 damages—*Held*, that, 1st, the action was premature; and, secondly, that no damages could be claimed for anything before the *mise en demeure*. *Filibien & Moir*, S. C. R. 1877.

97. Notwithstanding a clause in a lease stipulating that all improvements and additions made during the lease will remain to the proprietor at the expiration thereof, the lessee has a right to carry away double windows which he had placed on the house. *Plamondon & Lefebvre*, 3 Q. L. R. 288, C. C. 1877.

98. Where one of several tenants painted the entire front of the leased building a conspicuous red color, and the defendant who leased the upper flats, and to whom this color was offensive, covered over the red with a neutral tint—*Held*, that the lessor had no ground of rescission against the latter on account of the change. *Degnire* v. *Marchand*, 1 L. N. 326, S. C. R. 1878.

99. Plaintiff complained that by a lease the defendant leased him a shop and yard, in St. Joseph street, at the rate of $410 per annum, and for $140 paid agreed to give him immediate possession; that plaintiff made this bargain with a view to obtaining the good-will of the business; that defendant had refused to deliver the premises, and plaintiff was well founded in demanding $1,000 damages. The defendant pleaded that the premises did not belong to him, and that he had by error and in good faith leased them to the plaintiff. On the evidence the Court found the plaintiff entitled to $457. *Allard & Quintal*, S. C. 1875.

100. The plaintiff leased from the *auteurs* of the defendants a house to be used as a photograph gallery. Subsequently the defendants erected on the adjoining property a wall twenty-two feet in height, which had the effect of depriving the plaintiff of a portion of his light—*Held*, that the erection of the wall in question constituted an infringement on the plaintiff's rights under his lease, and gave rise to a right of resiliation of the lease and to damages against the representative of his lessor. *Remillard* v. *Cowan*, 6 Q. L. R. 305, S. C. 1880.

XIX. Rights of Lessor.

101. On 29th September, 1875, a writ of compulsory liquidation, under the Insolvent Act of 1875, was issued against one H., of Montreal, piano vendor, at the suit of the Exchange Bank. On 2nd October appellant presented a petition, whereby he alleged that about 1st May, 1875, he, the petitioner, delivered to H., to be kept stored for six months, one piano; and that under the above writ the official assignee took and has possession, not only of the insolvent's goods and effects, but also of the aforementioned property of petitioner. Petitioner therefore prayed that the assignee be ordered forthwith to deliver up to petitioner the piano upon payment of any storage charges that may be due upon the same. This petition appellant supported by a short affidavit that it contained the truth. The respondents intervened, alleging that on the 23rd September, 1875, said H. was indebted to them in the sum of $322.12 for a balance of rent due under lease of premises, dated May, 1875, and that respondents had seized the piano and other effects before the assignment. Upon this issue was joined between respondent and appellant, and it was proved, among other things, that the piano was stored with H. in May, 1875, at the rate of $20 for six months. It was also established that H. used the premises for warehouse, and that this use of the building was known to respondent. Upon this issue and this evidence the Court below declared the piano to be the property of appellant, but at the same time declared it subject to a lien for respondent's rent to an amount of over $600, accruing and to accrue, appellant was also condemned to pay his own costs and a part of respondent's on his intervention—*Per Curiam*—Without now adverting to the old law, which, in the opinion of this court, would not sustain such a decision, the 1622 Art. of our Code seems to dispose of the matter in terms that admit of very little doubt. It runs thus:—"It (the lessor's privilege) includes "also moveable effects belonging to third per- "sons and being on the premises by their consent, "express or implied, but not if such moveable "effects be only transiently or accidentally on "the premises, as the baggage of a traveller in "an inn, or articles sent to a workman to be "repaired, or to an auctioneer to be sold." Now, it is clear from the evidence that this piano was on the premises transiently, and therefore comes within the exceptions mentioned above. The fact of its being omitted in the cases given in the law by way of illustration, we think does not preclude it from the operation of the Code. There is one case among many others well known to the profession, and that is Eastty *vs.* the Fabrique of Montreal. As we view this case, the law and the jurisprudence concur in compelling us to reverse this judgment, and it is reversed accordingly with costs against respondent. *Ireland & Henry*, Q. B. 1876.

102. A tenant became insolvent, and the leased premises, which were vacant, subsequently becoming uninhabitable the landlord proceeded to execute certain repairs—*Held*, that in default of a demand by the lessee or his representative, the assignee, to rescind the lease it continued to

subsist, and the lessor was entitled to rent, less the time occupied in making repairs. *Rolland & Tiffin*, 22 L. C. J. 164, Q. B. 1877.

103. Where the lessee had sub-let, and the sub-lessee had failed and made an assignment, under the Insolvent Act, to an official assignee—*Held*, that the right of the lessor to his process by *saisie gagerie* against the principal lessee, and privilege on the goods found still remained, and that notwithstanding he had accepted the rent for several terms from the sub-lessee, where no express novation and discharge of the principal lessee was proved. *Boyer* v. *Melver & Craig*, 24 L. C. J. 160, S. C., & 22 L. C. J. 104, S. C. R. 1877.

104. The defendant, as one of a commercial firm, having made an assignment in insolvency, the plaintiff, his landlord, took an attachment against him individually for rent due and to become due. The defendant demurred, on the ground that the rent had not previously been demanded, and that no right was shown to claim rent not yet due—*Held*, that neither of these grounds would support the demurrer in view of plaintiff's declaration that defendant, as a member of the said firm, had made an assignment in insolvency. *Plante* v. *Robitaille*, 4 Q. L. R. 225, S. C. 1878.

105. Where a lease contains a clause that all the furniture in the house leased without exception shall be liable for the rent, the lessee cannot invoke the exemptions set forth in Arts. 556, 557 and 558 of the Code of Procedure. *Robitaille* v. *Boldue*, 4 Q. L. R. 179, C. C. 1878.

106. And such a clause in a lease is not contrary to public order. *Ib.*

107. An action to rescind a lease may be brought against a lessee who has become insolvent during the term of the lease. *Loranger & Clement*, 1 L. N. 326, S. C. R. 1878.

108. And a writing signed by the lessor, and not accepted by the lessee, promising that a new lease should be entered into after a certain date, did not constitute a new contract of lease which could be pleaded in defense to an action to rescind the original lease. *Ib.*

109. Action for the quarter's rent, due 1st of August of last year. The premises had been originally leased to a firm that became insolvent, and the assignee notified the plaintiff that the lease would terminate on 1st May, 1876, and after that the defendant went into possession for the benefit of the creditors, with the assent of the assignee and of the plaintiff. A *saisie gagerie* was issued for the last quarter on the 29th April, on the ground that defendant was removing the stock. There were two points: Was the defendant liable as a tenant of the plaintiff under the law, and was he removing the stock?—*Held*, that the proof was clear on that point. There were two insolvencies and two notices of termination, the composition at first agreed on not having been carried out. Defendant, by his petition in the Insolvent Court, alleged that the effects were his property, and in his possession. It did not matter what arrangements he made with the insolvents or with their creditors, to which the landlord was not a party. He was in no better position towards the latter than the first tenants whose place he took. Under Art. 1608 C. C. he was presumably tenant of the plaintiff, and liable as lessee. Action maintained with costs. *Joseph & Saunders*, S. C. 1878.

110. In an action in ejectment the defendant proved that the key was demanded from him on the 4th May, and that at his request the plaintiff, by his agent, consented to leave it in his possession the day following, and the action was taken the fourth—*Held*, that the defendant would not be condemned in costs. *Bell* v. *Burland-Desbarats Lithographic Co.*, 9 R. L. 540, S. C. 1879.

111. Where a lessor seized a horse *par droit de suite*, a horse which had been on the premises, but it was proved did not belong to the defendant but to the opposant, an outside party—*Held*, that the seizure must be discharged. *Delvecchio* v. *Lesage & Desmarais*, 2 L. N. 250, S. C. 1879.

112. Where, to an action for rent and to rescind a lease (which was for nine years), the defendant pleaded that the lessor at the time of the execution of the lease was only usufructuary of the property, and had no longer any interest having since renounced her usufruct—*Held*, reversing the judgment of the Court below, that in an action under a lease the lessee could not call in question the lessor's title. *Poitras & Berger*, 2 L. N. 390, Q. B. 1879.

113. An intervention by a sub-tenant, praying to have his effects exempted from the landlord's privilege for rent due. There was a prohibition against subletting in the lease, and it had been decided in the case of *Sisters of Charity & Vaile et al*, I. Dig. 750-188, that where such is the case the sub-tenant cannot claim the benefit of his payments to the lessee, but his effects are liable for the whole amount of rent due. *Smith* v. *Leclaire*, S. C. 1879.

114. A lessor has no right to an action for the taxes due under the lease until he has himself paid them to the corporation. *Maillé* v. *Riehler*, 2 L. N. 414, S. C. 1879.

115. The defendant occupied the house of plaintiff from 1st May, 1878, to 1st May, 1879, by sufferance. In the beginning of May, 1879, he left the premises, and the plaintiff immediately sued out a *saisie gagerie par droit de suite* to secure the rent for the year beginning the first of May, 1879. The demand was that the seizure be declared valid, and that the defendant be condemned to pay the rent for the year, namely, $240—*Held*, confirming the seizure, but refusing the seizure for such rent as would be found to be due at the end of the year, and maintaining that part of the plea which alleged that there was no rent due when the action was instituted. *Joseph* v. *Smith*, 3 L. N. 115, S. C. 1880.

116. The plaintiff seized a piano *par droit de suite*, the right to seize which she had renounced by a writing in the following terms: "I hereby "agree not to hold the above named pianoforte "for house rent or for any other claim against "Mrs. H."—*Held*, in the Court of first instance, that this agreement inured to the benefit of the tenant without the intervention of the owners of the piano. But in review this part of the judgment was reversed, and the agreement was held to be for the protection of the owners of the piano merely, and could not be made use of by the tenant for her advantage. *Corse* v. *Hudson & Gordon*, 2 L. N. 260, & 3 L. N. 78, S. C. R. 1880.

117. The plaintiff, having a judgment against defendant, took in execution a mare, omnibus and harness. Perrault claimed that they were his property, and could not answer for the rent due plaintiff, inasmuch as they did not furnish the place for which rent was claimed. The court below found in favor of the intervenor. In review judgment reversed, and contestation maintained. *Morin* v. *Demault & Perrault*, S. C. R. 1880.

118. Appellant got possession of respondent's house as subtenant of the principal lessee, whose lease terminated on the first of May, 1876. On the 2nd February, 1876, he wrote to respondent, offering to take the house at $500 a year for three years, on condition of certain repairs being made. This letter was not formally accepted but appellant staid on until May, 1878, when he gave up the house. The respondent would not take it off his hands, but on the 1st August sued the appellant for a quarter's rent. Appellant pleaded that he was not a tenant for three years, but held the house by *tacite reconduction* from the principal or former lessee—*Held*, that as the appellant paid a hundred dollars a year less rent after the first of May, 1876, than the former lessee had been paying, that it was evident he did not hold by *tacite reconduction*, and was liable for the rent of the current year. *Hodgson & Evans*, 3 L. N. 300, Q. B. 1880.

XX. Rights of Sub-tenant.

119. The defendant leased a store from one Dubord, and some time after she sublet the same store to the plaintiff with the consent of the landlord, who intervened in the lease. Subsequently the defendant having refused to give possession to the sub-tenant, the latter took an action of ejectment in his own name. Defendant pleaded that the action in ejectment pertained to the lessor only—*Held*, that the action was well taken. *Jaeger* v. *Sauvé*, 1 L. N. 139, S. C. 1878.

XXI. Sub-Lease.

120. In July, 1874, the firm of B. H. & Co., which had carried on business as timber merchants for some years in the district of Three Rivers, leased to defendants the saw mills which they had constructed, as also certain buildings and a field adjoining, for the term of three years and four months, commencing the first of July, 1874, and finishing the 1st October, 1877, at the rate of $700 for the first year and $800 for the subsequent years. One of the clauses of the lease provided that the lessee should not transfer his right in it without the express consent in writing of the lessors. In the year following L. A. B., who had succeeded to the rights of B. H. & Co., entered into a notarial agreement with the appellant, by which appellant engaged to put in machinery necessary for a flour mill to the value of $3,000, and on his part L. A. B gave the free use and enjoyment of the mill and other dependencies mentioned in the first lease to appellant for six years, terminating the first of June, 1881. In June, 1875, however, both parties failed, and made an assignment of their property to an official assignee. In 1878 appellant, as attorney of his brother, to whom he had previously transferred all his rights in the premises, transferred all his brother's rights therein to J. T., the other appellant. Subsequently all the property and rights of L. A. B. in said premises were sold by the official assignee to his estate, and respondents became the purchasers, subject to the clauses and conditions of the aforesaid lease and agreement. After their purchase respondents brought action under the lease, alleging that appellant had deteriorated the premises; that he had sub-leased them contrary to the conditions and stipulations of the lease, and that he had neglected to keep them insured, as he was bound to do. They asked for the resiliation of the lease, and for damages to the extent of $1,600—*Held*, under these circumstances, that the stipulation of the first lease against subletting was still in force, and that the sub-lessee could be *mis en cause* by a mere service and notice of the action, but that the transfer and assignment made by the lessor did not comprise or include a claim for damages caused to the premises by deterioration previous to the assignment, unless such damage was specially mentioned in the assignment. *Rheaume & Panneton*, 9 R. L. 591, Q. B. 1879.

121. The lessor has not a right to obtain the rescission of the lease for violation of a stipulation against subletting, where the sub-lease has terminated before the institution of the action, and the lessor has not been injured thereby. *Garcau* v. *Cinq Mars*, 3 L. N. 355, S. C. 1880.

XXII. Termination of Lease.

122. On the first of August, 1868, one S. transferred to appellants, in trust for his creditors, his interest in an unexpired lease, ending first of May, 1873, he had of a certain hotel in Montreal, known as the Bonaventure building, and in the furniture. On 1st April, 1870, A. P., the proprietor and lessor, after cancelling, with the consent of all concerned, the several leases of the said building and premises, gave a lease direct for a term of ten years to one G., at $6,000 a year, of the building, and also of the furniture, belonging to S.'s creditors, and on the same day, by a notarial deed "*agreement and accord*," A. P. promised and agreed to pay to appellants, as trustees of S.'s creditors, whatever he would receive from the tenant beyond $5,000 a year. In February, 1873, the premises were burned, with a large proportion of the furniture, and appellants received $3,223 for insurance on fixtures and furniture, and $791, being the proceeds of sale of the balance of the furniture saved. The lease with G. was then cancelled, and the landlord, after expending a large amount to repair the building, leased the premises to L. P. & Co., for $6,000 a year, from Oct., 1873. Appellants thereupon, as trustees of S.'s creditors, sued respondents, representing A. P., and called upon them to render an account of the amount received from G. and L. P. & Co. above $5,000 a year. The Superior Court of Montreal *held*, affirming the judgment of the Court of Queen's Bench, that the lease to G. terminated by *force majeure*, and that the obligation of A. P. to pay appellants the sum

of $1,000 out of the said rent of $6,000 ceased with the said lease. *Browne & Pinsonneault*, 3 S. C. Rep. 102, Su. Ct. 1879.

123. And the fact of appellants having alleged themselves in their declaration to be the "duly named trustees of S.'s creditors" did not give them the right to bring the present action for S.'s creditors, the action, if any, belonging to the individual creditors of S. under Art. 19 of the Code of Procedure.* *Ib.*

XXIII. Uninhabitable Premises.

124. The resiliation of a lease on account of the uninhabitable condition of the premises leased can only be granted on the most absolute proof that the premises are uninhabitable, and that that is the only recourse the lessee possesses. *Marchand* v. *Caly et vir.*, 2 L. N. 263, & 23 L. C. J. 259, & 9 R. L. 533, S. C. 1879.

125. Action for rent of a house which defendant had never entered into occupation of, and had refused to receive on account of its alleged unsanitary condition. The house was to be ready for occupation on the first of July, and on the afternoon of the 30th of June, according to the evidence of the sanitary inspector, it was not in a good sanitary condition—*Held*, that the defendant was not bound to receive it under his agreement. *Shuter* v. *Saunders*, 3 L. N. 134, S. C. 1880.

LETTERS OF ATTORNEYS—*See* ATTORNEYS.

LETTERS OF CREDIT.

I. Damages for Cancellation of, *see* DAMAGES.

LETTERS PATENT.

I. Appeal in Actions to Annul.

126. The delay to appeal in actions to annul letters patent is only forty days. *Angers, Attorney General & Murray*, 3 L. N. 108, Q. B. 1880.

II. Right of Quebec Government to Grant, *see* LEGISLATIVE AUTHORITY.

LEVEL OF STREETS.

I. Change of by Corporation, *see* STREETS.

*No person can use the name of another to plead, except the Crown, through its recognized officers. Tutors, curators and others, representing persons who have not the free exercise of their rights, plead in their own name in their respective qualities. Corporations plead in their corporate name. 19 C. C. P.

LEVIS.

I. Interpretation of Act amending Act of Incorporation of Town of, *see* ACTS OF PARLIAMENT.

LIABILITY.

1. Joint and Several, *see* OBLIGATIONS.

LIBEL AND SLANDER.

I. Action for.
II. Against Candidates at Municipal Elections.
III. Aggravation of in Plea.
IV. By Newspaper.
V. By Physicians in Publishing the Ailments of their Patients.
VI. Damages for.
VII. In Petition to Municipal Council.
VIII. In Pleading.
IX. Jurisdiction in Cases of.
X. Justification.
XI. Pleading in Actions for, *see* PLEADING.
XII. Publication of.
XIII. What is.

I. Action for.

127. Action will lie for slanderous and defamatory words uttered by a priest during the course of his sermon. *Vigneux & Noiseux*, 21 L. C. J. 89, S. C. 1877.

128. Action for verbal slander. Evidence held to be insufficient to support the demand. *Mallette* v. *Guay*, 2 L. N. 325, S. C. 1879.

129. At a meeting of the *curé* and marguilliers of a parish, at which plaintiff was present, he pointed out to defendant, the *curé*, that he was acting irregularly, and told him he should refer to the statutes and not to the authority he was quoting. The *curé* replied "*vous êtes un homme dangereux*"—*Held* not actionable. *Lafleur* v. *Guilmette*, 2 L. N. 261, S. C. R. 1879.

II. Against Candidate at Municipal Elections.

130. Plaintiff was a candidate for the office of alderman at municipal elections held in Montreal, when, the evening previous to the voting, the defendant published in the *Montreal Witness* a letter signed Argus, in which he cautioned the public against plaintiff and his candidature, accusing him of being a speculator and enriching himself at the public expense; and in order to give weight to his arguments he added that some months previous the plaintiff having undertaken, in his capacity of contractor, to restore a house which had been damaged by fire, asked for tenders for the different parts of the work; that tenders were submitted, and among others one of $900 for the masonry, and that plaintiff told the contractor in that case that

his tender was too low; the tender was thereupon raised to $1,200 and was accepted, but when the plaintiff was paying for the work he retained $100 for himself. When the plaintiff saw the letter he went to the *Witness* office and demanded the name of the writer, and published himself a reply in which he explained that the tender referred to had been raised because it did not include all the work which had to be done, and denied that he had ever asked for or retained anything for himself as charged. Defendant replied, reiterating his charges. Plaintiff sued for $10,000 damages. Defendant pleaded the truth of the charges, and that they were justified in the interests of the public, the plaintiff being a candidate for a public office—*Held*, on the proof that the defendant having failed to establish the truth of the charges was altogether unjustified in making them, and must pay $100 damages and costs. *Laurent* v. *Doutre*, 9 R. L. 286, S. C. 1877.

III. Aggravation of in Plea.

131. Where a defendant sued for defamation of character pleaded that the action was brought for the purpose of extorting money—*Held*, to be an aggravation of the slander, and $200 and costs was awarded. *Lepage* v. *Wylie*, 1 L. N. 162, S. C. 1878.

IV. By Newspaper.

132. The publisher of a newspaper at Montreal who mails there copies of his paper containing libellous matter to a number of individuals and to public reading rooms in Quebec, will be held to publish that matter in Quebec. *Irvine & Duvernay*, 4 Q. L. R. 85, S. C. 1878.

133. Action of damages for libel against the proprietors of the *Star* newspaper. The passage complained of insinuated, as the plaintiff contended, that he, an alderman of the city, had an interest in a certain contract. The evidence established the plaintiff's case—*Held*, that the defendant was not justified in publishing the article without ascertaining the truth of the statement, and judgment for $50 and costs of the action. *Mullin* v. *Graham*, S. C. 1879.

V. By Physicians in Publishing the Ailments of their Patients.

134. A doctor has no right to publish in an account for professional services sent to his attorney for collection the nature of the malady for which he treated his patient, when such publication is calculated to injure the patient's reputation. *Hart* v. *Therien*, 5 Q. L. R. 267, Q. B. 1879.

VI. Damages for.

135. Action by a notary against the defendant for defamation of character uttered at the door of the parish church, St. Sauveur, at the close of mass as the people were issuing from church, and which consisted in the use of the following language: "*Le Notaire Mathieu est accoutumé à faire des mauvaises pièces, et à forger des billets*," and added that he (the speaker) had never signed a certain note in favor of one J. C., and that if his name was on the note it was the notary Mathieu who put it there—*Held*, that considering the language used was proved false, that the plaintiff was a person of good reputation, and the fact that the defendant was also of good reputation and standing in that community only made his words more injurious from the greater credibility attached to them; considering that the retractation and apology of defendant made at the church door was too late to avoid the injurious effect of the language and to prevent damages, judgment for $250 and costs, and judgment to be published at the church door for two Sundays. *Mathieu* v. *Forget*, 7 R. L. 669, S. C. 1877.

136. Action of damages because the plaintiff had been called a *voleur* by the defendant. The judgment reduced the damages to $20, with costs of the Circuit Court. The plaintiff complained of this, but this court, while altering one of the *considerants* of the judgment, could not but confirm the judgment itself. *Godin & Ennis*, S. C. R. 1879.

137. An action of damages for verbal slander. The plaintiff was one of a firm of stevedores, and his statement in substance was this: that the steamship Jesmond, Captain Batt, arrived in port, this being one of the vessels that plaintiff's firm was accustomed to unload; that one of the plaintiff's firm went to apply for the unloading of her, but the defendant called out to Captain Batt not to give him the unloading, because one of the firm, meaning the plaintiff, had stolen some of his coal. The plaintiff complained of this expression, and also claimed for the loss of the work on behalf of himself and his partners. The court below found that defendant was not justified in making use of such an expression, and he was condemned to pay $50 damages. In review the court considered the judgment to be correct, and confirmed it, but the $50, it was observed, was allowed only for the verbal slander, and not by reason of any rights which plaintiff represented in the firm of stevedores. *Bowden & Hart*, S. C. R. 1880.

VII. In Petition to Municipal Council.

138. The defendant was a municipal elector of the township of Warwick, and the plaintiff at the time of the occurrence of the facts complained of was mayor of the village of Princeville, and as such a member of the Municipal Council of the County of Arthabaska, in which the township of Warwick is situated. The defendant and some other electors of the same municipality presented a petition to the said County Council, praying that a certain bye-law, known as bye-law No. 7, should be set aside, and among the reasons alleged in support of the petition were that certain members of the council, including the plaintiff, had voted for such bye-law contrary to their convictions, from selfish motives, and for personal popularity, owing to elasticity of conscience and in contempt of their oath of office—*Held*, maintaining a condemnation for $25 damages, to be defamatory and actionable, the said allegations not being material, and no proof appearing that they were made without malice or based upon reasonable or probable cause. *Lavergne* v. *Lainesse*, 6 Q. L. R. 241, S. C. R. 1880.

VIII. In Pleadings.

139. Action of damages by one advocate against another, on the ground that the defendant had in a factum in a previous case which they had had together, accused the plaintiff of fraud—*Held*, that without express proof of malice on the part of the defendant, the action must be dismissed, especially if both parties have been in fault and acted wrongfully toward each other. *Barthe & Boudreault*, 8 R. L. 489, Q. B. 1878.

IX. Jurisdiction in Cases of.

140. The plaintiff, residing in Quebec, brought action there against the defendants for a libel contained in their paper published in Montreal, where the defendants resided, but circulated in Quebec. Declinatory exception was filed, on the ground that the publication of the libel, if any, was in Montreal only—*Held*, dismissing the exception, that a person who mails in Montreal libellous matter to be received and read in Quebec publishes that matter in Quebec. *Irvine* v. *Ducernay et al.*, 1 L. N. 138, S. C. 1878.

X. Justification.

141. In an action for libel against the *Courrier du Canada*, owned by the defendant, who pleaded justification—*Held*, that a journal may publish accusations against an individual which would otherwise constitute a libel, provided that they are in the interests of the public, and are true; but if these are not proved the plea will only aggravate the offence. *Langelier & Broussean*, 6 Q. L. R. 198, S. C. 1880.

142. But if he proves good faith and apologises these will serve in mitigation of the penalty. *Ib.*

143. The libel complained of consisted in the publication in *L'Evenement* of 23rd January, 1874, of a certain report of an election nomination at Levis, at which scenes of violence had occurred, comprising the following words as applicable to the plaintiff: "*Il y avait encore un "Monsieur R. P. Vallee et un M. Ely Dery qui "eux presidaient a la distribution des bouts de "fer et des glaçons*"—*Held*, no defence to say that the defendant, being a newspaper proprietor, must give his readers all the information he can on public matters; or that what was said of the plaintiff formed part of a general report of the proceedings at a nomination; or that scenes of violence took place at such nomination concerning which the public was desirous of being informed; or that the article had to be written in haste; or that the information obtained was from persons worthy of belief; or that the article was written with the sole object of giving information to the public in the manner usually practised by newspapers generally; or that the plaintiff had not demanded a rectification from the defendant. *Dery* v. *Fabre*, 4 Q. L. R. 286, S. C. 1878.

144. The defendant was indicted for a malicious libel, and specially pleaded the truth of the libel, as well as the plea of not guilty. Under this plea he endeavored to prove justification—*Held*, that the evidence could not be admitted, as it was necessary to bring the defendant within the statute to plead that the publication was not only true but made for the public good. *Regina* v. *Hickson*, 3 L. N. 139, Q. B. 1880.

XII. Publication of.

145. In an action against a newspaper for libel, the original printing and publishing was alleged to have taken place in the district of Terrebonne, and there was only a general allegation that the newspaper in which it appeared circulated in the district of Montreal. Under this allegation the court would not allow evidence of the publication of the special article in the district of Montreal. *Regina* v. *Hickson*, 3 L. N. 139, Q. B. 1880.

XIII. What is.

146. Action for $400 damages, for having at an election of school commissioners said that plaintiff, who had been a commissioner the previous year and who was a candidate for re-election, said of plaintiff that he had acted dishonestly—*Held*, that while respondent had the right at such a meeting to discuss the previous administration of appellant, and while he was quite justified in making statements to influence the election, provided the statements were true, that he was not justified in trying to make those present believe that appellant had acted dishonestly in the performance of his duties, when the facts to which such charge is based amount simply to the neglect of a formality, which, as was proved in the case, had been often neglected, and with the sanction of the Department of Education, and must be condemned in damages; but, as he had on two occasions retracted the statement and offered explanations, judgment for $20 and costs. *Powel & Walkers*, 8 R. L. 656, Q. B. 1878.

LICENSE LAW.

I. Application of Act.
II. Closing Bar.
III. Constitutionality of Act.
IV. Conviction under.
V. Costs of Commitment.
VI. License to Brew does not Include License to Sell.
VII. Power of Recorder under.
VIII. Prosecutions under.
IX. Power of Provincial Legislature with Regard to, *see* LEGISLATIVE AUTHORITY.

I. Application of Act.

147. Section 92 of the Quebec License Law of 1878,* prohibiting the sale of liquor between 11 p.m. and 5 a.m., applies to the City of Montreal. *Richler & Judah*, 1 L. N. 591, S. C. 1878.

* The amendments to the License Law are too long to reproduce in this work, while it is unnecessary to point them out, as every session of the Legislature brings forth a new one.—Ed.

II. Closing Bar.

148. On a demand for a writ of prohibition against the Recorder of Quebec—*Held*, that considering that it was proved that the plaintiff, the hotelkeeper, occupied the same house himself with his family and also took in and kept boarders, he was not obliged to keep his house closed on Sundays, but merely his bar. *Poitras* v. *La Corporation de la Cité de Quebec*, 9 R. L. 531, S. C. 1879.

III. Constitutionality of Act.

149. The plaintiff, demanding a writ of prohibition, had been condemned by the Recorder of Quebec to $40 and costs for keeping his place open on Sunday—*Held*, that the Local Legislature had only the power of imposing licenses on the sale of liquor for the purpose of raising a revenue, and that the License Act, in so far as it pretended to restrain the sale of liquor or impose a penalty of imprisonment with hard labor, was unconstitutional and void. *Poitras* v. *Corporation of Quebec*, 9 R. L. 531, S. C. 1879.

150. The License Act of Quebec, in so far as it pretends to limit the powers of the assignees under the Dominion Insolvent Act, is *ultra vires* and void. *Coté* v. *Watson*, 3 Q. L. R. 157, S. C. 1877.

IV. Conviction under.

151. On a petition for *habeas corpus* from a conviction under the License Act the question was as to whether the prisoner was rightly convicted under the section 31. He was licensed to sell liquor in quantities over three half pints, but not to keep a house of public entertainment. He was convicted for selling by retail. It was argued that the conviction should be for selling in the house or place where he is licensed to sell wholesale—*Held*, that the paragraph does not bear that construction. The reference to the house or place applies to another offence, namely allowing liquors to be drunk on such premises. Writ refused. *Regina & Horner*, Q. B. 1876.

152. Prisoner was fined $75 for selling liquor without a license in the city of Montreal, and asked to be liberated on *habeas corpus* on the ground that he should have been fined $95. The clause imposing a penalty of $75 was for selling liquor outside the city without a license. The defendant was therefore convicted and fined under the wrong section—*Held*, that the prisoner must be condemned to the exact penalty applying to the offense for which he was convicted, and, whether higher or lower, the commitment must be quashed. *Lynott exparte*, 7 R. L. 426, Q. B. 1876.

153. A conviction, based on the License Act, 1870, which ordered that in default of moveables to pay the fine, or in case of their insufficiency, defendant would be imprisoned for the costs of the seizure, and sale held bad. *Rodrigue exp. & Paquin*, 8 R. L. 315, S. C. 1878.

V. Costs of Commitment.

154. The petitioner was convicted for that he, at the village of St. Jean Baptiste, in the first division within the district aforesaid, sold intoxicating liquors, and he was sentenced to pay a fine of $75, and the further sum of $87 for his costs. There was the usual addition for arrest, commitment and conveying to gaol if the fine were not paid. The fine not being paid the judge of sessions issued his *mittimus*, under which he was sent to gaol for three months, unless these several sums were paid, "and all costs of the arrest, commitment and conveying him to gaol," amounting to the sum of $2.70 be sooner paid —*Held*, on a petition for *habeas corpus*, that there was no authority for any charge for the arrest, commitment and conveying the prisoner to gaol, and he must therefore be discharged. *Archambault exp.*, 3 L. N. 50, Q. B. 1880.

VI. License to Brew does not include License to Sell.

155. Petitioner was condemned by the Police Magistrate to pay a fine of $75, besides costs, for having sold a dozen bottles of beer at one time, without having previously obtained license, in terms of the Quebec License Act 34 Vic., as amended by two later Acts. The petitioner pleaded before the Magistrate not guilty, also that he was being prosecuted for having sold wholesale; that he had right to sell wholesale, for he was partner with one McN. and another named McL., as the firm of McL., McN. & L. That McN. held a license as a brewer from the Dominion; that it was under that license that defendant sold, if indeed sale could be proved against him. It was proved that the firm alleged had existed since August, 1875, and McN. was holder of a license from the Dominion Government, a license to brew, but not of record. *Per Curiam*—Allowing that McN. has a Dominion license, could, or can, L. justify in a prosecution like this under it? Can a man who gets a brewer's license from the Dominion give the benefit of it to any number of persons whom he joins as partners with him, and enable them to plead, as L. has done, in Quebec Province? I think not. *Certiorari* dismissed. *Leveillé exp.*, S. C. 1877.

VII. Power of Recorder under.

156. The Recorder has power under section 102 of the License Act to revoke the certificate of a tavern keeper. *Riehler exp. & Judah*, 1 L. N. 591, S. C. 1878.

VIII. Prosecutions under.

157. A prosecution under the Quebec License Act may be brought in any district if the offence has been committed on board of a steamboat or other vessel. *McWilliams exp.*, 1 L. N. 66, S. C. 1878.

158. And such prosecution may be brought before a district magistrate at places within his district other than those where a Magistrate's Court has been established. *Ib.*

159. Under the Act of 1875 (Que. 39 Vic. cap. 6, secs. 20 and 21) the penalty for retailing spirituous liquors without a license is $75. *Ib.*

LICITATION —*See* PARTAGE.

LIEN—*See* PRIVILEGE.

I. Of Banks under Bailee Receipt, *see* BAILMENTS.
II. Of Carriers, *see* CARRIERS.
III. Of Pawnbrokers, *see* PAWNBROKERS.
IV. On Moveables, *see* MOVEABLES.
V. On Ships, *see* MERCHANT SHIPPING.

LIEN DE DROIT—*See* BILLS AND NOTES, Rights of Holder, CONTRACTS, Privity of.

LIFE INSURANCE—*See* INSURANCE.

LIGHTS.

I. Duty of Vessel to Show, *see* MARITIME LAW.

LIQUID MEASURE—*See* INSPECTION LAW.

LOAN.

I. Broker's Commission on.
II. By Banks on Stock of other Companies.
III. Prescription of.
IV. What is.

I. Broker's Commission on.

160. Where plaintiff, a broker, sued for a commission of one per cent. on the amount of a loan which he had undertaken to get for the estate and succession represented by the defendants, but which he had failed to obtain—*Held*, that he had no claim. *Campbell* v. *Chabot*, 2 L. N. 248, S. C. 1879.

II. By Banks on Stock of other Companies

161. The defendants held a large number of shares of the capital stock of the Montreal City Passenger Railway Co. as security for advances which they had made to plaintiff, and had notified him that they were about to sell them, plaintiff being in default to repay the advances. The action was by way of injunction to prevent the sale, on the ground, *inter alia*, that the bank had no power to advance money on the security of shares in an incorporated trading company, under C. 34 Vic. cap. 5, sec. 51—*Held*, that the bank had the power, and action dismissed. *Geddes & La Banque Jacques Cartier*, 24 L. C. J. 135, S. C. 1878.

III. Prescription of.

162. On action brought to recover the amount of a loan made some years previously by a non-trader to a commercial firm—*Held*, following *Wishaw & Gilmour*, 6 L. C. J. 319; 13 L. C. R. 94; 15 L. C. R. 177; 1 Dig. p. 769, Art. 324, that this was not a commercial matter, and not subject to the prescription of either 5 or 6 years. *Darling & Brown et al.*, 21 L. C. J. 92, Q. B. 1876; & 21 L. C. J. 169, Su. Ct. 1877.

163. The 24th August, 1869, the defendant, having borrowed $108 from the plaintiff, gave him a promissory note for the amount. In the month of September, 1878, the note not having been paid, the plaintiff sued on the loan—*Held*, that there was no novation, and the note not having been paid the plaintiff was justified in suing as he did, notwithstanding the note was long since prescribed. *Robitaille & Denechaud*, 5 Q. L. R. 238, S. C. 1879.

IV. What is.

164. Action by the respondent, late sheriff of the District of Richelieu, on a bond or obligation with hypothec for $1,858.33, money lent and interest from 1st July, 1869, to 23rd August, 1869, date of bond at 6 per cent. From that last date, at 8 per cent. $431.22 were claimed for interest, and $13.20 for the cost of the deed, enregistration, and the addition of a hypothec in another case. The defendant pleaded that he was adjudicataire at a sale, and that, as a creditor, he had a right to retain the price on giving security until the judgment of distribution. There was no question either as to the evidence or as to the right of the appellant to retain the price, if he chose so to do, on giving security; but respondent contended that appellant did not do so, but that he desired to pay the price of adjudication, and not having the money to do so that the sheriff lent him the money, and took a personal obligation for it. But the loan so made to appellant was a fiction; appellant said he had paid and the sheriff acknowledged to have received the price of the adjudication without any money passing at all. The court below maintained the action, and condemned appellant to pay the interest stipulated in the bond, on the ground that the sheriff might have taken the money from the appellant, and, having done so, might immediately have given him back the same money as a loan at interest; that since he could do that he might by a fiction, *brevis manus*, dispense with the payment and lend it him, without appellant dispossessing himself of the money, or his even having had it to pay—*Held*, reversing this judgment, that even if the sheriff had the legal right to lend back to the debtor the money which he, the sheriff, had received, in order to make a profit out of it for himself, substituting his personal responsibility as an equivalent for the substantial deposit in his hands, it is perfectly clear that he had no right to give the debtor a receipt for money which he had not received. In the case of *Beaudry* and *The Mayor, etc., of Montreal*, it was held in this court, reversing a judgment of the Superior Court, that the certi-

ficate of the prothonotary to the effect that the Corporation of Montreal had deposited the necessary funds in a case of expropriation, the fact being that the corporation had deposited a promissory note instead of the money, might be attacked by an inscription *en faux* (17 L.C. R., p. 428). It was also illegal as the sheriff had no right to take money for doing that which he was bound by his office to do. Judgment reversed as to interest. *Lepine & Mathieu*, Q. B. 1876.

165. On an indictment for making false returns—*Held*, that the giving of deposit receipts, payable on time, for money loaned, did not alter the nature of the transaction, and consequently such loans were not properly classified under the head of "other deposits payable after notice or on a fixed day" *Regina* v. *Hincks*, 2 L. N. 421, & 24 L. C. J. 116, Q. B. 1879.

LOCAL LEGISLATURES—*See* LEGISLATURES.

LODGING-HOUSE KEEPERS.

LODS ET VENTES.

I. Rents Constituted in Place of, *see* SEIGNIORIAL RIGHTS.

LOSS AND DAMAGE—*See* DAMAGES.

LOTTERY.

I. What is.

166. A building society distributed lots of land by a *tirage au sort*, which was a secondary or subordinate element in its constitution—*Held*, not to be a lottery, and not in violation of C. S. C. cap. 95 or 1927 C. C. *La Société de Construction de St. Louis & Villeneuve*, 21 L. C. J. 309, C. C. 1877.

LUGGAGE.

I. Liability of Carriers for, *see* CARRIERS.

I. Rights of, *see* HOTEL KEEPERS.

M.

SUMMARY OF TITLES.

	Page
MACHINERY	479
MAGISTRATES	479
MAGISTRATES' COURT	479
MAINMORTE	479
MAINTENANCE	479
MALICE	480
MALICIOUS INJURY TO PROPERTY.	480
MALICIOUS PROSECUTION	480
MANDAMUS	480
MANDATE	482
MANSLAUGHTER	482
MANURE	482
MARGIN	482
MARGINAL NOTES	482
MARINE INSURANCE	482
MARITIME LAW	482
MARRIAGE	486
MARRIAGE CONTRACTS	491
MARRIED WOMEN	501
MASTER AND SERVANT	501
MATERIAL	507
MATERIAL FACT	507
MEASURE	507
MEASUREMENT	507
MEDICINE AND SURGERY	507
MEETINGS	507
MEMBERS	508
MEMBERS OF PARLIAMENT	508
MEMORANDUM IN WRITING	508
MERCHANT SHIPPING	508
MEUBLE CORPOREL	512
MILITIA	512
MILITIA LAW	513
MINISTER OF EDUCATION	514
MINISTERS OF RELIGION	514
MINORS	514
MINORITY	514
MISAPPROPRIATION	517
MISDEMEANOR	517
MISDESCRIPTION	517
MISNOMER	517
MISREPRESENTATION	517
MIS-TRIAL	517
MITOYEN WALL	517
MOBILIZATION	517
MONEY	517
MONTREAL	518
MORTGAGE	518
MOTION	518
MOVEABLES	519
MUNICIPAL CORPORATIONS	519
MUNICIPAL TAXES	542
MUR MITOYEN	542

MACHINERY.

I. Nature of, *see* PROPERTY, Description of.

MAGISTRATES—*See* JUSTICES OF THE PEACE.

MAGISTRATES' COURT.

I. Jurisdiction of.
II. Powers of.

I. Jurisdiction of.

1. In an action by a county municipality against a local municipality to recover an assessment for a railway—*Held*, that the Magistrate's Court had jurisdiction under Arts. 939 and 951 of the Municipal Code,* and that the magistrate was not disqualified by reason of his being a ratepayer. *Corporation of Parish of St. Guillaume* v. *Corporation of Co. of Drummond*, 7 R. L. 562, Q. B. 1876.

II. Powers of.

2. The Magistrates Court has the same rights as the Circuit Court with respect to adjournments, and the hearing of cases at adjourned sittings. *McEvila & Corporation of the Co. of Bagot*, 7 R. L. 360, Mag. Ct. 1875.

MAINMORTE—*See* SEIGNIORIAL RIGHTS.

MAINTENANCE—*See* ALIMENTS.

I. Of Parents, *see* CHILDREN.

* La part imposée à chaque corporation locale constitue une dette payable par elle au conseil du comté d'après les conditions et aux termes déterminés par ce conseil.

Le montant du cette part ou dette est perçu dans la municipalité locale comme les taxes locales sur tous les biens imposables affectés à cette taxe sans qu'il y soit besoin de faire d'autres réglements ou ordres à cet effet.

En cas de refus ou de négligence de la part de la corporation locale de payer la part qui lui été imposée, elle peut être recouvré, d'elle en la manière indiquée à l'article 951. 939 M. C.

Le paiement des taxes municipales peut-être également réclamé par une action intentée au nom de la corporation devant un juge de paix, la Cour de Magistrat ou la Cour de Circuit du comté ou du district tant contre les absents de la municipalité que contre les personnes présentes. 951 M. C.

MALICE.

I. Evidence of.

3. Malice and want of reasonable and probable cause may be inferred from the acts, conduct and expressions of the party prosecuting, as for example the existence of a collateral motive such as a resolution on his part to stop the plaintiff's mouth. *Lefontaine* v. *Bolduc*, 1 L. N. 266, S. C. 1878.

4. But, *held* in another case, that malice and want of probable cause are conclusively disproved by the conviction of the plaintiff. *Renahan* v. *Geriken*, 1 L. N. 267, S. C. 1878.

MALICIOUS INJURY TO PROPERTY.

I. Plea of Title Bars Criminal Prosecution for, *see* CRIMINAL LAW.

MALICIOUS PROSECUTION.

I. Damages for, *see* DAMAGES.

MANDAMUS.

I. And Injunction not in Principle or Generally Speaking the same, *see* INJUNCTION.
II. Does not Lie to Enforce Private Contract.
III. Grounds of.
IV. Right to.
V. When lies.

II. Does not Lie to Enforce a Private Contract.

5. Writ of mandamus in which the appellant set forth that he was *franc tenancier, tenant feu et lieu*, at Beauharnois, and that since 1868 he has occupied pew No. 74 in the Roman Catholic Church of the parish of Beauharnois on payment of ten dollars a year; that according to the usages of the church he is entitled to the continued possession of said pew so long as he remains in the parish, and should pay the annual rent therefor; that although ready and offering to pay the annual rent respondents have taken said pew from him and leased it to another. Appellant asked that he be reinstated in his pew and the sale and re-lease thereof be declared null, and damages be awarded to him—*Held*, that the right claimed by appellant was not a right of a public nature, but resulted from a private contract, and could not be enforced by mandamus. *Robillard & Les Curé et Marguilliers de l'Œuvre et Fabrique de la Paroisse de St Clement de Beauharnois*, 8 R. L. 63, Q. B 1876.

III. Grounds of.*

6. Mandamus does not lie to compel a railway company to deposit an amount awarded for expropriation by arbitrators. *Bourgouin* v. *Montreal, Ottawa & Occidental Railway Co.*, 21 L. C. J. 217, S. C. 1876.

IV. Right to.

7. The plaintiff being assignee to the insolvent estate of O. L. under the Insolvent Act of 1875, presented a petition in chambers alleging the insolvency of O. L., and his appointment as assignee. That the defendant, in his quality of secretary-treasurer of the county of Beauharnois, had advertised for sale, and was about to sell for municipal taxes, certain lots of land as belonging to the said insolvent; that he, the plaintiff, in his quality of assignee, had also announced the same lots for sale; that by the insolvency the lots in question had passed into the hands of him, the assignee, and that it was the duty of the defendant to abstain from any further proceedings with regard to them, and to send a statement of the sums due for taxes to him, the said assignee, and finally that he the assignee had no other legal means of preventing the sale of the lots in question but by *mandamus*. Conclusions that defendant be ordered and commanded to refrain from selling the said lots of land, and to transmit to plaintiff a statement of sums due for taxes on account of said lots of land, and that a provisional order be granted enjoining defendant to desist from all further proceedings in regard to the sale of the said lots of land, etc. On presentation of this petition the judge in chambers ordered the issue of the writ demanded, and granted a provisional order to defendant to suspend his proceedings. The same day the plaintiff filed his fiat for the issue of a writ of "mandamus," which issued accordingly, and was contested by defendant—*Held*, that while a writ in the nature of an injunction might have succeeded a writ of mandamus which was to order something to be done would not lie, and must accordingly be discharged. *Moffatt* v. *St. A mour*, 9 R. L. 439, S. C. 1876.

V. When lies.

8. A writ of mandamus will lie to compel a benefit society to restore a member illegally expelled for non payment of dues. *Lapierre* v. *L'Union St. Joseph & Montreal*, 21 L. C. J. 3.2, & 1 L. N. 40, Q. B. 1877.

---

* In the following cases:

1. Whenever any corporation neglects or refuses to make any election which by law it is bound to make, or to recognize such of its members as have been legally chosen or elected, or to reinstate such of its members as may have been removed with ut lawful cause;

2. Whenever any person holding any office in any corporation, public body or court of inferior jurisdiction omits, neglects or refuses to perform any duty belonging to such office or any act which by law he is bound to perform;

3. Whenever any heir or representative of a public officer omits, refuses or neglects to do any act which as such heir or representative he is by law obliged to do;

4. In all cases where a writ of mandamus would lie in England. Any person interested may apply to the Superior Court or to a judge in vacation and obtain a writ commanding the defendant to perform the act or duly required or to shew cause to the contrary on a day fixed. 1022 C. C. P.

MANDATE.

Of Attorneys ad Litem—*See* Attorneys ad Litem.

MANSLAUGHTER—*See* Criminal Law.

MANURE.

I. Exempt from Toll, *see* Toll.

MARGIN.

I. Right of Agent to Recover Money Advanced for Speculation on, *see* Gambling Transactions.

MARGINAL NOTES—*See* Procedure, Erasures, Service, etc.

MARINE INSURANCE—*See* Insurance.

MARITIME LAW.

I. Assessors.
II. Collision.
III. Costs in Cases under.
IV. Damages caused by Collision.
V. Evidence in Cases under.
VI. Ill-treatment at Sea.
VII. Interest on Loss.
VIII. Jurisdiction of Vice-Admiralty Court, *see* Jurisdiction.
IX. Towage.

I. Assessors.

9. On an appeal to the Privy Council where their Lordships name assessors, an opinion on a nautical point given by Canadian assessors may be overruled. "*Eliza Keith*," *The & Tue* "*Langshaw*," 3 Q. L. R. 143, V. A. C. 1877.

II. Collision.

10. Where there were two sailing ships, one on the starboard and the other on the port tack, and the former by a rule of navigation having the right to keep her luff—*Held*, that the former was, notwithstanding in a case of imminent denger, bound to give way, and for not

doing so condemned in damages and costs. "*Underwriter*," *The* & "*Lake St. Clair*," *The*, 7 R. L. 125, V. A. C. 1875.

11. The proprietor of a vessel which has suffered damage from a collision caused by neglect on the part of the vessel suffering damage will have no recourse in damages. *Peloquin* v. *Sincennes-McNaughton Line*, 9 R. L. 8, Q. B. 1876.

12. A steam tug proceeding down the River St. Lawrence met two barques, and in passing between them came into collision with one which ported her helm—*Held*, that both were in fault, the tug for not keeping out of the way, and the barque for not keeping her course. *The* "*Ranger*" *in re*, 3 Q. L. R. 21, V. A. C. 1876.

13. And *held*, also, that admissions of a master of a ship being pertinent are evidence against the owners, although made after the collision and extra articulate, but the party affected may give counter evidence. *Ib.*

14. When a port-tacked vessel has thrown herself into stays and become helpless, she ought, nevertheless, to execute any practicable manœuvre in order to get out of the way of a starboard tacked vessel; and a starboard tacked vessel when apprised of the helpless condition of a vessel, which by the ordinary rule of navigation ought to get out of her way, is bound to execute any practicable manœuvre which would tend to avoid a collision—*Held*, that both vessels were under the circumstances to blame for the collision. *Witson & Canada Shipping Co.*, 2 L. R. 389, P. C. 1877.

15. Where both ships were to blame for a collision which occurred in Canadian waters—*Held*, that an Act of the Parliament of Canada which precludes either from recovering its damage was operative, although the Admiralty rule which divides the loss prevails in England, and has been recently applied in a case of collision on Canadian waters on appeal to the Privy Council, but without the Act* being brought under special notice there. "*Eliza Keith*," *The* & *The* "*Langshaw*," 3 Q. L. R. 143, V. A. C. 1877.

16. But in a case of collision, the fault being mutual, the Admiralty rule will apply as between the owners of cargo and the delinquent ships dividing the loss, each ship answerable for a moiety. *Ib.*

17. And on appeal to the Privy Council, where their Lordships name assessors, an opinion on a nautical point given by Canadian assessors may be overruled. *Ib.*

18. Where a tug was seen from a barque at anchor crossing her bows, and so suddenly stop her speed that she allowed her tow to drift upon and collide with the barque, and there appearing no fault in the tow, an action by the barque against the tow, the cause of neglect in the tug not being proved, was dismissed. "*Commodore*," *The*, 4 Q. L. R. 329, V. A. C. 1878.

19. A schooner descending and a steamship ascending in the channel of the St. Lawrence, the former changed her course before meeting, and in time to enable the steamship to keep out of her way—*Held*, in a case of collision that the steamship was in fault for not doing so, although had the schooner not changed her course each might have gone free. "*Lake Champlain*," *The*, 4 Q. L. R. 337, V. A. C. 1878.

20. Where a steamship overtook and sunk a schooner—*Held*, that the schooner was not to blame for not showing a stern light, but that the steamship was in fault for not keeping out of the way of the schooner. "*Cybele*," *The*, 5 Q. L. R. 232, V. A. C. 1879.

21. Where a collision occurred in a fog between two sailing vessels, one lying to and the other running free, and the fog was so dense that their lights respectively could be seen but within from fifteen to twenty seconds before the collision—*Held*, that the speed of the vessel running free was too great. "*Attila*," *The*, 5 Q. L. R. 340, V. A. C. 1879.

22. *Held*, also, that the maritime law recognizes no fixed rate of speed for vessels sailing in a fog, and that where a vessel is in a fog she should be under sufficient command to avoid collision. *Ib.*

23. Where, from a steamship ascending the traverse below Quebec, a red and then a green light indicating the approach of a sailing vessel were seen and lost sight of until too late to avoid a collision—*Held*, that the steamship was in fault for an insufficient look out and too much speed. "*Govins*," *The*, 6 Q. L. R. 57, V. A. C. 1880.

24. And *held*, also, that the steamship was liable for consequential damages, unless upon the reference she could establish gross negligence or want of skill in the sailing vessel, and that the rules for the injuring to stay by the injured vessel will be rigidly applied if the occasion should so require. *Ib.*

25. Where two steamers, one on the starboard and the other on the port tack, came into collision, the latter held to be in fault for not keeping out of the way. "*Princess Royal*," *The*, 6 Q. L. R. 342, V. A. C. 1880.

26. In the case of a steam vessel lying at anchor upon anchorage ground while using her bell and shewing two white lights, one upon her foremost and the other at the gaff att, against each in an oblong lantern—*Held*. that a sailing vessel which, misled by the whistle of another steamer in motion, struck her was in fault for going too fast, and that the lights, although not in globular lanterns as directed by the "Act respecting the navigation of Canadian waters," being equal in power were a substantial compliance with the Act. "*General Birch*," *The*, 6 Q. L. R. 300, V. A. C. 1880.

III. Costs in Cases Under.

27. Where a claim for damages awarded in a case of collision was reduced by more than one-third—*Held*, that the costs of reference to the registrar and merchants should be borne by the claimant, although his suit was for a smaller sum of which the amount allowed and interest thereon would be less than a third. "*Normanton*," *The*, 4 Q. L. R. 45, V. A. C. 1878.

28. In a case of collision, the registrar and merchants having found that there was a total and not a partial loss for which the claim was made—*Held*, that by reason of a reduction of the claim, either as preferred or amended, the

* Of Parliament of Canada.

costs of reference must be paid by the promoters. "*Quebec*," *The*, 4 Q. L. R. 101, V. A. C. 1878.

IV. Damages Caused by Collision.

29. Where after a collision the vessel injured was docked for the winter, and her voyage could not be resumed until the following spring, by reason of the closing of the navigation of the River St. Lawrence—*Held*, that her owners could not recover as part of their damages the seamen's wages while idle during the winter, and no more than would suffice to send them to the place where they were shipped and to pay their wages until their arrival there. "*Normanton*," *The*, 3 Q. L. R. 303, V. A. C. 1877.

30. And *held*, that the measure of damages for the detention of a vessel after a collision is the amount she could have earned while unemployed by reason of it. *Ib.*

V. Evidence in Cases Under.

31. The court in maritime cases will not receive as evidence the depositions of persons professing to be skilled in nautical affairs as to their opinion upon any case. "*Attila*," *The*, 5 Q. L. R. 340, V. A. C. 1879.

VI. Ill-treatment at Sea.

32. Action to recover damages to the amount of $500 for an assault and ill-treatment brought by the promoter, a sailor, against the owner and master of the "Bridgewater" an American vessel. The promoter signed articles on the 5th Sept. last in London, and in the course of a voyage to Quebec the master attempted to put him in irons, but failed, owing to passive resistance. Thereupon the owner said: "I'll help the master to put you in irons," and having disappeared he reappeared with a sword bayonet in his hands, and struck promoter several blows on the head with it to stun him, the more easily to put him in irons. One flesh wound was inflicted, and then the master struck the promoter. The defence was that the promoter engaged as an A.B. seaman, he being but an ordinary seaman, and that the attempt to put him in irons was for refusal of duty, and that he resisted and was mutinously supported by others of the crew; that the master was violently assaulted and knocked down by the promoter, and that the master acted in self-defence; that the crew were in open mutiny and armed with knives and other weapons with which the master was threatened, and that in consequence the defendants armed themselves for the protection of themselves and the wife and children of the owner, who were on board; further that the language and behavior of the promoter during the voyage were mutinous and subversive of good order and discipline, and as a ringleader others of the seamen were by him incited to a refusal of duty. The evidence bore out the mutinous disposition of the crew, and of the promoter in particular, and the necessity on the part of the master of doing something to bring back the crew to a state of subjection. Action dismissed with costs. "*Bridgewater*," *The*, 6 Q. L. R. 290, V. A. C. 1880.

VII. Interest on Loss.

33. Where interest on the value of the wreck for the period between the collision and the examination of the vessel was not specifically allowed, there being no direct claim for it, and it appearing that there was an equivalent granted by the registrar and merchants in another form, an act on petition contesting the report in this particular overruled. "*Quebec*," *The*, 4 Q. L. R. 101, V. A. C. 1878.

IX. Towage.

34. If a tug for a stipulated price promises to tow a vessel from one place to another her engagement is that she will employ competent skill with a crew and equipment reasonably adequate to the object; and, therefore, where a tug deviated from an order of her tow, and was afterwards so deficient in skill as to allow the tow to collide with another vessel—*Held*, that the tug was liable for the consequence of the collision. "*William*," *The, in re*, 4 Q. L. R. 366, V. A. C. 1878.

MARRIAGE.

I. Action to Annul.
II. Authorization of Wife.
III. Liability of Husband.
IV. Liability of Wife.
V. Nature of.
VI. Power of Husband.
VII. Power of Wife.
VIII. Presumptions Arising from.
IX. Rights of Wife.
X. Separation de Corps.

I. Action to Annul.

35. Action to annul a marriage. The husband was a minor afterwards interdicted, and the action was brought by the curator and father of the interdict. Both parties were Roman Catholics but were married by a Protestant minister.—*Held*, that the court in such case had power to refer the question to the Roman Catholic Bishop, and the decision of the Bishop ought to be followed by the court in deciding as to the civil effects of the ceremony.* *Laramée & Evans*, 3 L. N. 342, S. C. 1880.

36. And *held*, also, that in such case the parties had not withdrawn themselves beyond the jurisdiction of the bishop of the church to which they belonged by resorting to a Protestant clergyman to be married. *Ib.*

* Marriage must be solemnized openly by a competent officer recognized by law. 128 C. C.
All priests, rectors, ministers and other officers authorized by law to keep registers of civil status are competent to solemnize marriage. But none of the officers thus authorized can be compelled to solemnize a marriage to which any impediment exists, according to the doctrine and belief of his religion and the discipline of the church to which he belongs. 129 C. C.
Every marriage which has not been contracted openly nor solemnized before a competent officer may be contested by the parties themselves, and by all those who have an existing and actual interest, saving the right of the court to decide according to the circumstances. 156 C. C.

II. Authorization of Wife.

37. Where a wife sued as a widow pleaded that her husband was living—*Held*, that she did not require to be authorized in order to so plead, and that the husband would be ordered to be called in within a delay of fifteen days. *Smith v. Chretien*, 2 L. N. 39, & 23 L. C. J. 8, C. C. 1878

38. The plaintiff in this case sued J. P. and his wife, separated as to property, as partners doing business as such at Montreal. The female defendant pleaded that she could not become a partner of the alleged firm without the authorization of her husband, and that, in fact, she had never been authorized to form such partnership, and, consequently, she was not liable for debts contracted by the alleged partnership. To prove the authorization given by the husband the plaintiff had produced the act of partnership, and the act of dissolution executed some months afterwards, and the female defendant and her husband examined as witnesses. The two acts appeared to have been made by the female defendant alone, without the intervention or knowledge of the husband. —*Held*, that there was no proof that the husband knew of the existence of the partnership, and the authorization of the husband could not be presumed. The motion to reject the deposition of the husband granted, under the rule that husband and wife cannot be witnesses for or against each other. Action dismissed as to the wife, and judgment against the other defendant.* *Slater & Perrault*, S. C. 1880.

39. The contestant contested the collocation made by the dividend sheet, and prayed that it be set aside and that she be collocated by privilege for the sum of $104 due her for rent. The joint assignees pleaded an exception in law that the claimant was described in the contestation as "*épouse judiciairement séparée quant aux biens de S.A. Pessier*; that by law the claimant could not appear in or institute any judicial proceeding without the authorization of her husband or his being joined in the suit, and that the husband was not joined in the contestation.—*Held*, that as the suit was for rent, and was therefore a mere act of administration, that she did not require such authorization. *Desmarteau v. Baillie & Perrault*, 3 L. N. 100, S. C. 1880.

40. Action against a married woman *separée de biens* to recover $320.55, alleged to be due on a note signed by her and endorsed by her husband. Plea, *inter alia*, want of authorization. —*Held*, that the authorization of the wife was abundantly proved by the husband's endorsement. *Johnston v. Scott*, 3 L. N. 171, S. C. 1880

41. A wife separated as to property from her husband may file an opposition to the sale of her moveable property under seizure without the authorization or assistance of her husband. *Owens v. Laflamme & Charest*, 24 L. C. J. 207, C. C. 1880; 176 C. C.*

III. Liability of Husband.

42. To an action for the balance of the price of fish sold, etc., defendant pleaded that a payment of $90 which he had made on account, had been credited to an old account of his wife's previous to her marriage with him—*Held*, that as the parties were separate as to property, any payment made by the husband must be presumed to be made on his own account, and not on his wife's. *Oakes v. Clements*, 2 L. N. 271, S. C. 1879.

43. Where husband and wife are *commune en biens* and the wife carries on business in her own name the husband is liable also for the obligations of the business. *Vezina v. Lefebvre*, 2 L. N. 179, S. C. 1879.

IV. Liability of Wife.

44. A wife who with her husband makes a donation of a sum of money to one of her children whilst *en communauté* with her husband, remains liable for one-half of the donation, notwithstanding she be subsequently separated judicially from her husband as to property and renounce to the community. *Vincent et ux. v. Benoit et vir.*, 21 L. C. J. 218, S. C. 1876; 1308 C. C.†

45. A wife separate as to property is not liable jointly and severally with her husband for any part of the price of goods purchased from a grocer, although necessaries of life, if the goods have not been purchased by herself in

* A wife, even when not common as to property, cannot give nor accept, alienate nor dispose of property *inter vivos*, nor otherwise enter into contracts or obligations unless her husband becomes a party to the deed or gives his consent in writing, saving the provisions contained in the Act. 25 Vic. cap. 6. (*Act of Incorporation of Montreal City and District Savings Bank and relating to the validity of deposits therein without authorization.* sec. 19.)

If, however, she be separate as to property she may do and make alone all acts and contracts connected with the administration of her property. 177 C. C.

If a husband refuse to authorize his wife to appear in judicial proceedings or to make a deed the judge may give the necessary authorization. 178 C. C.

A wife who is a public trader may, without the authorization of her husband, obligate herself for all that relates to her commerce; and in such case she also binds her husband if there be community between them. She cannot become a public trader without such authorization, express or implied.

If a husband be interdicted or absent the judge may authorize his wife to appear in judicial proceedings or to contract. 180 C. C.

All general authorizations, even those stipulated by marriage contract, are only valid so far as regards the administration of the wife's property. 181 C. C.

A husband, although a minor, may in all cases authorize his wife who is of age; if the wife be a minor the authorization of her husband, whether he is of age or a minor, is sufficient for those cases only in which an emancipated minor might act alone. 182 C. C.

The want of authorization by the husband where it is necessary constitutes a cause of nullity which nothing can cover, and which may be taken advantage of by all those who have an existing and actual interest in doing so. 183 C. C.

A wife may make a will without the authorization of her husband. 184 C. C.

* A wife cannot appear in judicial proceedings without her husband or his authorization, even if she be a public trader, and not common as to property. Nor can she, when separate as to property, except in matters of simple administration. 176 C.C.

† If the consorts have jointly benefited their common child without mentioning the proportion in which they each intended to contribute, they are deemed to have intended to contribute equally, whether such benefit has been furnished or promised out of the effects of the community or out of the private property of one of the consorts; in the latter case such consort has a right to be indemnified out of the property of the other for one-half of what he has so furnished, regard being had to the value which the object given had at the time of the gift.

her own name, and if they are entered in her husband's name in the merchant's books. *Larose* v. *Michaud et vir.*, 21 L. C. J. 167, S. C. 1877.

46. A wife's property will not be made liable for necessaries supplied to the family without proof of the insolvency of the husband. *Laframboise* v. *Lajoie & Lauzon*, 21 L. C. J. 233, C. C. 1877.

47. If the husband is without means the creditors may claim from the wife payment of household debts for necessaries supplied after the husband's insolvency. *McGibbon et al* v. *Morse et vir.*, 21 L. C. J. 311, C. C. 1877.

48. A wife separate as to property, who has stipulated in her contract of marriage that she is not to contribute to the charges of marriage, is liable nevertheless to pay for groceries bought by her for the use of the family, especially when it is proved that she has often promised to pay for them. *Garrigan* v. *Garrigan*, 9 R. L. 510, S. C. R. 1878.

49. And in such case she does not require to have been authorized by her husband. *Ib.*

50. A wife separated as to property is not liable for the value of necessaries supplied to the family where credit is given to the husband, and the goods are charged to him in the books of the creditor. *Hudon & Marceau*, 1 L. N. 603, & 23 L. C. J. 45, Q. B. 1878.

51. A wife separated as to property is not liable on a promissory note given for a debt of her husband. *Scantlin & St. Pierre*, 10 R. L. 52, S. C. 1879.

52. The female respondent was sued as *separée de biens*, and as the keeper of an inn, for $192.55 for goods sold and delivered. Plea that the husband purchased the goods, and that the wife had not authorized the purchases. The goods were charged to the husband—*Held*, following *Hudon* v. *Marceau*, that the wife was not liable. *Paquette & Guertin*, 2 L. N. 211, Q. B. 1879.

53. Action was brought against a wife in her quality of curatrix to her husband, who was interdicted, on an obligation given by her in her said quality for the rent of the house in which she lived. Defendant pleaded that the obligation was null and void because a curatrix could not mortgage without authorization of justice—*Held*, that though this were true, as she must be presumed to be common as to property and as she must live somewhere, she would be condemned to pay the capital of the obligation as so much rent due. *Short* v. *Kelly es qual.*, 2 L. N. 285, S. C. 1879.

54. Action against a wife separate as to property for bread supplied to the family, the husband being insolvent—*Held*, that as there was proof that the credit was given to the husband the action must be dismissed. *Bachlaw* v. *Cooper*, 3 L. N. 128, C. C. 1880.

55. A wife separate from her husband as to property is not liable for the price of necessaries purchased for the family of her husband and herself, and charged by the seller to the husband, and especially when the husband has given a note for the price of such necessaries and the wife is sued as endorser *pour aval*. *Bruneau & Barnes*, 3 L. N. 301, Q. B. 1880.

56. The personal obligation of a wife separate as to property, with hypothec on an immoveable belonging to her, for a debt of her husband, or even of the community for necessaries for the family, is prohibited by law, and is absolutely null as to such immoveable. *Gaudrier* v. *Arres & Grenier*, 3 L. N. 349, S. C. 1880.

V. Nature of.

57. Civil marriage does not exist under the law of this Province, the law merely giving civil effects to a religious marriage validly celebrated by regularly-ordained ministers authorized to keep marriage registers. *Laramée & Evans*, 3 L. N. 342, S. C. 1880.

VI. Power of Husband.

58. A husband surviving his second wife has no power to alienate an immoveable which is *propre* to the issue of the second wife. *Franceur & Michaud*, 21 L. C. J. 288, Q. B. 1876.

VII. Power of Wife.

59. A wife cannot become bail for her husband, and where she has done so and paid the money she will have an action to get it back. *Buckley & Brunette et vir.*, 21 L. C. J. 133, Q. B. 1873; 1301 C. C*.

VIII. Presumptions Arising from.

60. A married woman claimed property seized by the assignee as belonging to the estate of her husband insolvent. The evidence showed that the property in question had been transferred by the husband, a few days previous to the insolvency, to a cousin, and by the cousin was retransferred to the wife, the whole without consideration, and evidently to save it from the assignee—*Held*, that as it had not been shown that the wife had any means of her own, that what she acquired must be presumed to be acquired with the means of her husband. *Plessis dit Belair & Fair & Lauderman*, 21 L. C. J. 197, S. C. 1877.

IX. Rights of Wife.

61. In an action for alimony by a wife living apart from her husband—*Held*, that a wife who has grounds for demanding *séparation de corps* and an alimentary allowance may claim an allowance without asking for separation. *Lachapelle & Beaudoin*, 1 L. N. 581, S. C. 1878.

62. And the *toit conjugal* is where the husband resides, but if the husband keep a concubine in the house the wife is justified in refusing to live with him. *Ib.* 188 C. C.

63. Where goods belonging to a wife *séparée de biens* were seized in the conjugal domicile for taxes due by the husband, by virtue of a clause in the city charter making goods and chattels found in the possession of those in-

* A wife cannot bind herself either with or for her husband otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect. 1301 C. C.

debted to the city for taxes and assessments liable to seizure—*Held*, that the goods were not in the possession of the husband within the meaning of the statute. *Green* v. *City of Montreal*, 22 L. C. J. 128, S. C. 1877; & 2 L. N. 170, Q. B. 1879.

X. Séparation de Corps.

64. In an action for separation from bed and board the misconduct of the plaintiff cannot be set up as a defense to the action. *Brennan* v. *McAnnally*, 21 L. C. J. 301, S. C. 1877.

65. Action *en separation de corps* by a wife against her husband. There was no doubt whatever that the wife was expelled by the husband. It appeared that he put her into a boarding house, and lived separately from her. The defendant held blameworthy, and separation decreed on the ground of his refusal to receive his wife. *Larose* v. *Filiatreault*, S. C. 1879.

MARRIAGE CONTRACTS.

I. Claim of Wife on Insolvent Estate of Husband.
II. Community.
Action by Heirs for Account of.
Action for Debt Due to.
Assets and Liabilities of.
Continued.
Of Parties Married Abroad.
Of Parties Married without Clergy or Registration.
Power of Surviving Consort.
Renunciation of.
III. Employment of Money Belonging to Wife.
IV. Hypothec from Husband to Wife.
V. Power of Wife.
VI. Registration of.
In Cases of Traders.
VII. Renunciation by Wife.
VIII. Rights of Survivor.
IX. Rights of Widow.
X. Rights of Wife under:
Cannot be Exercised during Life of Husband, see DOWER.
XI. Suretyship of Wife.

I. Claim of Wife on Insolvent Estate of Husband.

66. The wife of one of the insolvents, and *separée* as to property, filed a claim against their estate for $5,000 and interest settled upon her by her father in her marriage contract. The inspectors contested it, on the ground that the joint estate of the insolvents was not liable; but that the claim could only be made against the individual estate of her husband. The money had been originally advanced to the husband by the claimant's father, and he had put it into the business of the firm. It was after this that it was settled by the marriage contract on the wife to her separate use, and after her death on her children. The sum instead of being put to her credit in the books of the firm, was put to the credit of her husband. The judgment dismissed the contestation on the ground that it was a debt of the firm, but held that the inspectors, whose right to contest had been put in question, were properly before the court—*Held*, in review, that the judgment was right as regards the power of the inspectors to contest, but that it ought to have gone further and maintained their contestation, on the ground that not only was it not the firm's debt as contradistinguished from the individual debts of the husband, but that, as regards the claimant, it was not their debt in any sense. The money had been lent by the wife's father to the husband before his marriage. Just before the marriage, the wife's father had settled it upon his daughter; that is, had transferred a debt due by the firm to him; but there was no evidence of any signification of this transfer, and the wife during the solvency of the firm could not have maintained an action for it against them. Judgment reversed, and the contestation maintained. *Empey & Court & Mathews*, S. C. R. 1877.

II. Community.

67. *Action by Heirs for Account of.*—A married woman in community with her husband died leaving a will by which she bequeathed to her husband, during the time he should remain unmarried, the usufruct and enjoyment of all and every her property, moveable and immoveable, on his making a good and faithful inventory thereof, and on his death the remainder to her heirs. The husband neglected to make an inventory, and on being sued for an account by one of the heirs pleaded that she had sold to him all her right of succession, moveable and immoveable, in the estate of deceased, and afterwards being then *majeure* acknowledged to have and sold and transferred to defendant all her rights, pretensions and claims in the succession of her late mother, the deceased, for the sum of $300—*Held*, that by such sale the plaintiff had stripped herself of the right to demand an account and *partage* of the effects of the community. *St. Aubin et vir. & St. Aubin*, 1 L. N. 116, Q. B. 1878.

68. *Action for Debt Due to.*—A husband and wife common as to property may sue together for a debt due to the community. *Bertrand* v. *Pouliot*, 4 Q. L. R. 8, S. C. 1878.

69. *Assets and Liabilities of.*—A physician sued the tutor to a minor, heir by will of his deceased mother, for professional services rendered to the latter. The tutor had accepted for the minor the personal property of the deceased, but had renounced the community which existed between the deceased and her husband. The claim was resisted on the ground that the debt belonged to the community which the minor had renounced—*Held*, that although a debt of the community, it was also a natural debt of the child who had been constituted heir. *Perrault* v. *Etienne*, 1 L. N. 471, & 22 L. C. J. 210, C. C. 1878.

70. *Continued.*—A tripartite community of property is dissolved by the death of the second wife, who dies without leaving any minor children, and, therefore, the third share of the second wife in an immoveable purchased during the existence of such tripartite community is a *propre* of the issue of the second marriage. *Francœur* v. *Mathieu*, 21 L. C. J. 288, Q. B. 1876.

71. And *held*, also, that the husband has no power to alienate such immoveable after the death of the second wife. *Ib.*

72. Where a second wife dies leaving only a grown-up child, issue of her marriage, and to whom she has bequeathed all her property, the tripartite community which existed between her and her husband and the children, issue of the husband's first marriage, is dissolved, but not the community between the husband and the children of the first marriage, which continues to exist as it did before the second marriage took place. *Francœur & Mathieu & Crebassa*, 8 R. L. 665. Q. B. 1877.

73. *Of Parties Married Abroad.*—The parents of the female plaintiff were, on the fifth of April, 1850, married at Burlington, in the State of Vermont, where, as expressly admitted, they then had their domicile, and there, as was proved, community of property between married people as existing in the Province of Quebec was unknown. Some time after their marriage they established their domicile in this Province. In 1866, the husband purchased in his own name the real estate in the district of Quebec in dispute in the cause. The question which arose was whether community of property existed between the consorts under such circumstances. *Held*, in review, reversing the judgment of the Superior Court, that according to the well-established jurisprudence of the Parliament of Paris for more than two centuries before that tribunal was abolished, a community of property was held not to exist between persons who having been domiciled, and having married without contract in a place where the law of community did not exist, afterwards established their domicile and acquired property in a country where the law of community did exist, and the same jurisprudence founded upon a doctrine approved of by the most esteemed commentators on the Code Napoleon has been invariably observed by the courts of the Province of Quebec, the law of community being considered rather as a *statut personnel* than *statut réel*. *Astell* v. *Hallée*, 4 Q. L. R. 120, S. C. R. 1877.*

74. In another case, a woman, who was married in London, in June, 1872, sought to get a *séparation de biens* as on dissolution of community which she said supervened on that London marriage—*Held*, following *Astell & Hallée*, that community did not result from a marriage of two English people in England. As to all marriages, people must make their contracts, either expressly or impliedly. If there is no contract in writing, it results from the law, and is governed by the matrimonial domicile. Here the marriage took place in London, and it could not be assumed that, because the parties had come to Canada afterwards, they had married with a view to coming to Canada. *Dalton & King*, 9 R. L. 548, S. C. 1879.

75. There is no community of property between persons married at Chicago, and an action by the wife in such case for separation of property will not lie. *Wiggins* v. *Morgan*, 9 R. L. 546. S. C. 1879.

76. *Of Parties Married without Clergy or Registration.*—Action for an account and *partage* of the community alleged by the female plaintiff to have existed between her grandmother, A. K., and the defendant. Her grandmother and her grandfather, D. W., were married in 1801, at Plainfield, in the State of New Hampshire. They afterwards moved to reside in the township of Stanstead, in Lower Canada. In 1840, plaintiff's grandfather, D. W., died, leaving three children, of whom plaintiff's father, D. W., jun., was the youngest. In 1843, the widow, plaintiff's grandmother, married the defendant in Stanstead, and continued to live with him till her death, which took place in 1850. The plaintiff by her action alleged that community of property existed between plaintiff's grandmother and defendant, and that at the time of her death they had accumulated a large amount of property, both real and personal; that after her death the defendant caused no inventory to be made of the property, and therefore there was continued community of which plaintiff by her action claimed an account and her share from the defendant, who had ever since remained in possession of the whole of it. Defendant pleaded denying everything—*Held*, that there was community of property between the defendant and the grandmother of plaintiff, and that that community had been continued after the death of the grandmother *par défaut d'inventaire*, and that plaintiff was entitled to an account and a share. *Cutting & Jordan & Fox*, 10 R. L. 401, Q. B. 1879.

77. And that notwithstanding that the marriage between defendant and plaintiff's grandmother was contracted in a place where there was no clergyman and no registers of civil status, and the only proof of the marriage was that which could be made by witnesses of the marriage and co-habitation of the parties, and of the fact that the children of the first marriage lived with defendant, and were recognized and supported by him as part of the family. *Ib.* 51 C. C.*

78. And notwithstanding the first marriage was contracted in the United States of America where there were no regular and authentic registers such as required by the law of Canada, and that in consequence of the lapse of time and the absence of such registers a certificate of the marriage under Art. 1220 of the Civil Code could not be obtained, and the only proof of the marriage was by witnesses. *Ib.*

79. And notwithstanding that the only proof of the death *ab intestate* of the first husband, grandfather of plaintiff, who was drowned in an

* See in this judgment previous cases considered.

* On proof that in any parish or religious community no registers have been kept, or that they are lost, the births, marriages and deaths may be proved either by family registers and papers or other writings, or by witnesses. 51 C. C.

† The certificate of the secretary of any foreign state or of the Executive Government thereof, and the original documents and copies of documents hereinafter enumerated executed out of Lower Canada, make *prima facie* proof of the contents thereof, without any evidence being necessary of the seal or signature affixed to such original copy, or of the authority of the officer granting the same, viz:

4. Certificates of marriage, baptism or birth and burial of persons out of Lower Canada, under the hand of the clergymen or public officer who officiated, and extracts from any register of such marriage, baptism or birth and burial certified by the clergyman or public officer having the legal custody thereof. 1220 C. C.

uninhabited part of the province, while engaged in lumbering, where there was no priest or minister, magistrate or coroner, and where, consequently, no registers of civil status were kept or known, was by witnesses. *Ib.*

80. *Power of Surviving Consort.*—The respondent was mortgagee of a property belonging to the community of the father and mother of appellant. The mortgage was given by the father, subsequent to the death of his wife, and to the consequent dissolution of the community. The mortgage was duly registered, and the property being about to be sold under a judgment in favor of the mortgagee, the appellant, one of six children, heirs opposed, claiming an undivided sixth in the half belonging to the heirs. The mortgagee contested the opposition on the ground that the rights of the children had not been registered in conformity with 2098 C. C.—*Held*, reversing judgment of court below, that the husband could not hypothecate more than his own half of the immoveable, and the heirs at law of the wife, though they had failed to register their title, could claim the wife's share in preference to the mortgagee whose hypothec was duly registered. *Dallaire & Gravel*, 22 L. C. J. 286, & 2 L. N. 15, Q. B. 1878; 607 and 2098 C. C.*

81. *Renunciation of.*—Action was brought on an obligation made by a wife jointly and severally with her second husband, the wife having since died, leaving her property to a child by her first marriage. The action was against the tutor of this child who had taken possession of the property according to the will. The tutor pleaded that he had never accepted the community between the minor's mother and her second husband, but, on the contrary, had expressly renounced it on the advice of a family council.—*Held*, that the renunciation could not affect the antecedent liabilities of the wife. *Duchesne* v. *Etienne*, 1 L. N. 281, S. C. 1878.

82. In 1856 appellant purchased certain real estate from her brother by notarial deed, in which she assumed the qualities of a wife duly separated as to property from her husband. After the death of the latter she, by deed before notary, renounced to the community which existed between her and her late husband. Subsequently a creditor of the brother, also deceased, seized the real estate as belonging to his vacant estate. Appellant opposed the seizure on the ground that it was made *super non domino et possidente*, and setting up title and possession for more than twenty years uninterruptedly. She proved some acts of possession, and that the property had stood for some time in her name in the books of the municipality. The opposition was contested on the ground that her title was bad in law and simulated and fraudulent, and that there was no possession—*Held*, that by her renunciation to the community of property which subsisted between her and her late husband at the date of the deed of January, 1856, appellant divested herself of any title or interest in said lands, and could not now claim the legal possession of the lands under that deed or by prescription, or maintain an opposition because the seizure was *super non domino et non possidente*. *McCorkill & Knight*, 3 S. C. Rep. 233, Su. Ct. 1879.

III. Employment of Money Belonging to Wife.

83. Plaintiff obtained judgment against the defendant for a sum of $15,782.69, and took in execution thereof a property situated in lower town, Quebec. The opposant, wife of the defendant, filed two oppositions, claiming by one eight twenty-thirds, and by the other fifteen twenty-thirds of the property seized as belonging to her in virtue of declarations *d'emploi* made by her husband, the defendant. These declarations for the first-mentioned portion were for the employment of $8,000 received by him from her father and mother since, on condition that he should employ it in the purchase of immoveables of which the opposant should have the usufruct, and the property should belong to her children, and in default to her heirs on her side and line. The declaration for the other portion was for the employment of $15,000, which the husband, the defendant, received from one who had entered into an obligation to pay and make over to the opposant by gratuitous title, and on the condition that it should not enter into the community between her and her husband. The defendant, by the declarations on which the opposition was based, said that instead of employing these sums in the purchase of immoveables he had invested them in a property which belonged to him, to wit, the property in question, and which he had ceded and transferred to his wife in consideration thereof, who had accepted the declarations. *Held*, that such an employment of money belonging to the wife could only be made by a special deed of acquisition of property, which was expressly substituted for the wife's money, and that the transfer made by the husband to the wife of property which already belonged to him was simply a sale between husband and wife, and as such was illegal and null. *Ross* v. *Tetu & Dionne*, 6 Q. L. R. 251, S. C. 1880.

IV. Hypothec from Husband to Wife.

84. A husband may execute a valid hypothec in favor of his wife on his immoveable property, in lieu of a hypothec which she had by her contract of marriage, to secure a sum of money brought by her at her marriage and reserved as *propre* by her in the marriage contract. *Hogue & Cousineau & La Société de Construction Montarville*, 2 L. N. 308, & 23 L. C. J. 276, S. C. 1879; & 3 L. N. 329, Q. B. 1880.

85. The plaintiffs, creditors of an insolvent, brought an action against the assignee of the insolvent to set aside a mortgage given by the latter to his wife *separée de biens*. The wife, it appeared, had given money to her husband for the purposes of his business, and to secure her against loss he had given her the mortgage in

* The lawful heirs, when they inherit, are seized by law alone of the property, rights and actions of the deceased, subject to the obligation of discharging all the liabilities of the succession; but the surviving consort and the Crown require to be judicially put in possession in the manner set forth in the Code of Civil Procedure, 607 C.C.

The dessaisissement of immoveables by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death, and, lastly, the designation of the immoveable. 2098 C. C.

question—*Held*, maintaining the mortgage. *Bank of Toronto* v. *Perkins*, 2 L. N. 252, & 9 R. L. 562, S. C. 1879.

86. And where the wife, as in the above case, renounced her priority of hypothec in favor of an another of her husband's creditors—*Held*, that she did not thereby bind herself or become surety for her husband in terms of Art. 1301 C. C.* *Ib.*

87. And *held*, in appeal, that as the appellant had been paid the full amount of the note for which the hypothec had been transferred as collateral security only, the appellant had no interest to contest it. 1 Q. B. R. 357, Q. B. 1881.

88. And a married woman may validly renounce her priority of hypothec in favor of a third person lending money to her husband, on the security of his real estate, but such renunciation in favor of a third party does not deprive the wife of her rights against other mortgage creditors inferior in rank to herself. *La Société de Construction Montarville & Cousineau*, 3 L. N. 329, Q. B. 1880.

89. And, in another case, *held*, that a wife separated as to property may validly renounce in favor of a creditor of her husband any hypothecary claim whatever on her husband's immoveables. *Hovnier & Renaud & Morin*, 3 L. N. 330, S. C. 1880.

V. Power of Wife.

90. An obligation made by a wife to repay money advanced for her husband's use is an absolute nullity, and even a representation by the wife to the lender that the money was for herself does not affect the case. *Rheaume* v. *Caille & vir.*, 1 L. N. 340, S. C. 1878.

VI. Registration of.

91. Where a donation in a contract of marriage was subject to a prohibition to alienate—*Held*, that the non-registration of the contract did not deprive the donors of their *droit de retour* on the death of the donee. *Pepin & Courchêne*, 2 L. N. 397, Q. B. 1879.

92. *In Cases of Traders.*—The claimant, as the wife of one of the insolvents, claimed from the estate of her husband the sum of $1,120, under their marriage contract, dated 15th February, 1868, and registered 23rd June, 1868. The claim was contested, on the ground that the husband was a trader, and that the marriage contract was not registered until long after the thirty days prescribed by the Insolvent Act, 1864—*Held*, maintaining the contestation, that the non-registration within thirty days was a bar to the wife's claim against the estate. *Dassault & Desère & Prevost*, 1 L. N. 140, & 22 L. C. J. 56, S. C. R. 1878.

VII. Renunciation by Wife.

93. Action of improbation against a notarial obligation, bearing date the 26th January, 1855, executed before notaries, by which one J. F., jun., acknowledged to owe, and promised to pay, to the defendants £913.1.9, and mortgaged certain real estate in their favor for the payment of that sum. By the same deed the wife of J. F., jun., renounced in favor of the defendants all her rights upon the property so hypothecated by her husband; and J. F., sen., and J. S., his wife, the father and mother of J. F., jun., also became parties thereto as sureties, jointly and severally of the said debtor, and as further security hypothecated in favor of the defendants certain real estate which the mother of the said J. S. had given to her and to her intended husband, the said J. F., sen., by a deed of donation shortly before their marriage. The marriage contract between the said J. F., sen., and his wife contained a *clause d'emeublissement* in the usual terms, and also a *clause de reprises* in favor of the future wife. The deed, the improbation of which was sought by the action, in addition to the suretyship, contained a renunciation on the part of J. S., the mother, in the following words: *La dite Dame F., consentant à renoncer à l'exercise d'aucuns droits soit réels de propriété, soit hypothecaires et tous qu'elle aurait droit d'exercer sur les biens du dit J. F., son mari, sur lesquels elle donne et accorde priorité et rang antérieur à elle aux dits A. H. et freres"* (the defendants). The plaintiff had become the owner of the real estate so hypothecated in favor of the defendants by the said J. F., sen., and his wife; and the object of the improbations was to have the said obligation of the 26th January declared false and a forgery, in so far as regards the sureties, on the ground that they had never become parties to said deed of obligation, and also in consequence of certain alleged informalities and nullities in the deed. The action also sought to have the hypothec so created on the property in question declared null and inoperative, on the ground that F. could not hypothecate a *propre* belonging to his wife; and that his wife could not legally bind herself, either by the *cautionnement* or the renunciatory covenant contained in the said deed of obligation—*Held*, that the renunciation so made by the wife was good, notwithstanding the clause of *reprise*, and notwithstanding the provision of the registry ordinance which declared that "no married woman shall become security or incur any liability, other than as *commune en biens* with her husband, for debts or obligations entered into by her husband before their marriage, or which may be entered into by her husband during marriage." *Hamel & Panet*, 3 Q. L. R. 173, P. C. 1876.

94. The wife may legally renounce her priority of hypothec for her *reprises matrimoniales* in favor of a third party lending money to her husband on the security of his real estate. *Hogue & Cousineau & La Société de Construction de Montarville*, 2 L. N. 308, & 23 L. C. J. 276, S. C. 1879; & *Hovnier & Renaud & Morin*, 3 L. N. 330, & 24 L. C. J. 253; & *Thibodeau & Perrault & Lagongendière*, 3 Q. L. R. 71, S. C. 1870.

95. But where such third party waives his right in favor of another the priority of the wife will revive as regards other claims of the former. *Ib.*

* A wife cannot bind herself either with or for her husband, otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect. 1301 C. C.

VIII. Rights of Survivor.

96. Plaintiff was the widow of A. B.; she was married to him on the 8th of May, 1859, and they had a contract of marriage, stipulating that there should be a *communauté de biens*, and that the survivor should have the life enjoyment of the property of the pre-deceased, if there were no children born of the marriage. In August, 1864, the husband died, leaving no children; and the plaintiff brings this action for the whole amount in principal and interest of a note or obligation *en brevet*, made by the defendant on the 4th of November, 1862, to her husband, to which the defendant pleaded that he gave the note as alleged; but that it was understood that he was never to be called upon to pay it; that in fact he got a discharge the very same day, for A. B., on that very day made his will before the same notary, leaving to the defendant all moneys, whether in cash or notes, due to him at his decease, and appointed him his executor. By a second plea he pleaded payment and compensation in various ways, by a cheque, by board, and otherwise; and, thirdly, as to the thirteen years and nine months' interest, he pleaded prescription of everything accrued later than five years after the Code came into force. *By the Court*—These issues raise several questions of law and of fact. 1st, as to the effect of the will: Could it revoke the stipulations of the marriage contract? Art. 452 of our Code* is identical with Article 587 of the Code Nap., which is commented by Proudhon, vol. 3, No. 1030. This was cited on the defendant's side, to show that the plaintiff as *usufruitière* could not touch the capital; but Proudhon says nothing of the kind; but only that the usufructuary does not, by getting the capital into his hands, acquire a right of property. Rolland de Villargues, cited on the other side, No. 230, quotes Proudhon's words as authority that the capital may be touched by the usufructuary, and in No. 231 says: "*Nul doute que l'usufruitière n'ait le droit de recevoir les capitaux, et meme de forcer le remboursement*, etc., etc." Besides, if this contract of marriage means anything, it means that the survivor is to get in the debts *a la caution juratoire*. The testator had no power to revoke this stipulation by will. *Bourjean & Brassard*, S. C. 1876.

97. A widow who had been in community with her husband claimed in her capacity of universal legatee and testamentary executrix only a balance of a *bailleur de fonds*, arising from a sale of land made by her late husband some years previous to his decease without referring to her rights in the community—*Held*, that she could only be collocated for one half of the amount claimed. *Amiot* v. *Tremblay & Reid*, 2 L. N. 196, S. C. 1879.

* Natural and industrial fruits attached by branches or roots at the moment when the usufruct is opened belong to the usufructuary. Those in the same condition at the moment when the usufruct ceases, belong to the proprietor without recompense on either side for ploughing or sowing, but also without prejudice to the portion of the fruits which may be acquired by a farmer on shares, if there be one at the commencement or at the termination of the usufruct. 450 C. C.

IX. Rights of Widow.

98. A widow may sue personally and as tutrix of her children for debts due to the community before the expiration of the delays to deliberate on the acceptance or renunciation of the community if she has meddled with it (*si elle s'est immiscée*). *Hay* v. *Hands et al.*, 9 R. L. 537, S. C. 1879; 1347 C. C.*

X. Rights of Wife under.

99. Action for $400.10, claimed hypothecarily for five years and the current year of a life rent created in favor of the plaintiff by an *acte* of donation which she had executed to two children of her first husband. The immoveable which was the subject of the donation was transferred by the children, donees, to the second husband of plaintiff, who had in turn given it to the defendant, subject to a life rent which was to cease at the death of the donor, at which period the defendant commenced to pay to the plaintiff the life rent stipulated in the first deed—*Held*, that when in a contract of marriage it has been stipulated that there has been no community of property, that the wife is to have the free administration of what belongs to her, and that the husband alone is to be liable for the maintenance of the wife and the family, the wife may after the death of the husband claim from a third party arrears for five years and the current year of an annual life rent due to her, on an immoveable acquired by the husband during marriage, although she has never claimed such rent during the life time of her husband, and that notwithstanding Art. 1425 of the Civil Code,† which did not apply to the case in point. *Filion* v. *Guenette*, 7 R. L. 438, Q. B. 1872.

100. Where it was stipulated in a contract of marriage that the wife at the dissolution should have the furniture contained in the house which was therein described, and during the marriage the house and furniture was sold and a new one purchased and new furniture put in it, and the wife at the dissolution of the marriage claimed the new furniture in place of that given to her by the contract of marriage—*Held*, that she had no title to it without a new contract to that effect.‡ *Cahill & Hatchelte*, 7 R. L. 513, Q. B. 1876.

XI. Suretyship of Wife.

101. Action by plaintiff for $2570 and interest at twelve per cent. on an obligation signed by

* The wife who has neither made an inventory nor renounced within the delays above prescribed or granted is not therefore precluded from doing so; she is, on the contrary, allowed to do so so long as she has not intermeddled, or has not acted as being in community; but she can be sued as being in community so long as she has not renounced, and she is liable for the costs incurred against her up to the time of such renunciation. 1347 C. C.

† When the wife, who is separated as to property, has left the enjoyment of her property to her husband, the latter, upon the demand which his wife may make or upon the dissolution of the marriage, is bound to give up only the fruits which are then existing, and is not accountable for those which up to such time have been consumed. 1425 C. C.

‡ Confirming S. C., *Vide* I Dig. p. 818, Art. 321.

the defendants, husband and wife, the wife as principal and the husband as authorizing his wife, and *therefore caution solidaire* for the repayment of the loan for which the obligation was given. There was another defendant who had signed the deed as surety, but he got out of it on an *exception dilatoire*, on the ground that the property of the principal defendants had not been discussed before action brought. The wife only pleaded to the merits, and between her and the plaintiff the contestation was maintained. The evidence was that the loan was made to enable the husband to carry on his business, and *held* in the Superior Court, dismissing the action, but in appeal action maintained and judgment reversed, on the ground that the loan was made for the use and benefit of the wife, and was not made in violation of Art. 1301 of the Civil Code.* *Martel & Beaudet*, 8 R. L. 138, Q. B. 1877.

MARRIED WOMEN.

I. Action Against, *see* ACTION.
II. Bills and Notes by, *see* BILLS OF EXCHANGE, etc.
III. Rights of, *see* MARRIAGE, MARRIAGE CONTRACTS, etc.

MASTER AND SERVANT.

I. Action by Servant for Dismissal.
II. Desertion of Service.
III. Dismissal of Servant.
IV. Extra Remuneration.
V. Interpretation of Terms of Engagement.
VI. Liability of Master.
VII. Liability of Servant.
VIII. Oath of Master.
IX. Proof of Engagement.

I. Action by Servant for Dismissal.

102. Action for the recovery of $272.20, being four months and twenty days salary at the rate of $700 a year, payable monthly. Plaintiff alleged that, notwithstanding an engagement entered into between him and the defendant, the defendant dismissed him without reason before the expiration of the term for which he was engaged; that he had offered his services to defendant since his dismissal and been refused, and consequently had been forced to remain without employment, and asked that the defendant be condemned to pay him his wages until the expiration of his year of engagement—*Held*, that he had no action for salary not due at the time of his dismissal, but that he had a right only to an action of damages resulting from the breach of the agreement,* and that as he had not proved that he had been unable to obtain another situation and had suffered damages he could not recover. *Sait* v. *Nield*, 7 R. L. 224, S. C. 1874.

II. Desertion of Service.

103. On a *certiorari* from a conviction of a servant girl for desertion, the girl being a minor and having engaged without the consent of her father—*Held*, that the conviction must show a hiring by written contract or verbally before witnesses in order to standt. *Pelletier & Hurteau*, 3 L. N. 331, S. C. 1880.

---

* See Note *supra p.*

* This judgment appears to be in conflict with the general jurisprudence on this point, and more particularly with ss. 2 of sec. 5 of chap. 27 of the Con. Stats. of Low. Can., which says: "But every servant, assistant or laborer who has contracted an engagement for a determinate period cannot be discharged at or before the expiration of such engagement without previous notice from his master, mistress or employer, after having received the entire amount of the wages which would have been due him if he had served for the entire term of his engagement, and if the term be expired the person thus dismissed without previous notice would have a right to be paid his wages for all the time from the day the notice should have been given and that of his dismissal.

† The rules with regard to the desertion and dismissal of servants are now contained in the following

ACT RESPECTING MASTERS AND SERVANTS.

(Que. 44-45 Vic. cap. 15.)

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

Any apprentice, servant, journeyman or laborer bound by act of indenture, or written contract or agreement or verbally, before one or more witnesses for one month or for any longer or shorter period who refuses or neglects to enter the service of his master at the time agreed upon, or is guilty of ill behavior, refractory conduct or idleness, or of deserting from his service or duties or of absenting himself by day or night without leave from his said service or from the house or residence of his employer, or who refuses or neglects to perform his just duties or to obey the lawful commands which may be given him by his master or mistress, or who is guilty of dissipating his master's or mistress' effects or property, or of any unlawful act that may affect the interest of his master or mistress, shall be liable to a penalty not exceeding twenty dollars.

2. Any domestic servant, journeyman or laborer engaged by the month or longer space of time or by the piece or job who deserts or abandons the service or job for which he was engaged before the time agreed upon shall for each offence of such nature be liable to the penalty provided in the next preceding section.

3. In every case of contravention against the two preceding sections, on the part of any servant or laborer engaged to work or serve in the woods and forests of this province for the making of saw logs or the manufacture of square or other commercial timber or firewood of any kind, the contravening party may be prosecuted and convicted before any justice of the peace of the judicial district wherein he shall have contracted his engagement or wherein he shall be apprehended, notwithstanding that the territory where the contravention shall have been committed may happen to be beyond the limits of such district.

4. Any person knowingly harboring or concealing any apprentice or servant, engaged by written act or agreement or verbally before witnesses, who has abandoned the service of his master or mistress; or instigating or engaging or inducing any apprentice or servant to abandon such service, or keeping such servant in his or her service after being informed of the fact, shall for such offence be liable to the penalty provided in the first section.

5. Any domestic servant, journeyman or laborer engaged by the week, month or year, and not by the piece or job, or for a fixed period, who intends to quit the service in which he is engaged at the expiration of his engagement shall give at least one week's notice of such intention if his engagement be by the week, two week's

III. Dismissal of Servant.

104. An employee engaged for a year, who is dismissed without cause may sue for the monthly instalments of his salary as they fall due, unless facts are set up and proved by which the court may judge of the whole amount of damages caused by the breach of contract. *Rice & Boscoritz*, 23 L. C. J. 141, Q. B. 1874; *& Montreal Cotton Co. & Parham*, 23 L. C. J. 146, Q. B. 1878.

105. But a servant who is discharged without sufficient cause before the expiration of the term for which he was engaged can only sue for the wages which are due at the institution of the action, unless he sues for damages for breach of contract, in which case the length of the unexpired term of his engagement may be taken into consideration in estimating the damages. *Beauchemin & Simon*, 23 L. C. J. 143, Q. B. 1877.

106. An engineer sued for wages which would have been due if he had continued to hold his situation. He alleged that he had been wrongly dismissed, and he waited and sued for the time which had expired. A person dismissed improperly might wait until the term of the engagement had expired and then sue for wages, or he might sue at once for damages for breach of the engagement. The plaintiff had taken the former course. The plea was that he had been found incompetent, and the defendant was justified in dismissing him. But in an anterior suit this same matter was pleaded, and plaintiff was found competent. The only question that remained was whether, during the time which had elapsed since his dismissal, he had earned wages, for which the defendant ought to get credit. The court did not see that he had earned anything. The proof on this point was insufficient to warrant any modification of the judgment, and it was confirmed with costs. *Goad & Macdonald*, S. C. R. 1877.

107. A servant discharged without sufficient cause before the expiration of his term of hire cannot, if he sues for wages, claim for more than the portion of the term which has expired at the date of the institution of the action; but, *semble*, he may bring an action of damages for breach of contract, and then the length of the unexpired portion of the term may be taken into consideration in estimating the damages. *Beauchemin & Simon*, 1 L. N. 40, Q. B. 1877.

108. The plaintiff, a physician, sued the City of Montreal for professional services rendered by him to the city as health officer. In the year 1868 he and another were appointed health officers for the city. The employment was gratuitous, but at the end of the year the Corporation voted each a small fee, and engaged them for the year 1870 at the rate of $500. This was continued yearly to 1873, when the salary was raised to $800. In March, 1877, the Corporation resolved to employ only one health officer, and the plaintiff's services were dispensed with—*Held*, that 37 Vic. cap. 51, sec. 64,* did not authorize the Corporation to dismiss its servants unfairly and without notice,

---

notice if it be by the month, and one month's notice if it be by the year; and if any such person quits the service without giving such notice he shall be considered as having deserted from the said service and be punished accordingly.

Every master, mistress or employer shall give a like notice to any servant, journeyman or laborer engaged by the week, month or year, whose services he or she no longer requires; but any domestic servant, journeyman or laborer, so engaged may be discharged at or before the expiration of his agreement, without notice, upon full payment of the wages to which he would have been entitled had the term of service expired, and had the required notice been given.

6. Any master or mistress who discharges his or her servant without paying his wages as aforesaid shall incur the penalty provided in the first section.

7. Any master, mistress or employer against whom any just cause or complaint exists on the part of his or her apprentice, domestic servant, journeyman or laborer, bound for or engaged as aforesaid, for any misusage, defect of sufficient, wholesome provisions or food, or for cruelty or ill treatment of any kind, shall, upon each and every conviction, be liable to a penalty not exceeding twenty dollars.

8. Any complaint founded upon a contravention of the provisions of this Act may be heard and determined before one justice of the peace resident in the district where such contravention occurred, who may by warrant or summons require the attendance of the offender before him; and upon the offender being brought up under warrant or, if summoned, upon proof of the service of such summons, may, either in the absence or presence of the offender, determine such complaint in a summary manner on the oath of one or more credible witness or witnesses, to be sworn before him; and may, if the offender be convicted, condemn such offender to the penalty imposed for the offence, and in default of payment of the said penalty with costs of suit, with or without delay, to be imprisoned in the common gaol of the district for a period not exceeding two calendar months, unless the said penalty and costs of suit, together with the cost of apprehension and conveyance of the delinquent to gaol, be sooner paid. And on a suit by a servant for wages the defendant may plead the fact of such desertion, misconduct or disobedience herein before mentioned; and on proof thereof, and of the damages incurred in consequence by the defendant, it may be declared that the plaintiff hath lost all recourse for his wages in whole or in part in the discretion of the court, according to circumstances.

9. Upon complaint by any master, mistress or employer against his or her apprentice, servant or journeyman, or by any apprentice, servant or journeyman against his master, mistress or employer of continued misconduct or misusage, and of repeated violations of the ordinary and established duties of the parties towards each other, or of incapacity to perform the services for which he is hired, any two justices of the peace, resident in the district where the master or mistress lives may, at a special sitting, upon due proof of the facts, annul the contract or agreement, whether written or verbal, by which such master, mistress or employer and such apprentice, servant or journeyman were bound to each other.

10. All penalties imposed by this Act, when paid, shall be handed over to the sheriff of the district within which the offence was committed, to form part of the building and jury fund.

11. The prosecution for any offence against the provisions of this Act shall be commenced within three months after the offence has been committed and not after.

12. This Act shall apply to all parts of the province, except to the cities of Quebec and Montreal, and to all other incorporated cities, towns and villages which have passed or may hereafter pass bye-laws regulating the relations of master and servant.

13. Chapter 27 of the Consolidated Statutes for Lower Canada, chapter 34 of 29-30 Victoria, and Chap. 20 of 33 Victoria are hereby repealed.

---

* The said Council shall from time to time, as occasion may require, appoint a city clerk, a city treasurer, a city surveyor, a superintendent of water works, a city auditor, a chief of police, an inspector of buildings, clerks of markets, surveyors of highways, streets and bridges, health officers, assessors, collectors, pound keepers, inspectors of meat, and such other officers as they may think necessary to carry into execution the powers vested in them by this Act, and the said Council may prescribe and regulate the duties of all such officers respectively, and at their pleasure remove any such officer and appoint another in his place, and the said Council shall take such security for the due execution of the offices of city treasurer and other officers charged with the collection of the city revenue as the said Council may think proper, and shall and may grant to the city clerk, treasurer and other officers to be appointed as aforesaid such or other compensation for their services as they may think fit.

and the plaintiff was, therefore, entitled to the balance of his services for the year. *Dugdale & City of Montreal*, 3 L. N. 204, Q. B. 1880.

IV. Extra Remuneration.

109. In 1874, the Board of Health of the City of Montreal established a small-pox hospital, which went into operation in November of that year. The plaintiff, one of the health officers of the city, attended there until the first of January, 1876, when he resigned. Having put in a claim for his services at the hospital in addition to his salary as health officer, the Corporation offered him $400, which he refused. Action for $2,100, being at the rate of $150 per month, which was maintained in the Superior Court. But in appeal—*Held*, that if a person employed in a particular capacity by another is charged to perform some duty not theretofore performed by him, he may decline to do it, and then the question will arise whether the new employment is of a similar kind to that which he was employed to perform. If it is he is bound to perform it. And if the person employed performs the new duty without remonstrance the presumption is that the new work falls within the scope of that which he was employed to perform, and he has no legal claim to additional remuneration. Judgment for $400 offered. *Dugdale & The City of Montreal*, 3 L. N. 204, Q. B. 1880.

V. Interpretation of Terms of Engagement.

110. The defendants, merchants in Montreal, were sued for three months' salary by their former clerk, whom they discharged on the 6th November, 1876, having made an engagement with him in November, 1874, for three years and six months, so that his time would not have expired until May, 1878. The question was: What interpretation ought to be given to the terms of the engagement? The evidence of it was in a letter written by the plaintiff on the 30th of October, and which the defendant admits to contain the conditions of the agreement:—

"Montreal, 30 Oct., 1874.

"Je soussigné m'engage a remplir les fonctions de commis voyageur chez Messrs. A. P. & Cie. pour l'espace de trois ans et six mois, a compter du 1er Novembre, 1874, a raison de deux cents, deux cents cinquante, et trois cents louis par année. Mes appointements devront n'être octroyé comme suit: deux cent louis du 1er Novembre, 1874, au 1er Novembre, 1875; deux cent cinquante du 1er Novembre, 1875, au 1er Novembre, 1876, et trois cent louis du 1er Novembre, 1876, au 1er Mai, 1878, c'est-à-dire un an et six mois. Je devrai, bien entendu, m'occuper plus specialement des achats a faire pour le commerce de la maison sur les marches Européens: a cet effet je voyagerai deux fois par année, mon premier voyage devant être entrepris a la fin de Decembre, 1874, prochain. Une fois de retour de mes voyages, je devrai donner toute mon attention aux ventes dans le magasin. N.B.—Il sera loisible aux Messrs. A. P. & Cie. de decider a quelle saison M. Gauthier devra voyager. Ils se reservent de plus le droit de faire voyager un autre commis voyageur dans le cas ou ils le jugeront a propos."

The defendants contended that they had a right to make the plaintiff travel where they pleased, and that the subject of going to Europe was only mentioned in their interest to prevent his objecting to be sent out of the Province; and said they sent him to different places in the Province of Quebec and the other Provinces without any objection on his part, until October, 1876, when, being told to prepare himself to travel for the house somewhere in the Dominion, he manifested an intention not to act as local traveller any longer, and was therefore dismissed and paid up to that time—*Held*, in appeal, reversing the judgment of the court below, that plaintiff's pretensions were unfounded, that he was paid for his time, and his employers could use it as they pleased, provided they did not ask him to do anything that would injure his position in society. *Gauthier & Prevost*, 1 L. N. 289, Q. B. 1878.

VI. Liability of Master.

111. Action for damages for an accident while blasting, causing personal injury to an employee of the defendants. The accident it was proved was caused by the fact of a steel drill having been used which was done by the express direction of defendants' foreman. Judgment for plaintiff, and $2,000 damages sustained in review. *Hall* v. *Canadian Copper & Sulphur Co.*, 2 L. N. 245, S. C. R. 1879.

VII. Liability of Servant.

112. To an action for wages by an employee, the master pleaded that plaintiff, by his negligence, had allowed a large sum of money to be stolen for which he was responsible, and had since been discharged. The proof showed, however, that plaintiff had remained for a considerable time in defendant's employ after the theft and had charge of the money, and had been paid his wages as theretofore—*Held*, that the loss had been condoned, and plaintiff was entitled to his wages. *Watson* v. *Thomson*, 2 L. N. 387, S. C. 1879; & 3 L. N. 203, Q. B. 1880.

VIII. Oath of Master.

113. Action for wages by a servant. The defendant proved by his own oath the terms of the agreement, and the payment of wages due to the plaintiff—*Held*, that the oath of the defendant was equivalent in such case to the *serment decisoire*, and could not be contradicted by witnesses. *Larose* v. *Rousseau*, 6 Q. L. R. 196, S. C. 1873.

114. In an action for wages by a boy employed in carting, the oath of the master as to the employment and as to the payment of his wages is not sufficient. *Denis* v. *Poitras*, 3 Q. L. R. 162, S. C. 1877.

115. Art. 1669 of the Civil Code* does not apply to the case of a workman employed by the day to work in a mill, and in such case the oath of the master will not be received as to the terms of the engagement or the question of payment. *Marier & Lafreniere*, 10 R. L. 674, C. C. 1880.

IX. Proof of Engagement.

116. The engagement by a railway company of a civil engineer for the construction of the railway is a commercial matter, and may be proved by verbal testimony. *Legge & Laurentian Railway Co.*, 3 L. N. 23, & 24 L. C. J. 98, Q. B. 1879.

MATERIAL.

I. Lien on Ships for, *see* MERCHANT SHIPPING.

MATERIAL FACT.

I. What is, *see* INSURANCE, Misrepresentation.

MEASURE.

I. Of Damages, *see* DAMAGES.
II. Of Oil, *see* INSPECTION LAW.

MEASUREMENT.

I. Sale by, *see* SALE.

MEDICINE AND SURGERY.

I. Acts Concerning.

The principal provisions respecting Medicine and Surgery are to be found in Con. Stat. Can. cap. 76, and the Quebec Acts 40 Vic. cap. 26; 41 Vic. cap. 23, and 42-43 Vic. caps. 37 and 38.

MEETINGS.

I. Adjournment.

117. Where a meeting of creditors was adjourned at the call of the assignee—*Held*, that this was equivalent to an adjournment *sine die*, and new notices were necessary to meet again. *Consolidated Bank of Canada* v. *Davidson & Stanley*, 2 L. N. 348, S. C. 1879.

*In any action for wages by domestics or farm servants, in the absence of written proof the master may offer his oath as to the conditions of the engagement and as to the fact of payment accompanied by a detailed statement. But such oath may be refuted in the same manner as other testimony. 1663 C. C., as amended by Q. 41-42 Vic. cap. 12.

MEMBERS.

I. Of Building Societies not Bound by Rules Irregularly Passed, and to which they have not Assented to, *see* BUILDING SOCIETIES.

MEMBERS OF PARLIAMENT—
See ELECTION LAW.

MEMORANDUM IN WRITING—
See EVIDENCE.

MERCHANT SHIPPING.

I. Hypothecation of Vessels.
II. Jurisdiction under Act.
III. Law of.
IV. Liability.
For Repairs to Vessels.
V. Lien for Materials Furnished to Vessel in Course of Construction.
VI. Lien for Necessaries.
VII. Lien for Salvage cannot be Transferred.
VIII. Privilege of Master and Crew.
IX. Remedies under Act.
X. Sale of Vessel.

I. Hypothecation of Vessels.

118. Although C. S. C. cap. 41 was repealed by 37-38 Vic. cap. 128, sec. 3 (1874), a bill of sale by way of mortgage of a vessel registered under the former statute made after the passing of the repealing Act in the form usual under the former statute created a valid mortgage. *D'Aoust* v. *McDonald & Norris*, 1 L. N. 218, & 22 L. C. J. 79, S. C. R. 1878.

119. And it was not necessary to the validity of a mortgage on such vessel that she should first be re-enregistered under the Imperial Merchants Shipping Act of 1854. *Ib.*

120. Nor need the form I given in the Merchant Shipping Act be strictly adhered to in the case of a vessel registered under C. S. C. cap. 41 *Ib.*

121. But the mortgagee of a vessel cannot prevent the seizure and sale thereof by a judgment creditor, as such sale will not purge his mortgage, and will only convey to the purchaser the rights of the judgment debtor in the vessel. *Ib.*

122. A vessel which has been mortgaged by the owner in the form prescribed by the Merchant Shipping Act, 1854, and the mortgage of which has been registered, cannot be seized and sold without the consent of such mortgagee by any subsequent creditor, whether registered or not, unless an order to sell be obtained from a superior court. *Kemp* v. *Smith & Cantin*, 2 L. N. 190, & 23 L. C. J. 289, S. C. 1879.

123. And that though the vessel at the time of seizure be in the actual possession of the mortgagor, and the term for the repayment of

the mortgage debt have not yet elapsed. *Ross & Smith* v *Cantin*, 2 L. N. 362, & 23 L. C. J. 309, S. C. 1879; & 3 L. N. 76, & 10 R. L. 201, S. C. R. 1880.

124. Under the Merchant Shipping Act a mortgage executed before one witness is valid. *Ross* v. *Smith & Cantin*, 2 L. N. 362, & 23 L. C. J. 309.

II. Jurisdiction under Act.

125. The High Court of Admiralty has the same powers over a British ship as are conferred upon the High Court of Chancery by secs. 62 to 65 of the Merchant Shipping Act of 1854, but this jurisdiction has not been extended to Courts of Vice Admiralty, and belongs in Canada exclusively to the highest court of original jurisdiction. *Dinning in re & Wurtele*, 4 Q. L. R. 38, S. C. 1877.

III. Law of.

126. Articles 2356 to 2382 of the Civil Code having been repealed by the Stat. C. 36 Vic. cap. 128, the law applicable to the mortgage and hypothecation of vessels in the Province of Quebec is now the Imperial Merchant Shipping Act, 1854, as modified by said statute. *Ross* v. *Smith & Cantin*, 2 L. N. 362, & 23 L. C. J. 309, S. C. 1879.

IV. Liability.

127. *For Repairs of Vessel.*—Action for $5,265.89, work and labor done by the firm now represented by plaintiff to a barge called the "Frontenac," of which the *auteur* of the defendants was the registered owner and proprietor. The declaration alleged that when the barge was received for repairs she was rotten and worthless, and by the work done she was rendered seaworthy. By the evidence it appeared that the repairs were ordered by and the work was done on the responsibility of the owner in actual possession, without the knowledge of the registered owner, who was such merely for the purpose of securing a debt due to him by the real owner.—*Held*, that the registered owner was not liable. *Tate* v. *Torrance*, 3 L. N. 356, S. C. 1880.

128. *For supplies.*—The action was brought to recover the price of a quantity of coal from the defendant. The proof established that at the time of the sale of the coal, of which plaintiffs claimed the price by this action, the towboat "Champion," the captain of which had ordered and received the coal, was hired and navigated by the Ottawa and Rideau Fowarding Company, and the captain was the employee of the company and not of the defendant, although the latter was the proprietor of the "Champion." The sale of the coal held not to have been made to the defendant but to the company, which was then navigating the boat. The defendant could not be held responsible, and action dismissed. *Murphy & Molleur*, S. C. 1879.

V. Lien for Materials Furnished to Vessel in Course of Construction.

129. Question as to the right of a merchant, under Art. 2383 of the Civil Code,* to seize a ship in the hands of a third party, being a purchaser in good faith in actual possession, with the rights of a registered owner, for materials furnished for the ship while in course of construction. In the month of April, 1877, the defendant, by a written contract, undertook to build the vessel in question for the intervening parties, under the superintendence of their agent, for the price of £7. 17.6 per ton; payable £1000, when in frame, £1000 when planked, and the balance when ready for sea. The ship was built according to the contract, and in the month of June, 1877, the defendant, being in want of advances, and in order to secure the payment of the same, gave the intervening parties a mortgage on the vessel for £3000, in the form B, of the third schedule of the Act of Canada 36 Vic. Cap. 128,† The mortgage so granted was duly recorded with the registrar of shipping at the port of Quebec, whilst the vessel was being built, and after the recording of the mortgage so granted the plaintiffs furnished to the defendant materials for the building and completing of the ship to the amount of $1,116.13, for which the action in question was brought and the seizure of the vessel made. According to the contract the vessel ought to have been launched on the first of September, 1877. The launch, however, did not take place until the 24th of that month, but from the day last mentioned until the day of the seizure, the 17th of Oct., 1877, the intervening parties were in possession of the ship. On the 1st October the defendant granted, in pursuance of the Merchant Shipping Act of 1854, the usual builder's certificate, declaring that the ship had been built for the intervening parties, and on the same day addressed to the Registrar of shipping a letter, accompanied by the necessary papers, requesting a governor's pass for the ship. On the 8th of October, 1877, the mortgage referred to was discharged, and on the following day a governor's pass for the vessel was granted to the intervening parties as owners, the pass having the same effect under the statute as a "Certificate of Registry." The intervening parties then caused the ship to be loaded, and by the evening of the

* There is a privilege upon vessels for the payment of the following debts:

1. The costs of seizure and sale according to Art. 1995.
2. Pilotage, wharfage and harbor dues and penalties for the infraction of lawful harbor regulations.
3. The expense of keeping the vessel and rigging and of repairing latter since the last voyage.
5. The sums due for repairing and furnishing the ship on her last voyage, and for merchandise sold by the captain for the same purpose.
6. Hypothecations upon the ship according to the rules declared in the third chap of this title and in the title of Bottomry and Respondentia.
7. Premiums of insurance upon the ship for the last voyage.
8. Damages due to freighters for not delivering the goods shipped by them, and in reimbursement for injury caused to such goods by the fault of the master or crew. If the ship sold have not yet made a voyage the seller, the workmen employed in building and completing her, and the persons by whom the materials have been furnished are paid by preference to all creditors, except those for debts enumerated in paragraphs 1 & 2, 2383 C. C.

† See Sec 3.

16th of October the whole of the cargo was on board, but between the hours of six and seven of that evening the plaintiffs caused the ship to be seized as belonging to the defendant and as being in his hands.—*Held*, that the plaintiffs, as creditors of the defendant, whatever may have been their right or privilege on the ship while in the possession of their debtor had no right to seize it as against the intervening parties, purchasers in good faith, in full possession and with the rights of registered owners*. *Colebrook Rolling Mills* v. *Oliver & Graham*, 5 Q. L. R. 72, S. C. 1879.

VI. Lien for Necessaries.

130. Where an agent for a foreign vessel has made advances and disbursements for her use in account with her owner, and after sailing on her voyage is brought back a wreck to the port from which she sailed, the agent cannot treat his claim as one for necessaries under the Vice Admiralty Courts Act, 1863. *City of Manitowoc*, 5 Q. L. R. 108, V. A. C. 1879.

VII. Lien for Salvage cannot be Transferred.

131. Where an assignment was made by salvors of a sum due to them for salvage—*Held*, that their lien on the ship was personal and inalienable, and that it did not vest in their assignees so as to enable them to proceed against the ship. *City of Manitowoc*, 5 Q. L. R. 108, V. A. C. 1879.

VIII. Privilege of Master and Crew.

132. The privilege accorded by Art. 2383 of the Civil Code,† for the wages of the master and crew of a ship for the last voyage does not apply to a balance of wages for a season's continuous navigation on the St. Lawrence and lakes, though the master and crew signed articles for the season, and were paid by the month and not by the trip. *D'Aoust* v. *McDonald & Norris*, 1 L. N. 218, & 22 L. C. J. 79, S. C. R. 1878.

IX. Remedies under Act.

133. On a petition for an injunction to prevent a mortgagee from disposing of a vessel belonging to an insolvent estate—*Held*, that under sec. 36 of the Canadian Merchant Shipping Act,‡ the remedies provided by sec. 65 of the Imperial Act are extended to vessels building in Canada while in course of construction. *Dinning in re & Wartele*, 4 Q. L. R. 37, S. C. 1877.

X. Sale of Vessel.

134. The judicial sale of a vessel, unregistered in accordance with the provisions of the Imperial Merchant Shipping Act of 1854, confers on the *adjudicataire* a valid title which cannot be called in question by a third party who does not possess a registered title to the same vessel, and the *adjudicataire* may validly oppose a seizure of the vessel made at the instance of a creditor of the person defendant in the judicial sale, although such person may still appear by the register to be the registered proprietor. *Bourbeau* v. *Cartier & Beaupré*, 6 Q. L. R. 129, S. C. R. 1880.

135. And the *adjudicataire*, even after a second seizure of the vessel in the hands of the same person, may complete his title by obtaining the signature of the judicial officer who conducted the sale to the deed of sale in the manner required to obtain registration. *Ib.*

136. And an acquisition of the vessel made without fraud by a person interposed at the judicial sale, and a donation made by the actual purchaser by means of such intermediary. *Ib.*

MEUBLE CORPOREL—*See* PROPERTY, Description of.

MILITIA.

I. Liability for Services of.

137. The active militia having been called out on requisition of six magistrates in anticipation of a riot in the City of Montreal, but in opposition to the opinion and advice of the mayor of that city, who did not consider their services necessary to the city, afterwards refusing to pay—*Held*, that whether their services were necessary or not, the magistrates having acted within the powers given them by statute,*

---

* *Vide* Germain & Gingras in *Vo. Privilege*, p. 1016 Dig., Vol. I.

† *Vide supra.* Note.

‡ A ship about to be built or being built may be recorded under a temporary name by the Registrar of shipping at or nearest to the port at which she is about to be built or is being built, and any builder desirous of raising money by a mortgage on any ship about to be built or being built shall furnish to the Registrar of shipping at the port at or nearest to which she is about to be built or is being built a full description of ship and a statement of the port at which she is intended to be registered according to the form A, in the third schedule to this Act, and shall indicate the ship to be built or being built by painting on a board near the place of such building in his ship yard on a dark ground in white or yellow figures and letters, of a length not less than four inches, the number given him by the proper Registrar of shipping for that purpose, the temporary name of the ship and the name of the port at which she is intended to be registered.

* By an amendment (40 V. c. 40) to the Militia Act (31 Vic. cap. 40) "It is provided that the active militia or any corps thereof may be called out for active service in aid of the civil power, in any case in which a riot, disturbance of the peace or other emergency requiring such service, and beyond the power of the civil authorities to deal with, occurs or is anticipated, and that officers and men so called out shall receive from the municipality in which their services are required pay and allowances;

2. And whereas it is necessary to provide for the payment of the costs of transport of officers and men so called out and not residing within the municipality in which their services are required:

3. And whereas in the case of a municipality within which passes a railway whereon Her Majesty's mails are conveyed, the conveyance of such mails may be obstructed by a riot or disturbance of the peace beyond the power of the civil authorities to deal with, and not local or provincial in its origin:

And whereas it may be unjust that the municipality should bear the whole expense of preventing or repressing such a riot or disturbance of the peace:

And whereas the circumstance that the whole of such expense must be borne by the municipality is calculated

the city was liable. *Fraser & McEachern* v. *City of Montreal*, 2 L. N. 49, S. C. 1879.

MILITIA LAW.

I. Courts Martial.

138. On a *certiorari* by which the record and proceedings of a regimental court martial of "B Battery" Canadian Artillery are brought up by *certiorari*, and the petitioner asked that the judgment of the said court by which he was condemned to forty-two days imprisonment be quashed—*Held*, that militia officers attached to B Battery, though holding commissions in no regular or active militia corps, are competent to sit on courts martial of the said Battery. *Thompson exp.*, 5 Q. L. R. 200, S. C. 1876.

139. But members of the volunteer militia are *ipso facto* discharged by the expiration of the term of their engagement, and a court martial is without jurisdiction to try a man for acts done subsequently to such expiration, and a conviction under such circumstances will be quashed on *certiorari*. *Ib.*

140. And in an action of damages arising out of the same case—*Held*, that the expiration of the term of engagement of a volunteer under the Militia Act puts an end to his obligations as a soldier, and the fact that he has continued to receive pay after the expiration of his engagement, though it prevents him complaining of his detention in the corps, does not take away his right to claim damages for violence and ill-treatment. *Thompson & Strange*, 5 Q. L. R. 205, S. C. 1879.

---

to hinder the local civil authorities from taking the proper action;

And whereas it may be just and expedient that some part of such expense should be borne by Canada:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. In any such case as is referred to in the second clause of the preamble the officers and men called out shall receive from the municipality the reasonable cost of transport in going and returning from and to the place where they reside to and from the place where their services are required, and such cost may be recovered in like manner as the sums payable by the municipality under the first recited Act.

2. In any such case as is referred to in the third clause of the preamble it shall be lawful for the Governor in Council to pay or reimburse out of any moneys which may be provided by Parliament for the purpose such part as may seem just of the proper expenses incurred by any municipality by reason of any part of the active militia being called out in aid of the civil power under provision of the Acts hereinbefore recited.

(2) An account of any expenditure made under this section shall be laid before Parliament as soon as may be thereafter."

And by a subsequent amendment it is "provided that the said pay and allowances of the force called out, together with the reasonable cost of transport mentioned in section 1 of the Act passed in the fortieth year of Her Majesty's reign, and intituled, *An Act to make provision for the payment of the Active militia when called out in certain cases in aid of the civil power*, pending payment by the municipality, be advanced in the first instance by order of the Governor in Council out of the Consolidated Revenue Fund of Canada; but such advance shall no interfere with the liability of the municipality, and the commanding officer shall at once, in his own name, proceed against the municipality for the recovery of such pay, allowances and cost of transport, and shall on receipt thereof pay over the amount to Her Majesty." 42 Vic. cap. 35, sec. 2.

141. And *held*, also, that the Imperial Statute "The Army Enlistment Act, 1867," which makes the responsibility of a soldier to last until a regular and formal discharge has been granted them, has no application to the Canadian Militia, and affects only the regular army. *Ib.*

142. And though the right to an action of damages in such case is purely personal, and belongs only to the person who has suffered, it is otherwise if the action has been instituted by him before his death, as his heirs in such case have the right to continue it and succeed to the claim. *Ib.*

MINISTER OF EDUCATION—*See* COMMON SCHOOLS.

MINISTERS OF RELIGION—*See* CLERGY.

MINORS.

I. May be Voluntary Guardian of Property Seized, *see* GUARDIAN.

MINORITY.

I. Action against Minor.
II. Action by Father for Wages Due to Minor, *see* ACTION.
III. Liability of Minor.
IV. Loans to Minors.
V. Minor cannot Demand Second Account from Tutor while the First Remains, *see* TUTORSHIP.
VI. Minor cannot Transfer Immoveable without Authorization.
VII. Obligations by Minors.
VIII. Plea of Minority.
IX. Powers of Minor.
X. Prescription against Minors.
XI. Proof of Minority.

I. Action against Minors.

143. The defendant, a music teacher, being arrested by capias for a debt due for clothes, pleaded by exception to the form that he was a minor, and on the same ground presented a petition under Art. 819 of the Code of Procedure for his discharge. The plaintiff answered that although he was a minor he was still subject to capias, inasmuch as he was a trader, and the things for which he was indebted were necessaries—*Held*, that the petition under Art. 819 of the Code of Procedure was independent of all other proceedings, even though based on the same grounds. *Morgan* v. *Lebouthillier*, 5 Q. L. R. 212, S. C. 1879.

144. And *held*, also, that the purchase and resale by him to his pupils of pieces of music

did not make him a trader, and that he was entitled to demand his liberty, even though the goods for which he was indebted were necessaries. *Ib.*

145. Defendant was sued for the price of a lot of land. He pleaded that he was a minor and had no right to buy land—*Held*, that even if he had not pleaded his minority he had a right to suggest the fact to the court at any stage of the case and obtain relief. *Bousquet* v. *Rousseau*, 2 L. N. 59, S. C. R. 1879.

146. A minor emancipated by marriage does not require the assistance of a curator to defend a personal action. *Gagnon* v. *Sylva*, 3 L. N. 332, S. C. R. 1880.

III. Liability of Minor.

147. A capias issued against the defendant, a minor, for the price of a horse sold to him by the plaintiff, and which he was charged with secreting. He petitioned to quash on the ground that he was a minor—*Held*, that in order to be relieved from liability on his contract he must allege and prove that he has been injured thereby. *Gagnon* v. *Sylva*, 3 L. N. 332, S. C. R. 1880.

IV. Loans to Minors.

148. Respondent sued appellant for $1172. The action was based on a notarial obligation given for a loan of money which was to be all repaid, according to the terms of the loan, in 18 months. Interest on the loan at the rate of ten per cent., was payable semi-annually. The first payment, it was understood, was to be made in the month of November following the execution of the obligation. It was also expressly stipulated that in case the interest was not paid as it became due that the entire debt should become exigible. It appeared in the case that the defendants who borrowed the money were minors at the time, and the money was borrowed by the advice of a family council assisted by their tutor, in order to pay off certain debts due by the estate and succession of their mother which they had accepted. To secure the repayment of the money borrowed they mortaged a property belonging to the succession. The authorization obtained from the court in the advice of a family council permitted them to make a loan for the purpose in question, to be repaid in 18 months, and at as good a rate as possible. The plea to the action was that the loan should have been made at a less rate than ten per cent., and that the stipulation that all the debt should be due in case the interest was not paid according to terms was null. After action had been before the court two years, the 18 months had long before expired, the appellant obtained permission to amend her plea by adding a supplementary plea, in which she alleged that having arrived at the years of majority since the institution of the action she had renounced the succession of her mother, and as the loan was to pay the debts of the succession that she was not liable—*Held*, notwithstanding these allegations, that considering that it was over six years since the date of the obligation, and the 18 months had long since passed at the date of the supplementary plea, that the action must be maintained. *Watts & Paquette*, 9 R. L. 252, Q. B. 1876.

VI. Minor Cannot Transfer Immoveables without Authorization.

149. Every transfer of immoveables made by a minor without judicial authorization obtained, according to the usual formalities, is radically null, and may be set aside on the demand of any third party interested. *Beliveau & Barthe & Plante*, 7 R. L. 453, S. C. 1876.

VII. Obligations by Minors.

150. A mortgage given by a minor is not radically null, but is merely subject to be annulled in case of lesion. *Beliveau & Duchesneau*, 22 L. C. J. 37, S. C. R. 1877.

VIII. Plea of Minority.

151. Defendant was sued for the price of a lot of land. He said he was a minor, and had no right to buy land—*Held*, that a minor, even if he had not pleaded his minority, had a right to suggest the fact to the court at any stage of the case and get relief, as he was incapable of defending himself in a Court of Justice. He had no right to buy land even for the purpose of his business. The authorities from Merlin were conclusive. Judgment reversed, with costs against plaintiff. *Bousquet & Brown*, S. C. R. 1879.

IX. Powers of Minor.

152. Before the Code a minor, even when emancipated by marriage, could not institute an immoveable action without the assistance of a curator. *Hébert & Ménard*, 10 R. L. 6, S. C. 1876.

153. Obligations by a minor are not radically null, but only liable to be annulled in cases of lesion. *Beliveau & Duchesneau*, 22 L. C. J. 168, S. C. R. 1877.

154. In an action for the price of a lot of land defendant pleaded minority—*Held*, that a minor had no right to buy land even for the purpose of his business. *Bousquet* v. *Rousseau*, 2 L. N. 59, S. C. R. 1879.

X. Prescription against Minors.

155. In matters affecting immoveables prescription did not run against minors even previous to the Code, or whether married or not. *Hébert* v. *Ménard*, 23 L. C. J. 331, & 10 R. L. 6, S. C. 1876.

XI. Proof of.

156. Defendant pleaded to an action on a promissory note for $100: that at the time he signed it he was a minor, and incapable of contracting. There was a special answer that the note was really made in February, 1876, although it bears date in February, 1875. There was no proof of this, and the only attempt to

prove the minority was the production of an extract from a baptismal register of the baptism on the 11th July, 1856, of a child said to have been born on the 23rd April, 1854, and named Gasper George Nagy, whereas the defendant pleaded to the name of George G. Nagy, and adduces no evidence whatever of identity. Judgment confirmed. *Courville & Nagy*, S. C. R. 1877.

MISAPPROPRIATION.

I. Indictment for, *see* CRIMINAL LAW.

MISDEMEANOR.

I. New Trial in Cases of, *see* CRIMINAL LAW, New Trial.

MISDESCRIPTION—*See* PROCEDURE, Description of Parties.

I. Of Property, Ground for Vacating Sheriff's Sales, *see* SALE, Judicial.

MISNOMER—*See* PROCEDURE, Description of Parties.

I. When Ground of Exception to the Form, *see* PROCEDURE, Exceptions.

MISREPRESENTATION.

I. In Reports and Accounts of Corporations, *see* CORPORATIONS.

II. What is, *see* INSURANCE.

MIS-TRIAL—*See* CRIMINAL LAW.

MITOYEN WALL—*See* SERVITUDES.

MOBILIZATION.

I. Effect of Clause of in Marriage Contract, *see* MARRIAGE CONTRACTS, Renunciation.

MONEY—*See* CURRENCY.

MONTREAL.

I. Amendments to Charter of.
II. Corporation of Entitled to Demand a Reference to Commissioners in Cases for Damage to Private Property.
III. Borrowing Powers of Corporation of.
IV. Bye-Laws of.

I. Amendments to Charter of.

The recent amendments to the charter of the City of Montreal are contained in the Acts of this Province, 41 Vic. cap. 27; 42-43 Vic. caps. 53 and 54, and 43-44 Vic. cap. 61.

II. Corporation of Entitled to Demand a Reference to Commissioners, etc.

157. The Statute 27 & 28 Vic. cap. 60, sec. 18, which provides the procedure to be followed in certain actions against the Corporation of Montreal for damage to private property, does not exclude the right to proceed by ordinary action, and if the Corporation wishes to establish the amount of the damage by means of commissioners, it is for them to demand the appointment of such commissioners. *Morrison & Mayor, &c., of Montreal*, 4 L. N. 25, & 1 Q. B. R. 107, Q. B. 1880.

III. Borrowing Powers of Corporation of.

158. On a demurrer to an injunction to restrain the City of Montreal from proceeding with what was known as the million dollar bye-law—*Held*, that section 54 of 14 & 15 Vic. cap. 128, restricting the borrowing powers of the Corporation of Montreal to £150,000, does not apply to subscriptions for railway purposes. *Molson & The Mayor, &c., of Montreal*, 23 L. C. J. 169, Q. B. 1876.

IV. Bye-Laws of.

159. And in the same case—*Held*, that a bye-law of the Corporation of Montreal for taking stock in a railway was properly submitted to the qualified electors generally, under 35 Vic. cap. 32, sec. 2, as the provisions of the Municipal Code, Art. 497,* do not apply to cities and towns incorporated by special Act. *Ib.*

MORTGAGE—*See* HYPOTHEC.

I. Of Merchant Vessel, *see* MERCHANT SHIPPING.

MOTION—*See* PROCEDURE.

I. Conge Defaut on, *see* PROCEDURE.
II. For Folle Enchere, *see* SALE, Judicial.
III. Service of, *see* PROCEDURE.

*Si le paiement de l'emprunt ou des bons n'affecte que les biens-fonds imposables de la municipalité les electeurs municipaux proprietaires de ces biens-fonds ont seul le droite de voter l'approbation ou la désapprobation du réglement. 497 M. C.

MOVEABLES.

I. Lien on.
II. Resiliation of Sale of, *see* SALE.
III. Title to cannot be Questioned by Bailee, *see* PLEADING.
IV. What are.

I. Lien on.

160. Moveables when purchased and taken possession of in good faith are free from the debts, whether privileged or unprivileged, of the vendor. *Colebrook Rolling Mills* v. *Oliver & Graham*, 5 Q. L. R. 72, S. C. 1879.

IV. What are.

161. A life insurance policy is a moveable. *Archambault* v. *Citizens Insurance Co.*, 3 L. N. 416, & 24 L. C. J. 293, S. C. 1880.

MUNICIPAL CORPORATIONS.

I. Action to Annul Bye-Laws of.
II. Appeal from Judgments Concerning.
III. Assessments.
IV. Assessment Roll.
V. Bonds and Debentures of.
VI. Borrowing Powers of, *see* MONTREAL.
VII. Bye-Laws.
VIII. Change of Level of Streets, *see* STREETS.
IX. Change of Limits of, *see* COMMON SCHOOLS.
X. Confirmation of Plan of.
XI. Contestation of Elections.
XII. Dismissal of Servants of.
XIII. Election of Councillors.
XIV. Electoral List of, *see* ELECTION LAW.
XV. Expropriation of Land by.
Appointment of Commissioners.
XVI. Injunction Against, *see* INJUNCTION.
XVII. Liability of.
For Accidents.
For Acts of Officers.
For Fences.
For Footpaths.
For Services of Militia, see MILITIA.
For Trespass.
To Indictment.
XVIII. Lien of for Taxes.
XIX. Local Corporations may be Sued by County Corporations.
XX. Mayor.
XXI. Meaning of Term.
XXII. Notices of Meetings.
XXIII. Pleading by.
XXIV. Powers of.
To Change Street Levels.
To Impose Taxes.
To Issue Promissory Notes.
XXV. Powers of Officers.
To Sign Notes.
XXVI. Proces-Verbaux.
XXVII. Qualification of Aldermen.
XXVIII. Remuneration of City Attorney

XXIX. Resolutions of.
XXX. Right of County Council to Proceed for Taxes.
XXXI. Right of to Charge Interest, *see* INTEREST.
XXXII. Right of to Pass Bye-Laws Prohibiting the Sale of Liquor, *see* TEMPERANCE ACT.
XXXIII. Rights of over Streets.
XXXIV. Right of to Authorize Street Railways to Raise Street Level, *see* QUEBEC STREET RAILWAY.
XXXV. Roads.
XXXVI. Streets.

I. Action to Annul Bye-Laws of.

162. Action to annul as illegal a bye-law imposing a special tax. Plea to the form that plaintiffs should have proceeded under Art. 997 of the Code of Procedure,* inasmuch as they charged in effect that the Corporation, defendant, had exercised powers not conferred upon it by law—*Held*, that the remedy by the article referred to did not deprive the plaintiffs of their right at common law to bring the present action in their own name; and that any person might seek redress before the tribunals of the country against Corporations by whose acts his rights or property may be injuriously affected, or by whom he may be in any way aggrieved in the same, and to the same extent as he could do against individuals under similar circumstances. *Hunt* v. *Corporation of Quebec*, 1 Q. L. R. 275, S. C. 1878.

II. Appeal from Judgments Concerning

163. There is no right of appeal from a judgment rendered by the Superior Court on proceedings concerning municipal affairs, and falling under the provisions of chapter 10 of the Code of Procedure.† *Dutajon & Marquis*, 3 Q. L. R. 335, Q. B. 1877.

164. Nor of review. *Fiset & Fournier*, 3 Q. L. R. 334, S. C. R. 1877.

165. Appeal by plaintiff and about one hundred others from a decision of a board of delegates of the counties of Chateauguay and Huntingdon *held*, 21st May, 1877, homologating a *procès-verbal* prepared by B. V., special superintendent appointed by the County Council of Chateauguay, and ordering certain works on the south branch of the River Outarde, including a cutting of the rock in the bed of

---

* In the following cases:
1. Whenever any association or number of persons acts as a Corporation without being legally incorporated or recognized.
2. Whenever any Corporation, public body or board violates any of the provisions of the Acts by which it is governed, or becomes liable to a forfeiture of its rights or does, or omits to do, acts, the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law: It is the duty of Her Majesty's Attorney General for Lower Canada to prosecute in Her Majesty's name such violations of the law when ever he has good reason to believe that such facts can be established by proof in every case of public general interest. 997 C. C. P.

†Concerning *quo warranto* as in the preceding note. —ED.

the stream. By the *procès-verbal* all the lands in Ormstown, in the County of Chateauguay, and in Hinchinbrooke and Franklin, in the County of Huntingdon, up to the Province line and whose water passed the rock in question, were assessed for the improvements. The writ of appeal issued on the 19th June, 1877, and was made returnable on the 17th September following—*Held*, on objections in the nature of exceptions to the form by the Corporation of the County of Chateauguay, that the writ of appeal in such case need not be served on the parties who petitioned for the work ordered; but that under Art. 1070 of the Municipal Code as amended by 39 Vic. cap. 29, sec. 2, the writ should be returned into the Circuit Court on the first day of the term following the expiration of 40 days after the decision. *Cantwell* v. *The Corporation of the County of Chateauguay*, 23 L. C. J. 263, C. C. 1878.

164. And *held*, also, that the publication of the notices of the meetings by the special superintendent under Art. 794* should be attested by a certificate under oath either written on the original notice or annexed, and parol proof of the service is not sufficient. *Ib.*

165. Neither is a certificate of publication of notices by a secretary-treasurer or a bailiff under their oaths of office sufficient, and a *procès-verbal* of which the notices are thus attested by these officers will be set aside, even although it be proved at the trial that the publications were duly made. *Ib.*

166. An appellant under Art. 1061 of the Municipal Code,† as amended by 39 Vic. cap. 29, sec. 23, cannot examine fresh witnesses in support of the appeal. *Giroux & Corporation of St. Jean Chrysostome*, 5 Q. L. R. 97, C. C. 1879.

(*Tel qu'amendé par Q. 36 Vic. cap. 21, sec. 24.*)

Tout conseil local après la passation d'un reglement ou d'une résolution en vertu des articles 524 ou 527, ou tout conseil municipal après la réception d'une requête de la part d'une ou de plusieurs personnes interessées à l'ouverture, la construction, l'elargissement, le changement, le détournement ou l'entretien d'un chemin qui est ou doit être sous sa direction, demandant à faire régler et déterminer les travaux à faire sur ce chemin doit, sans delai : 1. Convoquer, à une de ses séances par avis public, les contribuables intéressés dans l'ouvrage projeté, et après les avoir entendus, s'il est d'opinion que cet ouvrage doit être fait, faire un règlement pour régler, déterminer et repartir les travaux du chemin ou, 2. Nommer un surintendant special chargé de visiter les lieux mentionnés dans le règlement, la résolution ou la requête, de lui faire rapport et de dresser un procès-verbal s'il y a lieu dans le delai qui lui est fixé.

795. Tout contribuable peut être assujetti aux travaux d'un chemin de front ou d'une route en vertu d'un procès-verbal ou d'un règlement fait sous l'autorité de l'article 794 à raison des biens imposables qu'il possède ou occupe, sujet à l'application de l'article 782.

† (*Tel qu'amendé par 39 Vic. cap. 29, sec. 23, et par 41 Vic. cap. 10, sec. 36.*)

Il y a droit d'appel à la cour de Circuit du comté ou du district :

1. De tout jugement rendu par des Juges de paix sur des poursuites intentees en vertu des dispositions de ce code ou des réglements municipaux.

2. De toute cecl-i-ci donnée par un conseil de comté relativement à un procès-verbal, fait et homologué ou à un acte de repartition amende sous l'autorité de ce conseil siégant autrement qu'en appel.

3. De toute decision donnée par un conseil municipal en vertu des articles 734, 738, 7466, relativement à une role d'evaluation.

Ce droit d'appel existe aussi au cas ou le conseil d'une municipalité locale a négligé ou refuse de prendre en considerati n une plainte ecrit produite en vertu de l'article 735, dans les trente jours après l' piration du délai pendant lequel il pouvait en prendre connaissance. 1061 M. ...

167. The appellants brought action under Art. 1060 of the Municipal Code, which authorizes the Circuit Court to set aside an assessment roll on account of illegality.—*Held*, that there was an appeal to the Queen's Bench from a judgment of the Circuit Court in such case. *Rolfe & Corporation of Township of Stoke*, 3 L. N. 69, & 24 L. C. J. 213, Q. B. 1880.

III. Assessments.

168. On a petition for the reduction of assessments—*Held*, that the assessors of Montreal may in their discretion hear complaints made by the agents of the proprietors interested. *Beaudry* v. *The City of Montreal*, 1 L. N. 484, S. C. 1878.

169. And *held*, also, that on an appeal from a judgment of the Recorder in an assessment case the court cannot hear evidence and give a final judgment on the merits. *Ib.*

IV. Assessment Roll.

170. In an action for school taxes—*Held*, that the nullity of a municipal assessment roll does not involve the nullity of the list of school assessments, and though the municipalities are obliged to make a new assessment roll every three years that does not prevent them from making a new assessment roll every year if they deem advisable. *School Commissioners for the Village of Hochelaga & Hudon*, 9 R. L. 16, & 10 R. L. 113, C. C. 1877.

171. Section 66 of the Act of Incorporation of the Town of Levis (36 Vic. cap. 60) provides that in the course of the month of June in each year the assessors shall deliver the assessment rolls to the secretary-treasurer, that notice of such deposit shall be given, and that during one month thereafter it shall be open to the inspection of any interested party, and during that time persons deeming themselves aggrieved by any error or omission in the rolls shall give notice of their complaints. The roll was not deposited in the said month of June, but in August and September—*Held* that the only effect of the failure to deposit the same within the time specified would be to prevent the roll from being conclusive against persons deeming themselves injured by it, and they would have the right to set up against the claim for their proportion of the assessment the grounds they might have urged upon the hearing of a complaint under said sec. 66; the said section being merely directory, the failure to deposit thereunder could not operate to prevent the roll from coming into force as a whole, or to render it an absolute nullity. *Corporation of Levis* v. G. T. R. Co., 4 Q. L. R. 108, S. C. 1878.

172. Action was brought by appellant to recover from the city of Montreal an amount alleged to have been collected from him for assessments not legally due, the assessment roll under which the payment was exacted being alleged to be a nullity. It appeared that commissioners had been appointed for the widening of certain streets, and they had made an assessment roll fixing the amounts to be levied on the proprietors benefited. Their report, however, was not made within the delay fixed by the court—*Held*, reversing the judgment of the

court below,* that a roll produced by the commissioners after the delay fixed by the court was an absolute nullity, and the plaintiff was entitled to recover. *Baylis* v. *City of Montreal*, 2 L. N. 340, & 23 L. C. J. 301, & 10 R. L. 106, Q. B. 1879; & *Wilson* v. *City of Montreal*, 3 L. N. 282, & 24 L. C. J. 222, Q. B. 1880.

173. And in his action to recover, if the assessment roll be admitted by the plea, it is not necessary for the plaintiff to produce it. *Ib.*

174. But *held*, also, that he is only entitled to interest from the date of the institution of the action, and not from the date of the payment of the money if the defendants were in good faith. *Ib.*

175. And in another case in which the plaintiff paid the amount claimed after the institution of the action in order to avoid an execution—*Held*, that this was not a waiver of his right. *Bisson* v. *City of Montreal*, 2 L. N. 341, & 23 L. C. J. 306, Q. B. 1879.

176. On appeal to the Queen's Bench—*Held*, that an assessment roll made by three valuators, of whom only two were legally appointed, is null and void. *Rolfe & Corporation of Township of Stoke*, 3 L. N. 69, & 24 L. C. J. 213, Q. B. 1880.

177. Where a municipality made an assessment roll in 1872, another in 1875, and again another in 1876, by which the estimated value of property was very largely increased—*Held*, that as the law provided only for triennial assessment rolls, that the one made in 1876 must be considered illegal, and a sale of lands for school taxes imposed in pursuance of it was prohibited.† *Morgan & Coté*, 3 L. N. 274, Q. B. 1880.

V. Bonds and Debentures of.

178. Action against the county of Compton, the town of Sherbrooke and the townships of Ascot, Orford and Compton for $39,900, interest on 190 debentures of $1,000 each, being seven semi-annual payments. Plaintiffs declared primarily on the debentures, and then stated that a bye-law No. 37 was passed (provisionally) by the County Council on the 14th September, 1870, to authorize the county to take stock in the St. Francis and Megantic Railway Company. The by-law was approved by vote of the local or township municipalities in the county on the 18th and 19th of October following, and was finally passed by the County Council on the 28th, and approved by the Lieut.-Governor in Council on the 26th December, in said year. They further alleged that the bye-law was pronounced valid by a judgment of the Superior Court on the 10th of said December, upon proceedings taken by the Attorney General *pro regina* against the county to have it declared null and void. By an Act, 34 Vic. cap. 30, the town of Sherbrooke and the townships of Ascot, Orford and Compton were detached from the county of Compton after the passing of the bye-law, and they were consequently made defendants in the cause with the county as being liable for their proportion of the amount claimed. The five defendants appeared and the county confessed judgment, the town of Sherbrooke allowed the case to proceed *exparte*, and the other three defendants contested and filed pleas of peremptory exception in law. The form of the debentures was that the municipality had received so much money "as a loan," and the defendants contesting denied this, and declared they were ignorant as to whether the county issued or authorized the issuing of the debentures, but contended that in any case the proceedings were *ultra vires*, and the debentures consequently null—*Held*, that the bye-law was legal and valid, and that debentures so issued under authority of cap. 25 of the Con. Stat. Low. Can. are negotiable securities, and pass from hand to hand by mere delivery, and the holder may declare upon them as promissory notes under the Municipal Code. *Eastern Townships Bank* v. *Municipality of Compton*, 7 R. L. 447, S. C. 1871.

VII. Bye-Laws.

179. The nullity of a municipal bye-law imposing a tax in aid of a railway, and which bye-law has on the face of it been regularly passed and approved by the Lieut.-Governor, cannot be set up in bar of an action for the recovery of an assessment made in virtue of the bye-law. *La Corporation of the Parish of St. Guillaume* v. *Corporation of the County of Drummond*, 7 R. L. 721, Q. B. 1876.

180. The provisions of the Municipal Code, Art. 497, do not apply to cities and towns incorporated by special Act.* *Molson & The City of Montreal*, 23 L. C. J. 169, Q. B. 1876.

181. The appellant and some other butchers of St. Jean Baptiste village had established public market places outside the public market of the village, contrary to a bye-law of the municipality of January, 1874. This bye-law prohibited the sale or exposure for sale of fresh meat except in the public market, subject to a penalty in case of violation of a fine not exceeding twenty dollars and imprisonment for a term not exceeding thirty days.—*Held*, that the Art. of the Code on which the bye-law was based being in part *ultra vires*, the bye-law could be amended so as to rest only on that part of the Art. of the Code which was constitutional. *Corbeille & Corporation of the Village of St. Jean Baptiste*, 7 R. L. 616, C. C. 1876.

182. *Action to Recover Money Paid under Illegal.*—Action was brought to recover money exacted under an illegal bye-law. The plea was that the bye-law should have been first set aside, and could not be attacked incidentally

---

* Vide 1 L. N., 62.

† (*Tel qu'amendé par* 36 *Vic. cap.* 21, *sec.* 19.)

Aux mois de Juin et de Juillet qui suivent la mise en force de ce code et dans la suite tous les trois ans aux mêmes mois les estimateurs de toute municipalité locale doivent dresser par eux mêmes ou par toute autre personne employées par eux une rôle d'évaluation dans lequel sont énoncée avec soin et exactitude toutes les particularités requises par les dispositions de ce titre. 716 M. C.

* If only the taxable real estate of the municipality is liable for the payment of such loan or debentures, the municipal electors who are the proprietors of such real estate are alone entitled to vote in approval or disapproval of such bye-law. Mun. Code, Art. 497.

under Art. 705* of the Municipal Code—*Held*, that even if this article applied to the municipality, appellant, it could not be interpreted to say that a bye-law in direct opposition to the law must be set aside within three months or thirty days as provided by the statute. *La Corporation de la Ville de St Germain de Rimouski & Riuguet*, 1 L. N. 115, Q. B. 1878.

183. The appellants took a butcher's stall in St. James market, in the City of Montreal, there being then in force a bye-law which prohibits the sale of meat outside of the market without a special license to this end, and that no such license will be granted to keep a stall within 300 yards of any market. One Corbeil paid $100 two years running for a license, and actually did open a stall within the limit of 300 yards. He never had a license, and the Corporation tendered back the $200– *Held*, that the appellants had no remedy in damages against the Corporation for a violation of the bye-law. *Richelieu & City of Montreal*, 2 L. N. 81, Q. B. 1879.

184. Where the Corporation of Montreal had authority to make bye-laws to prohibit the sale of meat outside the public markets, and also by another enactment to permit it—*Held*, that they had sufficient authority to appoint limits within which it should be sold. *Leresque & The City of Montreal*, 2 L. N. 306, & 23 L. C. J. 284, S. C. 1879.

185. And *held*, also, that the bye-laws of a city being presumably made in the interests of the public, the courts would not, without good cause, interpose to set them aside. *Ib.*

186. And where it was urged that the bye-law in question had been submitted to the Lieutenant-Governor, within the delay prescribed—*Held*, that the bye-law must be considered valid until disapproved of. *Ib.*

X. Confirmation of Plan.

187. A plan of a municipality may be confirmed notwithstanding the existence of disputed rights between it and the neighboring municipality. *Corporation of Village of Verdun & Corporation of Village of Cote St. Paul*, 2 L. N. 346, S. C. 1879.

XI. Contestation of Elections.

188. The right to a municipal office must be contested according to the provisions of, and in the manner prescribed by the Municipal Code, and not by *quo warranto*. *Fiset & Fournier*, 3 Q. L. R. 334, S. C. R. 1877.

XII. Dismissal of Servants of.

189. In an action for a balance of salary as health officer—*Held*, that the Statute 37 Vic. cap. 64, did not authorize the City of Montreal to dismiss its servants without notice.* *Dugdale & City of Montreal*, 3 L. N. 204, Q. B. 1880.

XIII. Election of Councillors.

190. On the contestation of a municipal election—*Held*, that the assistant secretary-treasurer has the same right to preside at the election meeting as the secretary himself. *Morrier* v. *Rasconi*, 7 R. L. 140, Mag. Ct. 18 .

191. And the fact that those who have nominated the candidates are not voters is not a cause of nullity in the election if no objection is made at the nomination or the opening of the poll, and if the voting has been regular. *Ib.*

192. And the omission of the *quality* of the electors in the poll book is not a cause of nullity in the election if no injustice results from it, as it does not materially effect the election. *Ib.*

193. The absence of the secretary-treasurer from the municipal bureau during the week preceding the election, and the impossibility on that account of the voters to pay their taxes and obtain the right of voting, is not a cause of nullity in the election, if the absence was unavoidable and without fraud, and where, in fact, one elector only presented himself to pay his taxes and was deprived of the right to vote in consequence. *Ib.*

194. Respondent was elected councillor at the municipal elections of the parish of Grondines by the casting vote of the president. Among those who voted were two who had been required to take the oath and who refused to take it, the president having accepted their votes notwithstanding their refusal. Petitioners urged that by Art 315 of the Municipal Code† the president was bound to refuse to accept the votes of those who had refused to take the oath after being required—*Held*, setting aside the election on this ground. *Dalbec* v. *Portelance*, 6 Q. L. R. 17, C. C. 1879.

195. An election of a municipal councillor had for the purpose of filling the place of a councillor who is absent is null if the seat has not been regularly declared vacant by the council before holding the election, as the council alone has the right of replacing the absent councillor. *Lizotte* v. *Lalancette*, 10 R. L. 480, C. C 1879.

196. And where the councillor thus elected admits that his election is null, but nevertheless proceeds with the contestation, denying the facts and does not tender the costs up to contestation, he will have to pay the costs of the entire contestation. *Ib.*

---

*Neanmoins toute taxe, contribution, pénalité, ou obligation imposée par un réglement sujet à être cassé et écrite avant la cassation du réglement est exigible nonobstant la cassation de tel réglement si la requête sur laquelle a été prononcée la cassation n'a pas été présentée à la cour dans les trois mois après l'entrée en vigueur du réglement.

Tout emprunt contracté et tout bon émis en vertu d'un réglement sujet à cassation sont également valables, et les taxes imposées pour payer cet emprunt ou ces bons sont dues et exigibles si la requête en cassat on a été présentée à la Cour après les trois mois qui suivent la mise en vigueur du réglement. 705 M. C.

* *Vide* MASTERS AND SERVANTS, DISMISSAL OF

† Quiconque se présente pour voter doit prêter le serment ou affirmation qui suit, s'il en est requis par ce dernier, par un électeur, par un candidat ou par le représentant d'un candidat.

Je jure (ou j'affirme) que j'ai droit à prendre part à cette assemblée, que je suis dûment habile à voter à cette élection, que je suis âgé d'au moins vingt-et-un ans, que j'ai payé toute taxe municipale et scolaire due par moi, et que je n'ai pas déjà voté à cette élection: ainsi que Dieu me soit en aide.

197. And the election of a municipal councillor is null if he is declared elected before the expiration of an hour from the opening of the election meeting; and if he is declared elected after the closing of the poll book, when the declaration should have been made immediately prior to the poll opened for the other candidates, that is to say at the expiration of the first hour from the commencement or opening of the meeting. *Ib.*

XV. Expropriation of Land by.

198. *Appointment of Commissioners.*—Six cases in which the city corporation applied to the court to name three commissioners for the purpose of the Provincial Act 42-43 Vic. c. 53, which provides for making a new assessment roll in certain cases. In two of the cases there was no objection made, nor any appearance by any one. The other four were contested. *By the Court:*—The words of the statute imposing this duty upon us are in the 1st sub-section of section four of the Act, and they say that the Corporation shall give notice in the manner there set forth, that it will, through its counsel, present, on a certain day and hour mentioned, to the Superior Court sitting in review in the District of Montreal, a petition calling on the said court to *choose and nominate* three competent and disinterested persons for the purpose of assessing the cost of the improvement, in whole, or in part, as the case may be, on the properties benefited: and the court shall appoint three commissioners, as aforesaid, and fix the day on which they shall commence their operations. There would seem to be no discretion vested in us by these words; the court is told to choose and nominate three commissioners, and further it is told that it must appoint three commissioners as aforesaid. It is not a case pending in this court at all, nor in which the experts or commissioners are required to make any report to us. It is a matter regulated by the Legislature, and in which the duties of selection and appointment alone are cast upon us. When, therefore, objections are made to our exercising this power so plainly imposed, those objections ought, of course, to address themselves, not, as they for the most part would seem to do here, to the danger of the misuse of their power by the commissioners after they shall have been appointed, but to our power of appointing at all. The controlling power which this court possesses over Corporations, and which was ably and justly insisted upon by the learned counsel, does not extend to enable us to defeat a positive enactment of the Legislature, however difficult or unreasonable its requirements. Under the law this court has not now to consider what will be the duties of the commissioners, nor how they may discharge them; but only to appoint commissioners who will be amenable to the law for the due performance of their duties. As to the point of interest, it certainly appeared to me at first to be a difficulty in the way of appointing commissioners at all. The counsel for the Corporation put it on the ground that the interest was an indirect one. I think, after reflection, that the point of interest can be disposed of on stronger ground than that. The statute has certainly used the word "disinterested," but it has also said the choice of the court is to be made from those who are assessed as proprietors of real estate of the value of at least $10,000. It has therefore declared the interest of any citizen, whatever it may be, is not a disqualifying interest, since those who have this $10,000 qualification are all made eligible. We think, therefore, that it has been successfully contended, on behalf of the city, that what the court is directed to do under this law is "to choose and nominate three competent and disinterested persons out of those assessed at $10,000 to act as assessors or commissioners for the purpose of assessing the cost of the improvements in whole, or in part, as the case may be, on the properties benefited, and to fix a day on which they shall begin their operations;" and this we proceed to do in these several cases. *City Expropriation Cases in re*, S. C. R. 1880.

XVII. Liability of.

199. *For Accidents.*—Action against City of Montreal to recover the value of a horse fatally injured by a street accident, and for damages to vehicle. It appeared that the Corporation had recently made a new tunnel in Craig st., the excavation for which had not been sufficiently or properly filled in, insomuch that as the plaintiff was driving along the front wheel of his carriage suddenly sank, the axle was broken, and the horse running away injured itself so that it had to be destroyed—*Held*, that the Corporation was liable. *Archambault* v. *City of Montreal*, 2 L. N. 141, S. C. 1879.

200. A city Corporation is not liable for damages caused by the construction of necessary works where no negligence appears, or for damages resulting from the omission to make a drain in a street where no drain previously existed. *Riopel & City of Montreal*, 3 L. N. 320, Q. B. 1880.

201. Action of damages against the defendants for injury to a horse caused by the narrowness of the winter road over which the plaintiff was driving, and which belonged to and was at the charge of the defendants—*Held*, that a municipal corporation is responsible for damages caused by neglect of the provisions of Art. 835 of the Municipal Code.* *Corporation de St. Christophe d'Arthabaska & Beaudrette*, 5 Q. L. R. 316, & 10 R. L. 591, Q. B. 1879.

202. Where the city of Montreal was sued in damages for injuries sustained by plaintiff by falling into an excavation while driving in one of the streets of the city on a dark night, the excavation having been unprotected by a fence—*Held*, that as plaintiff was proved to have been driving very fast at the time, that he had contributed to the accident, and could not recover. *Lackhurst* v. *City of Montreal*, 2 L. N. 278, S. C. 1879.

203. This was an action of damages for $5,000 for unlawful arrest and detention of plaintiff in a police station. The question was

* (Tel qu'amendé par 35 Vic. cap. 8, sec. 11.

Nul chemin d'hiver ne peut avoir moins de sept pieds de largeur, entre les deux rangs de buttes, si le chemin est simple. Si la trace est fait en double, chaque trace doit avoir au moins cinq pieds de largeur. 835 M. C.

whether the Corporation was liable for the illegal act of a policeman in its employment—*Held*, that the Corporation had justified to a certain extent the act of the policeman. The case was a gross one, for the plaintiff having been insulted, called a policeman for his protection, but when the policeman arrived he refused to interfere, and finally took plaintiff prisoner to the station. Judgment for $50, with costs as in an action for $100. *Forté* v. *City of Montreal*, S. C. 1876.

204. Plaintiff was a butcher, and obtained a license to keep a private butcher's stall. But the proper notices were not given, and the shop was closed by the Corporation. The plaintiff brought action of damages. The Corporation pleaded that he had not obtained the license in a regular manner, and that he had no right to complain. *By the Court*—In strict law the defendants were right. It was the fault of the subordinate officers of the Corporation, and the defendants were not responsible. The action would have to be dismissed; but, as the plaintiff had been led into error by the subordinate officers of the Corporation, it would be dismissed without costs. *Corbeil* v. *City of Montreal*, S. C. 1879.

205. *For Fences.*—Action of damages against defendants for having opened a road through plaintiff's property and left it unfenced, in consequence of which it was overrun with strange cattle and damaged. Demurrer on the ground that it was a front road, and that in such case the Corporation was not liable for the fences. But—*Held*, that as it was not so stated in the declaration the allegations of which were by the demurrer admitted, that the demurrer would not lie. *Whitman & The Corporation of the Township of Staubridge*, 23 L. C. J. 176, Q. B. 1878.

206. *For Footpaths.*—The Corporation of Montreal is liable for damages caused by the bad state of one of the public footpaths in the city. *Grenier & The Mayor, etc., of Montreal*, 21 L. C. J. 296, Q. B. 1876.

207. The city of Montreal is liable for damages caused by raising the level of a street, although authorized by statute to do so. *Grenier & City of Montreal*, 3 L. N. 51, Q. B. 1880.

208. The Corporation of Montreal is liable for damages caused by the bad state of the public footpaths in the city, and the Corporation has a recourse *en garantie* for such damages against the proprietor of the premises opposite the footpath. *Guillaume* v. *City of Montreal & City of Montreal* v. *Larose*, 3 L. N. 406, & 24 L. C. J. 258, S. C. 1880.

209. *For Trespass.*—Plaintiff had been employed as laborer by the road inspector of the defendants, to open a new road in the municipality, and had been sued for trespass in doing so. Defendants contested the case as their own by their own attorney but failed, and judgment was rendered against plaintiff for $20 and costs. The defendants then, in accordance with a resolution passed at a special meeting, carried the case to review, where the judgment was reversed; but, being carried to appeal, was restored with all costs against the present plaintiff, amounting, with the condemnation money, to $360, which plaintiff now claimed, together with $400 damages. Defendants pleaded that plaintiff had not shown, as he was bound to do, that the acts in question were duly authorized; that they were in themselves illegal, and that, moreover, defendants had acted *ultra vires* in taking part in the original suit and defending it. They also urged that the proper recourse of plaintiff was in warranty, and that not having availed himself of that he could not recover—*Held*, that the defendants were liable in the amount actually suffered by plaintiff, but not in special damages. *Callaghan & Corporation of St. Gabriel West*, 4 Q. L. R. 50, S. C. 1876.

210. *To Indictment.*—An indictment will lie against the Corporation of a rural municipality for the non-repair of a highway, although it is a front road of which each proprietor is bound to repair his frontage. *Regina* v. *Corporation of the Parish of St. Sauveur*, 3 Q. L. R. 283, Q. B. 1877.

211. And in such case where the Corporation after conviction causes the road to be repaired, a merely nominal fine will be imposed, and costs will not be awarded in favor of the private prosecutor. *Ib.*

XVIII. Lien of for Taxes.

212. The plaintiff, a wife *separée de biens*, took an injunction against the defendant to stop an execution for taxes due by her husband on property occupied by him as an office in a different part of the city to where they resided, and where the defendants sought to levy. The effects seized were the furniture of the house in which they lived, and had been purchased by plaintiff at a sheriff's sale of her husband's effects. The power given to the city by the statute (37 Vic. cap. 51, sec. 88) was to levy, by warrant from the Recorder's Court in 15 days after demand, "from the goods and chattels of "the person bound to pay the same, or of any "goods and chattels in his possession, where- "ever the same may be found within the city, "and no claim of property or privilege thereon "or thereto shall be available to prevent the "sale thereof for the payment of the assess- "ments, taxes or duties and costs out of the "proceeds thereof."—*Held*, that the plaintiff, though living in the same house, had a possession separate from her husband, and the city could not execute. *Green* v. *City of Montreal*, 22 L. C. J. 128, S. C. 1877, & 2 L. N. 170, Q. B. 1879.

XIX. Local Corporations may be Sued by County Corporations.

213. Appeal from a judgment rendered by the Superior Court, Arthabaska, rejecting a demand of the appellant for a writ of prohibition. The petition alleged in substance that in 1873 the petitioners had been sued by the respondents before the magistrates for the county of Drummond for $1,887.75, amount of an assessment on the taxable property of the parish of St. Guillaume, made by the county of Drummond (respondent), in virtue of a bye-law of the county subscribing a sum of $50,000 to the Drummond and Arthabaska Railway, and imposing on the different parishes of the county a tax to

cover the same. The action was based on the said bye-law, which was passed under and by authority of cap. 25 of the Con. Stat. of Lower Canada. The petitioners alleged that the magistrate presiding in the Magistrate's Court had no power and jurisdiction to take cognizance of such an action; that this objection had been raised to the original action, but nevertheless the action had been maintained and the petitioners condemned to pay the amount. The Superior Court rejected the demand and pretentions of the petitioners, and set aside the writ of prohibition, and this judgment was maintained on appeal. *Corporation of the Parish of St. Guillaume* v. *Corporation of the County of Drummond*, 7 R. L. 562, Q. B. 1876.

214. *Held*, also, that the magistrate was not disqualified from sitting by reason of being a rate payer. *Ib.*

XX. Mayor.

215. The mayor of a municipality is not a municipal officer in the sense of Art. 200 of the Municipal Code.* *Morin & Gagnon*, 9 R. L. 673, Q. B. 1876.

XXI. Meaning of Term.

216. Where in an action for a penalty for voting at a municipal election without the necessary qualification, the plaintiff described the Corporation as the "Municipal Corporation of"—*Held*, that the term municipal as used in the Municipal Code was merely a term of general description and not part of the title of a Corporation, and the action was dismissed on that ground. *Graham* v. *Morissette*, 5 Q. L. R. 346, C. C. 1879.

XXII. Notices of Meetings.

217. The publication of the notices of meetings by the special superintendent under Art. 794 should be attested by a certificate under oath either written on the original notice or annexed to it, and a certificate of the publication of such notices by the secretary-treasurer and a bailiff under their oaths of office is insufficient, and a *procès-verbal* of which the notices are thus attested by these officers will be set aside, even although it be proved at the trial that the publications were duly made. *Cantwell & The Corporation of the County of Chateauguay*, 23 L. C. J. 263, C. C. 1878.

XXIII. Pleading by.

218. Where a Municipal Corporation pretends that an account is overcharged, it must plead and prove it in the ordinary way and not by resolution of committee. *State & City of Montreal*, 3 L. N. 72, S. C. 1880.

* Les officiers ne sont responsables de leurs acts ou des dommages et interêts, provenants du refus de la negligence de remplir leurs devoirs qu'envers la Corporation; sauf en ce que concerne les pénalités qu'ils ont encournes lequelles peuvent être recouvrées d'après les règles du titre deuxième du troisième livre. 200 M. C.

XXIV. Powers of.

219. *To Change Street Levels.*—In June, 1871, the plaintiff sued the City Corporation, called "The mayor, aldermen and citizens" at that time, to have it adjudged that they (the defendants) had not the power to change the level of Little St. James street, as they had done, and to have them condemned to replace everything in the condition in which it was before the change of level, and in all or any events to have the defendants condemned to pay the plaintiff $5,000 for damages up to that date resulting from defendants' acts and deeds complained of, the plaintiff reserving her recourse for any future damages. She alleged by her declaration her ownership and possession, for over five years, of divers building lots on Little St. James street in Montreal. That in July, 1867, the defendants, by proceedings, the legality of which the plaintiff contests, changed Little St. James street, as indicated on a plan prepared by the city surveyor. That on the 26th of August, 1868, the Council of the city passed a bye-law to change the level of said Little St. James street (level that had existed from time immemorial). The bye-law is set forth in the declaration, and the plaintiff says that it is irregular, illegal and null (but it is not said why); that the Council had not power to pass it, and that, at all events, the formalities required to give it vitality were not observed. *Per Curiam*:—By the 14th and 15th Vic. c. 128 of 1851, the city has power to do many things, some on condition of compensation to parties aggrieved, and some without compensation; by sub-section 6 of sec. 10 of 23 Vic. of 1860 it was authorized to make bye-laws to widen streets or to alter them or to discontinue them. Under this law, and a bye-law under it, a street was discontinued in 1866 to the damage of Hon. Judge Drummond. Yet I held him entitled to no compensation, as the law provided none for his case. In 1868 the defendants had power to pass the bye-law referred to in plaintiff's declaration, and in 1868 and 1869 had power to carry on all the works of lowering or changing the levels of the roadway in Little St. James street as they did, and for the same reasons as led me to pronounce that the Hon. Judge Drummond had no right to sue the Corporation as he did for his damages from the shutting up of St. Felix street, I must pronounce that the plaintiff here had no right to money from the defendants for alleged damages from those works done by them, lowering and changing the level of the roadway of Little St. James street. In doing what defendants did in that matter they seem to me to have acted carefully, to have had authority to do all they did. I do not see their by-law complained of to be null or informal, and though some damage may have been suffered by plaintiff, yet she has no right to compensation, for the law authorizing the works referred to does not provide for any. For other cases it has provided for compensation; for instance, where market places are changed, or where the levels of footpaths or sidewalks are altered, any person whose property is injuriously affected must get compensation. The law of 14-15 Vic. in this respect was, at date of institution of plaintiff's action, still in force, and had been, appar-

ently, designedly left in force, notwithstanding all the changes and additions that had been made in and to the Corporation Charter Acts. At the argument before me it was stated by defendants' counsel, and not contradicted, that plaintiff abandoned her objection to the bye-law for altering St. James street level. Years before the bye-law complained of by plaintiff was made, there was in force, and still is, an amendment to the Corporation Charter Acts, viz., the 27-28 Vict., c. 60 (of 1864), mentioned in defendants' plea. It again gives the defendants power to open, extend or widen streets, and regulates expropriations. The plaintiff does not claim to have had any property expropriated, nor does she complain of the sidewalk level in front of her property having been altered. Had she had property expropriated, or had the sidewalk level in front of her property been altered, there was provided for her by this Act compensation, to be measured according to the report or judgment of a Tribunal of Commissioners. It shall be fixed and determined so, says the Act. Here is a particular process ordered for redress of such grievances; so the ordinary process by suit and the measurement of the damages, or compensation for damages, by a judge or judges in the ordinary law courts is excluded. Action dismissed.* *Morrison* v. *Mayor, &c., of Montreal*, S. C. 1877.

220. *To Impose Taxes.*—A county municipality can collect a tax imposed by itself, not on a municipality but on certain individuals in whose interest it has opened a road which is a county road, and within its exclusive jurisdiction. *Simard* v. *Corporation of the County of Montmorenci*, 4 Q. L. R. 208, S. C. 1877.

221. But taxes imposed by the county on local municipalities can be levied by such local municipalities only. Taxes ordered to be levied on taxable property belonging to persons interested or benefited by any public work are direct taxes by the county, to be levied by it only. *Ib.*

222. The city of Montreal, under sec. 123 of its charter, has a right to impose a license tax on butchers keeping stalls or shops in the city for the sale of meat or fish elsewhere than on the public markets. *Mallette* v. *City of Montreal*, 2 L. N. 263, S. C. 1879.

223. *To Issue Promissory Notes.*—In answer to a *saisie arrêt en main tierce*, the *tiers saisi*, a municipality, declared that it owed nothing. The plaintiff contested. It appeared by the evidence that it had owed defendant previous to the seizure, but had given him a duly authorized promissory note and obtained his discharge for the amount, and this note was now in the hands of a third party, to whom they were liable. Plaintiff contended that as the *tiers saisi* was not a trading corporation, and as by the Municipal Code municipalities are not authorized to raise money by notes or bills, the note in question was radically null, and the debt still remained—*Held*, that as the note was not given to raise money but to pay a debt, and as it had passed into the hands of a third party, and plaintiff was not in a position to offer it back, that the claim of defendant was discharged and plaintiff could not recover. *Ledoux* v. *Picotte & Municipality of Mile End*, 2 L. N. 37, S. C. 1878.

224. The respondents obtained a judgment *exparte* on a promissory note signed by the mayor and secretary-treasurer of the Corporation appellants. The Corporation appeared in the case but did not plead, and having allowed respondents to take judgment they appealed, on the ground that the mayor and secretary had no authority to sign notes on behalf of the Corporation, without being specially authorized to that effect by a resolution of the council, and no authorization had been proved. Appeal dismissed, on the ground that the note being apparently regular, and the appellant having failed to object to the want of authority in the court below, could not object in appeal. *Corporation of Grantham & Couture*, 10 R. L. 186, & 2 L. N. 350, Q. B. 1879.

XXV. Powers of Officers.

225. *To Sign Notes.*—The secretary-treasurer of a municipality has no power to sign notes and accept drafts. *Martin* v. *Corporation of the City of Hull*, 9 R. L. 512, & 10 R. L. 232, S. C. 1878.

XXVI. Procès-Verbal.

226. Under Art. 810 of the Municipal Code* a *procès-verbal* can only be amended by another *procès-verbal* made in the same manner. *Holton & Callaghan*, 9 R. L. 665, Q. B. 1875.

227. A *procès-verbal* of a municipal corporation can only be modified by another *procès-verbal* made in like manner, and any change which a municipal council may pretend to make in a *procès-verbal*, by means of a simple resolution, is absolutely without effect and null, and such nullity may be invoked at any time. *Holton & Aikins*, 3 Q. L. R. 289, Q. B. 1875.

228. The validity of *procès-verbaux* and acts of apportionment cannot be tried incidentally, and they are conclusive and binding until set aside by direct proceedings, such as furnished and authorized by the Municipal Code. *Simard* v. *Corporation of the Co. of Montmorenci*, 4 Q. L. R. 208, S. C. 1877.

XXVII. Qualification of Aldermen.

229. The qualification of the defendant, who had been elected alderman of the city of Montreal, was attacked as insufficient. The property qualification required by the statute was the possession in his own right, and after payment of all his just debts, of real estate to the

---

* Confirmed in Appeal, 4 L. N. 25, & 1 Q. B. R. 107.

* (*Tel qu'amendé par* 39 *Vic. cap.* 29, *sec.* 11.)

Tout procès verbal en vigueur peut être amendé ou abrogé en tout temps par un autre procès verbal fait de la même manière sur requête des intéressés ou sur l'ordre du conseil.

810*a*. (Ajouté par 41 Vic. cap. 18, sec. 29.)

Tout procès verbal en vigueur peut en tout temps être amendé par le conseil sur requête d'un ou de plusieurs intéressés ou sur l'ordre du conseil pourvu, qu'un avis public ait été donné par le secrétaire-trésorier du conseil ou par le secrétaire du bureau des délégués aux intéressés du lieux et du temps auxquels doit commencer l'examen du procès verbal.

value of two thousand dollars.* Defendant declared his qualification to be on a property in St. Elizabeth street in the said city, worth $12,090. This property, however, it was proved was owned not by himself individually but by a partnership of contractors, composed of himself and his father, and was moreover mortgaged to the extent of $5,600—*Held*, that he could not qualify on a property held in common, and if, for the purpose of qualification, his half was held to be divided and separable the mortgage could not be so divided, and must be held to affect every part alike, in which case his half would be insufficient for qualification. *Leduc* v. *Laberge*, 22 L. C. J. 259, & 1 L. N. 591, S. C. 1878.

230. But, *held*, that though the election of defendant was therefore null the court had no power to give the seat to the petitioner, and a new election would be ordered. *Ib.*

231. The petitioners contested the right of the defendant to hold the seat of alderman for the St. Mary ward in the city of Montreal, alleging that he was not a resident householder, and did not possess the necessary property qualification —*Held*, that a person occupying two adjacent rooms, one as an office and the other as a residence, in the city of Montreal, is a resident householder in the terms of 37 Vic. cap. 51, sec. 17, and that, with regard to the real estate, which was matter partly of estimate of value, the court could exercise its discretion. *Roy* v. *Thibault*, 22 L. C. J. 280, 1 L. N. 602, S. C. 1878.

XXVIII. Remuneration of City Attorney.

232. Action by city attorney of the city of Montreal, who had been dismissed in the middle of a year, for salary for balance of the year, for fees in cases pending and for compensation for extra services—*Held*, that he was entitled to his salary for the balance of the year and also the fees in cases pending. *Devlin* v. *City of Montreal*, S. C. 1877.

XXX. Resolutions of.

233. The plaintiffs complained that they had suffered damages in consequence of Drolet street not being opened in accordance with a resolution adopted by the council, by which it was resolved to execute certain works and to open certain projected streets—*Held*, that there was no engagement between the parties of such a nature that the non-execution of the projected works could give rise to responsibility for damages on the part of the Corporation. The plaintiffs had not performed what was incumbent on them, to permit the municipal authorities to act in conformity to the resolution referring to the street in question, and the plaintiffs, having no acquired right, could not complain of being prejudiced by the failure to open Drolet street. The indemnity claimed, moreover, was not for actual and direct damages occasioned by the bad state of the roads and streets, but for remote and uncertain damages, based on hopes and chances of a problematical nature, of profit to be derived from the sale in small lots of land which the plaintiffs had purchased for speculative purposes. Action dismissed. *Brunet & Corporation of Village of Cote St. Louis*, S. C. 1879.

234. Where the plaintiff asked to have a resolution of the City Council of Montreal set aside on the strength of anticipated action by the Legislature—*Held*, no interest, and dismissed. *Truteau* v. *City of Montreal*, 3 L. N. 55, S. C. 1880.

XXXI. Right of County Council to Proceed for Taxes.

235. The only means of collecting assessments due to a county council is by means of the local municipalities and their officers,* as the county Corporation has no right to proceed directly against the ratepayers by action or otherwise. *Roberge & Corporation of Levis*, 7 L. R. 642, Q. B. 1876.

XXXIV. Rights of, over Streets.

236. Where the Corporation of the City of Montreal had closed one end of a street by which some of the property situated thereon was alleged to have depreciated in value, and action of damages was brought—*Held*, that this was not such an interference with a servitude as to give rise to an action of damages, nor did it constitute expropriation so as to give right to preliminary indemnity under the special Act. *The Mayor, &c., of Montreal & Drummond*, 22 L. C. J. 1, P. C. 1876.

XXXVI. Roads.

237. On a petition to quash a *procès-verbal* concerning public roads homologated by the defendants—*Held*, that only ratepayers have a right to notice of such *procès-verbal*. *McErila* v. *Corporation of the Co. of Bagot*, 7 R. L. 360, Mag. Ct. 1875.

238. And the declaration authorized by Art. 758 of the Municipal Code,† for the conversion

---

* No person shall be capable of being elected an alderman of the city of Montreal unless he shall have been a resident householder in the said city for one year next before such election, and unless he shall, during the six months immediately preceding the day of his nomination as such alderman, be seized and possessed as proprietor of real estate within the said city of the value of two thousand dollars currency after payment or deduction of his just debts. Q. 37 Vic. cap. 51, sec. 17.

* Le montant de toute taxe imposée par un conseil de comté pour des fins générales ou spéciales est prélevés sauf le cas des articles 490 et 491 sur toutes les corporations locales de ce comté à proportion de la valeur totale de leur biens imposables affectés au paiement. 938 M. C.

La part imposée à chaque corporation locale constitue une dette payable par elle au conseil du comté d'après les conditions et aux termes déterminés par ce conseil.

Le montant de cette part ou dette est perçu dans la municipalité locale comme les taxes locales sur tous les biens imposables affectés à cette taxe sans qu'il soit besoin de faire d'autres réglements ou ordres à cet effet.

En cas de refus ou de négligence de la part de la corporation locale de payer la part que lui a été imposée elle peut être renvoyée d'elle en la manière indiquée à l'article 951. 939 M. C.

† Le conseil de comté peut par résolution ou dans un procès-verbal déclarer:

1. Qu'un chemin sous la direction d'une corporation locale de la municipalité du comté soit à l'avenir un chemin de comté, ou

2. Qu'un chemin de comté sous la direction exclusive de la corporation du comté soit à l'avenir un chemin local sous la direction de la corporation de la municipalité locale dans laquelle il est situé ou qu'il separe d'une municipalité. 758 M. C.

of a county road into a local road, and *vice versa*, need only be published according to Art. 761* in the counties interested. *Ib.*

239. And a designation of the taxable property in a *procès-verbal* by reference to the consecutive numbers in the valuation roll indicating such property is legal and regular. *Ib.*

240. A municipal council cannot help itself to a piece of land for the purpose of making a road until it has proceeded to a valuation of the land in the manner prescribed by Art. 903† and following of the Municipal Code. *Holton & Callaghan*, 9 R. L. 665, Q. B. 1875.

241. In the case of a petition of ratepayers of a municipality demanding the action of the council on the appointment of a superintendent to report on the opening and maintenance of a road, those who on an appeal from the decision of the board of delegates are called *intimés* by the Municipal Code should be the petitioners named at the bottom of the petition, and not the corporation, who, by the instrumentality of its council, have appointed the superintendent. *Corporation of the Parish of St. Alexandre & Mailloux*, 7 R. L. 417, C. C. 1875.

242. And in such an appeal the service of the writ required by the Code should be made upon all the petitioners who should be brought into the case as respondents. *Ib.*

243. And if all the members of the board have not voted the decision must be declared irregular and null; and in such case the court before which the appeal is brought will not render the judgment which the board should have rendered, but simply annul the decision, and leave the parties to act according to law in bringing the *procès-verbal* before the board again. *Ib.*

244. Appellant was sued before a justice of the peace for $10.15, special assessment arising out of the opening and maintenance of a county road under the control and jurisdiction of the county of Montmorency, and establishing communication between St. Feréol and the main road. Appellant was condemned to pay the sum demanded and $13.10 costs, and on the 16th July his goods were seized in execution of the judgment. He immediately sued out a writ of prohibition, addressed to the justice of the peace and the bailiff charged with the seizure—*Held*, that there was no right to a prohibition to arrest the procedure taken before a magistrate for the recovery of a sum due under a *procès-verbal* for the opening and maintenance of a road, if there has been no appeal from the homologation of the *procès-verbal* within the delay required by law, and especially if the defendant has acquiesced in the jurisdiction of the magistrate by appearing before him and pleading to the merits. *Simard* v. *Corporation of the Co. of Montmorency*, 8 R. L. 546, Q. B. 1878.

245. The plaintiffs sued to have a lane in the village of St. Martin declared a public road under the plaintiffs' control, and to have defendant ordered to discontinue encroachments and barriers upon it, and to pay damages for having disturbed plaintiffs and the public in their rights to the lane. The declaration alleged immemorial use of the lane by the general public —*Held*, that evidence showing that the inhabitants of the village passed by the lane in question was insufficient, more especially where the facts appeared to indicate that the lane was opened originally for the private convenience of adjoining proprietors. *Corporation of St. Martin* v. *Cantin*, 2 L. N. 14, S. C. 1878.

246. One P. was the owner of a piece of land forming one of the corners at the junction of two roads in the parish of St. Jerome. At this corner there had been no fence for upwards of thirty years, and the public had during that time been in the habit of cutting the angle formed by the two roads and passing near to P.'s house. More than a year, however, before the institution of the action, P. had put up a fence, partly on the one road and partly on the other, so as to form and enclose the angle of his land. Plaintiff complained of this fence as a nuisance, and sued the Corporation for a penalty of $20 for allowing it to exist contrary to law—*Held*, that P. had a perfect right to enclose his land, and if in doing so he had taken more land than belonged to him, an action would lie for encroachment, but there was no action against the municipality for an obstruction of a nuisance under the Municipal Code. *Scott & Corporation of Parish of St. Jerome*, 9 R. L. 514, C. C. 1879.

247. Inscription in review of a judgment of the Superior Court at Arthabaska ordering a peremptory writ of mandamus to issue commanding the defendants to open and complete a front road on lots numbers eighteen and nineteen, in the tenth range of the township of Wickham, under a penalty of one thousand dollars. On the 7th August, 1876, the petitioner and a number of other persons presented a petition to the Corporation defendant, praying that they would cause the road in question to be made, and that the road should be extended as much further as the Corporation should think fit. On the 11th of the following month the petitioner and others presented a petition to the county municipality, praying that the front road between the Ninth and Tenth Ranges of the township of Wickham might be opened from the by-road on lot 17 to the boundary line between the townships of Wickham and Grantham, to connect with the Tenth Range road in the township of Grantham, in said county. The county council then appointed a special superintendent who made a report and *procès-verbal*, purporting to show in what manner and when the road required by the last-mentioned petition should be made. The secretary-treasurer thinking that the whole of the work to be performed under the *procès-verbal* was within the jurisdiction of the local council transmitted the *procès-verbal* and the proceedings connected therewith to the defendants, the local council; and they, by a resolution of date the 6th November, 1876, carried by a majority of four against one, declared the road to be altogether unnecessary, and rejected the petition as frivolous and vexatious. Subsequently the county council got back the *procès-verbal* and homologated the report with

---

*Les déclarations mentionnées aux articles 758 et 759 ne peuvent être faites qu'après qu'un avis public à été donné à cet effet et doivent être publies aussitôt après leur passation. 761 M. C.

†Prescribing the rules and formalities to be observed in the expropriation of property.—Ed.

certain amendments. They also declared that the road prayed for by the first petition should be commenced on the 1st December, 1877, and by the *procès-verbal* it was required to be finished on or before the first of September, 1878; while, as regards the remainder of the road, it was ordered that it should not be commenced until asked for by one or more of the parties interested, but that the whole of the works should be finished in ten years; and by the same resolution the county council declared, under Art. 758 of the Municipal Code,* that the roads in question should be county works. Subsequently, on the 11th September following, without assigning any reason for the change, the county council declared the roads in question to be local works within the municipality now represented by the defendants—*Held*, under these circumstances, that the road in question, being a local road, had not been legally established by the county council, and that the order of the county council that the road in question should be a local work was inoperative, for want of the notice and publication required by law. *Bothwell* v. *Corporation of West Wickham*, 6 Q. L. R. 45, S. C. R. 1880.

248. And *held*, also, that even if the said road had been legally established the local council could not be ordered to make it within three months under a penalty of $1.000. *Ib.*

249. And that the *procès-verbal* was, as to certain particulars too vague to admit of its being enforced by mandamus. *Ib.*

XXXVII. Streets.

250. In May, 1877, the wife of the appellant was passing one day through the Finlay market, Quebec, when one of the stones of the pavements gave way under her feet, and she fell and received grave injuries about the face. Appellant sued in damages, urging that the accident was caused by the bad state of the pavement, and that the defendants were responsible for it. The action was dismissed. On appeal—*Held*, that the Corporation was responsible for the condition of the streets, without it being necessary to prove that the Corporation had been notified to repair them. *Kelly* v. *La Corporation of Quebec*, 10 R. L. 605, Q. B. 1879.

251. A writing is not required to establish that property has been abandoned to the public for use as a public street, and the fact that the street was openly used by the public for upwards of ten years as a highway, and that the Corporation of the city exercised visible ownership by constructing a side walk thereon and filling in a swamp more than ten years before the institution of the action, is sufficient proof of dedication by the proprietor. *Guy & City of Montreal*, 3 L. N. 402, Q. B. 1880.

* Le conseil de comté peut par résolution ou dans un procès-verbal déclarer:

1. Qu'un chemin sous la direction d'une corporation locale de la municipalité du comté soit à l'avenir un chemin de comté; ou

2. Qu'un chemin de comté sous la direction exclusive de la corporation du comté soit à l'avenir un chemin local sous la direction de la corporation de la municipalité locale dans laquelle il est situé ou qu'il sépare d'une autre municipalité. 758 M. C.

XXXVIII. Taxes.

252. Plaintiff got judgment against the defendants in the Queen's Bench for some $12—amount of taxes illegally exacted from her husband as proprietor of certain property which belonged to the Crown. The execution of this judgment was opposed by the defendants, who set up in compensation a larger amount due to them for taxes imposed since the first demand. The legality of the new tax was contested by the plaintiff, on the ground that the judgment of the Queen's Bench declared these lands exempt from all municipal taxes. *By the Court*—The judgment of the Queen's Bench undoubtedly says so; the language is that before the levying of these rates the property had always belonged to the Crown, and still did so, and was, "as such, exempt from all local rates imposable by the respondents upon the said lots." The admission of the parties of record is that the tax imposed for 1870, '71, '72 and '73, has been imposed upon them as lessees of the said property, *but on the footing of the value of the property and not on the amount of the rent.* Notwithstanding this fact, so admitted by the parties, the ground of the judgment is stated in one of the *considerants* to be, "*que les dites taxes sont imposés sur le loyer et occupation des dites propriétés.*" The judgment under review maintained the opposition to its full extent. There is a part of it, that is to the amount of $13.25, that was admitted by the answer, and for which there should have been judgment against the plaintiff, but without costs, as the items were for statutory labor, etc., that were not contested at all; but, as regards the main question, the Corporation are in this case attempting to do indirectly what the Queen's Bench has decided they have no right to do at all. They taxed the plaintiff as proprietor, and their right was denied in the other court, both because he was not proprietor and because the property was not taxable. They then wished to get round this judgment by taxing the lessee. The by-law is not in the case; we have only the admission of the parties as to what it is; but that is enough just now; for on turning to the Act of Incorporation, there are two points on which they must fail—1st, by the 38 sec., it would appear very doubtful, to say the least, whether this is not indirectly taxing property exempted by law from taxation; for by that section the tenant has the right to deduct all taxes from his rent, where he has not covenanted to pay them; and therefore the tax might in effect fall on the Crown; but paragraph 4, section 34 of the Act, which gives them power to tax tenants, limits that power to 3 cents in the dollar on *the amount of the rent;* and in this case it is admitted the roll has levied it on the value of the property. Therefore the judgment is wrong—for there is no authority to levy it on the value of the property; and it should be reformed by giving judgment to the opposants for $13.25, without costs, and reversing the rest of it in favor of the plaintiff, with costs. *Parsons* v. *Mayor of Sorel*, S. C. R. 1876.

253. Taxes paid under an existing bye-law cannot be recovered until the bye-law has been set aside. *Calmel* v. *City of Mo[illegible]*, 1 L. N. 64, S. C. 1877.

254. In an action for arrears of municipal taxes, it is not necessary to produce the original collection rolls, and proof of the notice required by Art. 960 of the Municipal Code, and of true abstracts from the collection rolls, is sufficient. *Corporation of Township of Acton & Felton*, 24 L. C. J. 113, S. C. R. 1879.

255. A person who claims a total exemption from taxes may, if proceeded against as a ratepayer, avail himself of the remedy allowed to ratepayers under Art. 970 of the Municipal Code.* *Montreal Cotton Co. & Corporation of Town of Salaberry of Valleyfield*, 3 L. N. 317, Q. B. 1880.

*Tout contribuable qui est requis de payer comme taxes municipales ou scolaires une somme plus élevée qu'elle ne devrait être est admis à plaider ce fait par exception à l'encontre de toute action ou réclamation ou par opposition sur toute saisie pratiquée en vertu de l'article 962 sur biens meubles et effets.

Cette opposition doit être accompagnée d'une affidavit attestant la vérité des allégations qu'elle contient être signifié à l'officier chargé de l'exécution du mandat de saisie et rapportée devant la cour de circuit du comté ou du district dans les huit jours suivants ou devant la cour de magistrat à son prochain terme. Elle est ensuite entendue est decidée selon les règles ordinaire de procédure de la cour.

L'opposition opère saisie si elle est accompagnée d'un ordre à cet effet signé par le juge ou par le magistrat de district ou par le greffier de la cour devant laquelle elle est rapportable.

256. *Demand of Payment of.*—A demand of payment of taxes in virtue of Article 961 of the Municipal Code,* addressed to a wife separate as to property, and by her transmitted in envelope addressed to her husband, is sufficient. *Corporation of the Village of Bienville* v. *Gillespie*, 6 Q. L. R. 346, C. C. 1880.

257. And the Circuit Court has jurisdiction in such cases no matter what the amount. *Ib.* & *Les Commissaires d'ecole de Sillery* v. *Gingras*, 8 Q. L. R. 355, S. C. R. 1880.

MUNICIPAL TAXES.

I. PRESCRIPTION OF, *see* PRESCRIPTION.

MUR MITOYEN—*See* SERVITUDES.

*A l'expiration du délai de vingt jours le secrétaire trésorier doit faire la demande du paiement de toutes les taxes et sommes de deniers portées au role de perception et non encores perçues aux personnes obligées de les payer en leur signifiant ou faisant signifier un avis spécial à cet effet accompagné d'un état détaillé des sommes dues par eux. 961 M. C.

N.

SUMMARY OF TITLES.

	Page
NAME	543
NANTISSEMENT	543
NATURALIZATION	543
NAVIGATION	543
NECESSARIES	543
NEGLECT	543
NEGLIGENCE	543
NEGOTIABLE INSTRUMENTS	543
NEIGHBORING PROPRIETORS	543
NEWSPAPERS	544
NEW TRIAL	544
NON-JURIDICAL DAYS	544
NOTARIAL DEEDS	545
NOTARIES	545
NOTES	547
NOTICE	547
NOTICES	547
NOVATION	547
NUISANCE	548
NULLITÉ DE DECRET	548
NULLITIES	548
NUN'S ISLAND	548

NAME.

I. Error in, *see* PROCEDURE, Description of Parties.

NANTISSEMENT—*See* PLEDGE.

NATURALIZATION.

I. General Provision for the Naturalization of Aliens is made by C. 44 Vic. cap. 13.

NAVIGATION.

I. Rules of, *see* MARITIME LAW.

NECESSARIES.

I. Liability of Wife for, *see* MARRIAGE.
II. Lien for, in cases of Vessels, *see* MERCHANT SHIPPING.

NEGLECT.

I. To Provide for Wife, etc., *see* CRIMINAL LAW, Indictment.

NEGLIGENCE—*See* DAMAGES.

I. Insurance against, *see* INSURANCE.
II. Contributory.

1. In an action of damages for injury suffered while walking on a railway track near the crossing—*Held*, that plaintiff had no right on the track, and must be held to have contributed by his negligence. *Wilson* v. G. T. R., 2 L. N. 45, S. C. R. 1879.

2. The plaintiff, a carter, went to load wood at a wharf in the port of Montreal, where a steamer was in the act of moving, and a cable having snapped the plaintiff was seriously injured by the recoil.—*Held*, reversing judgment of court below, that there was contributory negligence on his part, and he could not recover damages. *Periam & Dompierre*, 1 L. N. 5, Q. B. 1877.

NEGOTIABLE INSTRUMENTS.

I. What are, *see* BILLS OF EXCHANGE AND PROMISSORY NOTES.

NEIGHBORING PROPRIETORS.

I. Rights of, *see* TRESPASS.

NEWSPAPERS.

I. Libel by, where Published, *see* LIBEL.
II. Right of Action on.

3. The proprietor of a newspaper may sue his subscribers for the recovery of the amount due for their subscription in the district where the journal is published and posted, and it is there where the right of action arises. *Nouveau Monde* v. *Laferrière*, 7 R. L. 543, C. C. 1877.

NEW TRIAL—*See* JURY.

I. Grounds of.
II. In Case of Misdemeanor, *see* CRIMINAL LAW, New Trial.

I. Grounds of.

4. The defendants being condemned in $7000, by the verdict of a special jury for damages suffered by plaintiff through an accident which occurred while riding on defendants railway, applied for a new trial, on the grounds that, 1st, the evidence was against the verdict; 2nd, misdirection; and 3rd, excessive damages.—*Held*, in Privy Council, that the question of evidence was not open to the appellants; that the following words of the judge—"First of all was there time to give notice? That of course is easily answered, there was time. Then was there a possibility of doing it?—that is the question," did not constitute misdirection and that under the circumstances * the amount awarded was not excessive, and the new trial should have been refused. *Lambkin & South Eastern Railway Co.*, 3 L. N. 162, P. C. 1880.

NON-JURIDICAL DAYS.

I. Act Concerning.

Whereas it is necessary to amend articles, 2 and 3 of the Code of Civil Procedure respecting non-juridical days and to remove certain doubts on this subject; Therefore Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows:

I. The word "Governor" in article 2 of the Code of Civil Proeedure means indifferently the Governor General of Canada or the Lieut-Governor of this Province, as the case may be.

2. The first of July, the anniversary of the day on which the British North America Act came into force, shall in future be considered a non-juridical day, as if it had been mentioned in Art. 2 of the said Code, and if the first of July, should happen to fall on a Sunday then the second of July shall be considered a non-juridical day.

* See Railways, Liability of.

3. Proceedings and sales which have taken place on a day of thanksgiving ordered either by the Governor General or the Lieut.-Governor, prior to the passing of this Act, shall be deemed valid, as if they had taken place on the day following such thanksgiving day.

4. Article 3 of the said Code applies to sales announced to be made by authority of justice.

5. The present Act shall, in so far as it shall apply, form part of the Act respecting the interpretation of the Statutes of this Province, 31 Vic. cap. 7.

6. Nothing in this Act shall apply to any objections already raised before the courts in any case now pending.

7. The present Act shall come into force on the day of its sanction. Q. 42-43 Vic. cap. 19.

NOTARIAL DEEDS—*See* DEEDS.

NOTARIES.

I. Appeal by, in support of Deed, *see* IMPROBATION.
II. Fees and Charges of.
III. Have a right to be paid Cost of Originals before Furnishing Copies.
IV. Liability for Fees of.
V. Need not be Joined in Action to set aside a deed of Sale.

II. Fees and Charges of.

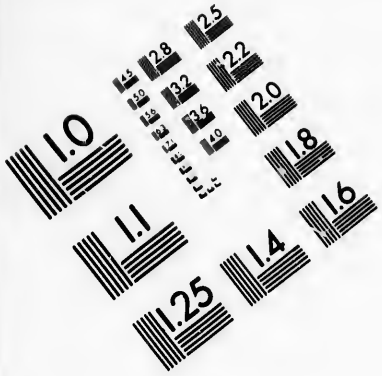
5. Action for the fees and disbursements of the plaintiff, a notary public, in drawing a composition deed between L. & S. and their creditors. The plaintiff by his action charged for the drawing of the deed $60, and for his services during 42 days in travelling through the counties of Dorchester, Beauce and Quebec, to see the creditors and induce them to sign, $175 and for a copy, $8.—*Held*, that even under Q. 39 Vic. cap. 33, sec. 22, which makes parties to notarial acts jointly and severally liable to the notary for his fees and disbursements the parties to the act in question could not be held jointly and severally liable for the said sums of $175 and $8. *Lemieux & La Banque Nationale*, 6 Q. L. R. 84, S. C. R. 1880.

III. Have a Right to be Paid Costs of Originals before Furnishing Copies.

6. Plaintiff applied to a judge to compel a notary to furnish him a copy of a deed of composition to which he was one of the parties, and which the notary refused to deliver without being paid the cost of the original. The judge ordered the deed to be given on payment of the cost of a copy merely; and the notary inscribed in review. He supported his refusal by reference to the Provincial Statute 39 Vic. C. 33, sections 22 and 23, which say:—"Parties to "acts executed before a notary are jointly and "severally liable for his disbursements and "fees."—"The furnishing of copies, extracts, "title deeds or deeds of any nature whatsoever, "is not to be considered a presumption of pay- "ment of the costs and fees of a notary, and on "notary is bound to furnish copies or extracts "of any deed to third parties, or even to the "parties themselves, if he is not paid the ori- "ginal cost of the minute, if at the time prescrip- "tion has not been acquired." The facts were admitted: the notary had the minute in his possession, and the cost of it had never been paid or offered. The party who petitioned, and who wanted to get the deed, had two pretensions:—First, he said the creditors were bound to pay for the deed; his second pretension was that the statute did not specifically repeal art. 245 C. C. P. by name, as required by the Interpretation Act of 1868. But to that the notary answered that the statute only explains the 1245th art. of the Code.—*Held*, reversing, that the notary was not bound to furnish copies till paid. *Jouffray & L'Archeveque*, S. C. R. 1876.

IV. Liability for Fees of.

7. There was an authority given by the court to sell some real estate belonging to the heirs P. according to the formalities usual in such cases, and D. who transferred his rights to the plaintiff, was the notary named to carry out the sale. The property was put up for sale to the highest bidder by the bailiff, named in the order of court, and one of the lots was formally adjudged to the defendant. The plaintiff sued the defendant as spurchaser to recover a commission of 4 per cent. at having been made payable to him by the conditions of the sale. The *procès-verbal* of the bailiff showed the condition was that the 4 per cent. was to be paid to the auctioneers. *By the Court.*—Several points were raised, such as there being no privity between the adjudicataire and the notary; but without going into the question whether this was a stipulation by the vendors with the adjudicataire for the benefit of a third party—so as to give to that party a right of action in his own name, there is no evidence of the condition that is alleged; for the allegation is of a contract by the adjudicataire to pay 4 per cent. to the notary, and the proof, according to the *procès-verbal* of the officer appointed by the court to sell, is that this commission was not to go to the notary, but to the auctioneer; and there is nothing whatever to give it to the notary, unless the notary can give it to himself. The tariff shows that the charge is not excessive, but the question as to whom the adjudicataire was to pay remains the same, and the conditions agreed upon between the vendors and the notary could not bind the purchaser, unless they were announced to him. I find it impossible to say, in the face of the *procès-verbal* of the officer, that this essential allegation of the plaintiff's demand is proved. It is therefore unnecessary to notice the point whether S, who was tutor to two of the minors, was really a purchaser at all under the agreement between all the parties as to the cases in which it was to be considered that there was to be no sale. Then it is to be observed also that this commission, even if



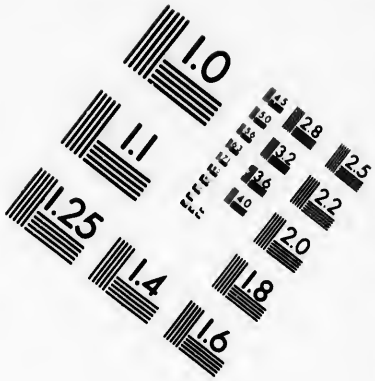
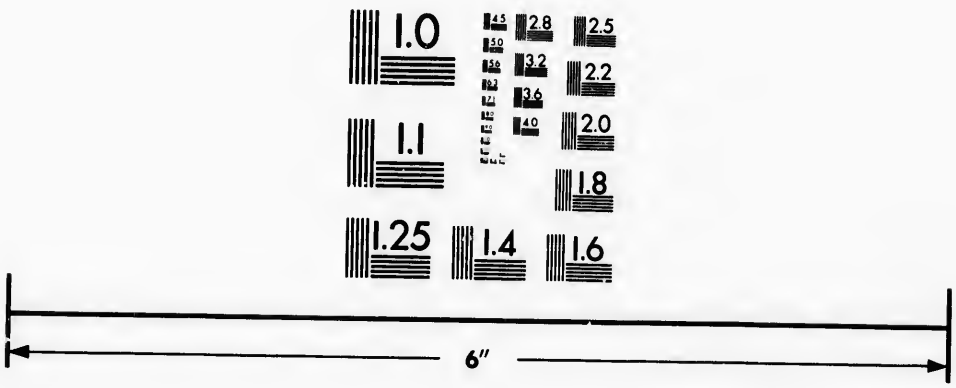
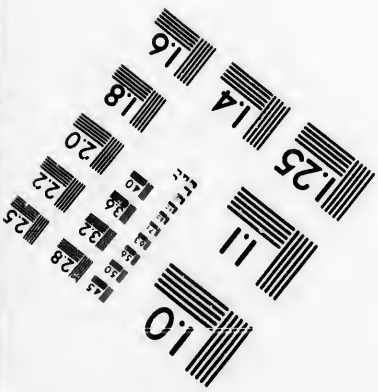
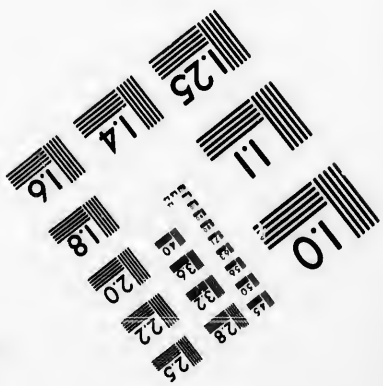


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
2.5
3.2
2.2
3.6
2.0
1.8
1.6
1.1
1.0

payable to the notary himself, was only to be paid at the execution of the deed, and none has been executed, nor has any been tendered by the vendors to the purchaser for execution, though D., on his own behalf, signified his individual readiness to execute one. Therefore the judgment is to dismiss the actions. *Hart & Smith & Hart & Bouthillier*, S. C. 1877.

VI. Need not be Joined in Action to Set Aside a Deed of Sale.

8. On an action by a creditor of the vendor toset aside a notarial deed of sale—*Held*, that the notary need not be joined as a defendant. *Clement* v. *Catafard*, 8 R. L. 624, S. C. 1878.

NOTES.

I. Of Stenographer not Evidence to Support an Indictment for Perjury, *see* CRIMINAL LAW, Perjury.

NOTICE.

I. Of Action, *see* PROCEDURE.
II. Of Inscription, *see* PROCEDURE.
III. Of Petition en Desaveu, *see* DISAVOWAL.
IV. To Insurance Companies of Loss, *see* INSURANCE.
V. To Members of Benefit Societies, *see* BENEFIT SOCIETIES.

NOTICES.

I. Of Meetings of Municipal Corporation, *see* MUNICIPAL CORPORATIONS.

NOVATION.

I. Of Indebtedness, *see* OBLIGATIONS.
II. Of Payment, *see* PAYMENT.

NUISANCE.

I. Right of Abatement Lost by Time.

9. Appellants built a wharf in the bed of the River St. Lawrence, which communicated with the shore by means of a gangway, and had enjoyed possession of this wharf and its approaches for many years,when respondent, on the ground that the wharf was a public nuisance, destroyed the means of communication which existed between the wharf and the shore. Appellants sued respondent in damages, and prayed that the works be restored. After issue joined respondents filed a supplementary plea, alleging that since the institution of the action, one C. R., through whose property the wharf passed to reach the shore, had erected buildings which prevented the restoration of the bridge and wharf—*Held*, that respondent having allowed appellant to erect the gangway on public property, and remain in possession of it for over a year, had debarred himself the right of destroying what might have been originally a nuisance to him ; and, notwithstanding the subsequent abandonment of the wharf and gangway, appellants were entitled to substantial damages. *Cuerrhill & Robillard*, 2 S. C. Rep. 575, Su. Ct. 1878.

NULLITÉ DE DÉCRET—*See* SALE, Judicial.

NULLITIES.

I. In Sheriff's Sale, *see* SALE, Judicial.

NUN'S ISLAND.

I. Exempt from Taxation, *see* RELIGIOUS INSTITUTIONS.

O.

SUMMARY OF TITLES.

	Page
OATH	549
OBLIGATIONS	549
OBLIGATIONS PREJUDICIELLES	553
OCCUPATION	553
OFFENCES	553
OFFICERS OF COMPANIES	553
OFFICERS OF COURT	553
OFFICIAL COUNT	553
OFFICIAL NOTICE	553
OFFICIAL OATH	553
OFFICIAL PLANS AND BOOKS OF REFERENCE	553
OIL MEASURE	553
OPINION	554
OPPOSITION	554
OPTION	563
ORANGE ASSOCIATIONS	563
ORDERS IN COUNCIL	564
OWNERSHIP	564
OVERDRAFTS	564

OATH—*See* JUDICIAL OATH.

I. Of Office, *see* EVIDENCE.

OBLIGATIONS.

I. Alternative, *see* CONTRACT.
II. By Minors, *see* MINORITY.
III. Conditional, *see* CONTRACTS.
IV. Default in, *see* PAYMENT.
V. Delegation of, *see* HYPOTHEC.
VI. Illegal Consideration for, *see* SALE, Judicial.
VII. Joint and Several.
VIII. Lesion.
Illegal Consideration.
IX. Novation of.
X. Parties cannot Allege their own Fraud in Avoidance of, *see* FRAUD.
XI. Signed by Agents, *see* AGENCY.
XII. Subrogation.
XIII. With a Term.

I. Alternative.

1. The defendants agreed with plaintiffs to pay them $1000 if they would put up a printing press in their premises, and at the end of six months either pay them $4,500 more or return them the press unbroken. Plaintiffs accepted these terms and put up the press, and at the end of six months, defendants not having paid the $4,500, or returned the press, brought action for the amount—*Held*, dismissing the action, that there was no absolute agreement to pay the money.* *Hoe & Mullin*, 2 L. N. 342, S. C. 1879.

IV. Default in.

2. Where no delay is fixed for the performance of a contract, the defendant must be placed in default before action brought. *Beaudry & Les Curé & Marguilliers, &c., of Montreal*, 3 L. N. 218, Q. B. 1880.

V. Delegation of.

3. Contestation of a collocation on an assignee's dividend sheet. The contestant sold to one R. a parcel of land on which there was a hypothec in favor of B. It was stipulated in the deed of sale that R. should pay B. the amount of his claim. B. accepted the delegation, but without discharging the contestant. It was further stipulated in the deed that R. should have the right of releasing any portion of the land from the hypothec of contestant for the balance of the *prix de vente*, by paying at the rate of $400 per arpent for the portion discharged. R. subsequently sold the land to the insolvent, who, exercising the right of discharge above mentioned, paid a sufficient sum on account of the purchase money to release half the property from the hypothecary claim of contestant. The insolvent also obtained from B. the release of same portion of the land from

* Confirmed in Review, 3 L. N. 168, S. C. R, 1880.

B.'s hypothecary claim, which was then restricted to the other half. The remaining half being sold by the assignee of insolvent, contestant disputed B.'s right to be collocated by preference to him on the proceeds of the sale—*Held*, that B. having accepted the delegation without discharging contestant, novation did not take place, and the release by B. of half the land applied solely to his hypothecary claim thereon, and did not affect his privilege on the rest of the land for the amount of said claim, so that B. was entitled to the preference. *Middlemiss* v. *Jackson & Leduc*, 2 L. N. 404, & 24 L. C. J. 33, S. C. R. 1879.

4. Action on a mortgage against a person who had purchased from the original mortgagor the property mortgaged, and undertaken to pay the indebtedness thereon. Plea, that there was no acceptance of the delegation on the part of plaintiffs—*Held*, that the action itself was a sufficient acceptance. *O'Halloran* v. *Boucher & Drummond* v. *Holland*, 23 L. C. J. 240, & 2 L. N. 285, S. C. R. 1879.

VII. Joint and Several.

5. Where four defendants, children of the plaintiff, were condemned to pay him an alimentary pension of $10 per month, but were not to be liable for more than $2.50 each, seeing their inability to pay more than that amount—*Held*, that they were not liable jointly and severally for the costs of the action, but only each for his share. *Crevier* v. *Crevier*, 9 R. L. 313, S. C. 1877.

6. Professional attorneys who carry on business under a firm name are jointly and severally liable for moneys collected by the firm. *Ouimet & Bergevin*, 22 L. C. J. 265, Q. B. 1878.

7. But the obligation of children to support an indigent parent is not joint and several, but each child is condemned to contribute in proportion to his means. *Leblanc* v. *Leblanc*, 1 L. N. 618, S. C. 1878.

8. In an action of damages against several defendants for cutting and carrying away wood from plaintiff's land—*Held*, that all who participate in an offence or quasi-offence are jointly and severally liable for the loss or injury resulting therefrom, and that in the case in question the defendants were jointly and severally liable for the value of the wood cut and carried away. *Lalonde & Bélanger*, 3 L. N. 26, & 24 L. C. J. 96, Q. B. 1879.

9. There is no solidarity between proprietors sued for the obstruction of a water course by dams and other constructions. *Jean* v. *Gauthier*, 5 Q. L. R. 138, S. C. 1879.

10. The parties to a *quasi delit* are jointly and severally liable therefor. *Kane & Racine*, 3 L. N. 66, & 24 L. C. J. 216, Q. B. 1880.

VIII. Lesion.

11. *Illegal Consideration.*—The plaintiff was a rich brewer in Pennsylvania, and defendant was in his employ as driver, and was known to be a person of intemperate habits. The latter was suddenly reported to be left heir of an estate in Australia. He entered into an agree-

ment with his employer that the latter should supply him with ten dollars a week, and also disburse the money necessary to obtain information, for which he was to be indemnified and to receive one-half of the estate. The amount realized was over $14,000. Plaintiff had disbursed $1,783, and when the moneys of the estate were lodged in the Bank of B. N. A. plaintiff took the action to recover his share under the agreement. Defendant pleaded his intemperate habits, and that he was not on equal terms with plaintiff when the agreement was made—*Held*, that the consideration was not lawful, and plaintiff would only get judgment for the amount he had disbursed. *Rhodes & Black*, 1 L. N. 268, S. C. 1878.

IX. Novation of.

12. The appellant, on the 16th September, 1875, being in difficulties, got his creditors to sign a composition agreement of 12s.6d. in the £, payable in four instalments, he giving his promissory notes for such instalments, and the last of them being specially guaranteed by four persons or firms. This agreement was carried out on the part of his creditors who took his notes and gave up their evidences of his indebtedness. The appellant went on with his business and paid his first and second instalments punctually. Failing on the fourth of April to pay the third he was, on the 28th of that month, forced into insolvency by a new creditor. The fourth instalment was consequently not paid, and thereupon the respondents demanded and received from two of the securities the amount of their share of the security given. The other two had themselves in the meantime gone into insolvency. Upon the appellants estate they claimed at first only for the balance of their composition, but afterwards they changed ground and increased their claim so as to cover the balance of the original debt, less their receipts on account of the composition. The appellant, having received from the assignee a reconveyance of his estate in terms of a deed of composition and discharge from his creditors, contested the collocation, on the ground that it might only go for the unpaid balance of the old composition. The contestation turned on the following clauses in the original deed of composition: "And it is declared "and agreed that in the event of the said "J. A. R. going into or being forced into insol- "veney, that the claims of all and every of the "said creditors who shall have signed this "indenture shall revive to their full extent. "But they, the said creditors, so signing this "indenture *hereby bind and oblige themselves* "*in such case to execute another indenture* "*similar to the present one in all respects* under "the provisions of the Insolvent Act of 1875, "of the Dominion of Canada"—*Held*, dismissing the contestation, that there was no novation, and that the creditors were entitled for the full balance unpaid. *Rafter & Moses*, 23 L. C. J. 297, Q. B. 1878.

13. Where a donor of an immoveable reserved a life rent to himself, and afterwards consented to a sale of the property, and to take the interest in the purchase money instead of the life rent—*Held*, no novation. *Bernier & Carrier*, 4 Q. L. R. 45, Q. B. 1878.

14. A writing signed by a lessor, and not accepted by the lessee, promising that a new lease should be entered into after a certain date, did not constitute a new contract of lease which could be pleaded in defense to an action to rescind the original lease. *Loranger* v. *Clement*, 1 L. N. 326, S. C. R. 1878.

15. But where there was a settlement by notes with a discount of 10 per cent., the notes being considered as cash, and the notes were unpaid—*Held*, that the credit price of the goods did not revive. *Stafford & Henderson & Darling*, 2 L. N. 325, S. C. 1879.

16. A composition in insolvency is not a novation of the debts subject to it, and, if not paid, the debts revive in full. *Rolland & Seymour & Smith*, 2 L. N. 324, S. C. 1879.

17. A promissory note given as an acknowledgment of a loan does not constitute novation, and after the maturity of the note the lender has a right, if the note be not paid, to sue on the loan, even if the note be prescribed. *Robitaille* v. *Deuechaud*, 5 Q. L. R. 238, S. C. 1879.

XII. Subrogation.

18. Where the promoters of a company paid a claim resting on property which they purchased for the purposes of the company, and which they transferred to the company, after its organization, but without special mention of the claim for the amount so paid—*Held*, that no subrogation took place so as to give the company the right to rank for the amount on the proceeds of the sale of the property under Art. 1156 Civil Code.* *Chinic & Canada Steel Co. & Lloyd*, 3 Q. L. R. 1, S. C. R. 1876.

19. And *semble*, that a tacit subro can not be claimed under a deed which gress terms discharges the privilege with ject to which the subrogation is claimed, and which is duly registered. *Ib.*

XIII. With a Term.

20. The plaintiff having a judgment against the defendant told him that he would wait until the first of May, 1879, for the payment of the judgment, but before the said date caused an attachment to be placed in the hands of the minister of public works. The minister of public works declared that he owed to the defendant a balance on a contract by the Government with the defendant for certain public works. On opposition by the defendant *afin*

---

* Subrogation takes places by the sole operation of law, and without a demand.

1. In favor of a creditor who pays another creditor whose claim is preferable to his by reason of privilege;

2. In favor of the purchaser who pays a creditor to whom the property is hypothecated;

3. In favor of a party who pays a debt for which he is held with others or for others, and has an interest in paying it;

4. In favor of a beneficiary heir who pays a debt of the succession with his own moneys;

5. When a rent or debt due by one consort alone has been redeemed or paid with the moneys of the community; in this case the other consort is subrogated in the rights of the creditor according to the share of such consort in the community. 1156 C. C.

d'annuller, on the ground, among other things, of the delay granted him, the attachment was set aside. *Gingras* v. *Vezina*, 5 Q. L. R. 237, C. C. 1879.

OBLIGATIONS PREJUDICIELLES —*See* SALE, CONDITION PRECEDENT.

OCCUPATION—*See* POSSESSION.

OFFENCES.

I. DEROGATORY TO THE BAR, *see* BAR.
II. UNDER ELECTION ACT, *see* ELECTION LAW.

OFFICERS OF COMPANIES.

I. POWERS OF, *see* COMPANIES.

OFFICERS OF COURT.

I. JUDICIAL NOTICE OF.

20. In a case of capias in which the affidavit was objected to because it was subscribed simply "commissioner," without saying "commissioner of the Superior Court"—*Held*, that the court knew its own officers and would take notice of them. *Joseph* v. *Donovan*, S. C. 1877.

OFFICIAL COUNT.

I. OF BALLOTS AT ELECTIONS, *see* ELECTION LAW.

OFFICIAL NOTICE—*See* EVIDENCE.

OFFICIAL OATH—*See* EVIDENCE.

OFFICIAL PLANS AND BOOKS OF REFERENCE.

I. DEPOSIT OF, *see* REGISTRAR.

OIL MEASURE—*See* INSPECTION LAW.

OPINION.

I. OF EXPERTS NOT RECEIVED AS EVIDENCE IN MARITIME CASES, *see* MARITIME LAW.

OPPOSITION.

I. AFFIDAVIT WITH.
II. AFIN D'ANNULLER.
III. AFIN DE DISTRAIRE.
IV. BY ASSIGNEE IN INSOLVENCY.
V. BY THIRD PERSON.
VI. COSTS OF FIRST OPPOSITION TO BE PAID BEFORE SECOND BROUGHT.
VII. DELIVERY OF MOVEABLES SUFFICIENT FOR, *see* DONATION.
VIII. EN SOUS ORDRE.
IX. FOR PAYMENT OUT OF SEIGNIORIAL INDEMNITY FUND, *see* SEIGNIORIAL RIGHTS.
X. GROUNDS OF, *see* EXECUTION.
XI. IN FORMA PAUPERIS.
XII. IRREGULARITIES IN.
XIII. MAY BE BROUGHT BY WIFE WITHOUT AUTHORIZATION.
XIV. MOTION TO DISMISS.
XV. PROCEEDURE ON.
XVI. TO JUDGMENT.
XVII. TO SALE OF REAL ESTATE ON GROUND OF INFORMALITIES.
XVIII. TO VENDITIONI EXPONAS.
XIX. WHEN IN CONTEMPT OF COURT.

I. AFFIDAVIT WITH.

21. In the case of an opposition *afin de distraire* or *afin de charge*, founded on title, an affidavit is unnecessary. *Hart* v. *Cook & Gamelin*, 7 R. L. 137, S. C. 1874.

22. The affidavit accompanying an opposition may be taken by a commissioner of the Superior Court in a different district from that in which the opposition is filed, and the words "*commissaire C. S.*" is a sufficient designation of the quality of such commissioner. *Wood* v. *Ste. Marie*, 21 L. C. J. 306, C. C. 1877.

23. Motion was made to dismiss the opposition fyled in this case, because the affidavit in support of it was insufficient. The motion was granted, and the opposition was dismissed. But—*Held*, in review, that the judgment must be reversed, because there had been a plain and substantial compliance with the law and with the rule of practice in the terms of this affidavit. Article 583 C. C. P. requires that the affidavit should state that the allegations in it are true, and that it is not made for the purpose of unjustly retarding the sale, but only to obtain justice. The terms used in the affidavit in this case substituted the words "the execution of the judgment" for the sale, and it appeared sufficient. What was the sale but the execution of the judgment; and what could have been the execution of the judgment but the sale? The two cases of *Schofield vs. Rodden*,* and

* 1 Dig. 902-53.

Morrin vs. Daly, and Daly, * opposant, give a very rigid application of the law, but not in point. Judgment reversed, and motion to dismiss opposition rejected. *Arpin & Dixon & O'Brien*, S. C. R. 1876.

II. Afin d'Annuller.

24. An opposition *afin d'annuller* may be filed to a seizure under a writ of execution *de bonis* by a creditor having a *bailleur de fonds* claim in the property seized. *Philion* v. *Bisson & Graham*, 2 L. N. 38, & 23 L. C. J. 32, S. C. 1878.

III. Afin de Distraire.

25. *Grounds of.*—An opposition to a seizure of moveables founded on a donation neither registered nor of which there had been any delivery or tradition was dismissed. *Crossen* v. *O'Hara & McGee*, 21 L. C. J. 103, S. C. 1877; 808 C. C.

26. A person who had been appointed voluntary guardian of things seized under a *saisie gagerie*, afterwards, when the things were to be sold, filed opposition, on the ground that he had purchased them at a previous judicial sale held on the very day on which the second seizure took place—*Held*, that being aware of the seizure he should have come in by intervention. *Poirier* v. *Plonffe & Calvi*, 21 L. C. J. 103, S. C. 1877.

27. And *held*, also, that he should have filed he copy of the *procès-verbal*, on which he relied, with his opposition, and not having done so he could not afterwards produce it. *Ib.*

IV. By Assignee.

28. An opposition by an assignee under the Insolvent Act of 1875 to a sale of effects seized in execution prior to the assignment in insolvency—*Held*, bad, no notice having been given to plaintiff in conformity with sec. 97. *Gagnon & Sorel Gas Co. & Fulton*, 2 L. N. 116, S. C. 1879.

29. The opposant, who had been duly appointed assignee to the defendant's estate, made a tierce opposition asking that a judgment maintaining a *saisie arrêt* be set aside. The *saisie arrêt* was served on the defendant and the *tiers saisi* before the writ of attachment, but the judgment validating the *saisie arrêt* was not rendered until sometime afterwards—*Held*, maintaining the opposition and ordering the *tiers saisi* to pay the amount of the judgment against him. *Marsan* v. *Tessier & Farmer & Dupuy*, 2 L. N. 133, & 23 L. C. J. 214, S. C. 1879.

V. By Third Person.

30. Where a judgment declared a certain horse to be common to two persons—*Held*, that the opposant who claimed to have a property therein had a right to come in by opposition and show it. *Chagnon* v. *Giroux & Giroux*, 2 L. N. 59, S. C. R. 1879.

* 1 Dig. 902-59.

VI. Costs of First Opposition to be Paid before Second Brought.

31. Where an opposition *afin de distraire* was dismissed on motion—*Held*, that the opposant could not file a new opposition until the costs of the first were paid. *Dalton* v. *Doran & Doran*, 1 L. N. 220, & 22 L. C. J. 103, & 8 R. L. 372, S. C. R. 1878.

VIII. En sous Ordre.

32. The respondent, after the sale of an immoveable as belonging to one B., opposed, claiming the proceeds on the ground that the immoveable belonged to him and not to B., upon which appellant opposed *en sous ordre*, claiming to be collocated for a hypothec which he had upon the same property. The court of first instance dismissed his opposition, on the ground that the insolvency of the debtor was neither alleged nor proved. But *held*, in appeal, that the opposition was not governed by Art. 753 of the Code of Procedure,* but by Art. 729,† and the judgment was consequently reversed. *Rouleau & Tremblay*, 10 R. L. 239, Q. B. 1880.

33. Where a mortgage creditor claimed on the proceeds of the property sold at the *folle enchere* of a purchaser—*Held*, that as there was evidence of the insolvency of the purchaser, that his opposition could be sustained as an opposition *en sous ordre*. *Garon & Tremblay*, 1 L. N. 43, Q. B. 1877.

IX. For Payment.

34. An opposition for payment cannot be received after the expiration of the delay fixed by Article 720 of the Code of Procedure,‡ without the permission of the court. *Shortis & Normand*, 3 Q. L. R. 382, Q. B. 1877.

X. Grounds of.

35. Where an opposition was issued on the ground *inter alia* of part payment of the judgment, and that execution had issued for more than was due, the opposition was maintained *pro tanto* without costs. *Tradelle* v. *Hudon*, 24 L. C. J. 171, Q. B. 1875.

36. Plaintiff got judgment against the defendant for $216, interest and costs, the amount of the defendant's promissory note. On the 13th of June, under a writ of execution, certain goods were seized as being in the defendant's possession, and in October another writ *de bonis* issued, under which other effects were seized.

* Any creditor of a person who is entitled to be collocated, or who is beneficially collocated upon moneys levied, has a right to file a sub-opposition, demanding that to the extent of his claim the sum accruing to his debtor be not paid to such debtor but to him; he cannot, however, exercise this right unless his debtor is insolvent, or his claim carries execution. 753 C. C. P.

† After law costs those claimants must be collocated in their respective order who had some right of property in the immoveable sold, and who failed to set up their rights in due time by opposition to annul, opposition to withdraw, or opposition to secure charges, but have filed opposition for payment, after, however, deducting such debts as they may be bound to pay, and as have become payable in consequence of the sale of the immoveable, and the costs mentioned in the preceding article. 729 C. C. P.

‡ Oppositions for payment may be filed with the sheriff if he has not yet made his return, or in the office of the prothonotary where the return is made, within six days after the return. After this delay they cannot be filed without permission of the court, and upon such conditions as it imposes. 720 C. C. P.

The opposant fyled opposition to both these seizures, and both of these oppositions were contested. The one which concerns the first seizure was based upon a sale from the defendant to the opposant of the 28th of August, 1875, by which the things afterwards seized, and also the half of the crop for that year, were made over to the opposant, who undertook to pay several persons, creditors of the defendant, to the extent of $147.50, which was the stipulated price of the things sold. At the time of this sale the original case had been pending about four months, but judgment had not then been given. The defendant was examined as a witness, and admitted that it was concerted between himself and the opposant, to whom he owed $70, that he should transfer to him all his property as he did, and which amounted altogether to $350 or $100, for $147½. After the sale the defendant ceased to be the opposant's tenant on halves as he had been before, and became his servant at $25 a month—though nothing showed that the lease had ever been formally rescinded. The opposant knew all about the defendant's indebtedness to plaintiff. The defendant says that the opposant on one occasion said to him "te voila *poursuivi par Lalonde pour un gros montant.*" On another occasion, he told another witness, "*Je preferc me faire payer avant le jugement,*" alluding to the sale that had just been made; and again, he said, "Lalonde *fera ce qu'il voudra.*" The whole property was transferred, not merely to the extent of the opposant's claim. The contestation between the opposant and the defendant maintained with costs. *Lalonde & Gauthier & Latreille,* S. C. 1876.

37. Where it appeared that certain immoveables seized had been previously sold by defendant, and the deed of sale duly registered, the opposition was maintained with costs against plaintiff. *Robert* v. *Fortin,* 22 L. C. J. 106, S. C. 1877.

38. An opposition based on part payment will be maintained with costs, notwithstanding no deposit was made of the amount remaining due. *Patenaude* v. *Guertin,* 1 L. N. 131, & 22 L. C. J. 57, C. C. 1877.

39. An opposition will not lie for the value of a deficiency in the contents of an immoveable sold by the sheriff, as there is no guarantee. *Pelletier* v. *Chassé & Castonguay,* 3 Q. L. R. 65, S. C. 1877.

40. An opposition *afin de distraire* to a seizure of moveables seized in the possession of the party condemned will be dismissed on motion, if the allegations fail to set out any specific title, and do not set up a possession in the opposants. *Duhamel et al.* v. *Duclos & Duclos & Currie et al.* v. *Delorme & Delorme,* 21 L. C. J. 308, S. C. 1877.

41. Plaintiff took in execution, and in order to obtain payment of a money condemnation against the defendant, a piece of land. The opposant, daughter of the defendant and living with him, claimed the land as her property under a donation from him to her of date 15th August, 1876. The plaintiff contested the opposition, and demanded the nullity of the donation, on the ground of fraud against the creditors of the donor. The contestation was maintained by the court at Iberville. The

opposant contended that the contestation was too late owing to the opposant having obtained a prescriptive title under C. C. 1010,* which requires the creditor to bring his suit within one year from the time of his obtaining a knowledge of the fraud. The court below decided that the facts proved to not bring the case within the rule, as it is only proved that the plaintiff had heard of the transfer.—*Held,* that the judgment in this respect is unassailable. The opposant further contended that the validity of the donation could only be tested by a revocatory action. The court on this point was also against the opposant. It was so decided in the case of *Cumming et al. and Smith et al.,* 5 L. C. Jur. 1,† where the contestation proved that the deed should be set aside, and the conclusions were such as to enable the court to do justice between the parties as fully as in an action purely in form revocatory or *actio Pauliana.* There was no injustice in confirming the judgment, as the pretended deed of donation was fraudulent and should be set aside. Judgment confirmed. *Morin & Bissonnette,* S. C. R. 1877.

42. Appeal was had from a judgment partially maintaining an opposition filed by respondent. Appellant had obtained a judgment against respondent for a balance of principal and interest due under an obligation. Execution having issued, respondent filed opposition on the ground that he had not received credit for certain payments on account made by him before he was sued, and that he had been unable to prove these payments owing to an error of date which he had only recently discovered. Respondent established by the evidence of plaintiff himself that he had paid $1270, at certain dates specified, and his opposition was maintained to this extent, and a deduction of this sum made. The appellant urged that defendant was re-opening under the opposition the *enquête* in the original suit. —*Held,* maintaining the opposition and dismissing the appeal. *Cornell & Rhicard,* 1 L. N. 471, Q. B. 1878.

43. Opposition on the ground that the effects seized belonged to the opposant and defendant as *legataire en usufruit* of her deceased husband and tutrix to their children. Proof accordingly, except as to a piano towards which defendant had paid part with her own money. Opposition maintained with costs. *McMahon* v. *Lassiseraye,* 1 L. N. 280, S. C. 1878.

44. The defendant being indebted to the plaintiff was sued by a wrong christian name and allowed judgment to go against him by default —*Held,* that he could not afterwards oppose the seizure of his goods on the ground that he was not the person against whom the judgment was rendered. *Merchants Bank of Canada* v. *Murphy,* 23 L. C. J. 215, S. C. 1878.

45. An opposition founded on the issue and service of a writ of appeal without security will be dismissed on motion. *Booth* v. *Bastien & Bastien,* 1 L. N. 130, & 22 L. C. J. 41, S. C. 1878.

---

* No contract or payment can be avoided by reason of anything contained in this section at the suit of any individual creditor, unless such suit is brought within one year from the time of his obtaining a knowledge thereof. If the suit be by assignees or other representatives of the creditors collectively, it must be brought within a year from the time of their appointment.

† 1 Dig. 643-299.

46. Real estate was seized as being in possession of the vacant estate of M., deceased. The appellant, sister of deceased, opposed setting up title and possession under title—*Held*, that where a title was bad in law and simulated and fraudulent, and where the purchaser had suffered the vendor to act as proprietor and to be the reputed possessor *animo domini* she could not maintain an opposition founded on the pretension that the seizure on the curator to the vacant estate was *super non domino et non possidente*, though she had done some acts of possession, and the property stood on the books of the municipality in her name. *McCorkill & Knight*, 1 L. N. 42, Q. B. 1877; 632 C. C. P.*

47. And *held*, in Supreme Court on appeal, that having renounced to the community to which the property belonged, she having been in community with her husband at the time she purchased the property from her brother, she had divested herself of any title or interest in the property, and could not claim the legal possession under the deed of purchase or by prescription, or maintain an opposition because the seizure was *super non domino and non possidente* *Ib.* 3 S. C. Rep. 233, Su. Ct. 1879.

48. The plaintiff, a workman, seized the property of his employer, a sub-contractor, for his wages. The principal contractor intervened and obtained a judge's order to get possession of the things seized on giving security. This was done, and judgment having been rendered against the defendant a writ of *renditioni exponas* was issued, and the intervenant who had obtained possession of the things ordered to produce. Instead of the things, however, the intervenant, who had allowed his intervention to drop after obtaining possession of them, produced an opposition claiming them as his own —*Held*, in appeal, reversing the *dispositif* of the court below, that such a position was incompatible with that of surety, and as the opposant had not offered to return the things into the possession of the court when called upon to do so the opposition should have been dismissed. *Prévost & Rodgers*, 24 L. C. J. 179, Q. B. 1879.

49. A second opposition which is not founded on reasons subsequent to the first will be dismissed on motion. *Desmarteau* v. *Pepin*, 2 L. N. 132, & 23 L. C. J. 61, & 10 R. L. 543, S. C. 1879; 664 C. C. P. & Q. 34 Vic. cap. 4.†

50. Review from a judgment which maintained an opposition *afin de distraire*, by which the opposants claimed the property seized as proprietors under a donation made by the late L. B. and his wife, the defendant, and also by the will of the said late L. B. by donation, the donors reserving to themselves and to the survivor the usufruct of the whole of their property, real and personal, gave to the opposant, except what might be necessary to pay the debts of the donors, who, or the survivor of whom, was to have the right of selling for that purpose. The terms of the will were *mutatis mutandis*, the same as the donation. The plaintiff was a creditor of the donors, and held on the real estate of the donors a mortgage executed on the 3[th] day of October, 1863, for the sum of $3,200, for the balance of which he obtained the judgment under which the property in question was seized. The plaintiff contended that the reserve in the donation and will excluded the property seized. That in reality the donation and will conveyed only the property which should remain after the payment of the debts. And until this had been established by the sale of sufficient property to pay the plaintiff the opposant could not claim the property or any part of it. The return of the sheriff was that the defendant was in possession when he seized, and not the opposant—*Held*, that there was no doubt that the donors intended that the plaintiff should be paid before the opposants enjoyed the property, and that the plaintiff might cite against the opposants the maxim *donner et retenir ne vaut*. Judgment to maintain the contestation and dismiss the opposition. *Vide* C. C. 782.* *McKenzie & Lavigne*, S. C. R. 1880.

51. A *saisie gagerie* issued against defendant, 1869. Defendant abandoned the premises, and judgment was rendered against him. In 1879, the plaintiff issued execution under the judgment. The bailiff went to the domicile of the defendant, and asked him if he had any moveables. He said he had none, and signed a return of *nulla bona*. Plaintiff then caused the immoveables of defendant to be seized. Defendant opposed, on the ground that the effects seized under the *saisie gagerie* had never been sold. Opposition dismissed on the ground that defendant had signed the return of *nulla bona*. *Graham & Hurlbert*, 10 R. L. 228, S. C. R. 1880.

52. The respondent had caused an execution to be issued against the immoveables of appellant personally, and he opposed the seizure as tutor to his son, a minor, his wife being deceased. The grounds of the opposition were that the immoveable seized as belonging to himself personally formed part of the community which had existed between him and his deceased wife, and also on the ground that when the seizure was made a writ of attachment under the Insolvent Act of 1875 had issued against him, and he was no longer in possession of the immoveable—*Held*, that opposant had no interest, and that as the writ of attachment in insolvency was being contested at the time of the issue of the execution, and was since set aside; and as, moreover the wife was still alive at the time of the seizure, that the opposition was groundless and was properly dismissed. *Lefebvre & Turgeon*, 3 L. N. 20, Q. B. 1880.

---

* The seizure of immoveables can only be made against the judgment debtor and he must be or be reputed to be in possession of the same *animo domini*. 632 C. C. P.

† When all the advertisements and publications required by law upon the first writ have been duly published and made the execution of a writ of *renditioni exponas* cannot be stopped by opposition, unless for reasons subsequent to the proceedings by which the sale was stopped in the first instance and upon a judge's order. 664 C. C. P.

Art. 664 of the said Code (of Procedure) shall apply to executions against immoveables. Q. 34 Vic. cap. 4, sec. 8.

* It may be stipulated that a gift *inter vivos* shall be suspended, revoked or reduced under conditions which do not depend solely upon the will of the donor. If the do or reserve to himself the right to dispose of or to take back at pleasure some object included in the gift or a sum of money out of the property given, the gift holds good for the remainder, but is void as to the part reserved, which continues to belong to the donor, except in gifts by contract of marriage. 782 C. C.

XI. In Forma Pauperis.

53. A plaintiff who has obtained leave to sue *in forma pauperis* does not require a new authorization to contest *in forma pauperis* an opposition to the execution of the judgment. *Belisle* v. *Pellerin & Dugas*, 3 L. N. 339, S. C. 1880.

XII. Irregularities in.

54. An opposition *afin de distraire* containing erasures and marginal notes not referred to or approved will be dismissed on motion. *Dalton* v. *Doran & Doran*, 1 L. N. 220, & 8 R. L. 371, S. C. R. 1877; 295 C. C. P.

XIII. May be Brought by Wife without Authorization.

55. An opposition may be brought by a wife separate as to property to the sale of her moveables without the authorization or assistance of her husband.* *Owens* v. *Laflamme & Charest*, 24 L. C. J. 207, C. C. 1880.

XIV. Motion to Dismiss.

56 On a motion to dismiss an opposition to a *renditioni exponas* on the ground that it had issued without a judge's order—*Held*, that an opposition could only be dismissed on motion when the grounds were evidently frivolous. *Heritable Securities & Mortgage Investment Association* v. *Wright*, 2 L. N. 301, S. C. 1879.

XV. Procedure on.

57. An opposant may at once demand from plaintiff a plea to the opposition instead of moving upon him, under Art. 586 of the Code of Procedure,† to declare whether he contests the same or not. *Bertrand* v. *Poulint*, 4 Q. L. R. 200, S. C. 1878.

XVI. To Judgment.

58. The plaintiff obtained judgment against the defendant for $200, being for instalments or calls due on its shares held by him, and caused an execution to issue against his moveable property. His mother opposed the seizure on various grounds; and, while being contested, filed a *tierce opposition* to the judgment itself, on the ground that the contract of subscription by her son was null, and had it been contested the action would probably have been dismissed. No fraud or collusion was alleged.—*Held*, that she had no status to make such an opposition. *Stadacona Insurance Co.* v. *Gagnon & Gosselin*, 5 Q. L. R. 231, S. C. R. 1879.

*A wife cannot appear in judicial proceedings without her husband or his authorization, even if she be a public trader or not common as to property; nor can she when separate as to property except in matters of simple administration. 176 C. C.

†After the return of the opposition the opposant moves upon the other parties to the suit to declare whether they intend to admit or contest it. In default of such declaration the opposant has a right to be relieved from the seizure with costs against the judgment debtor, unless the court otherwise orders. 586 C. C. P.

XVII. To Sale of Real Estate on Ground of Informalities.

59. *Per Curiam.* The opposants are mortgagees of the property sold by the sheriff in this case, and they come in by opposition, and ask the seizure, sale and adjudication may be set aside for certain informalities alleged, and because their interest as creditors was affected by the low price that the property sold for. The grounds of nullity set out a number of informalities which I will not at present refer to, because the right of the creditor to oppose after the sale in this manner and form is contested by the *adjudicataire*. There was first an exception *à la forme*; but that was rejected as too late. On the merits, it might possibly have prevailed; for though none was cited at the bar, there is positive and high authority for saying that the *exception à la forme* was good. I refer to the case of *Joseph v. Brewster et al.*, and *Haldane*,* *adjudicataire* (6 L. C. R., p. 486)—*Held*, that a petition *en nullité de décret* filed by a plaintiff on a sale of immovables will be dismissed on exception *à la forme* made by an *adjudicataire*. That was a decision in 1856, Day, Smith and Mondelet, J. J., and the reason given was that the *adjudicataire* was not party to the *instance*, and therefore could not legally be brought into the cause by a mere notice. Now, article 711 C. C. P. requires a *requête libellée* served upon the parties interested. Therefore, the Code seems to mitigate the rigor of the decision in *Joseph v. Brewster*, where the judges appear to have required an action and a writ. On the other hand, the creditor here opposing can be in no better position than the plaintiff was there, and the *adjudicataire* here is no more in the cause than he was in that. By filing a *requête libellée*, which the Code permits, and serving it on the parties interested, they would have been in no better position than they are now, for the opposition has been served on plaintiff, defendant and *adjudicataire*, and they were called to declare whether they contested. Therefore, I think, this opposition is really a *demande en nullité de décret*, and must be treated as such.† *Courtemanche & Gauthier & Fauteux*, S. C. 1877.

XVIII. To Venditioni Exponas.

60. An opposition to a seizure under a writ of *venditioni exponas* cannot be maintained, unless based on something which has occurred since the first opposition was filed, even when there is an order of *sursis* signed by a judge. *Lamy* v. *Casson & St. Martin et vir.*, 10 R. L. 542, C. C. 1879.

61. On a motion to dismiss an opposition to a writ of *venditioni exponas*—*Held*, that where the opposition had issued without a judge's order, and there was nothing to show that all the

*1 Dig. 1051-1024.

†The remarks of the court here given, though mere *obiter dicta*, are inserted as containing information of an authoritative character on an important point of practice. On the merits of the informalities set up, which were questions principally of fact and not of law, each opposition was dismissed.—Ed.

publications and advertisements required by law had not been made on the first writ in accordance with the terms of the Code of Civil Procedure, Art. 664,* that the opposition was rightly dismissed. *Delinelle & Armstrong*, 2 L. N. 172, & 10 R. L. 315, Q. B. 1879.

XIX. When in Contempt of Court.

62. A person cannot be condemned to imprisonment for contempt of court until the merits of the opposition have been decided. *Dawson & Ogden*, 8 R. L. 716, Q. B. 1877.

OPTION.

I. For Enquete and Hearing, *see* PROCEDURE, Enquete.
II. Of Trial by Jury, *see* JURY.

ORANGE ASSOCIATIONS.

I. Illegal.

63. Opinion of police magistrate on committing the defendants for trial for belonging to an illegal society, and attempting to walk in procession, thereby endangering the public peace. *Regina* v. *Grant*, 8 R. L. 697, Po. Ct. 1878.

*See note to p. 559 *supra*.

ORDERS IN COUNCIL.

I. Liability of Members on, *see* ACTION en Garantie.

OWNERSHIP.

I. Right of Accession.

64. Where the plaintiff had transformed certain cars belonging to a wooden railway, of which the defendant was proprietor, from platform cars into passenger cars—*Held*, that this did not make him proprietor of the cars, nor give him the right to revendicate them. *Sénécal & Peters*, 7 R. L. 308, Q. B. 1874.

OVERDRAFTS—*See* BANKS.

SUMMARY OF TITLES.

PAPERS..... 567
PARENTS..... 567
PARISHES..... 567
PARLIAMENT..... 568
PAROLE EVIDENCE..... 568
PARTAGE..... 568
PARTICULARS..... 568
PARTITION..... 568
PARTNERSHIP..... 569
PARTY PROCESSIONS..... 572
PASSAGE..... 572
PASSENGERS..... 572
PATERNITY..... 572
PAWNBROKERS..... 572
PAYMENT..... 573
PEACE..... 580
PENALTIES..... 580
PENSION..... 580
PENSIONS..... 580
PEREMPTION..... 580
PERJURY..... 581
PETITIONS..... 581
PETITOIRE..... 581
PEWS..... 581
PHYSICIANS..... 581
PICKLED FISH..... 582
PIGNORATITIA..... 582
PILOTS..... 582
PLAN..... 582
PLANT..... 582
PLEADING..... 582
PLEDGE..... 593
POLICE..... 596
POLICE MAGISTRATE..... 596
POLICY OF INSURANCE..... 596
POSSESSION..... 596
POSSESSORY ACTION..... 597
POSTPONEMENT..... 597
POUR PARLERS..... 597
POWER OF ATTORNEY..... 597
POWERS..... 597
PRACTICE..... 598
PRACTICE COURT..... 598
PRAECIPE..... 598
PRATICIEN..... 598
PRECEDENCE..... 598
PREFERENTIAL PAYMENTS..... 598
PRELIMINARY OBJECTIONS..... 598
PREROGATIVE..... 598
PRESBYTERIAN CHURCH..... 598
PRESCRIPTION..... 598
PRESENTMENT..... 606
PRESUMPTIONS..... 606
PRIESTS..... 606
PRINCIPAL..... 606
PRISONER..... 606
PRIVATE CONTRACT..... 606
PRIVILEGE..... 606
PRIVILEGED COMMUNICATION..... 610
PRIVITY OF CONTRACT..... 610
PRIVY COUNCIL..... 610
PROCEDURE..... 610
PROCESSIONS..... 629
PROCURATION..... 629
PROFANATION..... 629
PROHIBITION..... 629
PROHIBITION TO ALIENATE..... 630
PROMISE..... 630
PROMISES..... 630
PROMISSORY NOTES..... 630
PROMOTERS..... 631
PROMULGATION..... 631
PROOF..... 631
PROPERTY..... 631
PROPRIETORS..... 632
PROSECUTIONS..... 633
PROTEST..... 633
PROTHONOTARY..... 633
PROTHONOTARY'S OFFICE..... 633
PROVINCIAL LEGISLATURE..... 633
PUBLICATION..... 634
PUBLIC DOMAIN..... 634
PUBLIC NUISANCE..... 634
PUBLIC OFFICERS..... 634
PUBLIC POSSESSION..... 634
PUBLIC ROADS..... 634
PUBLIC WORKS..... 634
PUBLIC WORSHIP..... 635
PUNISHMENT..... 635
PURCHASER..... 636
PURCHASES..... 636

PAPERS—*See* NEWSPAPERS.

PARENTS.

I. Maintenance of, *see* CHILDREN.

PARISHES.

I. Assessments Due Commissioners for Civil Erection of, *see* COMMISSIONERS.
II. Erection of.

Act to Amend Chap. 18 of the Consolidated Statutes for Lower Canada Respecting the Erection of Parishes.

Assented to 31*st Oct.*, 1879.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

1. Whenever in a Roman Catholic parish or in two or more neighboring Roman Catholic parishes there exists a Catholic minority speaking a language different from that of the majority, such minority or a portion of such minority may be erected into a distinct parish for all temporal purposes of their religion, and shall constitute a Corporation under the name of congregation of the Catholics of
speaking the language.

2. The erection of such minority or portion of such minority into a separate parish shall be made in the manner determined by Chap. 18 of the Consolidated Statutes for Lower Canada, except that the freeholder shall be replaced by the heads of families belonging to the nationality of such minority; excepting, however, the parish of Ste. Brigide of Montreal to which the provisions of the Act of this Province 39 Vic. Chaps. 35 and 36, relative to the erection of certain parishes therein mentioned, shall apply mutatis mutandis to the said parish congregations.

3. The head of the family shall determine the nationality to which his family belongs, and no change from one parish to another shall be allowed, except when approved by the diocesan ordinary.

4. The Roman Catholic Bishop of the Diocese in which such congregations shall exist may annex thereto the parishioners of a neighboring parish speaking the same language who shall demand to be thus annexed.

5. The present Act shall come into force on the day of its sanction.

PARLIAMENT—*See* ACT OF.

I. Powers of, *see* LEGISLATIVE AUTHORITY.

PAROLE EVIDENCE—*See* EVIDENCE.

PARTAGE—*See* PARTITION.

PARTICULARS.

I. Bill of, *see* ELECTION LAW.

PARTITION.

I. Action for.
II. Appeal from Judgment Ordering, *see* APPEAL.
III. Expertise in Action of, may be Dispensed with.
IV. Fruits and Revenues.
V. Heirs not Confined to Action in, to Establish their Rights, *see* ACTION PETITORY.
VI. Not Necessary to Set off a Debt against an Undivided Share of a Legatee, *see* EXECUTORS.
VII. Of Property Bequeathed.
VIII. Right to.
IX. Secretion of Estate.

I. Action for.

1. A tutor may sue for and obtain a partition of the property of the succession on behalf of the minors under him, even when there are immoveables comprised in the succession. *Bérard v. Letendre*, 7 R. L. 391, S. C. 1876.

2. And in such action it is not necessary to bring all the heirs. *Ib.*

3. And such action may be brought before the completion of an inventory. *Ib.*

4. And in such action the plaintiff may offer to the defendant the option of paying a certain sum of money in place of proceeding with the partage. *Ib.*

III. Expertise in Action of, may be Dispensed with.

5. In an action in licitation the court may order the sale of the immoveables without ordering the expertise in Arts. 922 and following of the Code of Procedure, when it is in evidence that the immoveables cannot be divided and that there are not as many lots as there are co-partitioners. *Latouche & Latouche*, 9 R. L. 700, Q. B. 1876.

6. And any irregularities in the procedure subsequent to the service are covered by the silence of the parties and their neglect to invoke them before the hearing on the merits of the demand. *Ib.*

IV. Fruits and Revenues

7. In a partition a plaintiff is entitled to compensation from the defendant for the fruits and revennes, even if he has not demanded them by his action. *Haggerty & Morris*, 8 R. L. 446, Q. B. 1876.

VII. Of Property Bequeathed.

8. A right of partition or "*séparation de patrimonie*" is included in a demand for a replacement against a legatee. *Matte & Laroche*, 4 Q. L. R. 65, Q. B. 1878.

VIII. Right to.

9. Where a wife dying the community was continued and the husband married again—*Held*, on the death of the second wife, that her daughter, issue of such second marriage, was entitled to a third share in an immoveable belonging to the tripartite community, and that the purchaser of such share, the daughter being of age, could demand a partition of the property. *Francœur & Michaud*, 21 L. C. J. 288, Q. B. 1876.

IX. Secretion of Estate.

10. Where it is proved that there has been secretion the inventory and the partition will be annulled and a new one ordered. *Charlebois & Charlebois*, 10 R. L. 62, S. C. 1879.

PARTNERSHIP.

I. Action against, *see* ACTION.
II. Action by Partner after Dissolution.
III. Action for Account of, *see* ACTION en Reddition.
IV. Action for Non-Registration of, *see* ACTION qui tam.
V. Breach of Agreement of.
VI. Commercial.
VII. Description of Partners.
VIII. Liability after Change of Partners.

I. Action against.

11. Where persons are sued as partners, and a cause of action is only established against one individually the action will be dismissed *in toto*. *Fletcher* v. *Forbes*, 22 L. C. J. 24, S. C. 1869.

12. A firm originally composed of two partners admitted a third. The change was not registered, and the firm was sued as if composed of the first two partners only. Service was made at the place of business of the new firm—*Held*, that the plaintiffs were entitled to amend the writ by inserting the name of the new partners, and an exception to the form attacking the service of such amended writ because made after the original return day was dismissed. *Eastern Townships Bank & Morrill*, 1 L. N. 30, Q. B. 1877.

II. Action by Partner after Dissolution.

13. The plaintiff brought action for a debt due to a firm of which he had been a partner. By the deed of dissolution it was agreed that the business of the firm should be carried on by plaintiff and another, who had since died, and whose rights were represented by plaintiff—*Held*, that it was not necessary that the deed of dissolution should be signified to defendants before suit, such deed of dissolution and transfer not falling within the category of transfers or sales of debts or rights of action, which must be signified before action brought against third parties. *Tate* v. *Torrance et al.*, 1 L. N. 52, & 22 L. C. J. 48, S. C. 1877.

III. Action for an Account.

14. In March, 1871, plaintiff brought action to account against defendant, alleging *inter alia* that a partnership had existed between them as bakers, from the 15th July, 1864, to the 8th January, 1867, and praying for an account, or, in default, for a judgment against defendant of $400 and interest. Defendant denied the existence of a partnership. Plaintiff filed articles of co-partnership and of its dissolution. An *enquête* was held, and defendant admitted that he had retained all the assets of the concern, but asserted that plaintiff never was a partner. Account ordered and judgment condemning defendant to pay over to plaintiff whatever balance might be found due him on such account. Defendant in course of time filed an account accompanied by his own affidavit and an affidavit of the professional accountant by whom the account was made, and by which it appeared that plaintiff had put nothing into the business; that the sales had been so much and the receipts so much, and that there was really a balance against the business of so much, which plaintiff should pay one-half. It was also shown by the report of the accountant that plaintiff had not kept proper books of account of the firm, as he had undertaken by the articles of partnership to do, and that the only available assets of the partnership were a number of outstanding accounts. Judgment of the Superior Court by which these outstanding claims were divided between plaintiff and defendant, and reserving to each their rights against the other for any balance due, unanimously confirmed in appeal. *Powell & Robb*, 8 R. L. 125, Q. B. 1876.

V. Breach of Agreement of, *see* CONTRACT.

15. The plaintiff and another entered into a partnership agreement with the two defendants to tender for certain dredging and harbor works, tenders for which had just been invited by the harbor commissioners of Quebec. Defendants, finding that it was a settled matter that other parties were to get the contract, made common cause with them, and threw the plaintiff over board—*Held*, reversing the decision of the court below,* that plaintiff was entitled to his share. *Kane* v. *Wright*, 4 L. N. 15, & 1 Q. B. R. 297, Q. B. 1880.

* 1 L. N. 482 S. C., since appealed to Supreme Court.

VI. Commercial.

16. *What is.*—An association of persons formed for the purpose of trafficking in real estate is not a commercial partnership. *Girard & Trudel et al*, 21 L. C. J. 295, Q. B. 1876.

VII. Description of Partners.

17. On the contestation of certain claims in insolvency with regard to the right of the claimants to vote at meetings of creditors under the Insolvent Act, 1875—*Held*, that in the case of a claim by a firm the name of the partners must be given in full, but where an individual trades alone under the assumed name of a partnership, it need not be specially stated that he has no partners, unless the plural be used to designate the claimant in the body of the claim. *Dinning in re & Samson*, 4 Q. L. R. 26, S. C. 1877.

VIII. Liability after Change of Partners.

18. In June, 1869, the appellants, M. A. & J. B. A., entered into partnership to trade in hemlock bark, and in September, 1870, they dissolved, and M. A. entered into partnership for the same purpose with S. D. under the same firm name as before, "A. & Co." The formation of both partnerships was duly registered, but the dissolution was not. Action by respondents for goods sold subsequent to the dissolution. The first firm, although there was no registration of its dissolution, was only formed for a year, which had expired previous to the dissolution—*Held*, that under the circumstances there were two firms in existence under the same title, and as the evidence was that the goods in question had been sold to the first firm, and not to the second; and as, moreover, the respondents (plaintiffs) had accepted the notes of the second firm in part settlement of the amount, that the action against the first firm should have been dismissed. *Auger & Gilmour*, 8 R. L. 110, Q. B. 1876.

19. In an action against a partnership on a merchants account, it appeared that the firm had dissolved previous to the action, and that the dissolution was advertised in a newspaper, but not registered—*Held*, on an exception to the form, that service as on a partnership was sufficient. *Greenshields* v. *Wyman*, 21 L. C. J. 40, S. C. 1876.

20. And, also, that being described as "co-partners" and not "heretofore co-partners" was sufficient. *Ib.*

21. Where, by the deed of dissolution of a partnership, power was given to one of the partners to sign notes in the name of the firm, and one of the other partners being sued on a note signed under such authority pleaded that the note was given without his knowledge in the name of a terminated co-partnership—*Held*, confirming the judgment of the court below, that the defendant was liable. *White et al.* v. *Wells*, 1 L. N. 87, S. C. R. 1878.

PARTY PROCESSIONS—*See* PROCESSIONS.

PASSAGE.

I. Right of, *see* SERVITUDES, Right of Way.

PASSENGERS.

I. Rights of, *see* CARRIERS, Liability of, RAILWAYS, &c.

PATERNITY.

I. Action in Declaration of, *see* ACTION.

PAWNBROKERS—*See* PLEDGE.

I. Lien of for Advances.
II. Liability of.
III. Who are.

I. Lien of for Advances.

22. Where a pawnbroker advanced money on a watch in the hands of an employee who had been entrusted with it to repair it—*Held*, that he was entitled to be paid the amount advanced before the owner could recover. *Beaudry & Bissonnette & Moss*, 2 L. N. 407, C. C. 1879; 2268 C. C.*

II. Liability of.

23. The plaintiff pawned a watch with defendant, and defendant not being able to produce it sued him for the value. Defendant pleaded that the watch with other articles to a considerable value had been stolen. The robbery without any fault or negligence was proved—*Held*, that the theft under such circumstances constituted a *cas fortuit*, such as to relieve the defendant from liability. *Soulier* v. *Lazarus*, 21 L. C. J. 104, S. C. 1877; 1973, 1072, 1150 & 1200 C. C.

III. Who are.

24. Plaintiff sued for a penalty alleged to be incurred by defendant for illegally exercising the trade of a pawnbroker on 28th October, 1876, by receiving and taking by way of pawn, pledge and exchange, from one E. T. B., a gold watch. By a first plea the defendant denied that he had exercised such trade; that the transaction between him and B. was recognized by C. C. 1966; and that in taking said watch he

* Actual possession of a corporeal moveable by a person as proprietor creates a presumption of lawful title. Any party claiming such moveable must prove besides his own right the defects in the possession or in the title of the possessor who claims prescription, or who under the provisions of the present article is exempt from doing so.

did not exercise the trade of a pawnbroker. He also pleaded a second suit by one K. for the same penalty, in which he had been condemned. The court in Bedford District held that plaintiff had failed to prove the exercise by defendant of the trade of pawnbroker—*Held*, that defendant did not exercise the trade of pawnbroker by the pledge in question on the 28th October, 1876. The Quebec Act 41 Vic., C. 3, S. I. S. S. T. U. V., and *Laviolette* vs. *Dwerger*, 1 Dig. 988-530, 3 Rev. Leg., 444 and 552, are cited in support of the defendant. Judgment confirmed. *Perkins & Martin*, S. C. R. 1880.

PAYMENT.

I. Composition.
II. Default.
III. Delegation of.
IV. Demand of.
V. Imputation of.
VI. In Contemplation of Insolvency.
VII. In Fraud of Creditors.
VIII. Novation, *see* OBLIGATIONS.
IX. Opposition for, *see* OPPOSITION.
X. Place of.
XI. Proof of.
XII. Proved by Opposition, *see* OPPOSITION.
XIII. Subrogation.
XIV. Tender.

I. Composition.

25. To an action on a note the defendant pleaded an agreement by plaintiff to accept a composition of twenty-five cents in the dollar upon the amount of his claim, and alleged that he had tendered the amount but did not renew the tender by his plea nor deposit the money in court—*Held*, that the tender could not avail in defendant's favor as a payment, and the agreement to accept the composition rate being conditional on actual payment the plaintiff was entitled to recover the full amount of the debt in consequence of defendant's default to pay the composition. *Semple & McAuley*, 1 L. N. 62, S. C. 1877.

II. Default, *see* Demand of.

26. A demand of payment made on the part of the creditor by a person unknown to the debtor, and not furnished with an authorization, is not a putting in default when the debtor does not deny the debt but only refuses to pay to the unknown person. *Gagnon* v. *Robitaille*, 4 Q. L. R. 186, C. C. 1878.

III. Delegation of, *see* HYPOTHEC.

27. A delegation of payment contained in a registered deed of sale of real property, unaccepted by the delegatee, is no bar to an action by the creditor who has created such delegation against his debtor. *Mallette* v. *Hudon*, 22 L. C. J. 101, S. C. 1877.

28. A clause in a deed of sale providing that the purchaser shall pay all hypothecary creditors is not an *indication de paiement*. *Roy* v. *Dion*, 4 Q. L. R. 245, S. C. R. 1878.

29. An action on a delegation of payment is a sufficient acceptance, and no formal acceptance before action is necessary. *O'Halloran & Boucher*, 9 R. L. 547, S. C. R. 1879.

30. The acceptance by the hypothecary creditor of a delegation of payment contained in the deed of sale of the hypothecated immoveable is a matter of consent merely between the creditor and the purchaser, and may be proved by showing that both purchaser and creditor acknowledged and accepted the relation of debtor and creditor. *Trust & Loan Co.* v. *Guertin*, 3 L. N. 382, S. C. R. 1880.

IV. Demand of, *see* Default.

31. Where a debt is payable at the debtor's domicile he cannot when sued for the debt simply ask the dismissal of the action on the ground that no previous demand of payment was made at his domicile. *Mallette* v. *Hudon*, 22 L. C. J. 101, S. C. 1877.

32. A debtor who wishes to avail himself of the plea of want of demand of payment prior to action must deposit the amount in court. *Smallwood* v. *Attaire*, 21 L. C. J. 106, S. C. 1877.

33. Where want of demand of payment is pleaded, it must be accompanied with deposit of the amount in court in order to avail as a defence. *Mallette* v. *Hudon*, 21 L. C. J. 199, S. C. 1877.

34. In an action on a promissory note—*Held*, that the demand of payment made by any one without showing the note, or even having it in possession, is sufficient. *Marcotte* v. *Falardeau*, 6 Q. L. R. 296, C. C. 1880.

35. Plaintiff purchased a note made by defendant immediately after its maturity. The note was payable generally. Five months afterwards he sued on it. Defendant pleaded want of presentation, and proved that at the time of its maturity he had the money to pay for it—*Held*, that under art. 1152 of the Civil Code,* the plaintiff, in order to be entitled to the costs of the action, should have presented the note for payment at the domicile of the defendant. *Mineault* v. *Lajoie*, 9 R. L. 382, C. C. 1877.

36. Where a debt is payable at the office of the debtor, and he is sued without any demand being first made there for payment, he may deposit the amount in court, and in such case will be relieved from costs. *Crebassa* v. *Cie du Chemin de Fer de Sud Est*, 8 R. L. 722, C. C. 1878.

37. Payment of rent must be demanded before action brought. *Thymens* v. *Beautrone*, 2 L. N. 264, S. C. 1879.

38. A demand of payment of taxes addressed to a wife separate as to property, and by her sent in an envelope addressed to her husband, is sufficient. *Corporation of Bienville* v. *Gillespie*, 6 Q. L. R. 346, C. C. 1880.

---

* Payment must be made in the place expressedly or impliedly indicated by the obligation. If no place be so indicated the payment, when it is of a certain specific thing, must be made at the place where the contract was at the time of contracting the obligation. In all other cases payment must be made at the domicile of the debtor, subject nevertheless to the rules provided under the titles relating to particular contracts. 1152 C. C.

39. The defendant in an action on a note payable on demand, but of which no demand had been made, deposited the amount of the note in court without costs, and then demurred to the action on the ground of want of presentment. The demurrer was dismissed, but on the merits—*Held*, that as no demand had been made, the defendant was not in default at the time of action brought, and the plaintiff should therefore pay costs. *Archer* v. *Lortie*, 3 Q. L. R. 159, S. C. R. 1877.

V. IMPUTATION OF.

40. Appellant, acting as a broker, sold for the respondents a quantity of wheat to S. at $1.25 per bushel. This was on the 13th July, 1874. The appellant on the 15th July rendered to S. an account for 8,127 bushels of wheat so sold and delivered to him, and on the 18th July he sent his clerk to S. to get some money. The clerk received $8,000, and gave a receipt on account of respondent's wheat. When he returned appellant asked him if the $8,000 was on any particular account. The clerk replied that he thought he had given a receipt on account of respondent's cargo of wheat. Appellant replied, go back and tell S. it is not to be imputed on that account, but on account of wheat sold S. shortly before, belonging to the Bank of Montreal. The clerk returned, and found S. on the point of leaving his office for the day. S. put him off then, saying that he would make it all right on Monday. The matter, however, remained in that position, and no change was made in the receipt. Respondent now brought his action against appellant, claiming the $8,000 as paid by S. on account of the wheat sold him through appellant. The latter answered that the money had been applied to a different account; that the imputation made by S. was an error, and he, appellant, had remonstrated against it at once. The court below was of opinion that the imputation was made by the debtor at the time the payment was made, a receipt being given by the clerk, which remained unchanged, and could not be affected by the subsequent conversation between appellant and S. The court accordingly condemned the appellant to pay the $8,000. The court here saw no reason to alter the judgment of the court below. The imputation was made by the parties at the time, and a receipt given, and although S. might have said in a hurry subsequently that he would put it right, nothing had been done. Judgment confirmed. *Kershaw & Kirkpatrick*, Q. B. 1876.

41. And *held*, in Privy Council, that the debtor had a right to appropriate the payment to which of the two he preferred, and a receipt having been given effectuating his intention the appropriation could not be changed by the persons receiving the money, and moreover such alleged change should have been specially pleaded. *Kershaw & Kirkpatrick*, 22 L. C. J. 92, P. C. 1878.

42. Defendant sold plaintiff certain groceries, and received in payment a bank note, from which, after deducting the price of the groceries, he also retained the price of other effects previously sold to plaintiff, and then offered him the balance. Plaintiff refused and demanded his money back, and not getting it left the groceries which he had purchased in the store and sued for the amount of the bank note.—*Held*, that defendant had no right to retain the money, and judgment against him with costs. *Bryant & Fitzgerald*, 4 Q. L. R. 6, C. C. 1877.

43. Respondent had been surety for appellant for a debt of £125, and had paid and been subrogated. Afterwards he caused several *saisie arrêts* to issue, on which costs were incurred. Appellant having subsequently made payments on account contended that he had a right to have them imputed first to the interest-bearing debt—*Held*, that they should be imputed on the whole amount, interest and costs included. *Robert & Vautrin*, 2 L. N. 238, Q. B. 1879.

VII. IN FRAUD OF CREDITORS, *see* DONATION, SALE, &c.

44. This was a case, under section 89 of the Insolvent Act of 1869, of a payment made by an insolvent to a creditor within the thirty days preceding his assignment. It was alleged that S., the insolvent, made a payment on the 31st December, and he assigned on the 8th January following. Appellant pleaded that he received payment *bona fide*, and further that he held security which he gave up in consideration of the payment. The facts were these: appellant had made advances to the amount of $1,007 to S. and this was repaid in sums of $407 and $600 within the thirty days before S. made an assignment. The court below considered that the law required, to render such a payment invalid, that the creditor should know, or have reason to know, that the party making the payment was insolvent. And the court below did find that there was evidence of the knowledge on the part of appellant that S. was unable to pay his debts at the time this payment was made.—*Held*, that there was not sufficient evidence of that fact. The only evidence consisted of the statements of appellant himself on *faits et articles*, and appellant stated positively that he did not know of the insolvency at the time the payment was made. There was another circumstance that indicated why S. wanted to make the payment. Appellant held a warehouse receipt for several boxes of boots and shoes, and this payment was made by S. to get these goods released. It was proved that appellant gave up the securities on getting the money. It would therefore be the duty of the assignee to return the security to the creditor before he could get back the money paid. Judgment reversed. Action dismissed. *O'Brien & Brown*, Q. B. 1876.

45. Action by assignee of an insolvent estate to get back from defendants money paid to them by the insolvents within 30 days of their assignment. In the spring of 1876 the firm of A. & J. C. of Brantford, in Ontario, finding themselves in embarrassed circumstances, got an extension of time from their creditors, among whom the defendants stood for $449, and arranged to pay in 3, 6 and 9 months. When the first note became due, the C.'s were unable to meet it, and the creditors, through their solicitors in Brantford, took measures to force them into liquidation, but were unsuccessful, the affidavit not being considered sufficient by the judge. Thereupon they issued an ordinary action, and got paid

within the thirty days of the assignmen that was afterwards made. The evidence was that defendants knew that the C.'s could not meet their engagements in full, and judgment for plaintiff. *Mulholland & McArthur*, S. C. 1878.

46. The plaintiff, as assignee to the insolvent estate of C. sued the defendant to get back a sum of $560, alleged to have been paid to him by C. in contemplation of insolvency. The payment was not made within the thirty days, and the *onus* of proof was on the plaintiff. The defendant pleaded that in 1867, C. was trading at Verchères, and in good circumstances, and he, the defendant, being his uncle, became his security towards two merchants B. and E. in Montreal; that C continued his business up to the beginning of February, 1877, and in the interval the suretyship had continued; that on the 12th Dec., 1876, when this money was paid him by C. (that is about two months before the assignment), C. owed B. $160, and E. over $400, for which the defendant was liable to them as surety, and which he paid to them—the money in question being given to h m by C. for that purpose. The plaintiff contended that defendant was not a creditor of C. at the time of the payment made by the latter; that he had not settled with B. and E. towards whom he was security for C.; that C. was then unable to meet his engagements in full, and the defendant knew, or had probable cause to believe in this inability. *By the Court.*—The question is really, then, was this a fraudulent payment by C, with the knowledge of the defendant? and the insolvent law has not changed the common law, except as to the conclusive presumption arising from payments within the 30 days. The evidence does not seem to me to disclose anything from which fraud could be inferred, either on the one side or the other. C. honestly applied his earnings as captain of a river steamer, and while his store was being carried on by his employees, to pay his debts to two of his creditors—B. and E. It cannot affect the character of the transaction to know whether, technically, defendant had become his creditor by paying the money for him, if there was no belief on either side of his insolvency. The payment was no less a payment to his creditors, whether made through defendant or made directly by himself; and as long as both he and his surety got their discharge from their common liability. I do not see that it makes any difference what were the terms granted by the two creditors to the surety. There is evidence that C.'s business in his store was slack; but none, that I can see, tending to show that either he or his surety ought to have known he was insolvent. I am, therefore, of opinion to dismiss this action with costs. *Beausoleil & Therien*, S. C. 1878.

X. Place of, *see* Demand of.

47. Where a person made a note *en brevet*, payable at his domicile—*Held*, that the creditor was bound to make demand of payment at the place specified, and an application by the debtor for an extension of time was not a waiver of his right to pay at such place. *Dorion & Benoit*, 1 L. N. 350, S. C. 1878, & 2 L. N. 171, Q. B. 1879.

XI. Proof of.

48. In an hypothecary action for $37, balance due under a notarial obligation for $72—*Held*, that payment could be proved by parole evidence. *Massé* v. *Coté*, 5 Q. L. R. 145, S. C. 1879.

49. A deed or acte of discharge *sous seing privé* executed by a creditor may be set up against a notarial deed of obligation in the hands of a transferee of such creditor, and that without special proof that the same was signed and executed at the time it purports to have been. *Prévost & Melançon*, 23 L. C. J. 167, Q. B. 1878.

XIII. Subrogation.

50. A person who lends a sum of money to pay a creditor of the borrower, who mentions in the acknowledgment of the loan that the money was lent to pay such creditor, and that the receipt is to state that the payment was made with the money borrowed for that purpose, is not legally subrogated in the rights of the creditor if the receipt does not establish what was intended, nor can the identity of the money be proved otherwise than by the receipt. *Archambault & Bourgeault & Giguère*, 9 R. L. 519, S. C. R. 1879.

51. Appellants were the inspectors of the insolvent estate of one B., who prior to his insolvency had borrowed $20,000 from one H. As security for the repayment of this money, B. had given a mortgage on certain real estate and also *cautions solidaires*. Only part of the amount borrowed was drawn by B., the balance, amounting to $9,570.20, remaining in the bank to his credit, subject to the approval of H. On the 17th of March, 1876, the amount of the mortgage in capital and interest was settled by the *cautions solidaires*, who gave their own cheque for $9,087, money borrowed for that purpose from respondent, and the cheque of B. on the balance remaining in the bank, which with interest amounted at that time to $11,613.07. On the 23rd June, 1877, 15 months afterwards, by deed of transfer and subrogation before notary, respondent was subrogated in the rights of the *cautions solidaires* against the insolvent, including the mortgage before mentioned. On the insolvency of the latter the respondent filed for the full amount—*Held*, that under the Code, where the payment is made by the debtor with borrowed money, the subrogation of the lender does not require to be made simultaneously with the payment, and that the respondent therefore under the deed of subrogation was entitled to rank by privilege for the full amount of the mortgage.* *Remy & Moat*, 2 L. N. 97, Q. B. 1879; 1155-1156, C. C.†

---

*Confirmed in P. C. March, 1881.

† Subrogation is conventional:

1. When the creditor on receiving payment from a third person subrogates him in all his rights against the debtor. This subrogation must be express, and made at the same time as the payment.

2. When the debtor borrows a sum for the purpose of paying his debt and of subrogating the lender in the rights of the creditor, it is necessary to the validity of the subrogation in this case that the act of loan and the acquittance be notarial (or be executed before two subscribing witnesses); that in the act of loan it be declared that the sum has been borrowed for the purpose of pay-

52. By notarial deed passed in January, 1864, A. P. and S. P. acknowledged themselves indebted to A. L. in the sum of $100, and gave him a mortgage in security of the payment of the same. By another deed passed in January, 1878, the same parties acknowledged themselves indebted to plaintiff in the sum of $130, which they promised to pay him as mentioned in the deed, and in which they declared that they borrowed the money from plaintiff to pay A. L., and agreed to subrogate plaintiff in all the rights of A. L. By deed of quittance and discharge passed at the same time A. L. acknowledged having received from the debtors $110, in full of the money due him under the first deed, and subrogated plaintiff in all his rights, &c. In the meantime the debtors had sold the land hypothecated to defendant, and hence action in declaration of hypothec by the *subrogée*—*Held*, that under Art. 1155 of the Civil Code, the subrogation was good against the *tiers detenteur* who had acquired the property before the subrogation. *Chapdelaine & Chevallier*, 10 R. L. 687, C. C. 1880.

XIV. Tender of.

53. A tender of payment to be valid must be of the exact sum or thing due unconditionally; and therefore where a railway company which had engaged a civil engineer at a salary to be paid in cash or in bonds of the company at 50 cents in the dollar was sued for a balance of salary amounting to $619.50, pleaded a tender of three bonds of the face value of $1,500 on condition of receiving $261 in change, the tender was held invalid. *Legge & Laurentian Railway Co.*, 3 L. N. 23, & 24 L. C. J. 98, Q. B. 1879.

54. In a dispute between the appellant and his architect concerning some $84, extra paid for a tin instead of a gravel roof, the appellant tendered the balance due the architect less the $84. Some fourteen months afterwards respondent wrote accepting this offer. His acceptance not having been answered for nineteen days he sued for the whole amount—*Held*, that his acceptance not having been acted upon for fifteen days he was free to revoke it. *Snowdon & Nelson*, 3 L. N. 210, Q. B. 1880.

ing the debt, and that in the acquittance it be declared that the payment has been made with the moneys furnished by the new creditor for that purpose. This subrogation takes effect without the consent of the creditor. (If the act of loan and the acquittance be executed before witnesses the subrogation takes effect against third persons from the date only of their registration, which is to be made in the manner and according to the rules provided by law for the registration of hypothecs.) 1155 C. C.

Subrogation takes place by the sole operation of law and without demand:

1. In favor of a creditor who pays another creditor whose claim is preferable to his by reason of privilege or hypothec;

2. (In favor of the purchaser of immoveable property who pays a creditor to whom the property is hypothecated;

3. In favor of a party who pays a debt for which he is held with others or for others, and has an interest in paying it;

4. In favor of a beneficiary heir who pays a debt of the succession with his own moneys;

5. When a rent or debt due by one consort alone has been redeemed or paid with the moneys of the community; in this case the other consort is subrogated in the rights of the creditor according to the share of such consort in the community. 1156 C.C.

PEACE.

I. Justices of, *see* JUSTICES OF THE PEACE.

PENALTIES.

I. Action for under Election Law, *see* ELECTION LAW.

II. In Appeal, *see* APPEAL.

III. Incurred by Officers of Companies for Refusing to Allow Inspection of Books, *see* COMPANIES.

IV. In Obligations, *see* ACTION ON.

V. On Security Bond in Appeal to the Supreme Court, *see* APPEAL.

VI. Pleading in Action for, *see* ACTION QUI TAM.

VII. Proof in Action for under Elections Act, *see* ELECTION LAW.

VIII. Under Insolvent Act, *see* INSOLVENCY.

IX. Under License Law, *see* LICENSE LAW.

PENSION.

I. For Illegitimate Children, *see* ALIMENTS.

PENSIONS.

I. Of Infirm Pilots Exempt from Seizure, *see* EXECUTION, Exemptions.

II. To members of civil service and public employees, s. 40 Vic. cap. 10, & 44; 45 Vic. cap 14.

PEREMPTION.

I. Costs when Granted.
II. Interruption of.
III. Suspended by Inscription en Faux.

I. Costs when Granted.

55. A party in a cause who has obtained peremption is entitled to costs of the action. *Germain & Lacoursière*, 3 Q. L. R. 271, S. C. 1877.

56. In cases of peremption the action will always be declared *périmée* with costs, unless very special circumstances be adduced to prevent the condemnation in costs. *Sinclair* v. *McLean*, 22 L. C. J. 107, S. C. 1877.

II. Interruption of.

57. Proof by parole evidence of an alleged *compromise* between the parties cannot be permitted for the purpose of proving an interruption of peremption. *Phaneuf* v. *Cochrane*, 22 L. C. J. 106, S. C. 1877.

58. Pourparlers for the compromise of a case are of a nature to interrupt peremption, but the proof of these pourparlers can only be made

by writing and not by witnesses. *Phaneuf* v. *Elliot*, 21 L. C. J. 221, S. C. 1877.

59. Notice given by plaintiff to defendant that he will proceed with his *enquête* on such a day is a useful procedure which will interrupt peremption, even when the plaintiff does not proceed on the day indicated in the notice. *Gingras & Gingras*, 5 Q. L. R. 71, Q. B. 1879.

III. Suspended by an Inscription en Faux.

60. The action of the plaintiff was taken on the 11th December, 1872, and returned on the 10th January, 1873. The defendant met the action by an exception to the form on the ground of an alleged alteration in the writ after its issue, and followed the exception by an inscription *en faux*. The last proceeding in the case was the response of the plaintiff to the inscription *en faux*. That was filed the 2nd January, 1874. Nothing was done from this date until the 10th April, 1877. The defendant then moved for the peremption of the action, and on the next day the motion was granted and the action dismissed—*Held*, in review, that the proceedings on the principal demand were suspended by the inscription *en faux*, and until that was disposed of peremption did not run against the principal demand. *Anderson & Sanborn*, 3 Q. L. R. 206, S. C. R. 1877.

PERJURY—*See* CRIMINAL LAW.

I. New Trial in Cases of, *see* CRIMINAL LAW, New Trial.

PETITIONS.

I. For Expropriation, *see* EXPROPRIATION.

PETITOIRE—*See* ACTION Petitory.

PEWS—*See* CHURCH PEWS.

PHYSICIANS.

I. Cannot Publish the Nature of the Malady of their Patient in Account for Services Rendered, *see* LIBEL.

II. Liable for Disclosing Malady of Patient.

I. Liable for Disclosing a Patient's Malady.

61. A medical practitioner is liable in damages for publishing in an action against his patient for fees for his services the nature of the malady for which such services were rendered,

and malice will be presumed from the publication. *H. & T.*, 2 L. N. 202, & 5 Q. L. R. 267, & 9 R. L. 579, Q. B. 1879.

PICKLED FISH.

I. Inspection of, *see* INSPECTION LAW.

PIGNORATITIA—*See* ACTION.

PILOTS.

I. Pensions of, Exempt from Seizure, *see* EXECUTION, Exemptions.

II. Trial of, *see* HARBOR COMMISSIONERS.

PLAN.

I. Of Municipality, *see* MUNICIPAL CORPORATIONS.

PLANT.

I. Of a Brewery are Immoveables, *see* PROPERTY, Description of.

PLEADING.

I. Amendment of, *see* INJUNCTION.
II. Answer.
III. By.
Child.
Intervenant.
Married Woman.
Persons Sued Jointly.
Tutor.
Wife.
IV. Chose Jugée.
V. Conclusions.
VI. Declaration.
Amendment of.
VII. Declinatory Exception.
VIII. Defense en Fait.
IX. Delays in, *see* PROCEDURE.
X. Demurrer.
XI. Denial of Signature.
XII. Dilatory Exception.
XIII. Exception to the Form.
XIV. Fear of Trouble.
XV. Foreclosure, *see* PROCEDURE.
XVI. Form of.
XVII. General Denial.
XVIII. In Actions.
Against Church Fabriques.
Against School Commissioners.
For Penalty, see ACTION Qui Tam.
For Séparation de Corps.
For Slander.

For Special Assessment.
Of Damages.
XIX. In Election Cases, *see* ELECTION LAW.
XX. In Intervention.
XXI. In Opposition, *see* OPPOSITION.
XXII. Irrelevant Pleas.
XXIII. Libel Contained in, *see* LIBEL.
XXIV. Misdescription.
XXV. Overcharge.
XXVI. Payment.
XXVII. Prescription.
XXVIII. Repleader.
XXIX. Replication.
XXX. Special Answer.
XXXI. Special Replication.
XXXII. Title.
Bars Criminal Prosecution for Injury to Property, see CRIMINAL LAW.
XXXIII. To Petitory Action.
XXXIV. Under Insolvent Act, *see* INSOLVENCY.
XXXV. Under Election Law, *see* ELECTION LAW.
XXXVI. Want of Interest.
XXXVII. Want of Jurisdiction.

I. Amendment of.

62. In a redhibitory action concerning a horse, an application to change "wind gall" to "spring halt" was *held* to have been properly refused. *Lanthier & Champagne*, 23 L. C. J. 253, Q. B. 1874.

63. Action brought as a hypothecary action, but defendant was in fact personally liable for the payment of the debt. Leave to amend granted subject to $10 costs. *Heritable Securities & Mortgage Association & Racine*, 2 L. N. 309, S. C. 1879.

64. A copy of an amended declaration must be served upon defendant before he can be called upon to plead. *Fair & Cassels*, 3 L. N. 338, S. C. 1880.

II. Answer.

65. The failure by plaintiff to answer a plea cannot be regarded as an admission of the allegations of the plea under 144 C. C. P.* *Stadacona Insurance Co.* v. *Trudel*, 6 Q. L. R. 31, S. C. R. 1879.

III. By.

66. *Child.*—In a declaration alleging that from the marriage of such a person was born a child of the name of the plaintiff, it is not necessary to allege further that such child is the plaintiff, as that will necessarily be inferred. *Bérard* v. *Letendre*, 7 R. L. 391, S. C. 1876.

67. *Intervenant.*—An intervening party cannot plead matters of form that are personal to the defendant. *Hutchinson & Ford & Short*, 22 L. C. J. 279, S. C. 1878.

68. *Married Woman.*—A wife suing for rent does not require to plead her authorization, as it is a mere act of administration. *Desmarteau & Raillie & Perrault*, 3 L. N. 100, S. C. 1880.

*No particular form of words is required in any Pleading; but every fact the existence or truth of which is not expressly denied or declared to be unknown is held to be admitted. 144 C. C. P.

69. *Persons Sued Jointly.*—Two persons sued in joint quality such as joint tutor may by one exception to the form plead matters applicable separately to one or the other defendant. *Court* v. *City*, 3 L. N. 349, S. C. 1880.

70. *By Tutor.*—A tutor who sues for the minors in his charge to recover their share in a succession is not bound to set up that he has been authorized to accept the succession on behalf of the minors. *Bérard* v. *Letendre*, 7 R. L. 931, S. C. 1876.

71. Nor is he bound to allege in his declaration that the *acte* of *tutelle* has been registered. *Ib.*

72. Nor even where the action concerns the shares of the minors in immoveables the tutor is not bound to set up that he is authorized to bring the action. *Ib.*

73. *By Wife.*—A wife who sues with her husband is not bound to set up her marriage in the body of the declaration if in the title of the action she is described as wife of the other plaintiff. *Bérard* v. *Letendre*, 7 R. L. 391, S. C. 1876.

74. And where she sues as heir she is not bound to allege that she has been authorized by her husband to accept the succession. *Ib.*

IV. Chose Jugée.

75. Where the circumstances of the two cases do not perfectly correspond a plea of *chose jugée* will be dismissed. *Desève* v. *Gareau*, 3 L. N. 87, S. C. 1880.

V. Conclusions.

76. A contestation which attacks a deed of sale as made in fraud of creditors, but does not ask that it be set aside and annulled, cannot be maintained. *Blouin* v. *Langelier*, 3 Q. L. R. 272, S. C. R. 1877.

VI. Declaration.

77. *Amendment of.*—Action on a promissory note which plaintiff alleged had been made by defendant to the order of the other defendant, who endorsed it to plaintiff. In reality the note had been made to the co-defendant personally and not to his order. Before issue joined the plaintiff moved to amend in the following terms: "*Que les défendeurs doivent au demandeur "cent piastres et dix-huit centins, pour autant "en argent prêté, pour laquelle somme les dé-"fendeurs donnerent au demandeur un billet "promissoire signé par le dit Seguy et endossé "par Lemonier comme aval*"—*Held*, that such an amendment changed the nature of the demand, as by the first declaration the defendant was sued for a commercial debt prescriptible in five years, while by the amended declaration the defendants would be sued for a civil debt which could only be prescribed in thirty years, and proof of which could only be made by witnesses. *Venner* v. *Seguy*, 4 Q. L. R. 6, S. C. 1878.

VII. Declinatory Exception and Demurrer.

78. The defendant filed a declinatory exception, and the plaintiff demanded pleas to the

merits. The defendant then filed a demurrer, and the plaintiff inscribed for hearing on the demurrer—*Held*, that the law hearing would be suspended until the declinatory exception was disposed of. *Duchesnay & Larocque*, 3 L. N. 315, S. C. 1880.

VIII. Defense en Fait.

79. A *défense en fait* to an action on a note, if unsupported by affidavit, will be rejected on motion. *Laprise* v. *Methot*, 4 Q. L. R. 328, S. C. 1877.

X. Demurrer. *See* Exception to the form.

80. The sufficiency of a demurrer to a plea, or the sufficiency in law of a special answer to a plea, cannot be tried on motion. *Canadian Bank of Commerce & Brown*, 23 L. C. J. 181, Q. B. 1878.

81. Want of Presentment of a Bill or Note is not Ground of Demurrer, *see* BILLS AND NOTES.

82. The father and mother of plaintiff, by deed of donation of 24th December, 1858, gave to their daughter, plaintiff's sister, and her husband a farm and buildings thereon, subject to the charge of paying to the plaintiff, then a minor, when he should have attained the age of majority, real estate worth $300, and besides to erect thereon a dwelling of a certain size and outbuildings, and to give them certain stock therewith, and in the deed particularly specified, and the immoveable which was the subject of the donation was to remain hypothecated for the fulfilment of these conditions, and the deed to be registered, which was done. In 1869 the donees exchanged the property so given for another, subject to the charges in the donation, and the transferee in turn sold it to defendant, subject as before to the said charges. In 1873, plaintiff having come of age formally accepted defendant as his personal debtor, and served notice upon him. At the time of the last transfer defendant and his vendor estimated plaintiff's rights, to which the sale was made subject, at $600, which defendant now refused to pay, and for which action was brought, asking simply that defendant be condemned to pay him that amount. *Défense en droit* on the ground that plaintiff had only a hypothecary recourse; that he had never promised to pay him any determinate sum of money, and that by the action the option should have been given him of paying the plaintiff's rights in kind; and that the plaintiff had not remained in the service of the defendant or his *auteurs* until he was twenty-one years of age as he was bound to do by the deed of donation, and as he had not done so his rights were completely extinguished. At *enquête* the defendant admitted that he had been present at an interview between the donor and the plaintiff at the time of the exchange, at which it was agreed that the plaintiff's rights should be reduced to $400, without saying of what the reduction was to be made, and whether

the $400 was to be paid in money or not, and defendant admitted that he had always been ready to pay the $400 to plaintiff, but he had refused to accept it—*Held*, that as the rights on the plaintiff no longer consisted in land and kind, but in the sum of $100, payable in money, that the demurrer must be dismissed. *Doyon & Doyon*, 8 R. L. 472, Q. B. 1876.

83. Appellant alleged that he was a member of the Presbyterian Church of Canada in connection with the Church of Scotland, and minister and member of respondents' board; that respondents are a body corporate under 22 Vic. cap. 66, which statute is still in force; that certain ministers of said church on the 15th June, 1875, dissolved their connection with said church; that respondents were about to pay them their stipend out of the temporalities fund to which they would have been entitled had they not seceded, and to allow said fund to pass under the control of a new board, and that appellant will be personally injured thereby, and prayed "that the assets of said fund and profits and revenues accrued thereon may be declared to be the exclusive property of the Presbyterian Church of Canada in connection with the Church of Scotland and of the members thereof; that the members only of said church who maintain their connection therewith be entitled to participate in the benefits of said fund, and entitled to hold and administer the same in accordance with the statute creating it and for the purposes therein specified; that the ministers and members of said church who have seceded be declared incompetent, and not entitled to participate in the benefits derivable from the principal and interest of the said fund and the revenues accrued thereon, and incompetent and ineligible to hold or administer the same, and to have forfeited all right thereto or to claim anything therefrom; that the said fund and the revenues accrued thereon be administered solely for the purposes contemplated by the statute creating it; that the defendants be restrained and enjoined from diverting the capital and revenues thereof from the objects contemplated by the said statute and act of incorporation of said board, and be ordered not to pay any portion of the capital or revenues accrued in said fund to the ministers or representatives of ministers previously connected with the said church who have seceded therefrom, under pain of having its members personally condemned to repay the same to those legally entitled thereto; and that the said defendants and their successors in office legally elected be ordered and enjoined to hold and administer the said fund and revenues accrued thereon solely for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and the members thereof who maintain their connection therewith, in accordance with the provisions of the said statute or act of incorporation entitled by the said statute creating said fund to participate—*Held*, in appeal, that as appellant had set forth no personal grievance and as he had not shown that the statute under which respondents were acting was unconstitutional, and as his conclusions, if granted, would be merely declaratory of the law, and would order no specific thing which could be enforced, that the

action was properly dismissed on demurrer. *Lang* v. *Board for Management of Temporalities Fund*, 8 R. L. 3, Q. B. 1876.

84. Action for a penalty by the superintendent of education against the secretary-treasurer of the school commissioners of the parish of St. Gabriel de Brandon for refusal to deliver up the books and papers in his charge after being dismissed from the office by resolution of the board. Defendant pleaded by demurrer that there was nothing in the declaration to show that he had been regularly dismissed; that it did not appear that he had been served with notice of his dismissal, that action would only lie for one day's penalty and not for several days —*Held*, dismissing the demurrer on all these points. *Ouimet* v. *Piché*, 7 R. L. 636, S. C. 1877.

85. A suit was taken out, accompanied by capias. The defendant contested the capias, and had since pleaded to the merits. The plaintiff put in a demurrer to this plea, and also a special answer, and the other side moved to reject the demurrer, and also the special answer. Both these motions had been granted. On appeal—*Held*, that the judgment must be reversed, as a demurrer could not be rejected on motion. *Canadian Bank of Commerce & Brown*, Q. B. 1876.

86. In an action of damages against a Municipal Corporation for having run a road through plaintiff's property and left it unfenced —*Held*, that a demurrer would not lie, notwithstanding the fact that if it were a front road the Corporation would not be liable. *Whitman & Corporation of Township of Stanbridge*, 23 L. C. J. 176, Q. B. 1878.

87. Plaintiff alleged the sale of a beach lot to defendant, and that defendant after taking possession of the lot refused to sign the deed of sale or to pay the price as agreed to the damage of plaintiff, who was thereby prevented from affecting a favorable sale to another; and plaintiff concluded for $525 damages, and for the return of the lot to him in default of defendant's executing the deed and paying the interest. Demurrer, that plaintiff alleging a complete sale to defendant could not claim damages for not having been able to sell to another, nor could he demand to get back the lot without first obtaining a rescision of the sale, nor defendant therefore be condemned to the alternative—*Held*, that the general allegation of damages resulting from defendant's refusal to sign the deed was sufficient to support the conclusion for damages, and such general allegation was not to be considered as restricted by the statement that defendant's said refusal had prevented a favorable sale to another. *Motz* v. *Paradis*, 4 Q. L. R. 291, S. C. 1878.

88. In an action against the sureties of an ex-sheriff of Montreal a demurrer was filed by defendants to the declaration, alleging that important allegations of the declaration charging the defendants with responsibility arising out of the default of the late sheriff, "want of integrity, honesty or fidelity, or by the negligence, default or irregularity of the said late, etc."—*Held*, to be objectionable, but demurrer dismissed without costs with a suggestion to plaintiff to amend. *Ross* v. *Citizens Insurance Co.*, 2 L. N. 181, S. C. 879.

89. Defendant pleaded two exceptions followed by a *défense en droit*—*Held*, dismissing the *défense en droit*, the same being pleaded after two other pleas, the second of which covers the ground of the *défense en droit*. *Berger* v. *Devlin*, 2 L. N. 294, S. C. 1879.

90. In another case the *défense en droit* commenced by protesting that all the plaintiff's allegations were false and untrue, for which reason it was dismissed as irregular. *Huot* v. *Contu*, 2 L. N. 294, S. C. 1879.

91. Action for a subscription to a hospital. The declaration alleged that the defendant subscribed the sum of $200 to a hospital to be incorporated, and that the incorporation had since been duly had. Demurrer on the ground that the action was based on a promise of future donation, and that it was not alleged that it was made in authentic form, or that any acceptance thereof was made—*Held*, that as a donation was not alleged, and the subscription might have been for valuable consideration, that the demurrer would not lie. *Western Hospital* v. *Godfrey*, 3 L. N. 347, S. C. 1880.

XI. Denial of Signature.

92. Motion by defendant to be allowed to file pleas to an action on a note after foreclosure. One was founded on an affidavit charging that the signature to a note was not the signature of defendant—*Held*, that the allegation of forgery was not made in the terms required by the Code, and therefore the application could not be granted. *Milloy* v. *Farmer*, 2 L. N. 182, S. C. 1879.

XII. Dilatory Exception.

93. Where, by a deed of sale of a lot of land, the vendor obliged himself to furnish letters patent within a year from date of deed. The default to do so in five years was held to be properly pleaded by dilatory exception, in answer to an action for instalments of the purchase money, the obligation to furnish such letters patent being an *obligation préjudicielle* to the demand of the plaintiff. *Bouchard* v. *Thivierge*, 4 Q. L. R. 152, C. C. 1878.

XIII. Exception to the Form.

94. Where an action is brought in the name of the wrong person, it should be attacked by a exception to the form and not by a *défense en droit*. *Labelle & Gratton*, 7 R. L. 325, Mag. Ct. 1874.

95. Plaintiff, as *sequestre* of the property in dispute, brought action to set aside a pretended donation, and to get an account from defendant. Defendant filed an exception to the form on the ground that plaintiff, as *sequestre*, had no right of action. *Per Curiam*—Is that properly the subject of an *exception a la forme?* I think clearly not. It says to the plaintiff: "you show no right of action in your person." Absence of right of action, if the allegations are admitted to be true, is matter of demurrer, or of *fin de non recevoir;* not of exception as to the form. *Laframboise & Damour*, S. C. 1876.

XIV. Fear of Trouble.

96. Where a defendant pleads fear of trouble or eviction he is not bound to so by a dilatory exception, but may do so by a plea to the merits, praying that the plaintiff's action be declared premature and be dismissed, unless within a time to be fixed by the court the plaintiff either cause the mortgage to be discharged or give the defendant security to keep him harmless from such mortgage. *Noel & Gagnon*, 5 Q. L. R. 218, S. C. R. 1879.

XVI. Foam of.

97. An action was held to be rightly dismissed on exception to the form as being insufficiently libelled, as not showing to whom the land, which was the subject of the action, had been transferred, nor by what deed, nor what was the date of the deed, nor the name of the notary who received it, nor the place where it was executed. *Soucy* v. *Caron*, 9 R. L. 718, Q. B. 1875.

XVII. General Denial.

98. To an action of damages for the violation of a patent the defendant pleaded a general denial.—*Held*, that under this he could not prove that the patent was in use and well known long before the plaintiff's was obtained. *Baril* v. *Dionne*, 3 L. N. 86, S. C. 1830.

XVIII. In Action.

99. *Against Church Fabriques.*—In an action by *paroissiens et fabriciens* against the fabrique it is necessary that the plaintiffs allege not that they are of a Roman Catholic parish, but that they themselves are Roman Catholics. *Currier* v. *Les Curé et Marguilliers, &c.*, 3 Q. L. R. 27, S. C. 1876.

100. *Against School Commissioners.*—Where action was brought against certain *ci-devant* school commissioners to recover money paid to a school teacher in violation of the rights of another previously engaged—*Held*, that the action should have been of damages and not to recover money illegally paid. *School Commissioners of Ste. Marthe* v. *St. Pierre*, 2 L. N. 343, S. C. 1879.

101. *For Separation de Corps.*—In an action for separation as to bed and board the misconduct of the plaintiff cannot be pleaded as a defense. *Brennan & McAnnally*, 21 L. C. J. 301, S. C. 1877.

102. *For Slander.*—Where a defendant to an action of damages for slander specially denies and in the same plea alleges affirmative matter which is not a justification, such matter will be struck out on motion of plaintiff. *St. Jean* v. *Blea*, 21 L. C. J. 37, S. C. 1877.

103. *For Special Assessment.*—Action by respondent claiming from appellant the sum of $908.95, being a semi-annual instalment of a special tax imposed on the taxable property in the parish, appellant, in virtue of a by-law of the county of Drummond, imposing on the taxable property of the county of Drummond an annual tax of $12.000 for twenty years, to pay a subscription to the stock of the Drummond & Arthabaska Railway.—*Held*, that the nullity of the by-law in question could not be pleaded in bar of the action. *Corporation of the Parish of St. Guillaume & Corporation of the County of Drummond*, 7 R. L. 722, Q. B. 1876.

104. *Of Damages.*—In an action of damages against a municipal corporation for having run a road through plaintiff's farm, and put up no fences, defendants pleaded that if it was a front road, as they alleged, they would not be liable —*Held*, dismissing the demurrer, that plaintiff had alleged sufficient to entitle him to go to proof. *Whitman* v. *The Corporation of the Township of Stanbridge*, 23 L. C. J. 176, Q.B. 1878.

XX. In Intervention.

105. To an action against an executor three children of deceased intervened, and alleged that they were of age, that they were the universal legatees of deceased under her will, and that they had an interest in the conservation of her estate, and a right to watch over its administration. They alleged also that the estate had never received any value for the notes sued on. The plaintiff having contested this intervention on grounds such as would be urged if the intervention had been a plea to the merits the intervening parties filed a *reponse en droit* to the contestation, among other grounds "because the reasons invoked in the contestation could not be pleaded against the right of the intervening parties to intervene in the present cause —*Held*, maintaining the *reponse en droit*, that the intervenants had still a right to plead to the *instance principale*. *Evans* v. *Lionais & Lionais*, 2 L. N. 195, S. C. 1879.

XXII. Irrelevant Pleas.

106. Motion of the plaintiff to strike out of the defendant's plea certain words as irregularly inserted, and in general terms finding fault with plaintiff's accounts. The plaintiff was secretary-treasurer of the defendants and, having ceased to fill that office, brought his action to have a surety bond given by him in favor of the society cancelled, and to have the hypothec which he had given on his property, as a further security of $8,000 in the same matter, removed. The defendant pleaded that by the bye-laws of the society, 2nd section of the 38th article, the plaintiff, as secretary-treasurer, was obliged to submit a complete and exact statement of all the business of the society for the year terminating the 28th February last; that by virtue of 3rd section of said article the said report should be certified by the majority of the auditors; that plaintiff had failed to comply with these rules. The defendant then went on to charge that there were grave errors and omissions in the accounts and books kept by the plaintiff; that the cash of the society had not always been correctly balanced, and that important differences and contradictions existed between the books kept by the plaintiff and the deposit and other bank books of the society; and that, seeing the said grave omissions and errors which were found in his books and accounts the defendant is well founded in refus-

ing the discharge of the surety bond and the removal of the hypothec. Motion to have these words of the plea charging grave errors and omissions in his accounts struck out, on the ground that these matters are not at issue under the pleading of the parties, and that the allegations are too vague and general for a *débats de compte*; that the defendant was bound to specify in a clear manner the grave errors and omissions in the accounts. The court granted the motion. *Loughlin & Mount Royal Permanent Building Society*, S. C. 1876.

XXIV. Misdescription.

107. Action against a firm. Plea that no partnership existed. Evidence of a firm, but not composed as alleged. Action dismissed, but without costs, as the plea should have set up the proper composition of the firm. *Morey* v. *Gaherty*, 2 L. N. 108, S. C. 1879.

XXV. Overcharge.

108. Where a municipal corporation pretends that an account is overcharged they must plead and prove it in the ordinary way, and a resolution of a committee will not avail as evidence to that effect. *State* v. *City of Montreal*, 3 L. N. 72, S. C. 1880.

XXVI. Payment.

109. Where to an action for rights of succession the defendant pleaded a general denial, and filed a copy of a notarial discharge—*Held*, that he should have pleaded payment in order to admit the exhibit. *Cadieux* v. *Cadieux*, 2 L. N. 194, S. C. 1879.

XXVII. Prescription.

110. A contestation of an opposition for payment, on the ground that the same was founded on a constituted rent more than 30 years old without interruption of prescription being alleged—*Held*, bad on demurrer, because, as regards long prescriptions under Art. 2188 of the Civil Code, they must be pleaded to be taken advantage of, and the opposant was not bound to allege interruption of prescription until that prescription was pleaded to his opposition. *Sanschagrin* v. *Sauvageau & Germain*, 4 Q. L. R. 229, S. C. 1878.

XXVIII. Repleader.

111. Where a motion to amend the declaration in a case is of such a nature as to materially alter the allegations and conclusions, an opportunity to answer the declaration as amended should be afforded the defendant, and therefore a judgment granting such motion and pronouncing finally on the merits of the case at the same time will be reversed. *Montrait & Williams*, 22 L. C. J. 19, Q. B. 1877.

XXIX. Replication.

112. A replication to a general answer is unnecessary, and will be rejected on motion. *Fauteux* v. *Parent*, 21 L. C. J. 12, S. C. 1876.

XXX. Special Answer.

113. Execution having issued against the opposant for $196.66, he opposed on the ground that the only balance due under the judgment was $96.16 which he had tendered before execution, and which he deposited in court with his opposition. The plaintiffs contested, and in answer to their contestation the defendant opposing set up specially that the costs should be reduced by $18.55, and the principal by $75, which would bring the amount to the balance tendered—*Held*, on motion, that this could not be set up in an answer and must be set aside. *Casey* v. *Shaw*, 3 L. N. 90, S. C. 1880.

114. And *held*, also, that such interlocutory judgment could not be revised by the court at the hearing on the merits. *Ib.*

XXXI. Special Replication.

115. A special replication to a special answer may be filed without obtaining leave of the court. *Carter* v. *Ford*, 3 L. N. 338, S. C. 1880.

XXXII. Title.

116. The rule in petitory actions that a deed not pleaded cannot be produced at *enquête* as part of a chain of titles does not apply to actions for moveables, and, on the contrary, in such actions title need not be alleged. *Tourigny & Bouchard*, 4 Q. L. R. 243, S. C. R. 1878.

117. And a bailee of moveables cannot question the title of the person who placed such things in his care. *Ib.*

XXXIII. To Petitory Action.

118. The defendants pleaded to a petitory action that they held only by precarious title, and pointed out the real proprietor. Plaintiff demurred on the ground that this was not the subject of a plea to the merits, and that the plaintiff had a right to contest the alleged precariousness of the defendant's title—*Held*, maintaining the demurrer. *Lawlor* v. *Cauchon*, 6 Q. L. R. 13, S. C. 1876.

XXXVI. Want of Interest.

119. The action was instituted by the plaintiff as *cessionnaire* of certain shares in the defendants' society to be allowed to withdraw the amount due on the shares under the rules of the society. Plea that plaintiff was a mere *prête-nom*, and that he holds the shares with regard to which he sued the society as representing another party. The plaintiff demurred to this, on the ground that *la question de droit du demandeur est indépendante et étrangère au fait que cette action soit exercée par lui comme prête-nom, et ne peut motiver aucune exception en droit en réponse à l'action du demandeur:"*—*Held*, maintaining the demurrer. *Robillard* v. *Société Canadienne Française de Construction de Montréal*, 2 L. N. 181, S. C. 1879.

XXXVII. Want of Jurisdiction.

120. A plea which invokes want of jurisdiction *ratione loci* must be pleaded by declinatory

exception, and the court therefore refused on the merits to take notice of a plea that the note sued on had been endorsed by an employee of plaintiff merely to give the court an improper jurisdiction. *Fisher et al.* v. *McKnight*, 1 L. N. 350, & 22 L. C. J. 146, S. C. 1878.

PLEDGE.

I. Act Concerning.*
II. Delivery.
III. Liability of Pawnbrokers.
IV. Lien of Pledgee for Expenses.
V. May be of Debts and Rights of Action.
VI. May take the Form of a Sale.
VII. Of Things Stolen.
VIII. Privilege of Pledgee.
IX. Rights of Pledgee.
X. What is, *see* SALE.

II. Delivery.

121. On the contestation of a transfer or pledge of a quantity of brick 31 days before the insolvency of the pledgor—*Held*, that the contract was null for want of delivery and possession by the pledgee. *Lemay in re*, 6 Q. L. R. 35, S. C. R. 1879.

III. Liability of Pawnbrokers.

122. A pawnbroker is not liable for articles pledged with him which have been stolen from his premises without any negligence on his part. *Delaney* v. *Lazarus*, 22 L. C. J. 131, S. C. 1877.

* An Act respecting the contract of pledge. *Assented to 31st October*, 1879.

Whereas doubts have been raised as to the right of the creditor who has received a pledge in this province to be maintained in the possession thereof against the owner when the same was obtained in good faith from a trader dealing in similar articles; and that it is important to remove such doubts; therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Articles 1488, 1489 and 2268 of the Civil Code apply to the contract of pledge.

2. This Act shall come into force on the day of its sanction.

1488. The sale is valid if it be a commercial matter, or if the seller afterwards become owner of the thing.

1489. If a thing lost or stolen be bought in good faith in a fair or market or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it without reimbursing to the purchaser the price he has paid for it.

2268. Actual possession of a corporeal moveable by a person as proprietor creates a presumption of lawful title. Any party claiming such moveable must prove besides his own right the defects in the possession or in the title of the possessor who claims prescription, or who, under the provisions of the present article, is exempt from doing so. Prescription of corporeal moveables takes place after the lapse of three years (reckoning from the loss of possession) in favor of possessors in good faith (even when the loss of possession has been occasioned by theft). This prescription is not, however, necessary to prevent revendication if the thing have been bought in good faith in a fair or market or at a public sale or from a trader dealing in similar articles (nor in commercial matters generally), saving the exception contained in the following paragraph. Nevertheless so long as prescription has not been acquired the thing lost or stolen may be revendicated, although it have been bought in good faith in the cases of the preceding paragraph; but the revendication in such cases can only take place upon reimbursing the price which he has paid. If the thing have been sold under the authority of law it cannot in any case be revendicated. The stealer or other violent or clandestine possessor of a thing, and his successors by general title, are debarred from prescribing by articles 2197 and 2198.

IV. Lien of Pledgee for Expenses.

123. The respondent having backed a draft for a commercial traveller of appellants, which appellants refused to accept, was obliged to pay the same. The traveller, in order to secure him, made over to him his samples. The appellant having acknowledged his liability, and professed himself willing to pay respondent, sent the samples to Montreal with orders that they were not to be delivered to appellant until the amount of draft and some $11, incurred in following the traveller from Brantford to London, were paid. Appellant refused to pay the expenses —*Held*, confirming the judgment of the court below, that appellant was bound to pay the expenses incurred by his refusing to accept the draft as well as the draft itself. *Kennedy & Cowell*, 2 L. N. 420, Q. B. 1879.

V. May be of Debts and Rights of Action.

124. The 13th of March, 1871, petitioner sold to insolvent, for $6,000, payable in 7 years, with interest at 8 p. c., the property at Three Rivers known as the "British America Hotel." The deed of sale contained an agreement of resolution in default of payment of the price. In 1873 the insolvent gave a mortgage to petitioner on the same property of $4,000, payable on the same terms as the price of sale, and including a similar stipulation of resolution of the sale in case of non-payment. In 1878 petitioner transferred to the Trust & Loan Co. of Canada all his rights under the said sale and mortgage, which transfer was duly notified to the assignee of the debtor who had in the meantime failed and assigned in insolvency. The petitioner having demanded the resolution of the sale and the return of the property out of the hands of the assignee the latter pleaded the transfer to the Trust and Loan Co., when—*Held*, reversing the judgment of the court of *premier instance*, that such transfer was only a pledge of the debts and rights of action in question, and consent of the pledgee being obtained did not prevent the pledgor, or take away from him the right to demand the resolution stipulated. *Farmer & Bell & The Trust & Loan Co.*, 6 Q. L. R. 1, S. C. R. 1879.

VI. May take the Form of a Sale.

125. The 29th September, 1876, the defendant sold to the plaintiffs a quantity of printing material by a deed which stated it to be for good and valid consideration, which the vendor had received prior to the date of the deed, and with which he declared himself content and satisfied, and the same day the plaintiff signed a lease to him of the said printing material for eighteen months at a rental of $340. The lease contained a stipulation "that at the end and expiration of the present lease he (the defendant) shall peaceably and quietly surrender and deliver up the said printing materials and other effects in as good order and repair as the same is now, reasonable allowance being made for wear and tear." The defendant also signed an obligation by which he acknowledged to owe and promised to pay to the plaintiffs in eighteen months, by instalments, certain sums of money.

The plaintiffs again on their part, by a counter agreement, acknowledged that the deed of sale was only as security for their claims, and bound themselves to return the effects as soon as they would be paid. Not being paid as promised, and the defendant refusing to deliver possession of the property, action in revendication was brought on the lease.—*Held*, that the deeds, if they had not the effect of rendering the plaintiffs absolutely proprietors of the effects, established at least a promise of pledge by the defendant to the plaintiffs which should be carried out and fulfilled by the return of the things at the expiration of the lease, if the debts, of which the things pledged were the guarantee, were not paid and discharged. *Canada Paper Co.* v. *Cary*, 4 Q. L. R. 323, S. C. 1878, & 10 R. L. 501, Q. B. 1879.

VII. Of Things Stolen.

126. A clerk pledged in his own name to the plaintiffs goods stolen from his employer. He was tried and convicted of the theft, and the pledgees seized the goods pledged to them, which during the trial remained in the possession of the officers of the Crown. The appellants intervened, and contested the right of the pledgee to the goods. The evidence showed conclusively that the clerk enjoyed considerable powers as salesman, and was even allowed to deal for himself in goods of a similar though not precisely the same nature—*Held*, reversing the judgment of the court below, that notwithstanding the words "nor in commercial matters generally" in article 2268 of the Civil Code, the lien of the pledgee for advances on stolen goods is confined to the cases mentioned in article 1489; and, consequently that the advances not having been made to a trader dealing in similar articles, nor under the other conditions mentioned in said article, the action of the respondents should have been dismissed. *Cassils et al. & Crawford et al.*, 21 L. C. J. 1, Q. B. 1876.

127. And *semble*, that the words "in commercial matters generally" in said article were intended to cover other species of commercial transactions, such as pledge, deposit, etc., and not goods acquired under other circumstances than those mentioned in article 1489. *Ib.*

VIII. Privilege of Pledgee.

128. Where a watch had been given to a workman to repair and he pawned it—*Held*, that the pawnbroker was entitled to receive the amount *bonâ fide* advanced on the watch before the owner could recover it. *Beaudry & Bissonnette & Moss*, 2 L. N. 407, C. C. 1879; 2268 C. C.

IX. Rights of Pledgee.

129. Action for the balance claimed to be due on a promissory note in favor of the plaintiff. The difficulty arose out of a sale of brandy made by the plaintiffs to defendant through the medium of a broker. It was agreed that the defendant should not be obliged to pay the amount of the purchase, but that the brandy should remain in the possession of defendants as security for the note when it should fall due. *Per Curiam*—The broker was probably anxious to make another commission on the transaction, and was constantly at the plaintiff's to see whether he would have an opportunity of reselling the brandy at the costs and charges of defendant, and he finally negotiated the sale of the brandy previous to the 22nd July, on the supposition that the note would not be paid. At three o'clock on that day he was authorized by the plaintiffs to close the transaction. The plaintiffs in their demand credited the defendant with the proceeds of the second sale, and the action was for the balance. The question was whether this sale was regular. The ordinary rule with regard to *gage* is that the creditor cannot, in default of payment of the debt, dispose of the thing privately. Article 1568 of the Code says that if the purchaser do not pay the price at which the thing was adjudged to him, in conformity with the conditions of sale, the seller may, after having given reasonable and customary notice thereof, again expose the thing to sale by auction. The court knew no rule or custom which would justify the creditor, on the very day the debt became due, in disposing of the property without reasonable notice to the debtor, and perhaps without a public sale at his *folle enchère*. Under the circumstances the demand of the plaintiffs must be rejected and the action dismissed. *Ross* v. *Edson*, S. C. 1877.

130. Where the plaintiff had given the defendants express authority to sell or dispose of the property pledged in such manner as they might deem advisable without notice, etc.—*Held*, that an action would not lie to get it back. *Dempsey* v. *Macdougall*, 21 L. C. J. 328, S. C. 1877.

POLICE.

I. Liability of Corporation for Acts of, *see* MUNICIPAL CORPORATIONS.

POLICE MAGISTRATE.

I. Jurisdiction of, *see* JURISDICTION.

POLICY OF INSURANCE.

I. Conditions of, *see* INSURANCE.

POSSESSION.

I. Must be Pleaded in Oppositions afin de Distraire, *see* OPPOSITION, Grounds of.

II. Not Equivalent to a Servitude to Establish Title to a Servitude, *see* SERVITUDE.

III. Not Sufficient to Found Opposition, *see* OPPOSITION, Grounds of.

IV. Of Immoveables, *see* PRESCRIPTION.

V. Of Person of Minor.

What is, see CRIMINAL LAW, Abduction.

VI. Of Property Purchased at Sheriff's Sale, *see* SALE, Judicial.

VII. Of Stolen Goods not Proof of having received them knowing them to be Stolen, *see* CRIMINAL LAW.
VIII. Sufficient to Create Title, *see* ACTION, en Reintegrande.
IX. What is.
X. Writ of.

IX. What is.

131. Cohabitation does not destroy the possession *separée* which pertains to the wife *separée de biens*. *Green* v. *City of Montreal*, 22 L. C. J. 128, S. C. 1877.

X. Writ of.

132. An *adjudicataire* may obtain a writ of possession after the expiration of a year and a day from the date of the adjudication, provided he move for the same within the year and a day from the judgment of distribution. *Sewell & Bourk & Langlois*, 4 Q. L. R. 216, S. C. R. 1878.

133. An *adjudicataire* who asks for the issue of a writ of possession cannot obtain it before he has paid the amount of his adjudication. *Conrey* v. *Simley & Carpenter*, 4 Q. L. R. 183, S. C. 1878.

134. And notice of his petition must be given to the defendant. *Ib.*

POSSESSORY ACTION—*See* ACTION.

POSTPONEMENT.

I. Of Trial in Election Cases, *see* ELECTION LAW.

POUR PARLERS—*See* PEREMPTION, Interruption of.

POWER OF ATTORNEY—*See* AGENCY, ATTORNEY, Authorization of.

I. By Bank Officer, *see* AGENCY.
II. Conviction for Wrongful Conversion of Property under, *see* CRIMINAL LAW.
III. In Action by Foreign Company, *see* ATTORNEYS AD LITEM. Authorization of.
IV. Must be Filed with Action on an Obligation Signed by Attorney, *see* ACTION.

POWERS.

I. Of Agent, *see* AGENCY.
II. Of Officers of Companies, *see* COMPANIES.
III. Of School Commissioners, *see* COMMON SCHOOLS.

PRACTICE—*See* PROCEDURE.

I. Rules of, *see* RULES OF PRACTICE.

PRACTICE COURT.

I. Powers of, *see* COURTS.

PRAECIPE—*See* FIAT.

I. In Appeal, *see* APPEAL.

PRATICIEN—*See* EXPERTS.

PRECEDENCE.

I. Of Counsel in Court, *see* QUEEN'S COUNSEL.

PREFERENTIAL PAYMENTS—*See* INSOLVENCY.

PRELIMINARY OBJECTIONS.

I. In Election Cases, *see* ELECTION LAW.

PREROGATIVE.

I. Of the Sovereign in Granting Appeal, *see* APPEAL to Privy Council.

PRESBYTERIAN CHURCH.

I. Constitutionality of Acts of Union, *see* ACTS OF PARLIAMENT.

PRESCRIPTION.

I. Against Absents.
II. Against Minors.
III. Interruption of.
IV. Of Arrears of Life Rent.
V. Of Bills or Notes.
VI. Of Claim for Care of Animals.
VII. Of Claim of Sick Nurse.
VIII. Of Damages.
IX. Of Hypothec.
X. Of Immoveable.

XI. Of Insurance Claim.
XII. Of Interest, *see* INTEREST.
XIII. Of Loan.
XIV. Of Public Roads.
XV. Of Rent.
XVI. Of School Taxes.
XVII. Of Streets.
XVIII. Of Taxes.
XIX. Of Tithes.
XX. Of what is Paid by Error.
XXI. Of Wills.
XXII. Public Possession.

I. Against Absents.

135. In an action in declaration of hypothec the defendant pleaded *inter alia* prescription of ten years with title—*Held*, that as the plaintiff had been absent all the time, and the prescription invoke was prior to the Code, that the plea must be dismissed. *Hébert* v. *Ménard*, 10 R. L. 6, S. C. 1876.

II. Against Minors.

136 Action in declaration of a hypothec for plaintiff's part in the price of land sold by voluntary licitation to one A. G. in 1833, by the father and tutor of plaintiff. Plaintiff was married in 1844, and at the time of the institution of the action had been of age twenty-four years. Defendant pleaded *inter alia* that plaintiff's claim was extinct as she had been married upwards of thirty years—*Held*, that the prescription having commenced before the Code must be regulated by the law before the Code, and by that law prescription did not run against minors whether married or not. *Hébert & Ménard*, 10 R. L. 6, S. C. 1876.

137. In an action *en declaration* of a hypothec in favor of plaintiff, to which *inter alia* the prescription of thirty years was pleaded—*Held*, that under the law previous to, as under the Code, the minor emancipated by marriage could not institute an immoveable action without the assistance of a curator, and that on the same principle prescription did not run against minors under such circumstances. *Hébert* v. *Bellerose*, 23 L. C. J. 331, S. C. 1876.

III. Interruption of.

138. The plaintiff, a merchant tailor, sued the defendant for $78.75, balance of an account for clothes sold in 1854-55, and for which the defendant on the first of May, 1867, had given a promissory note at a month. The action was brought both on the account and on the note, and alleged a special acknowledgment made by the defendant about the 1st August, 1873, and at several occasions thereafter up to the date of the action, which was taken on the 13th of the same month of August. The defendant pleaded prescription, and the plaintiff deferred the decisory oath to which the defendant made no response—*Held*, that in commercial matters in which the amount demanded exceeds $50, a promise or acknowledgment sufficient to interrupt prescription cannot be proved by the oath of the adverse party, but must be proved by a writing signed by him. *Fuchs* v. *Legaré*, 3 Q. L. R. 11, C. C. 1876.

139. Action on a note made in 1867 for $181 and on which payments had been made and endorsed in 1868, 1870 and 1871—*Held*, that the endorsement of payments on a promissory note is not an interruption of prescription, as the limitation of five years operates as a statute of repose which extinguishes the debt, and nothing less than a new promise in writing will suffice to found an action upon. *Caron* v. *Cloutier*, 3 Q. L. R. 230, S. C. 1877.

140. And *held*, also, that any endorsement of interest or part payment of principal should be written by the debtor, and signed by both parties.—*Ib.*

141. A verbal acknowledgment of a doctor's account under $50 will suffice to interrupt prescription. *Benoit & Bélanger*, 6 Q. L. R. 195, C. C. 1873.

142. The sending of an unsigned account accompanied by a letter signed by the debtor to the creditor is sufficient to take the case out of the statute cap. 67 C. S. L. C. *Darling & Brown et al.*, 21 L. C. J. 169, Su. Ct. 1877.

143. A tender (not accepted) of money by an insurance company in settlement of a loss is not an interruption of the conventional prescription of one year under the policy. *Bell* v. *Hartford Fire Insurance Co.*, 1 L. N. 100, S. C. 1878.

144. In an action by a builder a promise to pay the balance claimed made within five years was especially set up—*Held*, that notwithstanding a plea of prescription of five years, that the action would be maintained on proof of such acknowledgment. *Brunet* v. *Pinsonneault*, 2 L. N. 27, S. C. 1878.

145. Interruption of prescription cannot be proved by the acknowledgment of an agent who has ceased to be such. *Pinsonneault & Desjardins*, 3 L. N. 29, & 24 L. C. J. 100, Q. B. 1879.

IV. Of Arrears of Life Rent.

146. Arrears of life rent accrued since the coming into force of the Civil Code are prescribed in five years. *Lemaire* v. *Payt*, 9 R. L. 513, S. C. 1879.

V. Of Bills and Notes.

147. The appellant sued respondent on a promissory note which had matured more than five years previously, adding to their declaration, "and has since frequently promised to pay the same bill at various times within the last five years." The evidence showed that defendant had written frequently during the five years, saying that the affair must be settled and asking for delay—*Held*, that notwithstanding Art. 2267 C. C.* that the prescription was interrupted. *Walker* v. *Sweet*, 21 L. C. J. 29, Q. B. 1876.

148. A debt originally due under a promissory note, and which has been prescribed by the lapse of five years from the making of such note, cannot be recovered at law, although the defendant may have acknowledged in the pre-

*In all the cases mentioned in articles 2250, 2260, 2261 and 2262 the debt is absolutely extinguished, and no action can be maintained after the delay for prescription has expired. 2267 C. C.

sence of a witness after prescription accrued that he was still indebted to plaintiff in the amount of the note and have promised to pay, thus renouncing the benefit of the prescription accrued. *Fiset* v. *Fournier*, 1 L. N. 589, C. C. 1878.

VI. Of Claim for Care of Animals.

149. The claim of a farmer for the care and food of animals left in his charge is prescribed in five years. *Lefebvre* v. *Proulx*, 6 Q. L. R. 269, S. C. R. 1880.

VII. Of Claim of Sick Nurse.

150. The claim of a sick nurse for services rendered as such during a last illness is prescribed under Art. 2262 C. C. by the lapse of one year, and the debt being absolutely extinguished after the lapse of a year the court is bound to take notice of such prescription, though not pleaded. *Leduc* v. *Desmarchais*, 1 L. N. 618, & 23 L. C. J. 11, S. C. 1878.

VIII. Of Damages.

151. In an action of damages for a *quasi delit* instituted more than two years after the wrong complained of occurred—*Held*, that the action must be dismissed, even in the absence of a plea of prescription. *Grenier* v. *City of Montreal*, 21 L. C. J. 215, S. C. 1876.

152. In an action of damages against the Grand Trunk for continuous damage caused by the building a bridge—*Held*, that the plaintiffs could only recover for what was suffered within a year previous to the date of the action. *Corporation of Tingwick & The Grand Trunk Railway Co. of Canada*, 3 Q. L. R. 111, Q. B. 1877.

153. An action of damages for cutting wood on the property of another is not subject to prescription under Arts 2250, 2261 and 2268 of the Civil Code. *Vandel & Aussant*, 9 R. L. 517, S. C. 1879.

154. Action against several defendants for cutting and carrying away wood from land belonging to plaintiff. Plea *inter alia* that such action under Art. 2261 C. C. was prescribed in two years—*Held*, following *Bulmer & Dufresne*,* that the article in question did not apply where the action was for the value of property actually carried away and appropriated. *Lalonde & Belanger*, 3 L. N. 26, & 24 L. C. J. 96, Q. B. 1879.

155. In an action of damages caused by the construction of a dam—*Held*, that the building of the dam being neither a *delit* nor a *quasi delit* the claim for damages was not subject to the prescription of two years. *Jean* v. *Gauthier*, 5 Q. L. R. 138, S. C. 1879.

156. Action against the city of Montreal for damages caused by raising the level of a street on which plaintiff's property was situated. Plea *inter alia* that the action was prescribed by the lapse of two years as laid down by Arts. 2261-62 of the Civil Code—*Held*, overruling the decision of the court below, that although the work complained of had been done more than two years that the damages must be regarded as continuous and not subject to such prescription *Grenier & City of Montreal*, 3 L. N. 51, Q. B. 1880.

IX. Of Hypothec.

157. A hypothec being but the accessory of a debt has no existence apart from it, and therefore the extinction of the personal action by prescription extinguishes at the same time the hypothec, even where acts of interruption have intervened. *Hamel & Bourget & Baby*, 4 Q. L. R. 148, S. C. 1878.

X. Of Immoveables.

158. Petitory action by the heirs C., brought against Madame L., claiming a lot of land which it is admitted was taken possession of by the latter in May, 1874. The title of the heirs C. was a deed of sale to their mother by one G. on the 3rd December, 1814. The appellant pleaded the 30 years' and the 10 years' prescriptions. Demurrers were fyled to these two pleas, and the Court below held that the pleas were bad, and the demurrers to both were maintained. In these pleas appellant had set up no adverse title, but alleged that one W. occupied the lot for 30 years prior to the 13th August, 1862; that on the 13th August, 1862, W., by *donation entre vifs*, gave the property to one D. for £30 in cash and a life rent; that on the 15th January, 1872, W. transferred to appellant arrears of the life rent amounting to £282.10s. 6d.; that the possession of W. and D. together constituted a prescription of 42 years, which prescription she, as mortgage creditor, opposed to the title of the respondents. She also alleged in her second plea, that her possession, combined with D., constituted a prescription of ten years which she, claiming under the transfer to her from W., also urged she was vested with the right of setting aside the donation of W. to D., but these rights of prescription and this right of resiliation did not, in the opinion of the court, confer on her any legal defence to a petitory action, or vest in her any right to offer a valid resistance to the claim of the respondents. She set up no adverse title in herself, and although a mortgage creditor, which she undoubtedly was, may have just rights to wage against the property, these claims are no answer in law or fact to a petitory action. She might have claimed that the property, if declared to vest in the respondents, should be adjudged to them, subject to her claims, but no more. The demurrers, therefore, to these pleas were properly sustained by the Superior Court, and in regard to the "*défense en fait*" pleaded by appellant, it could not avail her in the present instance, and the judgment maintaining the plaintiff's action, and adjudging the property to them, confirmed with costs. Reserving to the appellants such recourse as to law and justice may appertain. *Lionais & Cuvillier*, Q. B. 1876.

*This case is reported at 21 L. C. J. 98, & 1 L. N. 303, the first being the decision in the S. C. and the latter in appeal, but no question of prescription appears to have been raised in these Courts as far as the reports go. The decision in the Supreme Court is not reported.—Ed.

159. The knowledge by a purchaser of the existence of a hypothec in the nature of a constituted rent on the property acquired, such hypothec being formally set forth in the deed of acquisition, constitutes him in bad faith, and he cannot invoke the prescription of ten years; and the possession of his widow after his death, the immoveable having been acquired during the existence of the community, and of his son, under a deed of donation from the widow, are subject to the same defect.* *Blain & Vautrin*, 23 L. C. J. 81, Q. B. 1878.

160. The purchaser of an immoveable whose title shows the existence of certain hypothecs affecting it cannot invoke prescription. 10 R. L. 200, S. C. R. 18.†

161. The plaintiff brought possessory action alleging possession as proprietor for twenty years—*Held*, that as plaintiff had admitted by his answer that his possession from 1847 to 1856 was a precarious one, and from the latter date to the date of the action was that of usufructuary only, that the action was rightly dismissed. *Rhicard* v. *Chicoine*, 2 L. N. 286, S. C. R. 1879.

162. In an action concerning property which had been sold by a *grevé de substitution*, and to which the thirty years' prescription was pleaded —*Held*, that prescription could not exist in the face of the admitted character of usufructuary in the testator at the time he sold. *Guy & Guy*, 2 L. N. 110, S. C. 1879.

XI. Of Insurance Claim.

163. Action on policy of insurance to recover for a loss on a lot of grain which was coming down from the upper lakes in July, 1863—*Held*, prescribed by five years. *Jones* v. *Sun Mutual Insurance Co.*, 7 R. L. 387, S. C. 1871.

XII. Of Interest.

164. Annual interest arises from the law and not from the contract, and therefore the prescription of interest accrued since the Code is governed by the Code, even though the contract on which it arises was made anterior to the Code. *Hébert* v. *Ménard*, 23 L. C. J. 331, S. C. 1876.

165. The prescription under the Code of five years against arrears of interest cannot be invoked in respect of a debt due prior to the coming into force of the Code. *Darling & Brown et al.*, 21 L. C. J. 92, Q. B. 1876, & 21 L. C. J. 169, Su. Ct. 1877.

166. Interest on obligations is prescribed by five years. *Montchamps & Perras*, 3 L. N. 339, S. C. 1880.

XIII. Of Loan.

167. In 1858 W. D., sen., opened a credit of $584 in favor of his daughter, I. D., with W. D. & Co., a commercial firm in Montreal consisting of appellant and I. D., W. D. & Co. charging

*He who acquires a corporeal immoveable in good faith under a translatory title prescribes the ownership thereof, and liberates himself from the servitudes, charges and hypothecs upon it by an effective possession in virtue of such title during ten years. 2251 C. C.

† Title of case omitted in report.

W. D., sen., and crediting I. D. with that amount. In 1860 W. D., as sole executor of the will of I. D., credited I. D. in the books of W. D. & Co. (appellant at that time being the only member of the firm) with a further sum of $800, the amount of a legacy bequeathed by such will. These entries in the books of W. D. & Co., together with entries of interest in connection with said items, were continued from year to year. An account current was rendered to I. D., which showed a balance due her at that time of $1,912.08. The accounts rendered were unsigned, but the second account current was accompanied by a letter referring to it, written and signed by the appellant. I. D. died, and in a suit brought by G. T., her husband and universal legatee, to recover the $1,912.08, with interest from 31st December, 1865—*Held*,* that a loan of moneys, as in this case, by a non-trader to a commercial firm is not a "commercial matter," or a debt of a "commercial nature," and therefore the debt in question could be prescribed neither by the lapse of six years under C. S. L. C. cap. 67, nor by the lapse of five years under Civil Code of Lower Canada, but only by the prescription of thirty years. *Darling & Brown*, 21 L. C. J. 92, Q. B., & 21 L. C. J. 169, & 1 S. C. Rep. 360, Su. Ct. 1877.

168. And that even if the debt were of a commercial nature the sending of the account current accompanied by the letter referring to it, signed by the appellant, would take the case out of the statute. *Ib.*

169. And that the prescription of five years against arrears of interest under Art. 2250 of the Civil Code of Lower Canada does not apply to a debt the prescription of which was commenced before the Code came into force. *Ib.*

XIV. Of Public Roads.

170. A road which had been used and enjoyed as such by the defendant and others for upwards of thirty years was held to be a public road within the meaning of 18 Vic. cap. 100, sec. 41, ss. 9. *Parent* v. *Daigle*, 4 Q. L. R. 154, S. C. R. 1871.

XV. Of Rent.

171. Action was brought to recover the sum of $126.24, for sixteen years' arrears of *cens et rentes* (now called *rentes constituées*) on a lot of land owned and occupied during that period by the defendant in the seigniory of Rigaud, and which were due and unpaid for the 16 years ending the 29th September, 1877. Prior to the action the defendant offered to pay for the five years' arrears ending 29th September, contending that the remainder of the claim had been prescribed. By his plea he repeats this offer which was sustained in the court below.† In review—*Held*, that the only prescription applicable to arrears of *cens et rentes* or *rentes constituées* due up to the time the Civil Code of Lower Canada came into force was that of 30 years, and the prescription applicable to arrears accrued since the Code that of five years. *Bethune & Charlebois*, 23 L. C. J. 222, & 2 L. N. 135, S. C. R. 1879.

* Following *Wishaw & Gilmour*, 15 L. C. R. 177.
† 2 L. N. 13.

172. And *held*, also, that for the purposes of prescription said *rentes* which are payable annually are not held to be due day by day. *Ib.*

173. And also that interruption of said prescription as respecting arrears amounting in the aggregate to more than $50 cannot be proved by verbal testimony. *Ib.*

XVI. Of School Taxes.

174. School taxes are not annual rents, and are not subject to the same prescription as annual rents. *Les Rev. Dames, etc.* v. *Les Commissaires d'Ecole*, 3 Q. L. R. 323, S. C. R. 1877.

XVII. Of Streets.

175. In an action concerning the right of the public to a certain street—*Held*, that the only prescription that can accrue to the public in towns is that of thirty years. *Guy & City of Montreal*, 3 L. N. 402, Q. B. 1880.

XVIII. Of Taxes.

176. The municipal taxes of the City of Montreal are prescribed only after the lapse of thirty years. *Guy* v. *Normandeau*, 21 L. C. J. 300, S. C. 1877.

XIX. Of Tithes.*

XX. Of what is Paid by Error.

177. The action in restitution of what is paid by error is only prescribed by thirty years, even when the resort to such action supposes the previous cancellation of a contract, the rescision of which is prescriptible by a shorter period. *Ib.*

XXI. Of Wills.

178. The only prescription applicable to wills is that of thirty years under Art. 2242 of the Civil Code. *Dorion* v. *Dorion*, 7 R. L. 402, S. C. 1875.

XXII. Public Possession.

179. The brother of defendant, by obligation dated the 9th March, 1861, and registered the 11th of the same month, hypothecated certain real estate in favor of the plaintiff. The real estate so hypothecated was sold by the same brother to defendant by deed dated 2nd June, 1867, which, however, was not registered until the 16th January, 1871. The interest due to plaintiff was paid until March, 1875. The present action was instituted in November, 1877, for the capital with interest from March, 1875. Plea, prescription of ten years founded on sale in 1867. By the evidence it appeared that the defendant was in possession of the property when he purchased in 1867, and had been so in possession for several years before his purchase. After the defendant's purchase he continued in possession exactly as before. There

* By Q. 42-43 Vic. cap. 16, sec. 3, the English version of Art 2219 of the Civil Code is amended by replacing the word "thirty" in the second line by the word "forty."

was nothing connected with defendant's purchase to make third parties aware that a change had taken place in the ownership of the property, and as he had not registered his title—*Held*, that his possession could not be deemed a public possession within the meaning of Art. 2193 of the Civil Code* so as to support his plea of prescription. *Ross & Legaré*, 4 Q. L. R. 270, S. C. 1878.

PRESENTMENT.

I. Want of, cannot be Pleaded by Demurrer, *see* BILLS AND NOTES.

PRESUMPTIONS.

I. Arising from Marriage, *see* MARRIAGE.
II. Of Fraud, *see* FRAUD, DONATION, SALE, TRANSFER.
III. Of Theft, *see* THEFT.
IV. That Purchases are made with the Money of the Purchaser, *see* SALE.

PRIESTS.

I. Liability of, *see* CLERGYMEN.

PRINCIPAL—*See* INTEREST.

PRISONER.

I. Presence of, at Hearing of Reserve Case, *see* CRIMINAL LAW.

PRIVATE CONTRACT—*See* CONTRACTS sous seing privé.

PRIVILEGE.

I. For Costs, *see* COSTS.
II. For Money Deposited.
III. Of Boarding House Keepers.
IV. Of Builder.
V. Of Carriers.
VI. Of Dernier Equipeur.
VII. Of Hotelkeepers.
VIII. Of Journeymen under Insolvent Act, *see* INSOLVENCY.
IX. Of Landlord.
X. Of Pawnbrokers, *see* PAWNBROKERS.

* For the purposes of prescription the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor. 2193 C. C.

XI. Of Physician.
XII. Of Railway Bondholders, *see* RAILWAYS.
XIII. Of Vendor.
XIV. Of Workman.
XV. Right of.

II. For Money Deposited.

180. In accordance with a usage of trade at Montreal appellants borrowed from B. M. & Co. a quantity of corn, depositing a sum of money as security for its return. Sometime afterward the appellants returned the corn, but neglected to exact the repayment of the money deposit. Two or three days later B. M. & Co. failed, but prior to their failure had sold the corn, and the proceeds of that sale were subsequently collected by the assignee of their estate appointed under the Insolvent Act, 1869—*Held*, that the appellants had no lien or privilege on the proceeds of the sale for the amount of the unreturned money deposit. *Borrowman & Angus*, 24 L. C. J. 1, & 2 L. N. 92, Q. B. 1879.

III. Of Boarding-house Keeper.

181. A boarding-house keeper has a lien on the property and effects of the boarder under Q. 39 Vic. cap. 23. *Campbell & Filion*, 3 L. N. 200, S. C. 1880.

IV. Of Builder.

182. On the winding up of an insolvent estate, K. and L. were collocated on the dividend sheet under a builder's privilege for the sum of $750, and this was contested by D., a creditor, and the collocation was maintained, and D.'s contestation dismissed. D. inscribed for review, on the ground that by law the builders and artificers have a right of preference over the vendor and other creditors, only upon the additional value given to the property by their work, provided a *procès-verbal* establishing the state of the premises has been previously made by an expert; and that within six months from their completion they have been accepted by an expert, and the reception and acceptation be also officially established by *procès-verbal* containing the valuation of the work that has been done. *By the Court.*—There is no doubt that this is the law; in fact it is taken almost word for word from the Code (Art. 2013),* so that we have to see what has been done, and whether the law has been satisfied. The proceeding was a slovenly one, no doubt, but the second *procès-verbal* has to be construed fairly, as the learned judge below has done. We therefore confirm the judgment. *Lainerille & Lecours & Kelly & Desmarteau*, S. C. R. 1877.

* Builders or other workmen and architects have a right of preference over the vendor and all other creditors only upon the additional value given to the immoveable by their works, provided that an official statement, establishing the state of the premises on which the works are to be made, have been previously made by an expert appointed by a judge of the Superior Court in the district, and that within six months from their completion such works have been accepted or received by an expert appointed in the same manner, which acceptance and reception must be established by another official statement containing also a valuation of the work done; and in no case does the privilege extend beyond the value ascertained by such second statement, and it is reducible to the amount of the additional value which the immoveable has at the time of sale. In case the proceeds are insufficient to pay the builder and the vendor, or in cases of contestation, the additional value given by the buildings is established by a relative valuation effected in the manner prescribed in the Code of Civil Procedure. 2013 C.C.

V. Of Carriers.

183 Conservatory attachment of a quantity of lumber. In his affidavit the plaintiff alleged that the spring and summer previous he conveyed the said lumber at his own costs and charges down the two branches of the River Nicolet and its tributaries to the mouth of that river, according to a notarial agreement made with the defendants. That the amount of timber thus conveyed was 93,883 pieces, at the rate, according to the agreement, of five dollars per 100, the whole amounting to the sum of $1,694.15, which the defendants, by the said agreement, had undertaken to pay, $250 in commencing the work and afterwards in proportion as the work proceeded less twenty-five per cent., which was not to be paid until the whole work was finished; that he had also done similar work on the River Scott, and not included in the agreement, amounting to $36; that he had furnished 200 floats and 300 crossings amounting to $308, and spent $25 in conveying them; that he had suffered damages to the extent of $1,000, making in all $5,863.15; that the defendants had refused to furnish the money necessary to convey the timber, as they had agreed to do, and that the plaintiff had received only $2,000 altogether, leaving a balance of $3,863.15; that, further, the defendants were carrying away the timber, which was plaintiff's sole security for his claim, and were refusing to recognize the claim of plaintiff for the balance; that without the benefit of a writ of *saisie arrêt simple* in the nature of a conservatory writ of attachment to seize in the hands of defendants all the timber thus conveyed, and which was still at the mouth of the River Nicolet, in order to preserve his lien and privilege thereon as a *common carrier or dernier equipeur* he would lose his privilege and his debt and sustain damage. Petition to quash on a number of grounds.—*Held*, that the right of the plaintiff was the right of a *dernier equipeur* according to the usage of the country, and that he could, according to Art. 834 of the Code of Procedure, seize and detain them for the costs and charges of conveyance, but not for damages; that he had also the right of a carrier to retain the timber until paid the costs of transport according to Art. 1679 of the Civil Code,* that in consequence he had a right to conservatory process to seize and detain it, and that the affidavit was a sufficient affidavit for that purpose. *Trude v. Trahan*, 7 R. L. 177, S. C. 1874.

VI. Of Dernier Equipeur.

184. The privilege of the master and crew of a vessel for the wages for the last voyage does not apply to a balance of wages for a season's

* The carrier has a right to retain the thing transported until he is paid for the carriage or freight of it. 1679 C. C.

continuous navigation on the St. Lawrence and lakes, although the master and crew signed articles for the season, and were paid by the month and not by the trip. *D'Aoust* v. *McDonald & Norris*, 1 L. N. 218, & 22 L. C. J. 79, S. C. R. 1878; 2383 C. C.

185. The privilege upon vessels for furnishing a ship on "her last voyage" does not apply to supplies furnished during the whole season of navigation, though the vessel be one making short trips on inland waters. *Owens et al* v. *Union Bank*, 1 L. N. 87, S. C. 1873.

VII. Of Hotel Keepers.

186. An innkeeper can exercise his privilege for food and accommodation furnished to a guest upon effects brought into the hotel by such guest, though not his property and not forming part of his baggage. *Fogarty* v. *Dion*, 6 Q. L. R. 163, S. C. 1880.

IX. Of Landlord.

187. On the contestation of an opposition *afin de distraire*, a cart voluntarily left by the owner on the premises of a tenant for several weeks was held subject to the landlord's privilege for rent in the absence of proof that the landlord had reason to know that the cart was not the property of the tenant. *Beaudry & Lafleur & Perry*, 24 L. C. J. 150, S. C. R. 1880.

XI. Of Physician.

188. A claim for medical attendance, though in its nature a debt of the community, may be recovered from the personal heirs of the wife deceased, notwithstanding their renunciation of the community. *Perrault* v. *Etienne*, 1 L. N. 471, S. C. 1878.

XIII. Of Vendor.

189. The plaintiff took a writ of conservatory attachment against the defendant the same day that a writ of attachment under the Insolvent Act of 1875 issued against him. The plaintiff obtained judgment on his conservatory attachment but in an opposition by the assignee—*Held*, that his privilege had lapsed by the insolvency, and that as the assignee was not bound by the judgment against the insolvent, the attachment in favor of plaintiff must be set aside. *Robertson* v. *Smith & Fair*, 23 L. C. J. 207, S. C. 1879.

190. In October, 1856, the opposant sold an immoveable property in Montreal for the sum of £40, converted into a constituted annual rent of £2 8s. In the deed of sale it was stipulated, that should the purchaser alienate the property the rent would become at once exigible. It was also stipulated that the vendor, in case of the inexecution of the conditions of the deed, would have the right to retake the said lot of land and to re-enter into possession and enjoyment of it, and that in the meantime it would remain subject to the privilege of *bailleur de fonds*. The property passed through several hands, and in 1860, the holder being insolvent, was sold by forced sale, and the opposant claimed to be collocated on the proceeds by privilege for the price of sale—*Held*, that where the property as in this instance was sold previous to the Code, that the *droit de resolution* remained even though no renewal of the registration had been effected, and in preference to subsequent hypothecary creditors whose claims had been duly registered, and where the right had not been exercised before adjudication the *bailleur* could come in by privilege on the proceeds. *La Cie. de Pret, &c.*, v. *Garand*, 3 L. N. 379, S. C. 1880.

XIV. Of Workmen.

191. Laborers working in a quarry have no privilege on the tools used in quarrying, nor on the stone extracted therefrom, especially when the tools and the quarry are not the property of the person who employed the laborers.* *Prévost* v. *Wilson & Rodgers*, 1 L. N. 232, & 22 L. C. J. 70, S. C. R. 1878.

192. Under the Insolvent Act, 1875, day laborers had no privilege for wages. *Vanalstyne & Gray & Stewart*, 2 L. N. 302, S. C. 1879.

PRIVILEGED COMMUNICATION —*See* EVIDENCE.

PRIVITY OF CONTRACT—*See* CONTRACTS.

PRIVY COUNCIL.

I. Appeal to, *see* APPEAL.

PROCEDURE.

I. Alias Writ.
II. Amendment of, *see* Description of Parties.
III. Appearance.
IV. Articulation of Facts.
V. Bill of Particulars.
VI. Calling in Parties Interested.
VII. Congé Defaut.
VIII. Consent.
IX. Counsel at Enquête.
X. Declaration, *see* PLEADING.
XI. Delay.
To Plead.
XII. Depositions.
XIII. Deposits.
XIV. Description of Parties.

---

* Reversed in appeal on the ground of acquiescence without touching the question of privilege. 24 L. C. J 179, & 2 L. N. 257.

XV. Desistement.
XVI. Discontinuance
XVII. Enquête.
Reinscription for after Delibéré.
XVIII. Erasures and Notes.
XIX. Exceptions.
Delay to File.
Deposit with.
Dilatory.
Preliminary.
To the Form.
XX. Exhibits.
XXI. Exparte.
XXII. Faits et Articles.
XXIII. Filing Plea.
XXIV. Foreclosure.
XXV. In Appeal.
XXVI. In Cases of Conflict of Laws between the Provinces, *see* LAWS.
XXVII. Incidental Demand, *see* ATTORNEYS AD LITEM.
XXVIII. Informa Pauperis.
XXIX. In Intervention.
XXX. Inscription.
XXXI. Judge's Order.
XXXII. Judicial Oath.
XXXIII. Mis en Cause.
XXXIV. Motion.
Notice of.
XXXV. Notice.
Of Action.
Of Petition.
XXXVI. On Opposition.
XXXVII. Power of Attorney from Foreign Plaintiff.
XXXVIII. Re-hearing.
XXXIX. Reprise D'instance.
XL. Return.
XLI. Service.
At Domicile.
At Prothonotary's Office.
Bailiff's Right to Make.
Of Absentee.
Of Amended Writ.
Of Attorneys.
Of Co-defendant.
Of Company.
Of Consorts.
Of Corporation.
Of Intervention.
Of Motion.
Of Parties after Dissolution.
Of Railway Commissioners.
Of Saisie Gagerie par Droit de Suite.
Place of.
Return of.
XLII. Special Answer.
XLIII. Stay of, on Account of Insolvency.
XLIV. Summons.
By Advertisement.
XLV. Under Different Pleas.

I. Alias Writ.

193. On the 5th December, 1876, the appellant was arrested on a capias issued on the 2nd December and returnable on the 14th. Finding that through the delay to execute the writ a sufficient delay for the return was not allowed, the plaintiff took out an *alias* writ returnable on the 18th December—*Held*, confirming the judgment of the court below, that the proceeding was valid, and the exception to the form filed by appellant was properly dismissed. *Richard & Wurtele*, 1 L. N. 32, Q. B. 1877.

II. Amendment of.

194. In an action of damages—*Held*, that an amendment would not be permitted after the production of an exception to the form. *Lamarche & Blanchard*, 10 R. L. 678, C. C. 1880.

195. A copy of an amended declaration must be served upon defendant before he can be called upon to plead. *Fair* v. *Cassils*, 3 L. N. 338, S. C. 1880.

196. An exception to the form was maintained because the amended writ was not served with the full delay before return of action. *Slater & Belisle*, 3 L. N. 238, S. C. R. 1881.

197. When the plaintiff has obtained permission to produce an amended declaration on payment of the costs occasioned by the amendment, the payment of the costs as taxed by the prothonotary is sufficient to permit him to file his amended declaration, and a demand in revision of such costs by a judge does not suspend the procedure. *Chouinard* v. *Bertrand*, 6 Q. L. R. 201, S. C. 1880.

III. Appearance.

198. An appearance and plea by a person who was not served in the cause, though the writ purported to be addressed to him, will be rejected with costs where the evidence shows that he was aware of the error in the writ. In such case if the party fears that judgment may be erroneously rendered against him, his proper course is to come in by intervention. *The Exchange Bank of Canada* v. *Napper et al.*, 21 L. C. J. 278, S. C. 1877.

IV. Articulation of Facts.

199. Articulation of facts will not be permitted in an issue upon a preliminary plea. *Rees* v. *Morgan & Baillie*, 4 Q. L. R. 184, S. C. 1878.

200. On a petition for an injunction against a railway company, articulation of facts were on motion rejected. *Angus* v. *Montreal, Portland & Boston Railway Co.*, 2 L. N. 203, & 23 L. C. J. 161, S. C. 1879.

201. Under a plea of *défense en faits* simply, no articulation of facts is required in order to entitle defendant to costs of *enquête*. *Mathewson* v. *O'Reilly*, 2 L. N. 322, & 23 L. C. J. 313, S. C. 1879; 207 C. C. P.

V. Bill of Particulars.

202. In an action of damages against a lessee for deterioration of the leased premises the defendant cannot by motion demand a detailed statement of the damages charged, but must do so by exception to the form. *Rhéaume & Panneton*, 9 R. L. 594, Q. B. 1879.

VI. Calling in Party Interested.

203. In a revendication of a piano the defendant pleaded that the piano still belonged to the

makers and not to him nor the plaintiff—*Held*, that the *délibéré* would be discharged in order to allow plaintiff to bring the party really interested into the suit. *Dudevoir & Bruce*, 1 L. N. 590, S. C. 1878.

VII. Congé Defaut.

204. *Congé defaut* on a rule will be granted without costs. *Lavin* v. *Desloryes* v. *Serré*, 21 L. C. J. 206, S. C. 1877.

205. It is not necessary on a demand for *congé defaut* to give notice to plaintiff. *Chalut* v. *Valade et al.*, 21 L. C. J. 218, S. C. 1877; 82 C. C. P.*

206. Motion for *congé defaut* and costs on motions which had been served not made. Motion rejected as to costs. *Grant* v. *Lavoie*, 3 L. N. 392, Q. B. 1880.

207. Where a motion for *congé defaut* was not made until the fifth day after return no costs were allowed. *Siegert & Hartland*, 3 L. N. 347, S. C. 1880.

208. A *congé defaut* cannot be obtained by the defendant, except he returns into court the copy of the writ and declaration served upon him. *Cherrier* v. *Torcapel*, 6 Q. L. R. 377, C. C. 1880.

209. And he must at the same time pay the ordinary costs of return. *Coady* v. *Fraser*, 6 Q. L. R. 384, S. C.

VIII. Consent.

210. Where the attorneys of a garnishee agreed that a petition in intervention filed in the case be considered to have been served upon him (the garnishee , and afterwards revoked the consent—*Held*, hat the revocation had no validity until permitted by the court after notice to all the parties. *Bachand & Bisson & Trudeau*, 2 L. N. 324, S. C. 1879.

IX. Counsel at Enquete.

211. Action on a promissory note. Being inscribed for *enquête*, the parties contented themselves with an admission of certain facts signed by the attorneys of the plaintiff and the counsel at *enquête* of defendants, and countersigned by the attorneys of the defendants. The action was dismissed with costs. The prothonotary having refused to grant a fee for the defendants' counsel at *enquête*, the defendants appealed from the taxation of the prothonotary, and their pretension was maintained. *Corporation of Quebec* v. *Piton*, 5 Q. L. R. 239, S. C. 1879.

212. On a petition to annul a deed of transfer, the parties have a right to have a counsel at *enquête*, and the fee of such counsel should be taxed at $10, as in ordinary cases. *Piton in re*, 4 Q. L. R. 199, S. C. 1878.

213 The appearance of a counsel at *enquête* filed of record gives a right to such counsel to the fee of ten dollars, allowed by the tariff against the adverse party, and such fee will be granted if satisfactory affidavits are not filed establishing that the pretended counsel at *enquête* did not act as such. *Laliberté* v. *Paris*, 6 Q. L. R. 201, S. C. 1880.

XI. Delays in.

214. A writ under the Lessor and Lessee Act was served on the 24th Dec., returnable on the 27th. The 25th was Christmas day and the 26th was Sunday—*Held*, that the one day provided by the Code of Procedure* must be held to mean a juridical day, and the delay was therefore insufficient. *Melayer dit St. Onge* v. *Larichelière*, 21 L. C. J. 27, S. C. 1876.

215. An exception to the form which was filed between four and five o'clock on the afternoon of the last day was *held* to be in time in the absence of any rule of practice to the contrary, although the usual hour of closing the prothonotary's office was four o'clock. *The Carillon & Grenville Ry. Co. & Burch*, 21 L. C. J. 46, Q. B. 1876.

216. A motion for security for costs must be made within four days after return, and if vacation intervene the motion must be made within four days exclusive of vacation. *Cartier* v. *Germain*, 21 L. C. J. 310, S. C. 1877.

217. Where the defendant after the expiration of eight days from the filing of a special answer made a motion to have certain allegations of such answer struck out, the motion was granted. *Delbar* v. *Landa*, 21 L. C. J. 247, S. C. 1877.

218. Under the Code a clear day's notice of service of motion for *certiorari* is sufficient. *Gates exp. & Stewart*, 23 L. C. J. 62, S. C. 1878.

219. Where a writ of ejectment was served on Saturday, returnable on Monday—*Held*, sufficient. *Boulerisse* v. *Hébert*, 2 L. N. 196, S. C. 1879.

220. The day's delay in the service of a writ of ejectment should be a juridical day. *Darby* v. *Bombardier*, 2 L. N. 202, S. C. 1879.

221. *To Plead.*—The 6th December, which was a Friday, demand of plea was made on the defendants, and foreclosure taken on the Tuesday following, being the fourth day from the demand including Sunday—*Held*, that the delay under art. 137 of the Code of Procedure,† should be three clear juridical days, and that the foreclosure in the case in question was consequently premature. *Burroughs* v. *Berthelot*, 10 R. L. 3, & 24 L. C. J. 23, S. C. 1878.

222. Where a dilatory exception was filed delay to plead to the merits was allowed until the dilatory exception was disposed of. *Mailloux* v. *Trudeau*, 3 L. N. 152, & 24 L. C. J. 189, S. C. 1880.

---

* If the writ is not returned as hereinabove provided, the defendant may obtain the benefit of a default against the plaintiff, and be discharged from the suit with costs upon filing the copy of the writ served upon him. 82 C. C. P.

* The delay upon summons is only one intermediate day, &c. C. C. P. 890.

† All pleas to the merits, whether by exception otherwise, must be filed within eight days after the appearance, except in the cases otherwise provided for in the preceding section. If they are not filed within such delay the adverse party may demand them, and if they are not filed within the three next following juridical days, the prothonotary may grant the plaintiff a certificate of foreclosure. 137 C. C. P.

XII. Depositions.

223. *By Stenography.*—Where depositions are taken by a short-hand writer without a written consent, but both parties have participated without objection, they will be bound by them. *Ross* v. *McGillivray*, 1 L. N. 77, S. C. 1877.

XIII. Deposits.

224. Where money had been tendered to plaintiff by an intervening party, and deposited in court, and plaintiff moved to be allowed to withdraw it—*Held*, that he could not do so, as the tender was a conditional one *Privé* v. *Dillon & Beard*, 2 L. N. 195, S. C. 1879; 543 C. C. P.*

XIV. Description of Parties, *see* Exceptions.

225. An action in which the occupation or quality of the defendant is not given will be dismissed on exception to the form, but without costs. *Huot* v. *Cloutier*, 6 Q. L. R. 95, C. C 1873.

226. In an action to compel the defendant to take a deed of sale of land which it was alleged he had purchased, one of the parties was described as of the parish of Montreal instead of the city of Montreal. The court below dismissed the action on the ground of the misdescription, that was the only ground mentioned in the judgment. In appeal, the court said: It is true that he has not been properly described; but there was a judgment of this court in the case of *Morse and Brooks*, where the exception was on the ground that the party was described as of the township of Orford, when he should have been described as of the town of Sherbrooke. But the town of Sherbrooke is included in the township of Orford, and this court held that the party was rightly described. So here the city of Montreal is within the parish of Montreal, and the party was properly described. The exception, therefore, should have been dismissed. *Fauteux* v. *Jackson*, Q. B. 1876.

227. Where a writ of summons sets forth only one of plaintiff's three christian names and indicates the others by their initial letters, the action will be dismissed on exception to the form. *Gauthier* v. *Callaghan*, 3 Q. L. R. 384, S. C. 1877; 49 C. C. P.

228. Where the defendants, a banking corporation, were described in the writ as carrying on "the trade and business of banking, in the city of Montreal, in the district of Montreal and elsewhere"—*Held*, sufficient. *Bureau & The Bank of B. N. America*, 21 L. C. J. 261, Q. B 1877; 49 C. C. P.†

* Moneys paid into court cannot, without the authorization of the court, be withdrawn by the party who paid them in. Unless the tender is conditional, the party to whom it is made is entitled to receive the moneys paid in without prejudicing his claim to the remainder. 543 C. C. P.

† The writ must state the names, the occupation or quality and the domicile of the plaintiff, and the names and actual residence of the defendant. In actions upon bills of exchange or promissory notes (or any other private writings, whether negotiable or not), it is sufficient to give the initials of the christian or first names of the defendant, such as they are written upon such bills, notes or instruments. When a corporate body is a party to the suit, it is sufficient to insert its corporate name and to indicate its principal place of business. 49 C. C. P.

229. Where a plaintiff in his writ and declaration gives his christian name as "Thomas," proof that he sometimes signed "Thomas J." and sometimes "Thomas" is not sufficient to support an exception to the form alleging that he had two christian names. *Hearn & Mobony*, 3 Q. L. R. 339, Q. B. 1877.

230. The description of the defendant in a writ of summons should give the actual residence and not the domicile. *Martel* v. *Sénécal*, 22 L. C. J. 107, C. C. 1878.

231. Where the initial only of defendant's christian name is given in an affidavit for *capias*, this is no ground for a petition to quash. *Hall* v. *Zernichon*, 4 Q. L. R. 268, S. C. 1878.

232. The failure to state in the writ the plaintiff's names in full, and the giving a wrong name to defendant, are not mere irregularities subject to amendment, but nullities, and cannot be amended. *Parent* v. *Picard*, 4 Q. L. R. 73, S. C. 1878.

233. Plaintiff was described in the lease on which the action was based as "Henry S. Scott," without any indication of the name for which the "S." stood—*Held*, on exception to the form, that he could maintain an action in the name specified in the lease without any further designation of his second christian name. *Scott* v. *Hardy*, 4 Q. L. R. 215, S. C. 1878.

234. A debtor being sued by a wrong christian name, and allowing judgment to go against him, cannot afterwards oppose the seizure of his things on the ground that he is not the person against whom the judgment was rendered. *Merchants Bank of Canada* v. *Murphy*, 23 L. C. J. 215, S. C. 1878.

235. On exception to the form—*Held*, that the names "Eliza Betil," by which the female plaintiff was known and called at the time of her marriage, and by which she was entered in her marriage certificate, coupled with her designation as the wife of the other plaintiff, who was properly named, are a sufficient statement of her names under Art. 49 of the Code of Procedure,* although she was baptized by the names of "Marie Liza Betil." *Poutiot* v. *Solo*, 5 Q. L. R. 325, S. C. 1879.

236. Where in an action *qui tam* the Municipal Corporation to whom one-half of the fine was due was described in the declaration as the "Municipal Corporation of ——"—*Held*, that the term "municipal" as used in the Municipal Code is a term of general description, and not part of the title of a corporation. *Graham v. Morissette*, 5 Q. L. R. 346, C. C. 1879.

Act to Amend Art. 49 of the Code of Civil Procedure.

Assented to 31*st Oct.*, 1879.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. Art. 49 of the Code of Civil Procedure is amended by adding to the second paragraph thereof the following words:

"If the defendant has no domicile or permanent residence in this province, the mention of his surname alone will suffice if his christian name cannot be ascertained, provided that he be otherwise sufficiently designated in the writ, and that such writ be served upon him personally."

2. This Act shall come into force on the day of its sanction.

* *Vide* Note.

237. On an exception to the form—*Held*, that the description of the plaintiff by the title of Esquire was sufficient, although the plaintiff was a citizen of the United States, and such title was unknown there. *Bradley & Logan*, 3 L. N. 200, S. C. 1880.

238. An action in which the defendant was described as "Lisa Blanchard" was dismissed on exception to the form, on proof that her name was Elizabeth Blanchard, although she was called "Lizzie" in her family. *Lamarche & Blanchard*, 10 R. L. 678, C. C. 1880.

239. And, *held*, that being an action of damages it would not be permitted to the plaintiff to amend the writ and declaration after the production of the exception to the form. *Ib.*

XV. Desistement, *see* COSTS.

240. A party may desist from an interlocutory judgment rendered in his favor even after motion for leave to appeal from such judgment has been granted, and without the consent of the opposite party; and in such case the appeal will be dismissed with costs against appellant from the filing the desistement. *Nadeau & Pacaud*, 9 R. L. 678, Q. B. 1876.

XVI. Discontinuance.

241. Where a hypothecary creditor brought hypothecary action against his personal debtor —*Held*, that he could not withdraw the hypothecary conclusions in order to adhere simply to the personal ones. *Lebrun & Bédard*, 21 L. C. J. 157, S. C. 1877.

242. After a case has been submitted to the court on its merits the plaintiff is not entitled to discontinue the action on payment of costs. *Williamson & Rhind*, 22 L. C. J. 166, Q. B. 1877.

243. Where an attachment issued against the petitioner under the Insolvent Act, and he petitioned within five days that the attachment be quashed, and the plaintiff afterwards filed a discontinuance—*Held*, that the petitioner having proved his petition was entitled to a judgment on it. *Ford* v. *Short*, 21 L. C. J. 198, S. C. 1877.

XVII. Enquete.

244. A party inscribing for *enquête* and hearing at the same time will be sustained in his option under Art. 243 C. C. P., although the other side has on the same day inscribed for *enquête* in the ordinary way. *Bourgouin & The M. O. & O. R. R. & Angers*, 1 L. N. 131, & 22 L. C. J. 42, S. C. 1878.

245. *Reinscription for after Delibéré.*—Where a *delibéré* was discharged on motion of plaintiff, after final hearing, in order that they might reopen their *enquête*—*Held*, that a reinscription with the usual notice was necessary in order to get the case regularly on the roll. *Devine & Griffin*, 3 L. N. 92, & 24 L. C. J. 84, S. C. 1880.

XVIII. Erasures and Notes.

246. An opposition *afin de distraire* contained a number of erasures and marginal notes not referred to or approved. The plaintiff moved for its rejection, citing Art. 295 C. C. P.—*Held*, confirming the decision of the court below, that the opposition was null by reason of the irregularities referred to. *Dalton* v. *Doran & Doran*, 1 L. N. 220, & 22 L. C. J. 102, S. C. R. 1877.

XIX. Exceptions.

247. *Delay to File.*—Appeal from a judgment of the Superior Court at Terrebonne rejecting an exception to the form. The action was for $40,000 damages, and was returned on the 27th April. On the following day the defendants filed an appearance, and on the fourth day from return the defendants filed an exception to the form at half-past four in the afternoon. On motion to reject both appearance and exception as irregularly filed the motion was granted as to the exception by the Superior Court at Terrebonne, but reversed in appeal, on the ground that there was no rule of practice requiring it to be served before four o'clock. *Carillon & Grenville Railway Co.* v. *Burch*, 9 R. L. 3, Q. B. 1876.

248. *Deposit with.*—In cases under sixty dollars no deposit is required with preliminary exceptions. *La Co ipagnie d'Assurance des Cultivateurs* v. *Beaulieu*, 1 L. N. 566, & 22 L. C. J. 267, & 9 R. L. 432, C. C. 1878.

249. Since the jurisdiction of the Circuit Court in Quebec and Montreal has been restricted to $100 no deposit is required with preliminary pleas in that court. *Kennedy & McKinnon*, 3 Q. L. R. 358, C. C. 1877.

250. *Dilatory.*—A dilatory exception, on the ground that the money sued for was already seized by an attachment, to which plaintiff was a party, was allowed. *O'Halloran & Barlow*, 3 L. N. 171, S. C. 1880.

251. A dilatory exception will lie founded on a condition precedent to an action on a deed of sale. *Bouchard* v. *Thivierge*, 4 Q. L. R. 152, C. C. 1878; 120 C. C. P.

252. *Preliminary.*—Filing pleas to the merits is not a waiver of a preliminary exception, where there is a special reservation by defendant of his preliminary pleas. *Prévost* v. *Jackson*, 3 L. N. 128, C. C. 1880.

253. Exception to the form will lie where a declaration is insufficiently libelled. *Soucy & Caron*, 9 R. L. 718, Q. B. 1875.

254. The name of respondent was "Thomas J." and not "Thomas" as in the writ and declaration—*Held*, confirming court below, that this was not such a misnomer as to found an exception to the form. *Hearn & Maloney*, 1 L. N. 43, Q. B. 1877.

255. Where on a *saisie gagerie par droit de suite* the *mis en cause* objected that he was described by his initials only, and it was shown that he had signed the *procès-verbal* in that way, the exception was dismissed. *Wilson & Rafter*, 2 L. N. 211, 1879.

256. Where the defendants objected by exception to the form to the manner in which they were described in the writ and declaration, but did not give their proper description—*Held*, that the exception was properly dismissed. *Dunning & Girouard*, 9 R. L. 177, Q. B. 1877.

XX. Exhibits.

257. In an action on a foreign judgment to which counts in assumpsit were added, the proceedings on motion of defendant were ordered to be stayed until a statement of account was filed. *Holme* v. *Cassils*, 21 L. C. J. 28, S. C. 1877.

258. In an action for rights of succession—*Held*, that under a plea of general denial merely the defendant could not file a copy of a notarial *quittance*. *Cadieux* v. *Cadieux*, 2 L. N. 191, S. C. 1879.

259. Art. 103 of the Code of Procedure, which provides that until the exhibits are produced and filed the plaintiff cannot proceed with his action, is incompatible with the 7th Rule of Practice of the Circuit Court, which provides for the service of a detailed account with the action, and has consequently abrogated it. *Bélanger* v. *Chalifoux*, 9 R. L. 447, C. C. 1878.

XXI. Exparte.

260. A writ of *fieri facias* which has been stopped by an opposition to annul in a cause, the record of which has been lost by the Quebec Court House fire, is not an *exparte* proceeding, even though the judgment was obtained *exparte*, and that consequently the plaintiff cannot renew his proceeding under sec. 5 of Q. 37 Vic. cap. 15, but must obtain the restoration of the record, or procure leave to proceed under section 7* of that Act. *Bouchard* v. *Dawson*, 4 Q. L. R. 282, S. C. 1878.

XXII. Faits et Articles.

261. A party has not the right to examine his adversary *sur faits et articles* before trial. *Knox* v. *Lafleur*, 1 L. N. 470, & 22 L. C. J. 225, S. C. 1878.

262. And where the plaintiff has inscribed the case for proof and final hearing, a notice served by defendant upon the attorney of his absent adversary two days before the date fixed for trial and for *faits et articles* on the day of trial is in time. *Ib.*, & 221 C. C. P.

263. But when the attorney of an absent party, upon whom an order for *faits et articles* has been served, indicates the residence of his client, and his option to have him examined by commission at such place, the commission will be at the diligence and expense of the party requiring the interrogatories. *Ib.*, & 223 C. C. P.

264. The defendant made default, and was served with *faits et articles*. He then applied for and obtained leave to plead and ignored the interrogatories, which were adjudged and taken *pro confessis*. After judgment defendant inscribed in review when *held*, setting aside the judgment of the court below, that in the absence of notice of the motion for *pro confessis* the case should have been sent to *enquête* and the *pro confessis* refused. *Morgan & Girard*, 23 L. C. J. 209, S. C. R. 1878.

265. Action in damages for breach of contract. The defendant pleaded to the action and the plaintiff filed answers. At this point the plaintiff took out a rule against the defendant to have him answer interrogatories on articulated facts. The rule was returned into court, and the defendant on being called made default. Entry of default refused on the ground that interrogatories are only allowable during trial. *Beaudry* v. *Archambault*, 3 L. N. 317, S. C. 1880.

266. *Pro Confessis.*—Damages may be supported without other proof by failure of defendant, an absentee, to answer interrogatories, and which are held to be admitted. *Fortin* v. *Say*, 3 L. N. 331, S. C. 1880.

267. Answers to interrogatories cannot be divided in order to obain a *commencement de preuve* sufficient to let in parole evidence. *Christin & Valois*, 3 L. N. 59, Q. B. 1880.

268. At the hearing of a case in the Superior Court, a defendant who is in default to answer *faits et articles*, and makes a motion that he be permitted to answer, may, under certain circumstances, obtain from the court a reasonable time to permit him to do so, and in case this permission is refused, the Court of Appeal may relieve him of his default on such conditions as it deems reasonable. *McGreevy & Gagné*, 10 R. L. 351, Q. B. 1880.

XXIII. Filing Plea.

269. Where a defendant neglects to file an original plea, of which a copy has been served on the opposite party, and the case proceeds to final hearing as in a contested case, the plaintiff's attorney may file the copy of plea served on him, and stamp it to take the place of the original plea, without notice to the defendant's attorney, or leave or permission of the court. *Fontaine & The Montreal Loan & Mortgage Co.*, 3 L. N. 28, & 24 L. C. J. 161, Q. B. 1879.

XXIV. Foreclosure.

270. Where a plaintiff in an action *en reddition de compte* neglects to file a contestation of the account filed within fifteen days, the account is held to be admitted. *Hart & Hart*, 3 L. N. 24, & 24 L. C. J. 161, Q. B. 1879; 527 & 530 C. C. P.*

271. Appellant had been foreclosed from pleading, and moved the court below for leave to plead without producing any plea or alleging the nature of the plea, or that there was a *bonâ fide* defence to the action. The court below rejected the motion on the ground chiefly that no plea had been tendered. In appeal—*Held*, that the decision of the court below was strictly correct, but, as the action was for damages, it was intimated that a proper plea being tendered leave to plead should be granted. *Corporation of Princeville & Pacaud*, 3 L. N. 298, Q. B. 1880.

* Act to provide a remedy for the losses occasioned by the burning of the Quebec Court House.

* Parties accounted to are bound to take communication of the account and vouchers at the prothonotary's office, and to file their contestations of the account, if they contest it, within a delay of fifteen days, which may be extended by the court or a judge upon application pursuant to the notice. 527 C. C. P.

In default of filing the contestations, answers or replications within the delay, the party bound to file them is held to admit whatever is contained in the document he fails to contest. 530 C. C. P.

272. Action of damages for $5000, for false and malicious imprisonment. The defendant appeared and filed an exception to the form. The plaintiff without replying to the exception demanded a plea to the merits, and having foreclosed the defendant from pleading to the merits inscribed the case for proof *exparte*. On motion to discharge the inscription—*Held*, where the plaintiff had foreclosed the defendant from pleading under Art. 131 of the Code of Procedure,* he could proceed to *enquête exparte* without waiting for a judgment on the preliminary exception. *Pacaud* v. *Corporation of Princeville*, 6 Q. L. R. 81, Q. B. 1880.

XXVIII. In Forma Pauperis.

273. Where a party had been allowed to plead *in formâ pauperis* in the court below, she was allowed to proceed *in formâ pauperis* in appeal without a new affidavit. *Trust & Loan Co. & Quintal*, 3 L. N. 397, Q. B. 1880.

274. A defendant who seeks to have the plaintiff's leave to plead *in formâ pauperis* revoked is not entitled to ask for the dismissal of the action. *Guillaume* v. *City of Montreal*, 3 L. N. 315, & 24 L. C. J. 258, S. C. 1880.

275. The permission to plead *in formâ pauperis* includes the privilege of having the defendant's depositions taken and filed without payment of the usual fees. *Laramee & Evans*, 3 L. N. 373, S. C. 1880.

XXIX. In Intervention.

276. Where an intervenant having foreclosed the other parties from pleading to his intervention, and obtained judgment *exparte* without adducing any proof of the allegations of his intervention, the judgment in review was set aside on this ground, and on the ground that, if he did not intend to furnish any further grounds in support of his intervention, he ought to have given notice to that effect to plaintiff. *McGreevy & Gingras & Coté*, 4 Q. L. R. 203, S. C. R. 1876.

XXX. Inscription.

277. A case may be inscribed for *enquête et merites* without the filing of articulations of fact and answers, when the delay for filing these has expired before the date of the inscription. *Bellay & Guay*, 4 Q. L. R. 91, Q. B. 1874.

278. And an interlocutory judgment rejecting such inscription is a judgment from which an appeal will lie. *Ib.*

279. The plaintiff had given eight days' notice to defendant of his inscription for *enquête*, but had not filed the inscription within that time. On motion—*Held*, insufficient and struck.* *Latour & Gauthier*, 21 L. C. J. 39, S. C. 1877.

280. *Notice of.*—In the Circuit Court, non-appealable, where the action has been returned in vacation, the notice of inscription for proof and hearing on the merits must be given at least three days beforehand, even where such notice is given during term. *Neilan* v. *Demers*, 4 Q. L. R. 300, C. C. 1878.

281. *For Hearing.*—An inscription for hearing cannot be filed until the *enquête* has been formally declared closed. *Brewster & Grand Trunk Railway Co. of Canada*, 2 L. N. 323, & 23 L. C. J. 271, S. C. 1879.

282. A defendant foreclosed from pleading cannot inscribe for *enquête*. *Hughes* v. *Rees*, 3 L. N. 37, & 24 L. C. J. 41, S. C. 1879.

283. Motion for leave to appeal from a judgment setting aside plaintiff's inscription for *enquête*. The action was met by an exception to the form turning on a matter of record only. The plaintiff demanded defendant's pleas to the merits, the defendant did not plead and was foreclosed. The plaintiff then inscribed for *enquête exparte*. The motion was to set aside this inscription because the preliminary pleas should be disposed of before the case on the merits. It was also contended that the inscription *exparte* was irregular as the *enquête* should have been general. Appeal allowed. *Pacaud & Corporation of Princeville*, 3 L. N. 195, & 6 Q. L. R. 81, Q. B. 1880.

XXXI. Judge's Order.

284. An order at the foot of a petition signed by a judge described in the petition as being in the district will be presumed to have been given in that district. *Roy* v. *Fraser*, 6 Q. L. R. 244, S. C. 1877.

XXXII. Judicial Oath.

285. The Court of Review may send a case back to the court below in order that the judicial oath be referred to plaintiff. *Canadian Navigation Co. & McConkey*, 1 L. N. 23, Q. B. 1877.

286. When the judiciary oath is deferred by the court the parties will be heard anew if they desire it. *Syndics de St. Henri* v. *Carrier*, 4 Q. L. R. 205, S. C. 1878.

XXXIII. Mis en Cause.

287. A person to whom leased premises have been sublet contrary to the stipulations of the original lease may, in an action in resiliation, be *mis en cause* by mere service and notice of the action. *Rhéaume & Panneton*, 9 R. L. 594, Q. B. 1879.

XXXIV. Motion.

288. Neither a demurrer nor a special answer in law can be tried on motion. *Canadian Bank of Commerce & Brown*, 23 L. C. J. 181, Q. B. 1878.

---

* Before answering a dilatory exception or any other preliminary plea filed, the plaintiff may, if he thinks the exception is filed solely in order to retard the suit, require the defendant in writing to plead to the merits, and may foreclose him if such plea to the merits is not filed within eight days from the demand thereof.

In which case the court takes cognizance of no other issues than those raised upon the preliminary exceptions. 131 C. C. P.

* Notice of the inscription must be given to the opposite party at least eight days before that fixed for the proof. 235 C. C. P.

289. A writ of summons in the nature of a prohibition cannot be quashed on motion. *O'Farrel* v. *Garneau*, 4 Q. L. R. 206, S. C. 1878.

290. A motion to strike a *délibéré* should be made before the judge seized of the cause. *Veillet* v. *Thiffeault*, 10 R. L. 108, S. C. 1879.

291. *Notice of.*—A notice of motion given on Saturday for the Tuesday following, the Monday intervening being a non-juridical day, is sufficient. *Preston* v. *Paxton*, 23 L. C. J. 240, S. C. 1877.

XXXV. Notice.

292. *Of Action.*—A laborer employed by a municipality is not a public officer so as to be entitled to a month's notice of an action against him for damages occasioned by the work he has executed for the Corporation. *Holton & Atkins*, 3 Q. L. R. 289, Q. B. 1875.

293. Municipal councillors who, after the expiration of their term of office, and after they have ceased to be councillors, are sued for acts done in their capacity as councillors, have a right to notice of action under art. 22 of the Code of Procedure. *Morissette* v. *Corporation of Village de Bienville & Corporation of Village of Bienville* v. *Nadeau*, 5 Q. L. R. 362, C. C. 1879.

294. In an action against the mayor of the City of Montreal for false arrest, the attorneys of the plaintiff gave the following notice:

"District of Montreal.

"Superior Court.

"David Grant, plaintiff, *vs.* Hon. J. L. Beandry, defendant.

"To the Hon. J. L. Beandry, Mayor of Montreal.

"Sir,—We give you notice that David Grant, of the City of Montreal, salesman and trader, will claim from you personally the sum of ten thousand dollars damages by him suffered from the abuse made of your authority in causing his arrest illegally and for no cause on the twelfth day of July last (1878), and that unless you make proper amend and reparation of such damages within a month judicial proceedings will be adopted against you.

"Yours, Doutre, Branchaud & McCord,

"Advocates for plaintiff.

"Montreal, 19th Oct., 1878."

Held, an insufficient compliance with Article 22 of the Code of Procedure.* *Grant* v. *Beandry*, 2 L. N. 354, S. C. 1879.

295. *Of Petition.*—Notice of a petition by an *adjudicataire* to be put in possession must be given to the defendant. *Convey* v. *Smiley & Carpenter*, 4 Q. L. R. 183, S. C. 1878.

296. On a petition *en desaveu* no notice is necessary. *McClanaghan* v. *Harbor Commissioners of Montreal & Duhamel*, 2 L. N. 300, S. C. 1879.

XXXVI. On Opposition.

297. An opposant may at once demand from plaintiff a plea to the opposition instead of moving upon him under art. 586 of the Code of Procedure to declare whether he contests the same or not. *Bertrand* v. *Poulin*, 4 Q. L. R. 299, S. C. 1878.

XXXVII. Power of Attorney from Foreign Plaintiff.

298. The plaintiff residing in Scotland brought an action to annul a lease. The day of the return of the action the defendant made a motion for security for costs, which was furnished the fourth day thereafter. Then the defendant filed a dilatory exception, on the ground that no power of attorney had been furnished or filed. Motion to dismiss the exception as filed too late—*Held*, dismissing the motion, that the delay to file the exception only ran from the time the security was put in. *Mitchell* v. *Flanagan*, 6 Q. L. R. 295, C. C. 1880.

XXXVIII. Rehearing.

299. The fee for rehearing will be allowed when the *délibéré* is discharged without the fault of the attorneys and a rehearing ordered. *Grosleau* v. *Quebec N. S. T. Road Trustees*, 4 Q. L. R. 203, S. C. 1878.

XXXIX. Reprise d'Instance.

300. *Reprise d'instance* will not lie after judgment for the purpose of executing the judgment in the name of a subrogated creditor. *Jones & Crebassa & Chevallier*, 9 R. L. 546, S. C. 1877.

301. A petition *en reprise d'instance* having been filed in the prothonotary's office after service upon the parties, and having remained eight days uncontested, the petitioner at the expiration of that time moved, under arts. 439 & 440* of the Code of Procedure, that it be declared, admitted and well founded. Motion rejected as premature, no demand of plea appearing by the record. *Hamel & Laliberté*, 3 Q. L. R. 242, S. C. 1875.

302. And a judgment of the court declaring the continuance well founded is requisite even where no cause is shown against the petition. *D'Estimauville & Tousignant. Ib.*

303. Under Insolvent Act, 1875—*Held*, that an appellant could not demand, on the insolvency of the respondent, that his assignee take up the *instance*. *McKinnon & Thompson*, 23 L. C. J. 95, Q. B. 1878.

304. An assignee cannot be compelled to take up the *instance* in a suit pending against the insolvent. *Plessis* v. *Lajoie*, 1 L. N. 327, & 23, L. C. J. 213, S. C. 1878.

---

* Confirmed in appeal 4 L. N. 333 & now in Su. Ct.—Ed.

* The continuance may be effected upon petition filed in the prothonotary's office after being served upon the opposite party. This petition may be contested in the same manner as any suit. 439 C. C. P.

If the continuance is not contested within the delays prescribed it is held to be admitted, and in such case, as also when it is declared by the court to be well founded, the opposite party may continue on from the last proceedings originally taken. 440 C. C. P.

XL. Return.

305. The return day mentioned in a writ of prohibition will be deemed, as in ordinary writs of summons, to have been fixed by the court, and need not have been fixed by a special order of the judge. *Roy & Fraser*, 6 Q. L. R. 244, S. C. 1877.

306. On the hearing of an appeal from a judgment by default it appeared by the register and papers of record that the writ was returned only on the day after that fixed for the return day, under an agreement or understanding with defendant's counsel that the case would be settled on that day. As defendant had not pleaded, but allowed judgment to go by default, judgment reversed but without costs. *Ross & Marvean*, 2 L. N. 310, & 10 R. L. 143, & 24 L. C. J. 143, Q. B. 1879.

307. Where a writ of summons was made returnable on a non-juridical day, and the plaintiff returned it the following day, pretending that he had a right to do so under Art. 3 of the Code of Procedure*—*Held*, maintaining an exception to the form, that Art. 3 applied only to delays in pleading and not to returns, which were radically null if they fell on a non-juridical day, except in cases of proclamations of thanksgiving, etc., under Art. 2. *Champagne & Grivean & Boisjoli*, 10 R. L. 203, C. C. 1880.

XLI. Service.

308. *At Domicile.*—In action of damages for libel the writ and declaration were served at the residence of the French consul at Quebec, where the defendant was dwelling. In his absence service was made upon a servant there who opened the door to the bailiff and took the copies from him, and told him that defendant would be back in a quarter of an hour, that she would put the papers on his table and give them to him as soon as he came back—*Held*, that a defendant lodging at the private dwelling of another, but in rooms partly furnished by himself and taking his meals elsewhere, is validly served by leaving the copies with the servant employed there. *Hearn & Moloney*, 3 Q. L. R. 339, Q. B. 1877.

309. *At Prothonotary's Office.*—It is not necessary that a copy of the declaration in an action of revendication should be served at the prothonotary's by a bailiff, it is sufficient that a copy be left at the office. *Hearle & Rhind*, 22 L. C. J. 139, 1 L. N. 101, Q. B. 1878.

310. *Bailiff's Right to Make.*—A bailiff does not lose his right to make a service in a district for which he is appointed by being appointed to another and acting there.† *Cie du Chemin de Fer de Laurentides & Gauthier*, 3 L. N. 243, C. C. 1880.

311. *Of Absentee.*—An absentee having property here may be sued here, though no personal service is made, and though the cause of action did not originate here.† *Macdonald v. Mackay & Routh*, 2 L. N. 301, S. C. R. 1879.

*If the day on which anything ought to be done in pursuance of the law is a non-juridical day such thing may be done with like effect on the next following juridical day. 3 C. C. P.

† With regard to service in another district see Q. 42-43 Vic. Cap. 21.

312. *Of Amended Writ.*—In an action against a firm an exception to the form attacking the service of amended writ because made after the original return day was dismissed with costs. *Eastern Townships Bank & Morrill*, 1 L. N. 30, Q. B. 1877.

313. *Of Attorneys.*—Where an attorney *ad litem* neglects to make an election of domicile service is properly made upon him at the prothonotary's office. *Robertson* v. *Marlow & Fairrer*, 2 L. N. 181, S. C. 1879.

314. Plaintiff obtained judgment against the *tiers saisi* condemning him to pay money, and the assignee served a petition on the attorneys of plaintiff, praying that the *tiers saisi* be ordered not to pay the money to plaintiff—*Held*, that the service on the attorneys after judgment did not bind the plaintiff as the mandate of the attorneys had ended. *Booth* v. *Lacroix et al. & Rolland & Dupuy*, 21 L. C. J. 307, S. C. 1877.

315. *Of Co-defendant.*—A Corporation having its head office and place of business in Ontario was sued as co-partners and co-defendants of a person residing at Longueuil, and the only service was upon the latter at Longueuil—*Held*, on an opposition to a judgment against both parties by default, as there was no evidence of partnership there was no service upon the Corporation, and the judgment *quoad* them was set aside. *Gibeau* v. *Conway*, 2 L. N. 300, S. C. 1879.

316. *Of Company.*—On an exception to the form—*Held*, that a return of service upon an employé of defendants at their office and place of business was sufficient. *Bourgoin* v. *Montreal, Ottawa & Occidental Railway Co.*, 3 L. N. 134, S. C. 1880.

317. *Of Consorts.*—In action against husband and wife jointly and severally a copy of the writ and declaration must be served upon each. *Dansereau* v. *Archambault*, 21 L. C. J. 302, S. C. 1877; 59 & 67 C. C. P.

318. *Of Corporation.*—Service upon a president, secretary or agent may be made either personally on the officer or at his domicile. *Board of Temporalities* v. *Minister & Trustees of St. Andrew's Church*, 3 L. N. 379, Q. B. 1880.

319. *Of Intervention.*—The service of an intervention upon the plaintiff's attorney is a sufficient service upon the plaintiff. *Ross* v. *Morgan & Baillie*, 4 Q. L. R. 184, S. C. 1878.

320. Where a petition in intervention is served upon the parties before allowance, it does not require to be served afterwards. *Banque Ville Marie & Laurin*, 3 L. N. 347, S. C. 1880.

321. *Of Motion.*—Motion to reject appeal. Notice of motion served on a person who had been appointed prothonotary *held* insufficient, as he was no longer a practicing advocate. *Gagnier & Hamel*, 1 L. N. 590, Q. B. 1878

322. The defendant made a motion for *peremption d'instance*. The plaintiff's attorney resided in an adjoining district, and the service was made personally upon him there—*Held*, that this was a good service, though the plaintiff's attorney had elected a domicile in the district of Montreal where service could be made. *McCallum* v. *Harwood*, 1 L. N. 555, & 22 L. C. J. 279, S. C. 1878.

323. *Of Partners after Dissolution.*—Where in an action against a *quandum* partnership exception to the form was filed setting up that the service was bad, inasmuch as it had been

made at the place of business of the firm in the ordinary way, and also misdescription in being described as "partners" instead of "heretofore co-partners," whereas the firm was prior to the institution of the action dissolved, and notice of such dissolution published in a local newspaper —*Held*, that as the dissolution had not been registered, and no knowledge of it proved against plaintiffs, that the service was sufficient. *Greenshields* v. *Wyman et al*, 21 L. C. J. 40, S. C. 1876.

324. *Of Railway Commissioners.*—The Quebec Railway Commissioners were served with an action praying that they be ordered not to proceed with the expropriation of the plaintiff's property. They each filed exception to the form, objecting among other things to the service that it should have been personal and not at their office as they were not in partnership—*Held*, that as the office at which they were served was the office at which they transacted their business, and from which they issued notice to plaintiff, that the service was good. *Bourgoin & Malhiot*, 8 R. L. 396, S. C. 1876.

325. *Of saisie gagerie par droit de suite.*—No service of a *saisie gagerie par droit de suite* on the *mis en cause* is necessary where the *mis en cause* claims to have purchased the goods. *Wilson & Rafter*, 2 L. N. 211, Q. B. 1879.

326. *Place of.*—This case is before the court on the merits of an exception *declinatoire*. The defendants, five in number, are all of the village of St. Andrews, in the District of Terrebonne. One of them (John Webster) has been served personally in the City of Montreal. The others have been served at their domiciles in Terrebonne. Dame Ellen Walker and Isabella and Ellen Turner have filed declinatory exceptions declining the jurisdiction of the court, on the ground that none of them being resident within the limits of the District of Montreal, the service upon John Webster in Montreal did not give the court jurisdiction over the defendants declining the jurisdiction. Counsel for the defendants cited C. C. P. 34-38, and 1 Quebec Law Reports, page 88, *Lemesurier* v. *Garon et al.* Counsel for plaintiff cited same articles of C. C. P., and referred to C. S. L. C. cap. 82, sec. 26. The court maintained the exception. *Delaronde* v. *Walker*, S. C. 1876.

327. Where the defendant had left his domicile three weeks previously to the service there of the writ—*Held*, good, as there was no proof of an actual change of domicile. *Waldron & Brennan*, 2 L. N. 333, & 23 L. C. J. 268, S. C. 1879.

328. Defendant, resident in the City of Ottawa, was personally served there with a summons to appear before the Superior Court, in the District of Ottawa, in the Province of Quebec. The declaration alleged that defendant had real estate in the district in which suit was brought—*Held*, on *exception declinatoire*, that the service was sufficient, and that defendant was properly sued. *Cuddie* v. *Cassidy*, 2 L. N. 346, S. C. 1879.

329. *Return of.*—Where a defendant is described in the writ as of the City of Quebec, and service is alleged in the return to have been made at his domicile *at Quebec*, such mention is a sufficient indication that the City of Quebec is intended. *Hearn & Molony*, 3 Q. L. R. 339, Q. B. 1877.

330. And in such case the omission to state the distance from the bailiff's residence to the place of service, and from the court house to the defendant's domicile or place of service, does not invalidate the return. Ib.

331. The return on a rule for *folle enchère* stated that the service had been made at defendant's domicile in Stadacona. Evidence being adduced on an exception to the form that Stadacona was a village in the parish of St. Rochs de Quebec, motion was made and granted amending the return accordingly—*Held*, in appeal, that the service and return as amended were sufficient, and the *folle enchère* was ordered. *Bickell & Richard*, 1 L. N. 130, Q. B. 1878.

332. Where a bailiff omits to initial a marginal note, and to state the distance from the court house to the domicile of the defendant, that is good ground for an exception to the form. *Major* v. *Chartrand*, 21 L. C. J. 303, C. C. 1877.

333. The word *immatriculée* in a bailiff's return of service following art. 78 of the Code of Procedure is not sacramental. *Cie. du Chemin de fer de Laurentides* v. *Gauthier*, 24 L. C. J. 174, S. C. 1880.

XLII. Special Answer.

334. A special answer may be filed to an exception to the form. *O'Farrell* v. *Garneau*, 4 Q. L. R. 206, S. C. 1878.

XLIII. Stay of an Account of Insolvency.

335. Where a defendant, become insolvent, made a motion asking that proceedings be stayed until the assignee had taken up the *instance*, the motion was rejected.* *Wilson et al.* v. *Brunet*, 21 L. C. J. 209, S. C. R. 1877.

XLIV. Summons.

336. *By Advertisement.*—The plaintiff in Montreal purchased a cargo of oysters from a dealer in New Brunswick, paying him therefor partly in cash and partly by a *bon*. The oysters having turned out worthless, plaintiff notified the seller, and receiving no satisfaction, brought action for damages. The defendant having no domicile here, plaintiff made affidavit as to the *bon*, and called him in by advertisement under art. 68 C. C. P. Judgment was taken by default, and defendant appealed.—*Held*, that while a *bon* or note was properly within the meaning of said article, there was no sufficient proof that it belonged to defendant at the date of the action, and the judgment was set aside. *Poirier & Lareau*, 21 L. C. J. 48, Q. B. 1876.

XLV. Under Different Pleas.

337. Where the defendant after filing a declinatory exception is required to plead to the merits, and then pleads a demurrer, the court may order that the declinatory exception be

* Insolvent Act of 1875 is now repealed.

disposed of before proceeding on the demurrer. *Duchesnay* v. *Larocque*, 3 L. N. 315, S. C. 1880.

PROCESSIONS.

I. Abolished by Quebec Act 41–42 Vic. Cap. 9.

PROCURATION—*See* POWER OF ATTORNEY.

PROFANATION.

I. Of Cemeteries, *see* CEMETERIES.

PROHIBITION.

I. Cannot be Quashed on Motion.
II. Grounds of.
III. Judge may Appear in.
IV. Judge may Plead in.
V. Right of Appeal in, *see* APPEAL.
VI. Writ of.

I. Cannot be Quashed on Motion.

338. A writ of summons in the nature of a prohibition cannot be quashed on motion. *O'Farrel* v. *Garneau*, 4 Q. L. R. 206, S. C. 1878.

II. Grounds of.

339. As a general rule governing the remedy by prohibition it must be resorted to between the commencement of the action complained of and final judgment; otherwise the want of jurisdiction must appear on the face of the proceedings in order to justify prohibition after judgment. If the rate payer have abstained from urging before the Magistrate's Court his objections to the jurisdiction of the magistrate or to the sufficiency of the Municipal Acts, such objections will not afterwards be listened to if urged collaterally upon proceedings in prohibition. *Simard* v. *Corporation of the County of Montmorenci*, 4 Q. L. R. 208, S. C. 1877.

340. Action was brought in a Magistrate's Court to oust a party from possession of a house. There was no exception to the jurisdiction. After judgment was rendered the defendant took a writ of prohibition to have the Magistrate's Court ordered not to execute the judgment, on the ground that it had no jurisdiction, as the value of the improvements exceeded $50. The court below refused to maintain the writ of prohibition—*Held*, that the court of appeal would not interfere unless there was a defect apparent on the face of the proceedings. *Bergevin* v. *Rouleau et al.*, 23 L. C. J. 179, Q. B. 1878.

341. Prohibition will not lie to arrest proceedings taken before a justice of the peace for the recovery of a sum due in virtue of a *procès-verbal* for the opening and maintenance of a municipal road if no appeal has been had from the homologation of the *procès-verbal* within the delay prescribed by law, and especially if the defendant has acquiesced in the jurisdiction of the magistrate by appearing and pleading to the merits. *Simard & Corporation of the County of Montmorenci*, 8 R. L. 546, Q. B. 1878.

III. Judge may Appear in.

342. The judge, whose judgment is attacked by prohibition, may appear in answer to the service made upon him. *O'Farrel* v. *Doucet*, 4 Q. L. R. 207, Q. B. 1878.

IV. Judge Prohibited May Plead.

343. In a case of prohibition, where a conviction by the council of the Bar of a member of the profession is sought to be prohibited, with conclusions for costs only against the private prosecutor before the bar, the judge may be allowed to plead, independently of the other defendants to the demand for such prohibition. *O'Farrel & Brossard*, 4 Q. L. R. 62, S. C. 1875.

VI. Writ of.

344. A writ of prohibition will lie to restrain the proceedings of the Council of the Bar. *O'Farrel & Brossard*, 1 L. N. 32, Q. B. 1877.

345. Writ of prohibition addressed to the school commissioners of the municipality of the village of Hochelaga, to the said municipality of the village of Hochelaga, to the Corporation of the Council of Hochelaga and to the secretary-treasurer of the county, forbidding these parties from proceeding to the sale of the lands of the petitioners for school taxes pretended to be due to the said school commissioners—*Held*, that the writ would lie in such case.* *Morgan & Coté*, 3 L. N. 274, Q. B. 1880; & *Mayor, &c., of Iberville & Jones*, 3 L. N. 277, Q. B.

PROHIBITION TO ALIENATE—*See* DONATION, SALE.

PROMISE.

I. Of Sale, *see* SALE.

PROMISES.

I. At Elections, *see* ELECTION LAW.

PROMISSORY NOTES—*See* BILLS OF EXCHANGE.

PROMOTERS.

I. Of Companies, *see* COMPANIES.

PROMULGATION.

I. Of Acts of Parliament, *see* ACTS OF PARLIAMENT.

PROOF—*See* EVIDENCE.

I. Of Claim in Insolvency, *see* INSOLVENCY.

PROPERTY.

I. Description of.
II. In the Jurisdiction Gives Right to Personal Action Against Absentee, *see* ACTION Against Absentee.
III. Meaning of Term.
IV. What is.

I. Description of.

346. Appellant purchased at a bailiff's sale, held under a writ of *fieri facias de bonis* for taxes, certain moveable effects forming the plant of a brewery, the proprietor of the brewery not objecting to the sale, and allowing the same to remain on the brewery premises on storage. The brewery was some months afterwards sold under a writ *de terris*, the plant being still thereon and adjudged to the respondent. Appellant gave no notice of his claim on the goods, and filed no opposition to withdraw them, but after they were sold to respondent sought to revendicate them in his hands—*Held*, dismissing the action, that the said effects were immoveables by destination, and although the bailiff's sale had under the circumstances, passed the property in the same to appellant; yet, as he had allowed his property to be virtually included in the sheriff's advertisement of a brewery he had only himself to blame if an innocent purchaser of the brewery retained all the plant which he found thereon when it was adjudged to him. *Budden & Knight*, 3 Q. L. R. 273, Q. B. 1877.

347. The opposant was mortgagee of a property on which was a carding mill. The plaintiff, by virtue of a writ of execution *de bonis*, seized the machinery of the mill, consisting of "one horse power steam engine with boiler, belting, shafting and chimney complete, and one machine called a picker painted red." The mortgagee opposed the seizure by opposition *afin d'annuller*, on the ground that his mortgage attached not only to the said land, but to all the buildings and improvements thereon, and that said fixtures formed part of said mill and were immoveable by destination, being fastened with nails, lime and cement, and therefore could not be seized as goods and chattels under said writ—*Held*, on these grounds, that the seizure was an absolute nullity, and could be opposed by third parties interested or by the debtor himself, or by both. *Philion* v. *Bisson & Graham*, 2 L. N. 38, & 23 L. C. J. 32, S. C. 1878.

348. Although the owner of a house is not the owner of the ground on which it stands, it is nevertheless an immoveable as long as it is not demolished, and is subject to the same hypothecs by which it was affected when it formed together with the ground a single property. *Chaloult & Begin*, 5 Q. L. R. 119, S. C. R. 1879.

349. In the case of a claim against an insurance company of Ontario—*Held*, to be a *meuble incorporel*, and whether it were considered the property of the wife, or of the succession of the husband, was governed by the law of Ontario. *Parent & Shearer*, 2 L. N. 125, & 23 L. C. J. 42, S. C. 1879.

350. In a dispute about the right to a frame house, which had been built with the materials of one which had existed in another place and had been pulled down, and which also had been treated by the parties as a moveable—*Held*, to be a moveable, and subject to art. 1027 C. C. *Quintal* v. *Mondou*, 3 L. N. 166, S. C. 1880.

351. The plaintiff seized among other things on the defendant's railway 3,000 railway sleepers, 1,950 railway fastenings, and a quantity of cord wood and other things intended to be consumed in the running of the engines—*Held*, by all the judges, confirming the judgment of the court below, that the things so seized could not be considered *immeubles* by destination under art. 379 of the Civil Code. *Wyatt* v. *Levis & Kennebec Railway*, 6 Q. L. R. 213, S. C. R. 1880.

352. With regard to a seizure of a quantity of office furniture and other things of that kind in the offices of the railway, and described in the defendant's factum as "*ameublement de bureaux*"—*Held*,* that the opposition had been rightly dismissed also as regards these things, there being no provision in our law such as is contained in the Code Napoleon that "*Les objets que le propriétaire d'un fonds y a placés pour le service et exploitation de ce fonds sont immeubles par destination.*" *Ib.*

III. Meaning of Term.

353. The word "property" used alone in a statute includes both moveables and immoveables. *Lepage* v. *Watzo*, 1 L. N. 322, & 22 L. C. J. 97, & 4 Q. L. R. 81, & 8 R. L. 596, C. C. 1878.

IV. What is.

354. A note or *bon* is property within the meaning of art. 68 of the Code of Procedure. *Poirier & Lareau*, 21 L. C. J. 48, Q. B. 1876.

PROPRIETORS—*See* NEIGHBORING PROPRIETORS.

I. Rights of, with Regard to Boundaries, *see* BOUNDARIES.

*Casault, J., *dissentiente.*

PROSECUTIONS.

I. Under Insolvent Act, *see* INSOLVENCY.
II. Under License Act, *see* LICENSE LAW.

PROTEST.

I. Of Bills and Notes, *see* BILLS OF EXCHANGE.

PROTHONOTARY.

I. Liability of.
II. Rule Against.

I. Liability of.

355. Action of damages was brought against the defendants, joint prothonotary of the Superior Court for the district of Montreal, for having issued a *saisie-arrêt* before judgment illegally, and without any probable or reasonable cause—*Held*, that the prothonotary was not liable for damages for the issue of a writ of *saisie-arrêt* before judgment unless it were proved that he acted in bad faith. *McLennan & Hubert*, 22 L. C. J. 294, & 23 L. C. J. 273, Q. B. 1874.

II. Rule Against.

356. On a motion by the appellant for a rule against the joint prothonotary of the District of Sherbrooke to compel them to return a record which was before the Court of Review on a motion for a new trial—*Held*, that the proper course was to ask the Court of Review for an order that the record be transmitted to the court below, and then it could be brought up to this court. Motion rejected. *Fletcher & Mutual Fire Insurance Co.*, 2 L. N. 104, Q. B. 1879.

PROTHONOTARY'S OFFICE.

I. Hours of Closing.

357. Where there were no rules of practice fixing the hours of closing the prothonotary's office an exception to the form filed at half-past four in the afternoon was held to be in time, although the usual hour of closing was four. *The Carillon & Grenville Railway Co. & Barch*, 21 L. C. J. 46, Q. B. 1876.

PROVINCIAL LEGISLATURE.

I. Powers of, *see* LEGISLATIVE AUTHORITY.

PUBLICATION.

I. Of Libels in Newspapers, *see* LIBEL.

PUBLIC DOMAIN.

I. In Railways, *see* RAILWAYS.

PUBLIC NUISANCE—*See* NUISANCE.

PUBLIC OFFICERS.

I. Attachment of Salaries of, *see* ATTACHMENT.
II. Salaries of, *see* EXECUTION, Exemptions from.
III. Who are, *see* BAILIFFS, Status of.

I. Attachment of Salaries of.

358. On a seizure of salary of an employee in the Inland Revenue Department, Montreal, in the hands of the collector of Inland Revenue at that place—*Held*, that not he, but the minister of Inland Revenue, was the head of the department, in whose hands seizures should be made. *Evans* v. *Hudon & Browne*, 22 L. C. J. 268, S. C. 1877.

III. Who are.

359. A day laborer for a municipal corporation is not a public officer so as to be entitled to a month's notice of action for damages caused by the work done in such capacity. *Holton & Aikins*, 3 Q. L. R. 289, Q. B. 1875.

PUBLIC POSSESSION.

I. So as to Support Prescription, *see* PRESCRIPTION.

PUBLIC ROADS.

I. Prescription of, *see* PRESCRIPTION.
II. What are, *see* MUNICIPAL CORPORATIONS Roads.

PUBLIC WORKS.

I. Power of Government with Respect to, *see* INJUNCTION.

PUBLIC WORSHIP.

DISTURBANCE OF, *see* RELIGIOUS SERVICES.

PUNISHMENT—*See* FINES, PENALTIES.

PURCHASER.

I. ACTION BY, TO EJECT A LESSEE, *see* LESSOR AND LESSEE.
II. REMEDY OF, IN CASE OF DEFICIENCY OF LAND, *see* VENDORS AND PURCHASERS.

PURCHASES—*See* SALE.

Q.

SUMMRAY OF TITLES.

QUALIFICATION..... 635
QUANTO MINORIS..... 635
QUANTUM MERUIT..... 635
QUARRYMEN..... 635
QUASI DELIT..... 635
QUEBEC LEGISLATURE..... 635
QUEBEC OFFICIAL GAZETTE..... 636
QUEBEC STREET RAILWAY..... 636
QUEEN'S BENCH..... 637
QUEEN'S COUNSEL..... 637
QUI TAM..... 638
QUORUM..... 638
QUO WARRANTO..... 638

QUALIFICATION.

I. OF CANDIDATES AT ELECTIONS, *see* ELECTION LAW.

QUANTO MINORIS.

I. ACTION OF, *see* ACTION.

QUANTUM MERUIT.

I. ACTION FOR, *see* ACTION.
II. ALLOWED TO ATTORNEYS AD LITEM, *see* ATTORNEYS.

QUARRYMEN.

I. PRIVILEGE OF, *see* PRIVILEGE.

QUASI DELIT.

I. PARTIES JOINTLY AND SEVERALLY LIABLE FOR, *see* OBLIGATIONS.
II. PRESCRIPTION OF DAMAGES FOR, *see* PRESCRIPTION.

QUEBEC LEGISLATURE.

I. POWER OF, *see* LEGISLATIVE AUTHORITY.

QUEBEC OFFICIAL GAZETTE.

I. OFFICIAL NOTICE OF ANNOUNCEMENTS IN, *see* EVIDENCE, OFFICIAL NOTICE.

QUEBEC STREET RAILWAY.

I. RIGHT OF, TO LEVEL STREETS.

1. An Act of the old Province of Canada, 27 Vic. cap. 61, authorized the Corporation created by it to construct a street railway through Valliers street to the toll gate in the suburbs of Quebec, on any of the roads and streets of the city for which they might obtain the permission of the Corporation of Quebec. Sec. 5 of the Act provided further that "*les lisses du chemin* "*autorisé auront le meme niveau que la rue et* "*la voie ferrée aura autant que possible la* "*même declivité.*" The Act went to say— "*La cité de Quebec, les municipalités adjacentes* "*ou aucune d'elles et la dite compagnie sont par* "*le present respectivement autorisées à faire et à* "*passer des arrangements ou stipulations au* "*sujet de la construction du dit chemin de fer* "*et de tous les travaux qui s'y rattachent et de* "*la circulation des chars sujets aux restrictions* "*contenues dans le present acte à passer des* "*réglements,*" etc. The railway constructed by virtue of these powers passed in front of the plaintiff's property, where the roadway was quite low and so badly made as to be at some seasons almost impassable. The company therefore were obliged to raise the level some two feet nine inches in the middle and two feet at the sides. The plaintiff complained of this as obstructing the entrance to his house—*Held*, that under their Act of Incorporation the defen-

dants had a right to raise the level of the street, and the Corporation of Quebec had a right to authorize them to do so; and, that in any case their recourse was against the municipality and not against the defendants. *Lauzon* v. *Quebec Street Railway Co.*, 4 Q. L. R. 18, S. C. R. 1877.

QUEEN'S BENCH.

I. Right of, to Issue Certiorari, *see* CERTIORARI.

QUEEN'S COUNSEL.

I. Appointment of.

2. The Provincial Legislatures cannot authorize the lieutenant governors of the Provinces to appoint Queen's Counsel. *Lenoir & Ritchie*, 2 L. N. 373, Su. Ct. 1879.

QUI TAM—*See* ACTION.

I. Pleading in Action of, *see* ACTION.

QUORUM.

I. Of Harbor Commissioners, *see* HARBOR COMMISSIONERS.

QUO WARRANTO.

I. Power of Court in Cases of.

3. On a petition in *quo warranto* against an alderman—*Held*, that the court could exercise its discretion as to granting the petition even where a good objection was shown. *Roy* v. *Thibault*, 22 L. C. J. 280, S. C. 1878.

II. Right to.

4. *Quo warranto* will not lie to contest the right to a municipal office, which must be done in the manner provided by the Municipal Code. *Fiset & Fournier*, 3 Q. L. R. 334, S. C. R. 1877.

R.

SUMMARY OF TITLES.

RAFTS 639
RADIATION 639
RAILWAYS 639
REAL ESTATE 643
RECEIPT 644
RECEIPTS 644
RECEIVING STOLEN GOODS 644
RECONDUCTION 644
RECORDS 644
RECUSATION 645
REDHIBITOIRE 645
REFRESHMENTS 645
REGISTRAR 645
REGISTRATION 646
REGLEMENT DE COMPTE 651
REINSCRIPTION 651
RELATIVES 651
RELIGIOUS INSTITUTIONS 651
RELIGIOUS SERVICES 652
REMUNERATION 652
RENT 652
RENUNCIATION 653
REPAIRS 653
REPARTITION 653
REPEAL 653
REPLICATION 653
REPORT 654
REPORTS AND ACCOUNTS 654
REPRISE D'INSTANCE 654
REPRISE MATRIMONIALES 654
REQUETE CIVILE 654
RESCISION 655
RESERVED CASE 655
RESIDENCE 655
RESILIATION 655
RESOLUTION 655
RESOLUTIONS 655
RESOLUTION 655
RESPONDENTIA 655
RETAINER 656
RETENTION 656
RETURN 656
RETURNING OFFICER 656
REVENDICATION 656
REVIEW 656
REVISION 659
REVOCATION 659
REVOCATORY ACTION 659
REWARD 659
RIGHT OF ACTION 660
RIGHT OF WAY 660
RIPARIAN PROPRIETORS 660
RISK 661
RIVER BEACHES 661
ROADS 661
ROLLING STOCK 662
ROOFS 663
RULE 663
RULES 664
RULES OF PRACTICE 664

RAFTS.

I. Indictment for Mooring so as to Obstruct a Navigable River, *see* CRIMINAL LAW, Nuisance.
II. Mooring of, *see* RIPARIAN PROPRIETORS.
III. Name of.

III. Name of.

1. Rafts should have the name of owner legibly painted on a board to be fixed on the raft. Defendants fined $20 for neglecting this rule. *Normandeau & Grier*, 6 Q. L. R. 45, Har. Com. 1874.

RADIATION.

I. Of Hypothec, *see* HYPOTHEC.

RAILWAYS—*See* STREET RAILWAYS.

I Application of Act.
II. Expropriation for.
III. Liability of.
For Accidents.
IV. Moveable Property of, not Immoveable by Destination, *see* PROPERTY.
V. Power of Arbitrators in Expropriation for.
VI. Power of Company to Dissolve.
VII. Right of Execution Against Grand Trunk Railway.
VIII. Rights of Bondholder.
IX. Rights of Contractors for Construction, *see* CONTRACTS, Interpretation of.
X. Rights of Shareholders.
XI. Seizure of.
XII. Tickets.

I. Application of Act.

2. The Consolidated Railway Act of 1879 (c. 42 Vic. cap. 9*) applies to the Quebec, Montreal, Ottawa and Occidental Railway. *Joly & Morcau*, 2 L. N. 284, S. C. 1879.

II. Expropriation for.

3. On action to set aside an award of arbitration between the Montreal, Ottawa and Occidental Railway and the defendants—*Held*, that matters of expropriation for the purposes of said railway were regulated and governed by the Federal Act 38 Vic. cap. 68, and not by the local legislature. *Montreal Ottawa & Occidental Railway* v. *Bourgouin*, 7 R. L. 715, S. C. 1877.

III. Liability of.

4. The defendants, the Grand Trunk Railway, in carrying their line through the township of Tingwick were obliged to cross a stream in that township known as Trout River, over which the plaintiffs had constructed a bridge some fifty feet lower down than where the railroad crossed. The Railway, in consequence of the sandy nature of the bottom of the river, were obliged to lay a very heavy stone foundation, which obstructed the natural flow of the water to that extent that, escaping from the bridge, it rushed with considerable velocity on to the bridge of plaintiffs and undermined it. The plaintiffs alleged that, in consequence, they had been obliged to reconstruct their bridge once already, and that again it had been destroyed. On the proof the Superior Court in first instance allowed $700, which was reduced by the Court of Review, and by the Court of Appeal raised again to $460. *Corporation of Tingwick* v. *Grand Trunk Railway Company*, 9 R. L. 346, & 3 Q. L. R. 111, Q. B. 1877.

5. *For Accidents.*—The crossing of the Grand Trunk Railway at Levis is recognized as one of the most dangerous possible. The Company in consequence kept a guardian there, but subsequently removed him. On the 25th January, 1874, the mail driver between Levis and St. Romuald was killed by a train going eastward at an unusual hour. The widow sued for damages, and a verdict was rendered in her favor for $2000. On appeal—*Held*, that the company was responsible, even though they had taken all the precautions required by the Railway Act, if they had not taken the additional precautions rendered necessary by the exceptionally dangerous nature of the crossing. *Grand Trunk Railway Company & Godbout*, 6 Q. L. R. 63, Q. B. 1877.

6. And the fact that a municipal corporation was obliged to take precautionary measures at the same crossing did not relieve the Railway Company from liability, more particularly as they had recognized the dangerous character of the crossing by placing a man there. *Ib.*

7. And the action which resulted from the accident could be brought by the widow without joining the children, and the court was in no way bound to divide the indemnity between them. *Ib.*

8. Plaintiff, a customs officer at St. John's, P. Q., was knocked down by a locomotive and seriously injured while walking on the track near the crossing at that place. Action for $6000 was brought. The jury granted $5000. —*Held*, on motion of defendants for a new trial, that as the evidence established beyond a doubt that plaintiff was walking on the track, and not on the highway, as he alleged, that he must be held to have contributed to the accident, and defendants were not liable.* *Wilson* v. *G. T. R.*, 2 L. N. 45, S. C. R. 1879.

9. In an action for damages for cattle killed on the appellants' road.—*Held*, that they were liable for accidents of that kind occasioned by the state of the fences, and that though the road really belonged to another. *Central Vermont R. R. Company & Paquette*, 2 L. N. 390, Q. B. 1879.

10. Action to recover damages which the plaintiff sustained by reason of an accident to a train in which he was a passenger. Plaintiff obtained a verdict with damages of $7000.

* For the Railway Consolidation Act of the Province of Quebec, *see* Q. 43-44 Vic. cap. 43.

* In Supreme Court.

Defendants applied for a new trial upon a number of grounds, including misdirection, verdict against evidence and excessive damages.—*Held*, in the Privy Council, setting aside the judgment of the Queen's Bench which ordered a new trial on the ground of excessive damages, that the question of evidence was not open to the appellants; that there was no misdirection; and as the plaintiff, who was an architect, making a considerable income by his practice, had been very seriously injured by the accident, and as also a certain amount of negligence on the part of the company's servants had been proved, that the damages were not excessive, and a new trial should have been refused. *Lambkin & South Eastern Railway Co.*, 3 L. N. 162, P. C. 1880.

V. Power of Arbitrators in Expropriation for.

11. The appellants being lessees of a quarry a part of which had been expropriated and taken possession of by the company, respondents claimed to be indemnified. Arbitrators were accordingly appointed, the majority of whom rendered an award condemning the company to pay to the lessees "the sum of $35,013, plus "$100 per month, from this date, payable on the "first of each month, until the company shall "have set free the water-course servi.g to drain "the quarries adjacent to the expropriated land, "and constructed a culvert to protect the said "water-course, as being the amount of compen-"sation for the said price of land and for all "the damages resulting from the possession of "the same."—*Held*, that the indemnity or compensation awarded by arbitrators under the authority of the Canada Railway Act of 1868 must consist in a fixed and capital sum of money, and not in future monthly payments dependent on the completion of a certain work. *Bourgoin et al. & The Montreal, Ottawa & Occidental Railway & Ross*, 2 L. N. 131, & 23 L. C. J. 96, Q. B., & 3 L. N. 177, & 24 L. C. J. 193, P. C. 1880.

12. And *held*, further, that the arbitrators could not by their award condemn the company to execute certain works in a certain manner under authority of the 6th sub-section of the 7th section of the said Railway Act, 1868. *Ib.*

13. That the award in these respects being bad could not be divided, and must fail altogether. *Ib.*

VI. Power of Company to Dissolve, etc.

14. The Montreal Northern Colonization Railway Company having by an Act of the Parliament of Canada, 36 Vic. cap. 82, been created a federal railway, for the general advantage of Canada, and by a subsequent statute (38 Vic. cap. 68) renamed The Montreal, Ottawa and Western Railway Company, afterwards, in virtue of a Quebec Statute (39 Vic. cap. 2), transferred all its property and rights to the Quebec Government—*Held*, that the company was incompetent thus to dissolve itself and to transfer its property, etc., to another body without the sanction of the Federal Parliament. *Bourgoin & The Montreal, Ottawa & Occidental Railway*, 3 L. N. 185, & 24 L. C. J. 193, P. C. 1880; 369 C. C.

VII. Right of Execution against the G. T. R.

15. The plaintiffs got judgment against the defendant on the 29th of November, 1873, for $7,300; and in 1875 proceeded to execute it by *fi fa de bonis*, and by attachment in the hands of divers garnishees. The execution against the goods was contested by opposition, and the attachment in the hands of third parties was also contested. It was contended, on behalf of the Railway Company, that the debt in question existed before the statute of 1862, and all that the plaintiffs were entitled to under the provisions of that Act was their proportion of postal bonds and of preference shares which the defendant offered, together with the costs of the seizure. The plaintiffs' answer to these pretensions was that they were not bound by the provisions of the Act of 1862, because the consent of the creditors and of the bond and share holders requisite under that Act was not shown; and because the defendants were bound to have pleaded the statute in answer to the action. Section 25 of the statute says that, "subject to the proviso to section 23" (that is the proviso that three-fourths of the creditors should give their consent), "no execution shall at any time issue against the company on any judgment recovered, or to be recovered for any now existing debt such as are mentioned in sections 1 and 2." Sections 1 and 2 mention "the present debts of the company owing either in Canada or in England to others than the bondholders or holders of notarial mortgages registered in Lower Canada;" and the preamble of the Act recites that the company has become deeply indebted, both in Canada and in England, on simple contract to various persons and corporations. The plaintiffs' action issued on the 12th of September, 1859, for eleven thousand five hundred pounds currency, partly for the price of work done in 1854, under a contract with the St. Lawrence and Atlantic Railway Company, for grading and ballasting, and which was to be ascertained by measurement; and partly for damages for loss of profits; and the issues in the case were purely of fact, as to the existence and extent of the debt and the damage. The Act of 1862 was not passed until two years and a-half after the plea was fyled. The proceedings lasted for fourteen years through all the stages of reference to experts, *and contestation*, and rejection of reports, and at last a report was adopted, and a judgment rendered upon it in 1873—*Held*, that by the plaintiffs' own showing it was a liability on the part of the Grand Trunk Railway Company, which they, the plaintiffs, claimed to be due to them before the passing of the Act of '62, and which was provided for by that statute. The remaining question was whether the requirements of the Act had been fulfilled by the defendants. There was an admission of record which was complete as to the consent of the English creditors, but the proviso in the 23rd section required also the consent of three-fourths in amount of the creditors resident in America. This was required in both cases to be in writing, and in the case of the Canadian creditors the writing had been destroyed by the fire at Point St. Charles, and secondary evidence had been adduced. This

evidence was objected to, but had been as complete as secondary evidence could well be under the circumstances, and it would be unreasonable not to act upon it. The opposition in the one case and the contestation of the seizures in the other should be maintained, and the offers declared good. *McDonald* v. *G. T. R.*, S. C. R. 1876.

VIII. Rights of Bondholder.

16. A holder of railway bonds has the right by conservatory process to prevent rolling stock which is hypothecated for the payment of the bonds from being removed from the road. *Wyatt & Sénécal et al.*, 1 L. N. 98, & 4 Q. L. R. 76, S. C. 1878.

IX. Rights of Contractors for Construction of, *see* CONTRACTS, Interpretation of.

X. Rights of Shareholders.

17. An individual shareholder in a railway company will not be entitled to an injunction forbidding a special meeting for the purpose of sanctioning a lease of the road to another railroad until a meeting has been called at which the accounts of the company have been submitted, unless fraud by the majority or corrupt influence have been proved. *Angus* v. *The Montreal, Portland & Boston Railway Co.*, 2 L. N. 203, & 23 L. C. J. 161, S. C. 1879.

XI. Seizure of.

18. On the contestation of an opposition to seizure of the line, plant and rolling stock of the Levis & Kennebec Railway—*Held*, that railways subject to the second part of the Railway Act of Quebec, and especially those which have been constructed by the assistance of Government, form part of the public domain, and cannot be sold by judicial sale. *Wason Manufacturing Co.* v. *Levis & Kennebec Railway*, 5 Q. L. R. 99, S. C. 1879.

19. The railway of an incorporated company may be seized and sold in execution of a judgment in favor of a mortgage creditor. *The Corporation of the County of Drummond* v. *The South Eastern Counties Railway*, 24 L. C. J. 276, & 3 L. N. 2, Q. B. 1879.

XII. Tickets.

20. Railway tickets marked "good only for continuous trip within two days" cannot be used after the expiration of such time in payment of fare over part of the route covered by it. *Livingstone* v. *The Grand Trunk Railway Co.*, 21 L. C. J. 13, S. C. R. 1876.

REAL ESTATE.

I. Donation of, *see* DONATION.
II. Partnerships to Traffic in, *see* PARTNERSHIP.
III. Registration of, *see* REGISTRATION.
IV. Sale of, *see* SALE.
V. Trading is not a Commercial Matter, *see* PARTNERSHIP.

RECEIPT—*See* INTERIM RECEIPT.

I. May be Set Aside.
II. Set Aside as Fraudulent.

I. May be Set Aside.

21. Action for a balance (exceeding $25) of rent due 1st October, 1879. The plea was that plaintiff had already instituted a previous action for this balance due 1st October, 1879, and that defendant had paid the same and got a receipt and discharge in full from plaintiff's attorney for all rent due up to that date. Plaintiff answered that the date "1st October" in the previous action was an error, and should have been 1st August, and that the receipt was given by error and signed by an unauthorized clerk—*Held*, that the error could be proved by witnesses, and that on proof of the error the burden was on the defendant to show that all the rent sued for had been paid. *Worthington & Jaques*, 3 L. N. 143, C. C. 1880.

II. Set Aside as Fraudulent.

22. The assignee to an insolvent estate sued for a sum of money due insolvent under a deed of sale. Plea of payment and receipt filed. Answer, that the receipt was simulated and fraudulent. Proof, that payment was only by a promissory note which had been transferred to defendant's wife—*Held*, setting aside the receipt. *Melançon & Bessener*, 2 L. N. 280, S. C. 1879.

RECEIPTS—*See* WAREHOUSE RECEIPTS.

RECEIVING STOLEN GOODS.

I. Indictment for, *see* CRIMINAL LAW.

RECONDUCTION.

I. Of lease, *see* LEASE.

RECORDS.

I. In Criminal Cases, *see* CRIMINAL LAW.
II. Introduction of Papers Foreign to.
III. Transfer of, *see* PROTHONOTARY.
IV. When Incomplete.

II. Introduction of Papers Foreign to.

23. An application was made for the court to give a certificate that certain papers had been fraudulently inserted in the record sent to the Privy Council, and that the opinion of one of the learned judges had been wrongly stated, and a false opinion written over the judge's name. It would perhaps be the duty of this court to make inquiry whether so gross an irregularity had taken place, but on looking at the papers

themselves the court found that the papers attacked did not form part of the paper book which purported to be the transcript of the record, but was simply the argument of counsel. This appeared on the most cursory glance at the paper book, and it was impossible to suppose that the judicial committee could have been led into error, or that any damage could have resulted therefrom. It was competent for counsel, if they saw fit, to have drawn the attention of the judicial committee to it. But this court could not give any certificate that it was false, because, so far as the judges know, it was not false. *Abbott & Fraser*, Q. B. 1877.

IV. When Incomplete.

24. Where the affidavit on which a *capias* was founded was missing from the record it was held that the *capias* could not be maintained, though the contestation by defendant was manifestly unfounded. *Hotte* v. *Currie & McDonald & Gordon*, 1 L. N. 53, S. C. 1877.

RECUSATION.

I. Of Judges, *see* JUDGES.
II. Of Magistrate.
III. Procedure in Matters of.

II. Of Magistrate.

25. A district magistrate was held not to be disqualified from sitting in and hearing a cause between a local and a county corporation by reason of being a rate payer. *Corporation of Parish of St. Guillaume* v. *Corporation of County Drummond*, 7 R. L. 562, Q. B. 1876.

III. Procedure in Matters of.

26. Where one of the parties to a suit filed a recusation of the judge before whom a motion was to be argued, and the judge answered that there was no ground for it—*Held*, that the recusation must either be withdrawn or disposed of before the case could proceed. *Montreal City and District Savings Bank* v. *Geddes et al.*, 2 L. N. 271, S. C. 1879.

REDHIBITOIRE—*See* ACTION, REDHIBITORY.

REFRESHMENTS.

I. Supplied at Elections, *see* ELECTION LAW, Bribery, &c.

REGISTRAR.

I. Action by, for Fees.
II. Duties, &c., of.
III. Liability of.

I. Action by for Fees.

27. He was registrar, and the defendant was returning officer, and required from him the election lists, which were furnished, and the action is brought for the price of the work. The defendant did not plead; but submitted himself to the judgment of the court—*Held*, reversing the judgment of the court at Joliette, that the plaintiff was entitled to be paid by the returning officer who had requested him to do the work, although the returning officer had not received the amount from the Government. *Rocher* v. *Leprohon*, S. C. R. 1876.

II. Duties, &c., of.

28. The provisions of cap. 37 of the Con. Stats. of Lower Canada, secs. 74, 75 & 76, relating to the deposit by registrars of the official plans and books of reference for each registration division, have been abrogated in virtue of Art. 2613 of the Civil Code, by the express provisions on the same subject contained in Arts 2168, 2169, 2170 & 2171 of the same Code. *Montizambert & Dumontier*, 4 Q. L. R. 235, & 8 R. L. 199, Q. B. 1877.

29. And a registrar cannot be condemned to pay the fine imposed by the first-named statute for failure to keep from day to day the index required by Art. 2171 of the Civil Code. *Ib.*

III. Liability of.

30. A registrar is responsible to the creditor for any damage caused by the omission of a hypothec in his certificate furnished to the sheriff, and the creditor may proceed against the registrar to recover the amount with interest, without showing that the debtor and others liable on the hypothec are insolvent. *Trust and Loan Co. of Canada & Dupras*, 3 L. N. 332, Q. B. 1880.

REGISTRATION.*

I. After Action Brought.
II. Delay to Register.
III. Effects Acceptance of Delegation, *see* HYPOTHEC, Delegation.
IV. Not Equivalent to Acceptance of Delegation of Price of Sale, *see* VENDORS AND PURCHASERS.
V. Of Bailleur de Fonds.
VI. Of Constituted Rent.
VII. Of Customary Dower.
VIII. Of Death of Testator.
IX. Of Donation, *see* DONATION.
X. Of Hypothec.
XI. Of Immoveables.
XII. Of Marriage Contract.
XIII. Of Mortgage on Merchant Shipping.
XIV. Of Rights of Succession.
XV. Of Sale.
XVI. Of Servitudes.
XVII. Priority of.
XVIII. Renewal of.

* For Amending Acts, *see* Q. 42-43 Vic. caps. 16 and 27; 43-44 Vic. caps. 17; & 44-45 Vic. caps. 16 & 21.

I. After Action Brought.

31. The registration of a deed of sale of an immoveable after the institution of an hypothecary action against it confers no title on the purchaser. *La Soc. de Construction Metropolitaine* v. *Beauchamp & David*, 3 L. N. 135, S. C. 1880.

II. Delay to Register.

32. One cannot plead that a will was not registered within the delay required by law, if their rights have been acquired subsequently to the actual time of registration. *Dufresne* v. *Balmer*, 21 L. C. J. 98, S. C. 1877.

V. Of Bailleur de Fonds.

33. The registration at any time of a deed of sale of immoveables passed prior to the Registration Ordonnance of 1841, save in the case of prescription, has the effect of preserving the privilege and hypothec of the vendor as against a third holder who has had open and public possession, but who has not registered his title until after the registration of the deed of sale. *Hébert* v. *Ménard*, 23 L. C. J. 331, S. C. 1876.

34. On the 6th July, 1874, appellant, by deed before notary, sold an immoveable for $788, the purchaser undertaking by the deed to pay in discharge of the vendor $128 due to *La Corporation Episcopale Romaine de Montreal*, the *auteur* of appellant, and appellant, reserving a privilege and *bailleur de fonds* for the balance. The deed remained unregistered until 21st August, 1874, at which date the respondent caused a memorial thereof to be registered, which indicated and set forth the conveyance of the property registered, without mention of any balance due thereon to the vendor of the purchase money. On the same day as the registration the purchaser gave the respondent an obligation for $6000, with hypothec on the immoveable in question, which was duly registered. It was not until 7th September, 1874, that the vendor caused his deed of sale to be registered. He then did so by transcription at full length—*Held*, on a contestation of the collocation of the proceeds of the property, that the registration of the purchaser's title by the respondent in order to enable them to take a hypothec on the property did not preserve to the vendor his privilege of *bailleur de fonds*, and that the mortgage of the respondent should be collocated by preference. *Charlebois & La Société de Construction Metropolitaine*, 24 L. C. J. 20, Q. B. 1878.

VI. Of Constituted Rent.

35. Under an emphyteutic lease from a seignior the lessee is also a seignior, and all concessions made by him *à titre de cens* or of constituted rent are exempt from registration. *McCord & Les Religieuses Sœurs de l'Hotel Dieu de Montréal*, 2 L. N. 417, Q. B. 1879.

VII. Of Customary Dower, *see* 44-45 Vic. Cap. 16.

VIII. Of Death of Testator.

36. The father of respondent's husband gave a property in Montreal to two brothers of respondent's husband, with substitution in favor of the donee's children, subject to a charge of £800, which they were to invest for respondent's husband. The £800 was also subject to a substitution in favor of the donee's children, with right, however, to the donee to will the usufruct to his widow, the respondent, all of which really occurred. One of the brothers died, leaving three children, one of whom assigned his share in the £800 to appellant, who brought action against the *detenteur* to recover. The respondent intervened, claiming the usufruct. Appellant contested on the ground that the declaration of the death of respondent's husband had not been registered in conformity with 2098 C. C.—*Held*, that appellant could not invoke the non-registration as, until the death of respondent's husband, she, appellant, had no rights. *Brouillard & Gunn*, 2 L. N. 228, Q. B. 1879.

X. Of Hypothec.

37. The mention in a deed of mortgage of the existence of a previous mortgage is not sufficient to give priority to the mortgage thus mentioned if it has not been regularly registered, nor will the consent of the second mortgagee be inferred from such mention, as the most express consent only on the part of the second mortgagee can relieve the first mortgagee from the necessity of registration. *Jeannot & La Cie de Pret et Credit Foncier & Pope*, 24 L. C. J. 28, S. C. 1878.

38. The registration of a hypothec within thirty days of the insolvency of the person against whose estate it is registered is null. *Dwyer & Fabre & McCarron*, 24 L. C. J. 174, S. C. 1879.

39. The registration of a hypothec within thirty days previous to an assignment under the Insolvent Act, 1875, is without effect, and especially when the hypothec was granted by the debtor while insolvent to the knowledge of the creditor receiving such hypothec. *McGauran & Stewart*, 3 L. N. 423, Q. B. 1880.

40. On a contestation arising out of the collocation of the parties on an assignee's dividend sheet—*Held*, that a hypothec given to the Corporation of Three Rivers for moneys advanced under authority of 20 Vic. cap. 136, does not require registration in order to preserve its privilege. *Peloquin & La Société de Construction St. Jacques*, 3 L. N. 348, S. C. 1880.

XI. Of Immoveables.

41. *Effect of.*—The defendant was the purchaser of an immoveable which he caused to be registered within thirty days and took possession of. Previous, however, to the registration of such sale the vendor gave a hypothec to plaintiff on the same immoveable, which was immediately registered in advance of the defendant's sale, though subsequently to his possession.—*Held*, that the hypothec was preferable to the sale. *Adam & Flanders*, 3 L. N. 5, Q. B. 1879.

XII. Of Marriage Contract.

42. Where by a contract of marriage a piece

of land was given to the husband by his father and mother, but subject to a prohibition to alienate—*Held*, that the right of the father and mother to take back the property on the death of their son was not affected by the fact that the contract had never been registered. *Pepin & Courchêne*, 2 L. N. 397, Q. B. 1879.

43. Where a wife claimed on the estate of her husband, an insolvent trader, under her marriage contract, and the creditors contested, on the ground that the marriage contract was not registered within thirty days, as prescribed by the Insurance Act, 1864—*Held*, maintaining the contestation. *Dussault & Desève & Prévost*, 1 L. N. 140, & 22 L. C. J. 56, S. C. R. 1878.

XIII. Of Mortgage on Merchant Vessel, *see* MERCHANT SHIPPING.

XIII. Of Rights of Succession.

44. The right of children to succeed to their mother's share in the property of the community after her death, though unregistered, is not affected by the registration of a mortgage given by their father subsequent to the death of his wife, notwithstanding anything contained in article 2098 C. C. *Dallaire & Gravel*, 22 L. C. J. 286, & 2 L. N. 15, Q. B. 1878; 607 C. C.

XIV. Of Sale.

45. In an actio , in declaration of a hypothec, defendant pleaded *inter alia* that at the time of the registration of the deed of sale under which plaintiff claimed he was in open and public possession of the land in question as his auteurs had been before him, and even if their title was not registered their possession at the time of the registration, under which plaintiff claimed, was sufficient to destroy plaintiff's hypothec on the land in question, her deed having been registered only in 1876, forty-three years after its execution—*Held*, that the registration at any time of a deed passed before the Registry Ordonnance of 1841 had the effect of preserving the privilege of the vendor as against a third holder, even with open and public possession, but who has registered his title only after the registration of the first deed. *Hébert & Ménard*, 10 R. L. 6, S. C. 1876.

46. Until the purchaser of an immoveable has registered his title the creditors of the vendor may, subsequently to the sale, obtain a valid legal hypothec on such property. *Lefèbvre* v. *Branchaud*, 1 L. N. 230, & 22 L. C. J. 73, S. C. R. 1878.

47. On the 13th January, 1877, defendant obtained a deed of sale and transfer of a certain immoveable property, and entered into actual possession thereof, but neglected to register his deed. On the 3rd of March following the plaintiff obtained a judgment against the *auteur* of defendant, and registered it on the 8th of the same month, against the property in question—*Held*, that his title prevailed over that of the purchaser who was ordered to quit. *Tellier* v. *Pagé*, 2 L. N. 156, S. C. R. 1879.

48. On the contestation of a report of distribution of the proceeds of a judicial sale of land the following facts appeared: A private sale of the land in question by the husband of the contestant in 1868; a resale of the land by the purchaser to the defendant the following year. The first sale was registered in 1876; the second sale was never registered, but the defendant, in 1874, gave a mortgage to plaintiff, which was duly registered at the time, and also another about the same time, also duly registered, to another of the collocated parties. The report was contested by the widow of the first vendor, who claimed for a balance of the *bailleur de fonds*—*Held*, that as the second deed of sale was not registered that the mortgages given under it, though registered prior to the registration of the first deed of sale, had no legal effect whatever. *Amiot* v. *Tremblay & Reid*, 2 L. N. 196, S. C. 1879; 2098 C. C.

49. But *held*, at the same time, that as the price of the land must have fallen into the community which existed between her and her husband, that only a half belonged to her in quality of legatee and testamentary executrix. *Ib.*

XV. Priority of.

50. Where the delay for renewing registrations under the cadastre expired between the date of the debtor's insolvency and the sale of his lands by the assignee—*Held*, that a *bailleur de fonds* claimant who had not renewed the registration of his hypothec would nevertheless be collocated by preference to a mortgagee who had enregistered under the cadastre, but whose hypothec was subsequent in point of time to that of the said *bailleur de fonds* claimant, as at the date of the insolvency the latter's delay to renew had not expired, and no renewal of registration could have affected the lands after they had passed into the hands and possession of the assignee; and, even had such a renewal been made it would not appear by the registrar's certificate, which in matters of insolvency would only show registrations up to the date of the attachment or assignment, and not (as under 699 C. C. P.*) up to the day of sale. *Brunelle* v. *Layleur*, 4 Q. L. R. 341, Q. B. 1878.

51. The vendor of an immoveable property having registered the deed of sale on the 31st day (one day after the thirty days allowed by art. 2100f of the Civil Code) a creditor of the purchaser obtained from him, and registered within the thirty days, a mortgage against the property—*Held*, that the vendor's claim was pri-

*As soon as immoveables have been adjudged the sheriff must procure from the registrar of the registration division in which each immoveable is situated a certificate of the hypothecs charged upon such immoveable and registered up to the day of sale, which certificate the registrar is bound to furnish on payment of the fee established by order of the governor in council. The word "hypothec" as regards this certificate includes privileges and all other charges upon real estate. 699 C. C. P.

† Persons conveying immoveables by sale, gift or exchange preserve all their rights and privileges by registering the deed of alienation within thirty days from its date, even against persons registering their rights between the dates of such deed and of its registration. The right of the vendor to take back an immoveable, sold in the case of non-payment of the price, does not affect subsequent purchasers who have not subjected themselves to such right, unless the deed in which it is stipulated has been registered as in ordinary cases; nevertheless the vendor in this matter, as well as for securing the price, has all the advantage of the delay of thirty days. 2100 C. C.

vileged, the hypothecary creditor's mortgage being without effect as long as his debtor's title was not registered. *Pacaud & Constant*, 4 Q. L. R. 91, S. C. R. 1878.

52. The plaintiff omitted to renew a hypothec which he had on a property under the cadastral system, and, having obtained judgment on his hypothec, proceeded to execute it, but was met by an opposition founded on a sale which had taken the place of the property two days after he had obtained judgment, and which sale had been duly registered—*Held*, that the sale had precedence of his hypothec, notwithstanding the judgment. *Thayer & Ansell & Moss*, 2 L. N. 75, S. C., & 3 L. N. 242, & 24 L. C. J. 181, S. C. R. 1879.

53. The renewal of a hypothec in virtue of the law establishing the cadastre can only be made by the notice prescribed by Art. 2172 of the Civil Code. *Roussell & Bureau*, 5 Q. L. R. 369, S. C. R. 1879.

54. And therefore a transfer of a hypothecary claim made during the period fixed for the renewal of real rights, even when the transfer conforms to all the conditions prescribed by art. 2168 of the Civil Code, will not give to the transferee the rank of such hypothec, unless the transfer is accompanied by such notice. *Ib.*

REGLEMENT DE COMPTE—*See* ACCOUNTS.

REINSCRIPTION.

I. For Enquete After Delibere, *see* PROCEDURE, Enquete.

RELATIVES.

I. Action by, *see* ACTION of Damages.

RELIGIOUS INSTITUTIONS.

I. Exemption from Taxation.

55. The property known as Nun's Island, occupied by the Nuns of the Congregation of Notre Dame, and the products of which are devoted to the maintenance of that religious community and other establishments of a religious and educational character, is exempt from taxation under Art. 712 of the Municipal Code, which exempts properties belonging to Fabriques or to religious, charitable or educational institutions, and not possessed solely by them, to derive a revenue therefrom. *The Corporation of Verdun* v. *Les Sœurs de la Congregation de Notre Dame de Montreal*, 1 L. N. 319, S. C. 1878, & 1 Q. B. R. 163, & 4 L. N. 15, Q. B.

RELIGIOUS SERVICES.

I. Disturbance of.

56. On a certiorari from a conviction for disturbing divine service—*Held*, that chap. 22 of C. S. L. C. has been repealed by 32-33 Vic. cap. 20,* and that a conviction for having "resisted the said W. S., churchwarden of said church, by forcibly occupying in opposition to the directions of him, the said W. S., the seat set apart and reserved for the choir when ordered and required so to do by the said S., did not disclose a disturbance of a congregation met for religious worship such as is referred to in said Act.† *Gates exp. & Stewart*, 23 L. C. J. 62, S. C. 1878.

REMUNERATION.

I. Of Advocates, *see* ADVOCATES.
II. Of Agents, *see* AGENTS.
III. Of Architects, *see* ARCHITECTS.

RENT.

I. Action for.
II. Demand for, *see* LESSOR AND LESSEE.
III. Emphyteutic.
IV. Liability for, *see* EXECUTION, Exemptions.
V. Liability of Tenant who Pays in Advance, *see* LESSOR AND LESSEE.
VI. Constituted.
Prescription of.
VII. Life.

I. Action for.

57. Defendant leased a house from plaintiff for a year from 1st August, rent payable monthly. On the 10th October he left it and took away all his things. None of the rent had been paid. The action was for rent accrued, and for damages equivalent to that to accrue—*Held*, that a judgment for so much for rent due

* Whosoever by threats or force unlawfully obstructs or prevents, or endeavors to obstruct or prevent, any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, school-house, or other place used for divine worship, or in or from the performance of his duty in the lawful burial of the dead in any churchyard or other burial place, or strikes or otherwise any violence to or upon any civil process, or, under the pretence of executing any civil process arrests any clergyman or other minister who is engaged in, or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who, to the knowledge of the offender, is going to perform the same, or returning from the performance thereof, is guilty of a misdemeanor, and shall be liable to be imprisoned in any gaol or place of confinement other than a penitentiary for any term less than two years, with or without hard labor. C. 32-33 Vic. cap. 20, sec. 36.

† Whosoever wilfully disturbs, interrupts or disquiets any assemblage of persons met for religious worship, or for any moral, social or benevolent purpose, by profane discourse, by rude or indecent behavior, or by making a noise, either within the place of such meeting or so near it as to disturb the order and solemnity of the meeting, may be arrested. 32-33 Vic. cap. 20, s. c. 37.

and to become due was good without mention of damages. *Theroux* v. *Blanchard*, 2 L. N. 331, S. C. R. 1879.

58. A seizure for rent not yet due will be maintained, but no condemnation granted until after the rent has accrued. *Joseph* v. *Smith*, 3 L. N. 115, S. C. 1880.

II. Demand of, *see* LESSOR AND LESSEE.

59. Where the lessee is insolvent, the lessor is not obliged to demand payment of the rent before bringing an action. *Plante* v. *Robitaille*, 4 Q. L. R. 225, S. C. 1878.

III. Emphyteutic.

60. The creditor of an emphyteutic rent has a right of action in declaration of his hypothec where the property has been sold at sheriff's sale subject to his rent, although no mention is made of it in the sheriff's title, and in such case the sheriff's title will be declared *faux*. *Carpenter & Dery*, 8 R. L. 283, Q. B. 1877.

VI. Constituted.

61. *Prescription of.*—The only prescription applicable to arrears of *rentes constituées* due up to the time the Civil Code of Lower Canada came into force is that of thirty years, and the prescription applicable to arrears accrued since the Code that of five years. *Bethune & Charlebois*, 23 L. C. J. 222, & 2 L. N. 135, S. C. R. 1879.

VII. Life.

62. Arrears of life rent accrued since the coming into force of the Code are prescribed in five years. *Lemaire* v. *Payment*, 9 R. L. 513, S. C. 1879.

RENUNCIATION.

I. Of Judgment, Costs after, *see* COSTS.

REPAIRS.

I. To Vessels, *see* MERCHANT SHIPPING.

REPARTITION.

I. Of Cotization for Erection of Parishes, *see* CHURCH FABRIQUES, COMMISSIONERS.

REPEAL.

I. Of Statutes, *see* Acts of Parliament.

REPLICATION—*See* PROCEDURE.

REPORT.

I. Of Experts, *see* EXPERTS.

REPORTS AND ACCOUNTS.

I. Liability for, *see* CORPORATIONS.

REPRISE D'INSTANCE—*See* PROCEDURE.

I. In Appeal, *see* APPEAL.

REPRISE MATRIMONIALES—*See* MARRIAGE CONTRACTS.

REQUETE CIVILE.

I. Affidavit for.
II. Grounds of.
III. In Appeal.

I. Affidavit for.

63. An affidavit to a petition for a *requête civile* cannot be amended, but the petition itself may be amended, no affidavit being necessary to support such petition. *Voligny* v. *Corbeille & Corbeille*, 1 L. N. 130, & 22 L. C. J. 50, S. C. [illegible]

II. Grounds of.

64. In an election case—*Held*, that a judge in chambers cannot on petition correct a final judgment in a cause and render another judgment on documents which were not in the record at the time the first judgment was rendered. *Brossard & Lanyevin*, 9 R. L. 153, S. C. 1877.

65. But *semble*, that a clerical error in an interlocutory judgment may be corrected on petition. *Ib.*

66. Where, by false statements, and in consequence of the absence of certain receipts which had been mislaid, a person obtained an order of the court for the possession of certain goods belonging to an insolvent estate, the judgment was set aside on *requête civile*. *Cable & Stewart & Bayard*, 21 L. C. J. 121, S. C. 1877.

67. *A requête civile* which does not on its face came within the provisions of art. 505 of the Code of Procedure may be rejected on motion. *Macdougall et al. & The Union Navigation Co.*, 21 L. C. J. 63, Q. B. 1877.

68. A judgment duly signed and paraphed by the judge cannot be attacked by *requête civile* as being an incorrect copy of the judgment. *Carter* v. *Molson & Holmes*, 21 L. C. J. 210, S. C. 1877.

69. *Requête civile* will not lie to set aside a judgment on the ground of error in the draft and register of such judgment. *Holmes & Carter*, 23 L. C. J. 50, Q. B. 1878.

III. In Appeal.

70. *Semble*, that a *requête civile* will lie in appeal in certain cases. *Hampson* v. *Thompson*, 2 L. N. 206, Q. B. 1879.

RESCISION.

I. Of Contracts, *see* CONTRACTS.
II. Of Deeds, *see* DEEDS.
III. Of Sale, *see* SALE.

RESERVED CASE.

I. Cannot be Had Without Trial or Conviction, *see* CRIMINAL LAW.

RESIDENCE.

I. Of Defendant Should be Given in Writ, *see* PROCEDURE, Description of Parties.

RESILIATION.

I. Of Deed of Donation, *see* DONATION.

RESILIATION.

I. Of Sale of Moveables, *see* MOVEABLES.

RESOLUTION.

I. Of Sale, *see* SALE.

RESOLUTIONS.

I. Of sale of Immoveable, *see* PRIVILEGE of Vendor.
II. Of Municipal Corporation, *see* MUNICIPAL CORPORATION.

RESPONDENTIA—*See* AFFREIGHTMENT, MERCHANT, SHIPPING.

RETAINER.

I. Of Advocates, *see* ADVOCATES.

RETENTION.

I. Right of, *see* LIEN, PRIVILEGE.

RETURN—*See* PROCEDURE.

RETURNING OFFICER.

I. Liability of, *see* REGISTRAR.

REVENDICATION.

I. Grounds of, *see* SALE, Stoppage in Transitu.

REVIEW.

I. Argument in.
II. As to Costs.
III. Costs in, *see* COSTS.
IV. Deposit for Costs in.
V. Grounds of Revision.
VI. Hearing of Preliminary Exception.
VII. Jurisdiction of Court, *see* JURISDICTION.
VIII. Notice in.
IX. Of Circuit Court Judgment.
X. Power of Court of.
XI. Right of.

I. Argument in.

71. A respondent in review cannot compel his adversary to argue his appeal sooner than eight days after the date of the inscription. *Eastwood* v. *Corriveau*, 2 L. N. 8, S. C. R. 1879.

II. As to Costs.

72. Where a judgment was rendered for plaintiff but with costs in favor of defendant—*Held*, in review, reversing the judgment as to costs. *Hall* v. *Brigham*, 3 L. N. 219, S. C. R. 1880.

IV. Deposit in.

73. The court will not order the prothonotary to refund a deposit of $40 made by a party under art. 497 C. C. P. to whom the deposit has been refunded on his succeeding in review, although the judgment in review be reversed, and the judgment reviewed be afterwards established in its integrity in appeal. *O'Farrel & Brossard*, 4 Q. L. R. 93, S. C. 1878.

74. A party inscribing in review is entitled to a return of the deposit so soon as the judgment has been reversed in his favor. *Bousquet*

& Brown, 1 L. N. 555, & 22 L. C. J. 266, S. C. 1878.

75. The deposit required on an inscription in review cannot be dispensed with by consent of parties. *Laperriere & Mutual Fire Insurance Company of Berthier*, 24 L. C. J. 206, S. C. R. 1879.

76. The amount of deposit in review is regulated by the amount of plaintiff's demand although the proceeding be in compulsory liquidation. *Eastwood* v. *Corriveau*, 3 L. N. 8, S. C. R. 1879.

V. Grounds of Revision.

77. A judgment maintaining the taxation of an assignee's bill by a judge in chambers will not be interfered with by the Court of Review, except on very special grounds. *Marsan & Magnan & Brouillet*, 22 L. C. J. 147, S. C. R. 1878.

VI. Hearing of Preliminary Exception.

78. In an inscription from a final judgment which referred in no way to a former interlocutory judgment dismissing an exception to the form the question of the exception to the form cannot be entertained or reviewed. *Montreal & Ottawa Forwarding Company* v. *Dickson*, 3 L. N. 70, & 24 L. C. J. 225, S. C. R. 1879.

VIII. Notice in.

79. A party who inscribes in review and makes the required deposit within eight days is not bound to give notice thereof within the same delay to the adverse party, but may give notice at any time afterwards, the law not determining, within what delay that formality is to be observed. *Lewis* v. *Levis & Kennebec R. R. Co.*, 3 Q. L. R. 372, S. C. R. 1877.

IX. Of Circuit Court Judgment.

80. A judgment brought to review without any evidence other than the notes of the judge, and not on a point of law, must be confirmed. *Dorion* v. *Marsil*, 3 L. N. 183, S. C. R. 1880.

X. Power of Court of.

81. The Court of Review has no power to revise a judgment on a petition to revise a bill of costs. *Ryan* v. *Devlin*, 21 L. C. J. 28, S. C. R. 1876.

XI. Right of.

82. The judgment of a judge in vacation respecting a *contrainte par corps* is susceptible of being reviewed. *Nolan* v. *Dastous*, 4 Q. L. R. 335, S. C. R. 1875.

83. It is competent to a party to inscribe in review from a judgment rendered on a writ of *habeas corpus* by a judge in chambers. *Regina* v. *Hull*, 3 Q. L. R. 136, S. C. R. 1876.

84. No review can be had of a judgment of the Superior Court concerning a municipal officer. *Fiset* v. *Fournier*, 3 Q. L. R. 334, S. C. R. 1877.

85. The defendant inscribed for review a judgment of the Circuit Court at St. Scholastique for $85 rent; and the plaintiff moved to reject the inscription on the ground that the judgment being for less than $100 is not susceptible of review. The action was instituted to recover $170, but was dismissed in part, and judgment rendered for $85. *By the Court*:—The pretension of the mover is untenable. The law gives jurisdiction to the Circuit Court up to $200, but subject to appeal in cases between $100 and $200. (1054 C. de P.) The law also gives a right of review upon every final judgment upon which an appeal lies. The only question would, therefore, be whether the parties had an appeal from the judgment of the Circuit Court in a case in which the sum demanded exceeded $100; and the first paragraph of Art. 1054 says in express terms that they had. The party moving has relied upon two cases which undoubtedly decided, one of them in the Court of Queen's Bench, and the other here in Review, that neither appeal nor review existed. The first was the case of *Bellerose* v. *Hart*, decided in appeal (1 Rev. Leg. p. 157); and the second in the case of *Lefebvre* v *Murdoch*, which was decided on the authority of the first. The cases were both precisely similar to the present, and the principle, or the pretext of the judgment in the first one, upon the authority of which the second was rendered, was that the plaintiff's acquiescence in the judgment in effect reduced the "*sum demanded*." The requisite examination of those two cases need not now be made by this court, for less than a year after they had been given they received careful reconsideration at the hands of the Queen's Bench in the case of *Lafond* v. *McCarthy* decided on the 10th of December, 1870. In that case Chief Justice Duval, and Judges Caron and Badgley, who had both concurred on the judgment in *Hart* v. *Bellerose*, sat together with Mr. Justice Drummond and myself; and we unanimously overruled the decision in that case. In *Lafond* v. *McCarthy* judgment had been rendered in the Circuit Court at St. Johns for $200, the defendant had inscribed in review, and the Court of Review had reduced the damages to $30. The Queen's Bench confirmed the judgment of the Court of Review—maintaining its jurisdiction. *Clunie* v. *Ladouceur*, S. C. R. 1877.

86. A judgment maintaining a demurrer to a part of a declaration is an interlocutory judgment, and therefore cannot be revised by three judges in review. *Lottinville & McGreevy*, 4 Q. L. R. 242, S. C. R. 1878.

87. There is no right of review under the Election Act of Quebec, not even of the taxation of a bill of costs. *Picard* v. *Vallée*, 5 Q. L. R. 309, S. C. R. 1879.

88. Motion to discharge an inscription in review from an order granted in vacation appointing a sequestre. Motion rejected. *Heritable Securities and Mortgage Association* v. *Racine*, 2 L. N. 325, S. C. R. 1879.

89. There is no right of review from an order fixing and defining the facts to be submitted to a

jury in a civil case. *Dominion Type Founding Co.* v. *Canada Guarantee Co.*, 3 L. N. 77, S. C. R. 1880.

90. And an order of the Superior Court cancelling the appointment of a bailiff for misconduct is not susceptible of revision. *Chartrand et vir. exp. & Lambert*, 3 L. N. 77, S. C. R. 1880.

91. An inscription in review does not lie from an order of the Superior Court authorizing a creditor in insolvency under Insolvent Act, 1875, sec. 68, to prosecute an appeal in the name of the assignee. *Bélanger & Archambault*, 3 L. N. 243, S. C. R. 1880.

REVISION.

I. Of Bills of Costs, *see* COSTS.

REVOCATION.

I. Of Consent, *see* PROCEDURE.
II. Of Donation, *see* DONATION.

REVOCATORY ACTION—*See* ACTION.

REWARD.

I. Right to.

92. The plaintiff as tutor *ad hoc* to his minor son, Edward Grant, brings this action to recover the amount of a reward publicly offered by the defendants in the following words:—

"$2,000 reward: Whereas between the 14th and 15th days of October instant, diamonds, gold and silver watches were feloniously stolen from the pawnbroker's shop of A. Lazarus, 84 Notre Dame street, City of Montreal, to the value of about $18,000, notice is hereby given that the sum of $2,000 has been deposited in the Molsons' Bank, to remain there for two months from date, and the same shall be paid to any person or persons who shall give such information as will tend to the recovery of the property, and the apprehension and conviction of the thieves. If the whole property so stolen be not recovered on such information, but merely a portion thereof, reward to be in proportion of the value of the property recovered to $18,000.

(Signed), D. Lazarus.

Montreal, October 17, 1876.

The evidence was that the intervenant had given information which led to the discovery of who the parties were, and the plaintiff's son had pointed out the principal thief in the street after the information was obtained—*Held*, dismissing the action and maintaining the intervention. *Grant & Choren & Lavoie*, S. C. 1877.

RIGHT OF ACTION—*See* ACTION.

RIGHT OF WAY.

I. Use of, *see* STREET RAILWAY.

RIPARIAN PROPRIETORS.

I. Rights of.

93. Plaintiff brought his action for the value of the use of his riparian rights by the defendant, who moored his raft opposite his property, and obtained $10 a month for every summer month that such use continued. *Reburn & Hunter*, 2 L. N. 52, S. C. 1879.

94. In an action for damages and to obtain the demolition of a bridge constructed by the Corporation of Quebec across the little River St. Charles, on the ground that the bridge obstructed the navigation of the river, and thereby caused damage to the plaintiff as proprietor of the riparian land; that another bridge existed a short distance higher up the river; that the river was tidal beyond the higher bridge and navigable for boats, floats and rafts, and that it was possible at exceptionally high tides to float barges as far as the higher bridge, but that the difficulties and risk which attended the navigation of craft of that description were so great that the river in its present state did not admit of their use in a practicable and profitable manner; that the smallboats, floats and rafts could be navigated as before unobstructed by the bridge, although masted barges could not pass it without lowering their masts; that the plaintiff's land was situated between the two bridges, and was used as a farm, but was not proved to have depreciated in value by reason of the bridge complained of, and the plaintiff was not proved to have sustained damage from actual interruption of traffic—*Held*, that although there may be *droit d'accès* according to French law as it prevails in Quebec, riparian land is like a house in a street which, if interfered with, at once gives the proprietor a right of action, yet that right is confined to what it is expressed to be a right of *accès*, or the power of getting from the water way and upon the land in a free and uninterrupted manner. That such right had not, on the evidence, been violated, and that, supposing the bridge complained of to cause some obstruction to the navigation, the action could not be maintained in respect of it, without proof of actual and special damage. Whether an obstruction amounts to an interference with a riparian proprietor's *accès* and to his frontage, which is a private right by English as by French law, is a question of fact to be determined by the circumstances of each particular case. According to French law, the test of the navigability of a river is its possible use for transport in some practicable and profitable manner. *Bell & Corporation of Quebec*, 5 L. R. 84, P. C. 1879.

RISK.

I. Concealment of, in Insurance, *see* Insurance.

RIVER BEACHES—*See* RIPARIAN PROPRIETORS.

I. Obstruction of.
II. Rights Over.

I. Obstruction of.

95. Action by respondents, proprietors of land at Lachine, against the appellants, a lumber firm, for having, about the 1st July, 1875, moored two large rafts opposite their premises, on the beach of the River St. Lawrence, where they remained, in spite of notifications to have them removed, until the middle of September, when the action was served. Plaintiffs alleged that they had purchased some 67 acres of land on the shore of the river, for the purpose and with the intention of dividing it into building lots, but that the rafts in question being moored opposite to it all summer prevented free access to the property, and they asked that defendants be ordered to remove the rafts in question and pay $2000 damages. Defendants pleaded by demurrer that the St. Lawrence was a navigable river, and that they had a right to use it; that the Harbor Commissioners had no jurisdiction over it; that they had permission to moor their rafts there, and in doing so had interfered in no way with the rights of the plaintiffs, nor caused them any damage. The proof was that the presence of the rafts there was calculated to diminish the value of the property obstructed by them, and that they were more or less of a nuisance generally—*Held*, that the plaintiffs had a right to demand that the rafts be removed, and a judgment condemning the defendants to $30 damages and costs was confirmed. *Dunning & Girouard*, 9 R. L. 177, Q. B. 1877.

II. Rights over.

96. In an action against the St. Lawrence Navigation Company for wintering their boats in the mouth of the River St. Maurice within the limits of a grant of water lots made to the plaintiff by the Quebec Government—*Held*, in appeal, reversing the judgment of the Superior Court, that the authority of the Provincial Legislature extended to granting letters patent of the lots in question, but subject to the tacit restriction that they did nothing to injure or interfere with the requirements of trade in the use of the river. *Normand* v. *La Cie. de Navigation du St. Laurent*, 4 Q. L. R. 1, S. C., & 5 Q. L. R. 215, & 10 R. L. 513, Q. B. 1879.

ROADS.

I. Acquired by Prescription.
II. Commissioners of, *see* TURNPIKE ROAD COMMISSIONERS.
III. Prescription of.
IV. Liability for, *see* TURNPIKE ROAD TRUSTEES.
V. Liability of Municipality for Repair of, *see* MUNICIPAL CORPORATIONS.
VI. What are, *see* MUNICIPAL CORPORATIONS.

I. Acquired by Prescription.

97. Where a road had been enjoyed as such for thirty years and upwards by the plaintiff, the defendant, and others requiring to use it—*Held*, that it was to be deemed a public road within the meaning of the 18 Vic. cap. 100, sec. 41, ss. 9. *Parent & Daigle*, 4 Q. L. R. 154, S. C. R. 1871; & *Theoret & Ouimet*, 4 Q. L. R. 250, S. C. R. 1878.

98. And every road opened and used by the public as such without contestation during the space of ten years and upwards, must be considered as a public road, and to have been legally recognized as a public road within the meaning of the law. *Mignerand & Legaré*, 6 Q. L. R. 120, Q. B. 1879.

III. Prescription of.

99. The plaintiffs in their capacity of universal usufructuary legatees of the late Etienne Guy, their father, claimed the property forming Guy street, in the City of Montreal, from St. Joseph street south to a distance of 424 feet, and pretended that the defendants, the city, were illegally in possession of it. Defendants pleaded that the property had been for more than thirty years an open and public street, and that it was as such in the possession of the defendants; that the father of plaintiffs had himself intended the property in question as a public road, and as the continuation of Guy street; and that, in pursuance of such intention, he had not transmitted it to his heirs with his other property, nor was it subject to the partage of the property of the succession which took place in October, 1831; that for more than ten years before the institution of the action it was open to the public as a street, and had been duly registered as such in the registers and archives of the city, according to the terms of the City Charter. By the evidence it appeared that for more than forty years it had been appropriated to the purposes of a public street by the late Etienne Guy, *père*, who had previously ceded to the city that part of the said Guy street north of St. Joseph street, and had even been regarded as such by the plaintiffs themselves. In the partage of the property referred to the property in question was described as a *rue projetée*—*Held*, dismissing the action. *Guy* v. *Le Maire, Les Echévins et les Citoyens de la Cité de Montréal.* 9 R. L. 284, S. C. 1877.

ROLLING STOCK.

I. Seizure of, *see* RAILWAY.

ROOFS.

I. Liability for, *see* CONTRACTORS

RULE.

I. Against Witnesses for Contempt, *see* WITNESSES.

RULES.

I. Of Building Societies, *see* BUILDING SOCIETIES.

RULES OF PRACTICE.

I. In Election Cases, *see* ELECTION LAW.

S.

SUMMARY OF TITLES.

	Page
SAILORS	665
SAISIE ARRET	665
SAISIE CONSERVATOIRE	665
SAISIE GAGERIE	665
SAISIE REVENDICATION	665
SALARY	665
SALE	665
SALES	693
SALVAGE	693
SCHOOL COMMISSIONERS	693
SCHOOL TAXES	694
SEALS	694
SECRETARY-TREASURER	695
SECRETION	695
SECURITY	695
SEDUCTION	695
SEIGNIORIAL RIGHTS	696
SEPARATION DE PATRIMOINE	698
SEQUESTRATION	698
SEQUESTRATOR	700
SEQUESTRE	700
SERMENT JUDICIARE	700
SERMENT SUPPLETOIRE	700
SERVANTS	700
SERVICE	700
SERVICES	700
SERVITUDES	701
SESSIONS OF THE PEACE	704
SETTLEMENT	705
SETTLERS	705
SETTING FIRE	705
SET-OFF	705
SEWING MACHINES	705
SHAREHOLDERS	705
SHARES	705
SHERIFF	705
SHERIFF'S REPORT	706
SHERIFF'S SALE	706
SHERIFF'S TITLE	706
SHIPPING	706
SHORT-HAND	706
SICK NURSE	706
SIGNATURE	706
SIGNIFICATION	707
SKILL	707
SLANDER	707
SNOW	707
SOCIÉTÉ DE CONSTRUCTION	707
SOLDIERS	708
SOLICITORS	708
SOUS SEING PRIVÉ	708
SPECIAL REPLICATION	708
SQUATTERS	708
STAMPS	708
STATUS	709
STATUTES	709
STEAMBOAT COMPANIES	709
STEAMBOATS	709
STENOGRAPHER	709
STENOGRAPHERS' FEES	709
STENOGRAPHY	709
STOCK	709
STOCK IN TRADE	709
STOLEN PROPERTY	710
STOPPAGE IN TRANSITU	710
STORAGE	710
STREAMS	710
STREET RAILWAY	710
STREETS	710
SUB-LEASE	711
SUBPŒNAS	711
SUBROGATION	711
SUBSCRIPTION	711
SUBSTITUTION	711
SUBSTITUTIONS	713
SUCCESSION	713
SUFFERING	714
SUGGESTION	714
SUMMARY CONVICTIONS ACT	714
SUMMARY TRIAL	715
SUMMONS	715
SUPERINTENDENT OF PUBLIC INSTRUCTION	715
SUPPLIES	715
SUPREME COURT	715
SURETIES	715
SURETYSHIP	715
SURVENANCE D'ENFANS	718
SURVEY	718
SURVEYOR	718
SURVIVORSHIP	718
SUSPENSION	718

SAILORS.

I. Ill-treatment of, *see* MARITIME LAW.

SAISIE ARRET—*See* ATTACHMENT.

SAISIE CONSERVATOIRE—*See* ATTACHMENT.

SAISIE GAGERIE—*See* ATTACHMENT.

I. Damages for, when Needlessly Issued, *see* DAMAGES.

SAISIE REVENDICATION—*See* ATTACHMENT.

SALARY.

I. Action for, *see* MASTER AND SERVANT.
II. Of Public Officers, *see* ATTACHMENT.

SALE.

I. Action in Resolution of, may be Brought by Transferree.
II. Action to Compel Purchaser to take Deed.
III. Bidding.
IV. By.
Auction.
Collector of Customs.
V. Condition Precedent.
VI. Delivery.
VII. En Bloc.
VIII. Eviction.
IX. For Customs' Dues.
X. For Illegal Purposes.
XI. For Taxes.
XII. Fraudulent.
XIII. In Fraud of Creditors.
May be Attacked Incidentally.
XIV. From Husband to Wife, *see* MARRIAGE CONTRACTS.
XV. Judicial.
Adjudication.
Agreement not to Bid at.
Attacked on the Ground of Fraud.
Cahier des Charges.
Collocation of Claims.
Conditions of, cannot be Changed.
Deficiency of Contents.
Description of Property.
Effect of.
Extent of Land Sold.
Folle Enchère.
Liability of Adjudicataire.
Nullities in.
Of Vessels.
Place of.
Possession.
Report of Sheriff.
Rescission of.
Rights of Hypothecary Creditor.
XVI. Of Immoveables.
Effect of, on Lease Pending, see LEASE.
XVII. Of Insolvent Estate, *see* INSOLVENCY.
XVIII. Of Land.
Belonging to Another.
While Action Pending.
XIX. Of Moveables.
XX. Of Timber Limits, *see* WARRANTY.
XXI. Payment of Purchase Money.
XXII. Privilege of Vendor.
XXIII. Prohibition to Alienate.
XXIV. Promise of.
XXV. Purchaser cannot Demand Completion of, where no Term is given for Payment without Offering the Price.
XXVI. Purchase Presumed to be made with Money of Purchaser.
XXVII. Registration of Title.
XXVIII. Registration of Vendor's Privilege, *see* REGISTRATION.
XXIX. Remedy of Buyer where Goods are Inferior to Purchase.
XXX. Resolution of.
XXXI. Rights of Vendor.
XXXII. Simulated.
XXXIII. Stoppage in Transitu.
XXXIV. To Avoid Sequestration.
XXXV. To Two Persons.
XXXVI. Vendor not Liable in Damages for Failure to Deliver what was Sold by Mistake, and which Proved to Belong to Another.
XXXVII. Warranty.
XXXVIII. What is.

I. Action in Resolution of, may be Brought by Transferree.

1. Under the *Coutume de Paris* the transferree pure and simple of a *prix de vente* may exercise the action *en resolution de vente* for default of payment either total or partial. The action in resolution of the sale may also be brought for *defaut de prestation* of a constituted rent, price of an immoveable, even by the seller who has sued for the payment of the price. *St. Cyr & Millette*, 3 Q. L. R. 369, S. C. R. 1877.

II. Action to Compel Purchaser to take Deed.

2. The action was brought by Fauteux and others to compel Jackson to take a deed of two lots of land on the Lachine Canal which he had bought at public auction. The numbers of the lots as purchased were 17 and 40, and were specified to be in the parish of Montreal. This purchase was made on the ordinary conditions. Jackson refused to sign, and after *pour parlers* the plaintiffs decided on a draft of

deed, to which they required the defendant's signature. In this deed the lots were called 17 and 42, instead of 17 and 40—*Held*, reversing the judgment of the court below, that there was less difficulty here in maintaining the action than in *Leggett and Tracy*. The errors in the deed were very slight, an error as to the residence of defendant, and a mistake as to the number of one of the lots. These would be corrected by the judgment. *Fauteux & Jackson*, Q. B. 1876.

III. Binding.

3. An agreement between two persons, that one of them shall bid up a property at sheriff's sale to a certain figure and then resell it to the other, is perfectly legitimate. *Grenier* v. *Leroux*, 1 L. N. 231, S. C. R. 1878.

IV. By.

4. *Auction.*—Plaintiff bought from the defendants three lots of land at auction, on the 29th of August, 1874; and on the 24th of September following he took a title deed and paid down one-fourth of the price. On the 27th of September, 1876, he brought action to set aside the deed and get back his money, alleging the subsequent discovery of fraud on the part of the vendors, in employing persons to make false bids. The evidence as to this was that there were two other bidders who had purchased, but neither of whom had taken a deed, and one of them was told by the vendors to give them a hand at the bidding, "and if he did not like his bargain he need not take a deed." It was not shown, however, that the bids of these persons influenced the lots purchased by plaintiff, and as two years had elapsed from the time of the purchase action dismissed. *Milloy* v. *Rooney*, S. C. 1877.

5. An auctioneer is not liable in his own name on a sale made by him, as such auctioneer, for a disclosed principal. *Larue* v. *Fraser*, 21 L. C. J. 309, S. C. 1877.

6. *Collector of Customs.*—A sale of goods by the collector of customs for non-entry is null, and confers no right on the purchaser, unless the goods have been for a month previous to the sale in the customs warehouse. *Simpson & Fuile*, 1 L. N. 31, & 22 L. C. J. 229, Q. B. 1877; 31 Vic. cap. 6, sec. 13, ss. 4.

V. Condition Precedent.

7. Plaintiff sold to defendant the south-west half of lot No. 4 in the 7th range of the township of Thetford, in the County of Megantic, for the sum of $900, $100 of which was paid at time of sale, the balance payable in yearly instalments until final payment. By the deed of sale the vendor obliged himself to deliver to the purchaser the letters patent of the said half lot of land within one year from the date thereof, he having acquired the same from the Crown Lands Department. Defendant being sued for one of the said instalments, pleaded by a dilatory exception that the plaintiff had not fulfilled the obligations incumbent upon him by the said deed, viz., within one year from its date to deliver to defendant the patent of the land in question, and asked that all the proceedings in the cause be stayed until the plaintiff delivered to him the said patent. Plaintiff answered that the obligation to furnish letters patent within one year from the date of the deed of sale did not constitute an *obligation prejudicielle* to the demand of the plaintiff, which could be the subject of a dilatory exception—*Held*, that the exception was well founded. *Bouchard* v. *Thivierge*, 4 Q. L. R. 152, C. C. 1878.

VI. Delivery.

8. On the 16th of April, 1875, the defendants sold to the plaintiff a lot of land in Montreal. The deed contained the usual warranty of vendors under the law. The price was paid in cash, and the deed duly registered. The purchaser, on attempting to take possession, was met by one G. who asserted an adverse title, whereupon he notified his vendors through a notary, and required them to fulfil their contract, protesting for all loss or damage; and on their failure to comply, he brought action to get possession, together with all damages resulting from the inexecution of their obligation, or else to get back the price and the damages. The defendants pleaded a *défense en fait*, and also an exception, setting up in substance that G. was an "usurpateur," with whom the purchaser had to settle the matter, and that they have nothing whatever to do with it, the mere passing of the deed having given the purchaser by law sufficient delivery. In the deed given by the Corporation, that body declares it was "legally seized and possessed of the said lot, having acquired it under a good and sufficient title;" but it did not say from whom. They further said in their deed that "the said lot of land is marked and described on the official plan and book of reference as belonging to C. G., although it was, at the time of the execution of the said plan and book of reference, the property and in the possession of the Corporation." The question, apart from the damages which are put in issue by the *défense en fait*, was whether the vendors had fulfilled their legal obligation under the deed—*Held*, that they had not. "*La délivrance est la translation de la chose vendue en la puissance et possession de l'acheteur.*" (1492 C. C.) How was the thing sold here put into the *puissance* of the purchaser? What was it he got into his *puissance?* It was not the thing that had been sold, for G. prevented that; it was an *obstacle* that he got,—an *obstacle* known to the vendors, and which they themselves mentioned in the deed, and reiterate is an unfounded claim; yet not only do they not exclude their guarantee, but they formally give it. "*L'obligation de delivrer est remplie de la part du vendeur, lorsqu'il met l'acheteur en possession actuelle de la chose vendue, ou consent qu'il en prenne possession, tous obstacles étaient écartés.*" (1493 C. C.) How could the vendors pretend here that "*tous obstacles étaient écartés*"? They state themselves this obstacle of Gareau's apparent and recorded possession, which they treat as an unfounded one on his part; and they cannot pretend that they did not know it, or that they did not guarantee against it. The peaceable possession of the thing sold is the first object of the vendor's guarantee. The principle is the same under the old law and under the

new, though the Code Napoleon puts it in better words (Art. 1625 C. N.); "*La garantie que le vendeur doit a l'acquereur a deux objets; le premier est la paisible possession de la chose vendue.*" Judgment reversed, and plaintiff allowed to get back the price and $112 damages, unless put in possession. *Cox & City of Montreal*, S. C. R. 1877.

9. The action was for the price of goods purchased in St. Louis by one Pierre Poulin, of Montreal, and consigned to appellants, J. Poulin, who accepted delivery of the goods, but refused to accept a draft for the price or pay the amount of the purchase money. The draft was by Pierre Poulin, requesting them to pay the consignors (respondents)—*Held*, that having accepted the goods they could not refuse to pay. *Poulin & Williams*, 22 L. C. J. 18, Q. B. 1877.

10. In an action to set aside a deed of sale as made in fraud of creditors—*Held*, that absence of delivery was only a presumption of fraud, and might be rebutted by other presumptions equally strong. *Bell & Rickaby*, 3 Q. L. R. 243, Q. B. 1877.

11. Under a covenant to sell and convey "all the estate, right, title, interest, claim or demand" that the vendors had in certain lots specified, an action for damages cannot be maintained against the vendors for failure to deliver the whole of the lots mentioned, where they had included by mistake a lot to which they had no claim. *Fulton & McDonnell*, 1 L. N. 531, Q. B. 1878.

12. The respondents purchased by notarial deed of sale from a brewing firm all the plant, machinery, etc., of the brewery, and without taking any delivery leased in turn to the firm at a nominal rental who continued as before. The firm shortly afterwards became insolvent, and the assignee on behalf of the creditors took possession of the things in question. On a petition in revendication by respondents—*Held*, reversing the judgment of the court below, that, notwithstanding art. 1027* of the Civil Code, the sale in question had no effect with regard to third persons, more especially toward the creditors of the vendors. *Dupuy & Cushing*, 22 L. C. J. 201, Q. B. 1878, & 3 L. N. 171, & 24 L. C. J. 151, P. C. 1880.

VII. En Bloc.

13. A sale of 2265 cords of wood, "as now corded at Port Lewis," with which the purchaser in writing declared himself satisfied, and discharged the vendor *de toute garantie ultérieure*, was *held* to be a sale *en bloc* and not by the cord. *Lalonde & Drolet*, 1 L. N. 29, Q. B. 1877.

VIII. Eviction.

14. The production of a registrar's certificate, showing that mortgages are registered against the property purchased, which mortgages do not appear to have been discharged, is sufficient to support a plea of fear of *trouble* under art. 1535 C. C., but in such case the balance of purchase money which the buyer has yet to pay on the property is the only amount for which he can claim security. *Parker & Felton*, 21 L. C. J. 253, Q. B. 1877.

15. The purchaser of a piece of land who had paid a fourth of the price down was sued for interest on the balance, and pleaded the existence of a hypothec of a much larger amount than the balance, against which he had a right to retain not only the principal but also the interest to the amount of the fourth paid—*Held*, that, notwithstanding *Hyde* v. *Dorion*,* a purchaser under such circumstances cannot retain the interest money, not even as a set-off of money already paid, as he has no right to recover such money. *Hogan et al.* v. *Bernier*, 21 L. C. J. 101, S. C. & S. C. R. 1877.

16. In a deed of sale it was stipulated that the purchaser should have the right at any time to keep in his hands the whole or any part of the balance payable to the vendor, until such time as the vendor should have furnished a registrar's certificate showing the property sold to be "free and clear of all mortgages, dowers or other encumbrances whatsoever." It appeared that part of a small island which was included in the property sold did not belong to the vendor, and there also existed a right of passage over the rest of this island. The island was of small value—*Held*, that the purchaser was not entitled under the above cited clause of the deed to retain an instalment of the purchase money sued for, there remaining unpaid another instalment which was much more than sufficient to cover the proved value of the island and the right of passage. *McDonnell & Goundry*, 1 L. N. 50, & 22 L. C. 221, Q. B. 1877.

17. Where a defendant pleaded fear of trouble or eviction, and the plaintiff with his special answer produced deeds showing that the mortgage complained of had been discharged before the institution of the action—*Held*, that as the deeds were not registered they could not remove the cause of fear of eviction, and defendant was justified in pleading as he did. *Noel* v. *Gagnon*, 5 Q. L. R. 218, S. C. R. 1879.

18. And *held*, also, that he could do so by a plea to the merits, praying that the plaintiff's action be declared premature and be dismissed, unless within a time to be fixed by the court the plaintiff either cause the mortgage to be discharged or give the defendant security to keep him harmless from such mortgage. *Ib.*

IX. For Customs Dues.

19. Where plaintiff, being indebted to the collector of customs for customs dues, transferred

---

*A contract for the alienation of a thing certain and determinate makes the purchaser owner of the thing by the consent alone of the parties although no delivery be made. The foregoing rule is subject to the special provisions contained in this Code concerning the transfer and registry of vessels * * * Art. 1025 C. C.

The rules contained in the two last preceding articles apply as well to third persons as to the contracting parties, subject in contracts for the transfer of immoveable property to the special provisions contained in this Code for the registration of titles to and claims upon such property. But if a party obligo himself successively to two persons to deliver to each of them a thing which is purely moveable property, that one of the two who has been put in actual possession is preferred, and remains owner of the thing, although his title be posterior in date, provided, however, that his possession be in good faith. 1027 C. C.

* *Vide* Dig. p. 1165, art. 84.

a quantity of goods as security for the payment of the debt, and the delay having expired the collector proceeded to sell—*Held*, that he had a perfect right to do so, and that the plaintiff had nothing to complain of. *Ansell & Simpson*, I L. N. 64, S. C. 1877; 31 Vic. cap. 6, secs. 13 & 60.

X. For Illegal Purposes.

20. Action for $112 for liquor sold to defendants in the course of business. Defendants pleaded that the liquor was for an illegal purpose, viz., for the purpose of corrupting the electors of the County of Beauce, which was prohibited by law as contrary to public order, and that to the knowledge of plaintiff's. The question was one of evidence. In the Superior Court the action was dismissed without costs, but, in appeal—*Held*, that defendant had failed to prove that the plaintiff's knew the purpose for which the liquor was intended, and action maintained with costs. *Couture* v. *Delery*, 7 R. L. 577, Q. B. 1876.

XI. For Taxes.

21. A county municipality and a village municipality, defendants, were parties to certain proceedings resulting in a form of sale to the other defendant of part of two lots of land belonging to plaintiff, on the ground that municipal taxes were due upon them, and that the owner was unknown. It appeared that there were certain lots owned by the father and certain lots owned by the son, both being of the same name, and the corporation being unable to discover which was which made a new roll in which the proprietor was described as *inconnu*. Defendants pleaded that the plaintiff was present at the sale and did nothing to oppose it, and there was therefore acquiescence—*Held*, that the sale was altogether irregular and invalid, and plaintiff's presence at it could not affect its validity in any way. *Smart* v. *Wilson*, 2 L. N. 26, S. C. 1878.

XII. Fraudulent.

22. Action to annul a deed of sale to defendant by her father, who was insolvent at the time action brought. The sale was made on the 18th May, 1875, and the insolvent made an assignment on the 6th November, 1875. The consideration stipulated in the deed was altogether about $8,700. The property in 1873 was valued at $42,500. The action was taken by the assignee to the estate of the father under the Insolvent Act, 1875—*Held, dubitante*, setting aside the sale. *Evans* v. *Paige*, 2 L. N. 150, S. C. 1879.

XIII. In Fraud of Creditors.

23. Action by an assignee, under the provisions of the Insolvent Act, 1875, to recover back from them a quantity of glue obtained by them from the insolvents fraudulently, and in contemplation of their insolvency, or the value of said glue. The facts as alleged in the declaration, as it is contended, are that on the 1st April, 1874, the insolvents, being indebted to the defendants in the sum of $420, for the price of glue purchased from them, gave the defendants their note for that sum, payable four months after date, at the Bank of British North America. On the 10th April, 1874, they gave the defendants another note for $551.46, payable at the same date and at the same Bank, also for glue purchased. These notes were discounted by the defendants at the Bank of British North America. On or about the 19th May, 1874, the insolvents transferred and delivered, by way of payment of the above-mentioned indebtedness, to the defendants, a quantity of glue, of the value of $1055.42, whereupon the defendants took the notes of the insolvents, although they had been discounted, and could not have become due for nearly three months, out of the Bank, and handed them back to the insolvents, at the same time giving the insolvents their own notes for the difference and for the price of another quantity of glue, which they, at or about the same time, purchased or pretended to purchase from them. The sale of glue took place on the 19th May, and the assignment in insolvency on the 7th July. The defendants pleaded ignorance of the position of the insolvents and perfect good faith on their own part. —*Held*, that though the circumstances were suspicious it was not sufficiently so, considering the high character of the firm, defendants, to characterize it as fraudulent. *Whyte & McArthur*, Q. B. 1876.

24. Plaintiff having a judgment against defendant seized three lots of land as belonging to him, when appellant filed opposition to the seizure of one of the lots, claiming that it had been sold to him by defendant. The other two lots sold. Plaintiff, after the opposition had been filed, failed and his estate was taken possession of by an assignee. The plaintiff then gave security, and contested, when—*Held*, that the proof being that defendant was notoriously insolvent when he sold the land, to the knowledge of the opposant, opposition dismissed. *Pacaud & Huston*, 8 R. L. 169, Q. B. 1877.

25. A deed of sale cannot be annulled and set aside as made in fraud of creditors on a contestation of an opposition, unless demanded by the contestation. *Blouin & Langelier*, 3 Q. L. R. 272, S. C. R. 1877.

26. But where the evidence establishes that the deed was made fraudulently, and is only upheld on the ground of such technicality, costs will not be ordered against the party contesting. *Ib.*

27. Action to rescind a sale by defendant to L., to his son-in-law, the other defendant, as made in fraud of the plaintiff, a creditor of L., the father-in-law. Proof that the son-in-law was in the habit of doing business for L., and knew before the passing of the deed attacked that L., his father-in-law, was indebted to plaintiff; that, with the exception of a few dollars' worth, he had no other property than what was sold by the deed, and that he was, in fact, insolvent. It also appeared that L., the father-in-law, had continued in possession of the property thus sold to his son-in-law, not only without paying rent, but even without having agreed to pay any—*Held*, sufficient to establish a presumption of fraud and simulation against both defendants, especially in the absence of proof of the employment of the money which

the deed mentions as having been paid for the property purchased. Action maintained, and deed set aside with costs. *Clarke & Lortie,* 4 Q. L. R. 223, S. C. R. 1878.

28. Action by the assignee of the insolvent estate of M. C. against the sister of the insolvent, to set aside a pretended deed of sale as executed between them on the 19th of November, 1875, in fraud of the creditors. The sale was not made within the thirty days preceding the insolvency, but the proof was that the vendor knew he was hopelessly insolvent at the time, and mentioned in the deed the object of making the transfer. Judgment for plaintiff. *Court & Cuvillier,* S. C. 1878.

29. Plaintiff obtained judgment against defendant, B., for $80, interest and costs, making, altogether, $116.30. That was on the 8th February, 1876. On the 10th B. sold his land at St. Placide to the other defendant, subject to the charge of paying $5500 to a third person, to the discharge of B.; and further in consideration of $600 to be paid, of which sum B. acknowledged to have received $300 previous to the sale, the other $300 to be paid to plaintiff in six annual payments of $50. Action to set aside this sale as made with a view to defraud B.'s creditors and plaintiff in particular. Action also included the setting aside another sale of a mare made between the defendants for the same object, the price of the mare being $60. The averments of the declaration were that both these sales were made for a price much below their value; that the purchaser was a *cousine* of B.'s, and without apparent means; that she knew of the existence of the plaintiff's claim; that by the sale the defendant B. was placed in a state of utter insolvency, to the knowledge of the other defendant, the purchaser, who knew that he had no other property, which fact had also been established by a return of *nulla bona* to a writ of execution issued at the instance of the plaintiff. Plaintiff asked that both sales be cancelled and set aside, as made in fraud of the creditors of B., unless the defendants paid to the plaintiff the amount of his debt and costs and $100 damages. Proof that B. had no other property but that sold, and that the other defendant must have known of his insolvency, as the judgment of the plaintiff which remained unsatisfied was mentioned in the deed between them. The property had been sold for a price much about its value —*Held,* that the sales were made in fraud of plaintiff, and must be set aside as regards him. *Clement & Catafard,* 8 R. L. 624, S. C. 1878.

30. One F., an hotelkeeper, being largely indebted to the appellant, a notarial deed of sale was passed between them and duly registered, whereby F. sold to the appellant, with right of redemption within three years, certain moveable and immoveable property, comprising the hotel and furniture, being the bulk of his estate, for a certain stated valuable consideration. F. remained in possession of the property under lease from appellant, and continued to carry on his business as usual. About ten months afterwards he became bankrupt, and respondent was appointed his assignee. In the meantime appellant had, with F.'s consent, granted a lease of the moveables to T. and J., in whose hands they were when respondent revendicated them as part of F.'s insolvent estate. T. & J. did not contest, but appellant intervened, and claimed the effects under the deed of sale above mentioned. The respondent contesting prayed that the deed of sale be annulled and set aside as having been made in fraud of F.'s creditors—*Held,* that under the circumstances, reversing judgment of Q. B.* there was sufficient evidence to prove that the object of the transaction was to defeat F.'s creditors generally, and therefore the deeds of sale and lease of 19th January, 1875, were null and void under Arts. 1033, 1035, 1040 & 993 of the Civil Code, and secs. 86 & 88 of Ins. Act, 1869, & sec. 3, s.s. 13 of Ins. Act, 1875.

31. Where a sale is attacked as made in fraud of creditors it should be by direct action and not by garnishment of the purchaser. *La Banque d'Echange du Canada* v. *Massé,* 2 L. N. 192, S. C. R. 1879.

32. Action by the assignee to an insolvent estate to annul a sale of an immoveable, made by the insolvent some three months previous to his insolvency, as made in fraud of his creditors. The property which was very valuable was hypothecated to different persons to the amount of $6500. The sale was to a brother of the insolvent, and was made subject to the charge of paying not only the hypotheca but sums due to the relatives of the insolvent to the amount of $2,594, and subject also to a right of *reméré.* The property, which was worth more than the total of these charges, remained in the actual possession of the insolvent who, it was shown, had had repairs made, and done other acts of proprietorship since the sale—*Held,* that the sale must be presumed to have been made in contemplation of insolvency and in fraud of the insolvent's other creditors. *Brais & Racette,* 3 L. N. 398, S. C. R. 1880.

33. *May be Attacked Incidentally.*—On the 13th November, 1877, one Mad. Fournier, a debtor of appellant, sold a piano and other articles to the value of $428 to the respondent in payment of a debt due by her to respondent. The appellant, being informed that Mad. Fournier was making away with her things in fraud of her creditors, issued a *saisie arrêt* in the hands of respondent who declared he had nothing. In his answer to contestation, however, he admitted that he had the piano, but alleged that he bought it from defendant, and he produced a writing *sous seing privé* by which the piano and other articles were sold to respondent by defendant in payment of what she owed him—*Held,* reversing the decision of the Superior Court, that such a sale made, at a time when the debtor was notoriously insolvent, to a creditor who had reason to know of the insolvency was fraudulent, null and void, and the nullity could be invoked and pleaded by any creditor who was not a party to such fraudulent contract, in any proceeding in which the sale was set up against him, and that without being obliged to call in all the parties to the deed. *Kane & Racine,* 3 L. N. 66, & 24 L. C. J. 216, Q. B. 1880.

XV. JUDICIAL.

34. *Adjudication.*—After a judicial sale the

*3 Q. L. R. 243.

sheriff took from the *adjudicataire*, who was also a creditor, a bond, or obligation for the purchase money until judgment of distribution, said bond to carry hypothec and interest—*Held*, on action on the bond, reversing the judgment of the Superior Court, that such bond was without legal consideration, against public order, and the laws regulating the office of sheriff, and was, therefore null. *Bérard dit Lépine & Mathieu*, 21 L. C. J. 234, Q. B. 1876.

35. *Agreement not to Bid.*—The respondent gave to her son a lot of land, which was all the property she had, in consideration of a life rent. The son being in debt to the appellant the latter took judgment and seized the lot of land which had been given to him by his mother. The son gave it up and went to the States, and the property was to be sold at sheriff's sale, when the respondent, the mother, meeting the appellant at whose suit it was sold, agreed with him that, in consideration of a certain amount of money being paid her on account of her claim, she would not bid on the property, but would allow the appellant to buy it in at a nominal figure, in order that he might sell it again at a profit. This was done; but the respondent, not being paid the money agreed upon, took action—*Held*, that the agreement as between the appellant and the respondent was perfectly legal and valid, and that a judgment condemning appellant to pay the balance due was good and would be confirmed. *Beaudette & Mahoney*, 5 Q. L. R. 165, Q. B. 1879.

36. *Attacked on the Ground of Fraud.*—Question between the plaintiff and the intervening party as to the right of property in the latter of some household effects attached under *saisie gagerie par droit de suite* at the suit of the plaintiff. The intervention was founded on a previous sheriff's sale of these same effects to intervenant in a case in which he was plaintiff, and defendant and another were defendants. This was on the 24th of September, and on that day, after paying the price, intervenant removed the things to the house in which they now are, and where they were seized by the plaintiff. The answer was that the sale to intervenant was fraudulent, and that the things having once been liable to the plaintiff for rent of the house in which the sheriff's sale took place, were still held for the rent. The *saisie* by *droit de suite* took place on the 27th September, three days after the sheriff's sale—*Held*, that the sheriff's sale put an end to the plaintiff's lien, unless it was a fictitious or fraudulent sale, which was not proved. The plaintiff knew of the sale some days before it was to take place. He read the advertisement in a newspaper, and should have opposed. There were no conclusions to set aside this sale, and, where the usual forms of a sheriff's sale and adjudication and payment of the price are proved, something more is required than mere suspicion to prevent its having legal effect. Intervention maintained with costs. *Browning & Vissière & Beaudry*, S. C. 1877.

37. Where a person brought opposition founded on a purchase of the things seized at a previous judicial sale—*Held*, that as it was proved that he was the only bidder at such sale that the sale was null and he had no title. *Poirier* v. *Plouffe & Calvi*, 21 L. C. J. 103, S. C. 1877.

38. *Cahier des Charges.*—The condition in a *cahier des charges* connected with a judicial sale of immoveables that the purchaser shall be obliged to pay, in addition to the price of adjudication, at the time of the execution of the deeds of sale to the notary superintending the same as *commis*, a commission of four per cent., to cover "the notarial legal commission, the auctioneer's commission, and all necessary costs and expenses incurred to effect the sale of the lots, and will also include the costs of the deed of sale, and of one copy thereof for the vendors, and the costs of registration," will not entitle the notary to sue the purchaser for such commission of four per cent., and especially so when no deed was really executed by the vendors. *Doucet & Pinsonnault*, 23 L. C. J. 163, Q. B. 1878.

39. *Collocation of Claims.*—Where the proceeds of a sale by the sheriff of an immoveable are insufficient to pay the claims in full of two rival claimants having the same kind of privilege that is to say one for arrears of *cens et rentes* accrued prior to the death of the *grévé de substitution*, and the other for arrears accrued since, the proceeds will be divided *pro rata* between the claimants according to the amounts of their respective claims. *Hamilton & Christie*, 24 L. C. J. 140, Q. B. 1844.

40. *Conditions of Cannot be Changed.*—The appellant became *adjudicataire* of an immoveable sold by licitation, subject to the condition, among others, that he should have the right to keep and retain in his hands a sixth of the purchase money until the opening of a certain substitution affecting the property. Appellant accordingly deposited the amount, less the sixth in question. The respondent, in whose favor the substitution was, filed a petition asking that she be allowed to apply the said sixth of the purchase money in a different way, or, in other words, to invest it in other property, and that the *adjudicataire* be ordered to pay it in—*Held*, that the court would not change the conditions of the sale and the position of the *adjudicataire*. *Comte & Archambault*, 8 R. L. 102, Q. B. 1876.

41. *Deficiency of Contents.*—Deficiency of contents in an immoveable sold by sheriff's sale gives a right to the *adjudicataire* to demand a diminution of the price in proportion to the deficiency; but, in such cases it must be shown that the *adjudicataire* has been deceived, and that he had no means of knowing what the property was before he purchased; and where the property at the sale had been described by metes and bounds with which the purchaser was acquainted, the action was dismissed. *Thomas & Murphy*, 8 R. L. 231, Q. B. 1877.

42. An *adjudicataire* of a property sold at sheriff's sale, finding that the property did not contain as much as it was described in the minutes of sale and advertisements, filed opposition for the value of the deficiency on the balance that remained of the proceeds in the hands of the sheriff—*Held*, that the sale and adjudication were without *garantie* of the contents, and the opposant had no claim. *Pelletier* v. *Chassé & Castonguay*, 3 Q. L. R. 65, S. C. 1877.

43. *Description of Property.*—Under a writ of *venditioni exponas* issued in a suit wherein M. C. was plaintiff and D. G. was defendant, the latter's property was seized, advertised and sold to the appellants under the following de-

scription :—"Four lots of land or emplacements situate at Coteau St. Louis, in the "parish *L'Enfant Jesus*, heretofore forming "part of the parish of Montreal, in the district "of Montreal, being known and designated in "the official plan and book of reference of the "village of Coteau St. Louis, in the said parish "of Montreal, under the Nos. 18, 19, 20 and 21 "of the subdivision of No. 167 of the said "official plan and book of reference, with 4 "wooden houses and dependencies thereon "erected." The sale was made in one lot only at the sheriff's office in the City of Montreal. The respondents demanded the nullity of the sale by means of an opposition—*Held*, that it was not sufficient to give only the number of the official plan and book of reference in the *procès verbal* of seizure and the advertisement of the sheriff, as under art. 638 C. C. P.* it is necessary to give the range or the street where the property is situated, in addition to the official number, and therefore the sale was null and of no effect. *Montreal Loan & Mortgage Co. & Fauteux*, 3 S. C. Rep. 411, Su. Ct. 1879.

44. The description in the adjudication of an immoveable by the sheriff of three arpents by thirty, situated between two concessions, is sufficient, although there be an error added by saying "*borné à une route separant les deux con-"cessions*," while on the other side of this *route* there is a strip of land of two arpents by three in the same concession, such strip being comprised in the description of thirty arpents between the two concessions. *Dumont & Aubert*, 5 Q.L.R. 295, & 10 R.L. 576, Q.B. 1879.

45. Where an assignee in the minutes of seizure and advertisements of sale under, of a lot of land, omitted the name of the street on which it was situated—*Held*, fatal.† *Rolland & Dupuy & Franey*, 3 L. N. 256, S. C. 1880.

46. Where a property subject to an emphyteutic rent was sold at sheriff's sale—*Held*, that the creditor of the rent had a right to an action in declaration of his hypothec against the representative of the *adjudicataire*, if the sheriff's sale was made subject to the rent, although no mention was made of it in the sheriff's deed; and in such case the sheriff's title must be declared false. *Carpenter & Dery*, 8 R. L. 283, Q. B. 1877.

47. *Folle Enchère.*—An *adjudicataire* of immoveables having failed to pay the price, one B. produced an opposition *afin de conserver*, and moved for a *folle enchère*. B.'s claim did not appear in the registrar's certificate, and he had given notice of his motion before filing his opposition—*Held*, that, as his claim was not proved in the record at the time he gave notice, his motion must be rejected with costs. *Fraser v. Garant*, 4 Q. L. R. 224, S. C. 1878.

48. But a false bidder is not relieved from his liability by a subsequent false bid, although higher than the first, and sufficient to cover the first bid with interest and the costs incurred on the resale. *Blais & Learmonth & Gowen*, 4 Q. L. R. 251, S. C. R. 1878.

49. *Liability of Adjudicataire.*—The appellant was the purchaser, at sheriff's sale of an immoveable which had been the subject of two acts of donation to the person in whose hands it was seized and sold—one subject to a substitution, and one ten years later, making no reference to the substitution. When the appellant purchased he was not aware of the existence of the substitution, and on discovering it refused to pay the purchase money—*Held*, reversing the judgment of the court below, that he was not liable, and a rule for *folle enchère* against him was discharged. *Jobin & Shuter et vir.*, 21 L. C. J. 67, Q. B. 1876.

50. *Nullities in.*—Petition by the purchaser of property at a sheriff's sale praying that inasmuch as the property was described as containing 50 acres more or less, and upon measurement proved only to contain 40 acres, the price be reduced in the proportion of such deficiency—*Held*, that by law the *adjudicataire* of an immoveable at a sheriff's sale is without any warranty as to contents, and the *adjudicataire* purchases *per reversionem* and not *per mensuram*. *Douglas v. Douglas & Le Seminaire*, 3 Q. L. R. 197, S. C. 1877.

51. The case raised a question as to the validity of a sheriff's title. A writ of execution was issued from the district of Quebec to the sheriff of the district of Montreal to seize lands in the district of St. Francis. It is alleged now that the sale by the sheriff of Montreal of lands lying in the district of St. Francis was illegal and null. At the time of the seizure and sale the district of St. Francis had been duly organized, with a sheriff for the district. The Court was of opinion, therefore, that the sale by the sheriff of Montreal was, under the circumstances, utterly illegal; that he had no right to seize or sell in the district of St. Francis. This being so, the *adjudicataire* remained without title. This question had already been decided by the Court of Appeal some years ago in the case in which the writ to seize this land was issued. On that occasion the court unanimously decided that the title from the sheriff was a perfect nullity. The same judgment must be recorded here. The title conferred no right upon respondent, and he could not claim to be the proprietor of the land. *Perkins & Nye*, Q. B. 1876.

52. In June, 1873, the plaintiff obtained judgment for $2981.48 against the defendants, and upon a writ of *venditioni exponas de terris*, issued on the 20th, 1874, lot No. 1163 of St. Ann's ward of Montreal, with buildings seized as belonging to Louis Barré, was adjudged and sold to the appellant. The property had been given to Louis Barré by his father by deed of gift of the 6th April, 1857, and duly registered on the 9th March, 1859, but it was charged with

---

* In the registration divisions in which official plans and books of reference are in force, all sheriffs' titles respecting real estate situated within such divisions, *procès verbaux* of seizures of the said properties, advertisements, publications and notices posted up, in which the properties seized and sold have not been designated by the numbers shown on such official plans and books of reference, are hereby declared valid for all legal purposes whatsoever, notwithstanding any law to the contrary, and especially Articles 638, 648, 650 and 689 of the Code of Civil Procedure, and every law or statute amending the said articles; provided, however, that a notice indicating the official numbers of the properties described in the titles shall have been given, within six months from the passing of the present Act, to the registrars of such registration divisions by the sheriffs or any of the parties interested. Q. 42-43 Vic. cap. 24.

† C. C. P. 638.

a substitution in favor of the donee's children born and to be born. When the appellant purchased he was not aware of the existence of this substitution, but discovered it shortly afterwards, and then refused to pay the purchase money and complete the sale. Plaintiff on the 17th October, 1874, presented a petition for a resale. Appellant contested this petition, alleging the substitution above mentioned, and pleading that the sheriff's sale did not discharge the property from it; that he was exposed and liable to eviction by reason of it; and had, consequently, a right to demand the vacating of the adjudication, and was entitled to set up such right in answer to and bar of the plaintiff's application for a resale for false bidding; and prayed that the sale and adjudication made to him should be declared null and void, and he vacated, and that he should be discharged from all liability by reason of his purchase, and the plaintiff's petition rejected—*Held*, reversing the judgment of the Superior Court, that he was justified in demanding the nullity of the sale if he was exposed to trouble, without being obliged to prove that he was exposed to certain eviction; and that the court, if it is of opinion that the *adjudicataire* had just reason to fear trouble, would declare the adjudication null, without pronouncing as to the validity of the cause of trouble. *Johns & Sluter & Barré*, 7 R. L. 705, Q. B. 1876.

53. On a petition *en nullité de decrêt* of a sheriff's sale—*Held*, that an error in the minutes of seizure as to the contents of an immoveable bearing a cadastral number will not alone support a demand by the purchaser to have the sale vacated, on the ground of misdescription, even where a lot only thirty feet frontage was described as of forty-five feet frontage; but, where a lot of land sold at sheriff's sale was described in the minutes of seizure and in the advertisements as having a two-story wooden house thereon erected, while in fact the house in question was erected partly on the lot sold and partly on the adjoining lot, and it was proved, moreover, that the purchaser would not have bought if he had been aware of the error, the sale would be vacated at the suit of the purchaser on the ground of misdescription. *La Cie. de Prêt & Credit Foncier & Baker*, 24 L. C. J. 45, Q. B. 1879.

54. But where the purchaser and *adjudicataire* was the original vendor no costs were allowed. *Ib.*

55. Petition to annul a sheriff's sale. Petitioner was defendant, and alleged in support of her petition that by the judgment in the cause she had been condemned to give up another lot within 15 days after service of the judgment upon her, and in default to pay $150 interest and costs; that she gave up the land within 15 days yet, notwithstanding, a writ of execution issued, under which other land No. 208 was seized and sold; that the sale of No. 208 was further illegal, because petitioner never had possession of it, and a petition to annul the sale had been filed by another, which petition was still pending—*Held*, that as the formalities of the sale had not been complained of, and no opposition to the sale was made before fifteen days previous to the sale, that nullities or informalities arising out of the *delaissement* could not be invoked under 714 C. C. P. *Robert* v. *Northgraves & Blanchet*, 3 L. N. 133, S. C. 1880.

56. Petition to set aside a sale made by the sheriff of defendants land on which the petitioner had a mortgage of $4,000. The property was purchased by the *adjudicataire* for $2,200 as the last and highest bidder. The grounds of the petition were that the purchase was fraudulent; that the *adjudicataire* was the son of the defendant and her *prête nom*, that he had no intention of purchasing, and defendant used artifices to prevent persons from attending and bidding, and that petitioner would have been paid the amount of his mortgage if the property had been sold at its value. The evidence showed that the property was worth over $4,000 and was sold for $2,200. That the sale was fixed for 10 a.m., and the petitioner was unrepresented in consequence of their agent having made a mistake and only attending at 11 a.m.—*Held*, insufficient to set aside the sale. *Commercial Mutual Building Society* v. *McIver*, 3 L. N. 357, S. C. 1880.

57. And *held*, also, that the costs on such petition were the same as those allowed in ordinary suits. *Ib.*

58. *Of Vessels.*—The sale of a merchant vessel by a creditor may be opposed by any previous registered mortgagee, unless the leave of the court has been obtained. *Ross* v. *Smith & Caulin*, 2 L. N. 362, & 23 L. C. J. 309, S. C. 1879.

59. *Place of.*—A sale by the sheriff of Montreal at his own office of land situate in the parish of *l'Enfant Jesus*, a duly erected parish for all civil purposes formed out of the parish of Montreal, was void, and such sale could be legally effected only at the church door of the parish of *l'Enfant Jesus*.* *Fauteux* v. *Loan & Mortgage Co.*, 22 L. C. J. 282, & 2 L. N. 15, Q. B. 1878, & 2 L. N. 424, & 3 S. C. Rep. 411, Su. Ct. 1879.

60. And *held*, also, that such nullity could be invoked by means of a petition filed after the sale and served on all the interested parties, or by means of an opposition filed after the sale and containing all the essential allegations of a petition *en nullité de decret*. *Ib.*

61. *Possession.*—The *adjudicataire* of an immoveable sold by licitation who takes possession of the immoveable cannot be sued *en complainte* by the possessor of the property, especially if he has been a party to the action. *Hus* v. *Joseph*, 7 R. L. 90, S. C. 1875, & 9 R. L. 56, Q. B. 1876.

62. Defendant was the *adjudicataire* of a piece of land, being part of a farm property owned and held by plaintiff, but which had been sold by judicial licitation, plaintiff being a party in the cause in which it was sold. Defendant after the sale went and took possession, and plaintiff took action possessory to evict him—*Held*, reversing the judgment of the court below, that defendant had no right to take possession without an order of the court, even though the plaintiff was in the original action. *Hus & Joseph*, 9 R. L. 56, Q. B. 1876.

---

* Such sales were legalized and confirmed by 42-43 Vic. cap. 25, so that only those then in litigation are affected by this decision.

63. An *adjudicataire* may obtain a writ of possession after the expiration of a year and a day from the date of the adjudication, provided he move for the same within the year and a day from the judgment of distribution. *Sewell & Bourk & Langlois*, 4 Q. L. R. 246, S. C. R. & 2 L. N. 202 Q. B. 1878.

64. But the *adjudicataire* of property sold at sheriff's sale, who, instead of paying, gives security to the sheriff for the amount of the adjudication until the judgment of distribution shall be rendered, had not the right to take a writ of possession against the *saisi* before obtaining a title to the property. *Courke & Langlois*, 10 R. L. 560, Q. B. 1879.

65. And *semble*, that a writ of possession will not lie against the *saisi* after the lapse of a year from the date of the sheriff's title. *Ib.*

66. *Possession.*—The petitioner set up that he became purchaser, at sheriff's sale, of certain tracts of land in the district of Bedford, and that a deed of purchase of such land had been duly executed by the sheriff to the petitioner, but that a third party was in possession and refused to deliver up. He therefore asked that the court do order the sheriff to give petitioner possession, and to take all necessary means, etc.—*Held*, that such a petition would not be against a third party. *Trust & Loan Co.* v. *Jones & Jones*, 2 L. N. 195, S. C. 1879; 712 C. C. P.

67. *Report of Sheriff.*—Inscription *en faux* against a supplementary report of the Sheriff of Rimouski, who had since become insolvent. The respondent in February, 1876, became the purchaser, at sheriff's sale, of an immoveable, sold at the instance of the Seminary of Quebec out of the hands of one J. B. M., against whom the appellant had a claim of $1268.53, for which he had been collocated. The sheriff made a supplementary report in the case, to the effect that respondent, the *adjudicataire*, had paid the whole of the purchase money, amounting to $2030. The sheriff having become insolvent, and the appellant being in danger of losing his claim, or a material portion thereof, contested this supplementary report by an inscription *en faux*. The evidence showed that only some $1350 had been paid by the *adjudicataire* of the purchase money, and the balance had been settled by some arrangement between the *adjudicataire*, the defendant and the sheriff—*Held*, reversing the judgment of the court below, that the inscription *en faux* should have been maintained and a *folle enchere* ordered, unless the balance were paid within a delay fixed by the court. *Quebec Permanent Building Society & Martin*, 10 R. L. 619, Q. B. 1880.

68. *Rescission of.*—The petitioner was *adjudicataire* of a property situated at Hochelaga which had been sold at sheriff's sale. The property was described by the sheriff as comprising certain subdivisions of an official number as marked on the Cadastre, and as fronting on a projected street, and the official plan referred to indicated the existence of a street along the front leading to the highway—*Held*, that the absence of such street was ground for vacating the sale.* *Moat & Moisan*, 3 L. N. 294, Q. B. 1880.

* 714 C. C. P.

69. *Rights of Hypothecary Creditor.*—Under no circumstances can a hypothecary creditor be collocated for and paid interest beyond the date of the adjudication. *Genereux & Gordon & La Soc. de Con. Metropolitaine*, 2 L. N. 134, & 23 L. C. J. 221, S. C. R. 1879.

XVI. Of Immoveables.

Effect of Lease Pending, *see* LEASE.

XVIII. Of Land.

70. *Belonging to Another.*—Plaintiff claimed $137.60, balance due on a sale of land to defendant, of which land defendant had taken possession. In the deed of sale the property sold was described as 100 acres in superficies, forming part of the 14th lot in the 12th range in the township of Stanford, and setting out the boundaries of said 100 acres. Plea, that the sale was with guarantee of law and fact of the land, as described and situated as described. By a subsequent survey, however, it was established that the property described formed part of another lot and really belonged to the Crown, and that as soon as the plaintiff discovered that, he took steps to obtain the letters patent from the Government in his own name. Defendant himself, however, purchased the property from the Government and filed his certificate. This was the lot of which defendant was in possession. The lot No. 14 described in the deed belonged to a third party, and was not of good quality. Defendant prayed that the deed to him be annulled, and plaintiff be condemned to reimburse him the money which he had paid on account of it. Plaintiff answered that he really was in possession of a lot such as described in the deed; that he had himself occupied and cleared it, and made improvements upon it; that he had rented it to the defendant, who had occupied it, and that he, the defendant, knew the property well, and had declared himself thoroughly satisfied with it. The defendant also knew that there was a nominal error in the description of the lot, and that it was to defraud plaintiff that he had obtained a ticket from Government. Action maintained in Superior Court, but in review and appeal dismissed. *Roy* v. *Dion*, 8 R. L. 259, Q. B. 1876.

71. *While Action Pending.*—The opposants became proprietors of the undivided half of an immoveable by deed of sale from the defendant in 1874. In October, 1875, they acquired the remaining half by deed from the defendant. Before the latter deed was signed the notary, at the request of one of the opposants, went to the registry office and made search to ascertain if there were any encumbrances registered against the property, and having reported that there were none the deed was executed. Sometime afterwards the property in question was seized under the plaintiff's execution, and the opposants then became aware for the first time that in July, 1875, the plaintiff had brought an action against the defendant for a balance due to him under a former deed of sale to the *auteur* of the defendant, and that the plaintiff had obtained judgment in that action in October, 1875, two days before the second deed of sale from the defendant to the opposants was passed. The

plaintiff had no registered rights against the property at the time of the second deed of sale. His claim was founded upon a deed executed before the cadastral system came into force, and no renewal of the registration had at this time taken place—*Held*, that, notwithstanding his judgment, the plaintiff had no title which could prevail against the opposants. *Thayer & Ansell & Moss*, 2 L. N. 75, S. C., & 3 L. N. 242, & 24 L. C. J. 181, S. C. R. 1879.

XIX. Of Moveables.*

72. *Resiliation of.*—The respondent seized in the possession of appellant, by attachment in revendication, a quantity of wood which he had previously sold him, and which he had failed to pay for. With the attachment a demand was made for the resiliation of the sale, and that in case the attachment would not hold as an attachment in revendication that it serve as a *saisie conservatoire*—*Held*, that under article 1543 of the Civil Code the unpaid vendor had a right to a resiliation, even after the eight days mentioned in article 1999, and that the attachment was good as a conservatory process. *Henderson & Tremblay*, 21 L. C. J. 24, Q. B. 1876.

XXI. Payment of Purchase Money.

73. Real estate of a substitution was sold, and the purchase money was allowed to remain in the hands of M., the purchaser, until another investment should be found. Subsequently a mode of investing the purchase money was duly authorized by a family council—*Held*, that M. could not refuse to pay over the purchase money on the ground that the proposed investment was not in strict accordance with the terms of the deed creating the substitution. *Mullin & Michon*, 1 L. N. 603, Q. B. 1878.

---

* Of Moveables of Succession.

Act to declare valid certain sales of moveables belonging to successions.

Whereas in virtue of articles 1320 and 572 of the Code of Civil Procedure the sale of moveables belonging to a succession of which one of the co-heirs is a minor cannot be made before the expiration of eight days to be reckoned from the Sunday when such sale was announced by public notice, that is to say the second Tuesday after the Sunday aforesaid; whereas since the putting into force of this Code several of these sales have been made on the second Monday instead of the second Tuesday after the Sunday aforesaid, as was the custom previous to the Code; and whereas this irregularity may be prejudicial to the interests of a large number of families, and that in consequence it is urgent that these sales should be made valid; therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Every sale of moveables belonging to successions of which one of the co-heirs was a minor made since the coming into force of the Code of Civil Procedure until the coming into force of this Act the second Monday instead of the second Tuesday following the first Sunday on which such sale ought to have been announced, according to articles 1320 and 572 of the Code of Civil Procedure is declared valid, and shall be so considered in law; provided always that all the other formalities required by law shall have been observed.
2. This Act shall not affect pending cases.
3. The present Act shall come into force on the day of its sanction. Q. 41 Vic. cap. 9.

Act respecting the sale of securities belonging to persons not in the exercise of their civil rights. *See* Q. 42-43 Vic. cap. 26.

XXII. Privilege of Vendor.

74. The 82nd section of the Insolvent Act of 1875 has not taken away the right of the vendor to revendicate goods sold by him to the insolvent, and the price whereof has not been paid. *Hatchette et al. & Gooderham et al.*, 21 L. C. J. 165, S. C. 1877.

XXIII. Prohibition to Alienate Contained in.

75. Action in resiliation of a deed of sale from plaintiff to the father of defendant under the following circumstances: Defendant was the son of the vendee by his first wife. The vendee having taken a daughter of plaintiff, the vendor, as his second wife, plaintiff sold him the lot of land in question for $200, agreeing to allow $100 to remain in the hands of the vendee in anticipation of his daughter's rights in his succession, while the vendee on his part bound himself to leave the property to his children by the second marriage. There were five children, issue of the second marriage, who survived their parents, but the vendee, instead of leaving the property in question to them, left it to defendant, one of his children by his first marriage, whom he constituted his universal legatee. Plaintiff asked for the resiliation of the sale on this ground, and on offering back the $100 received as part of the purchase money. Defendant did not contest, but one of his creditors intervened, and pleaded that the stipulation was illegal and null, inasmuch as it constituted a prohibition to alienate a property sold by onerous title—*Held*, maintaining the intervention on this ground, and dismissing the plaintiff's action with costs. *Salois* v. *Neveu & Drolet*, 10 R. L. 72, S. C. 1879.

XXIV. Promise of.

76. On the 28th July, 1874, the appellant gave to the respondent a writing, entitled "sale from Daniel Munro to Mr. M. Dufresne." It was in effect a promise of sale, by which M. bound himself to sell to D. certain immoveable property, therein designated, for the price of $50,000, of which $8,000 was to be paid on passing the deed. The offer was to remain open till the 10th August. The parties met on that day at the office of Simard, notary, who was to have joined D. in the purchase, but he declined to come in; D. had not the funds ready, and they separated to give D. time to make other arrangements. Later in the day D. sent a letter to M., stating that he accepted the offer made on the 28th July. The first point was whether this was a sufficient acceptance of the promise of sale to be binding on M. Was it sufficient that on the 10th August D. should say, merely, I accept your offer? There was no difficulty that when there was a delay fixed, the expiration of the delay was fatal if there was no acceptance on the day. There was no necessity for a *mise en demeure* if the party does not accept on the day fixed. The only question, then, was as to the meaning of the promise of sale. On the day named the money was not forthcoming, and after some *pour parlers* D. did nothing more than write to M., stating that he accepted

the offer. It was in evidence that M. subsequently sold the property to one B. for the same amount. D. then brought his action asking that Munro should have the deed to B. set aside and convey the property to him, or that the judgment be held to be a title for him to the property; and if the property could not be conveyed, that M. be condemned to pay him $30,000 damages. The court below held M. bound by the acceptance, and condemned him to pay $23,635 damages for the failure to convey the property. The question was this, was D. bound to put the vendor *en demeure* on the 10th August to give him a deed on that day, and failing that was he entirely debarred from any claim on the property?—*Held*, that the word acceptance did not mean merely sending the vendor word that he would accept, but a complete acceptance, and that it was for D. to put him *en demeure*. The judgment would therefore be reversed and the action dismissed. *Munro & Dufresne*, Q. B. 1876.

77. In 1874, by notarial deed, the respondent promised to sell and transfer to appellant the undivided half of the immoveable therein described, and to pass a title after a licitation of the said immoveable had been had. The terms of the deed were that appellant was to pay on the 29th of September of each year the half of the ground rent of said property to the parties to whom it was due and to pay to respondent at the time of passing a deed the sum of $135,000. The purchaser was also to pay all the expenses of licitation and was to proceed to such licitation immediately. Action to obtain the resiliation of this promise of sale on the ground that appellant had not paid the rent as stipulated or proceeded to a licitation. Defendant pleaded that he had always been ready to do both, and if he had not done them it was because plaintiff seemed to repent his bargain; and, moreover, he could not proceed to a licitation without using his name, for which he required his consent. Question of proof and action maintained in Superior Court and in appeal. *Charlebois* v. *Lemaire*, 8 R. L. 306, Q. B. 1876.

78. Petitory action for the purpose of establishing ownership, and recovering possession of the north quarter of lot No. 17 in the 5th range in the township of Shefford, in the district of Bedford. Defendant had been in possession five years and claimed under an alleged promise of sale from plaintiff, through his agent. The plea alleged that one Wood was, in the month of June, 1866, and for a long time previous, the authorized and recognized agent of the plaintiff at Shefford, and that he did in the name and at the instance of the plaintiff sell his lands there and in the adjoining townships and receive and collect the moneys of such purchases. That about the 8th June, 1868, the said Wood, acting as such agent with the knowledge and consent of the plaintiff, bargained and sold to the defendant the said north quarter of the said lot No. 17, in the fifth range of lots in the said township of Shefford, for the price of ten dollars per acre, and then and there received from defendant for plaintiff the sum of $125. That plaintiff, acting as aforesaid, then and there undertook to grant defendant a promise of sale of the said parcel of land for the price mentioned, the balance of the purchase money to be paid in three annual instalments with interest, and that plaintiff, by his agent, thereupon gave defendant permission to occupy the same as if the promise of sale had been executed; that defendant accordingly took possession of the land, and had ever since remained in the occupation thereof, and had paid out large sums in improvements; that plaintiff had failed to fulfil his part of the alleged agreement, and defendant by reason of the premises claimed a right to the land in question. Plaintiff denied all these averments, and the question that arose was as to the agency of the person Wood. A large amount of evidence was produced by defendant, including that of Wood himself, who had since left Canada and was residing in the States. But *held*, that the promise of sale was not sufficiently proved, and judgment for plaintiff. *Stuart & White*, 7 R. L. 523, Q. B. 1876.

79. A condition in a promise of sale that, although followed by possession it should not be equivalent to a sale—*Held*, valid. *Noel* v. *Laverdière & British American Land Co.*, 4 Q. L. R. 247, S. C. R. 1878.

XXX Purchaser Cannot Demand Completion of, where no Term is Given for Payment, without Offering the Price.

80. The 31st November, 1876, the respondent sold to appellant two cars of oats (about 1400 bushels), at the rate of one cent per pound, deliverable at the cars at St. Paschal, the appellant undertaking to pay also one cent for commission, the whole payable at the time of delivery. The 27th of November following the respondent sold to appellant two other cars of oats (about 1400 bushels of 36 pounds), deliverable at the Taché mill and at the cars, the appellant binding himself to pay besides $10 of commission, the whole payable at delivery. The respondent sold two cars of oats and was paid for them. Afterwards he sent to the Taché mill another lot forming the balance sold, and applied to appellant for payment; appellant not being ready to pay respondent carried his oats away again. Appellant then without any offer of payment or any demand upon him for the oats sued out a writ of revendication in order to seize them, but the oats having been carried off and returned to where they came from he was unable to do so. However he proceeded with his action, and obtained judgment ordering appellant to deliver the oats or pay damages. This judgment was reversed in review, and in appeal the judgment in review was confirmed, on the ground that appellant could not demand delivery of the oats without offering the money. *Blagdon & Lebel*, 5 Q. L. R. 87, Q. B. 1878.

XXVI. Purchases Presumed to be made with Money of Purchaser.

81. Where a trader before insolvency went to England, taking with him a sum of his own money and a sum belonging to his wife, and purchased goods there in connection with his trade—*Held*, that in the absence of any account of the money so taken from his assets it must be assumed that the purchase of goods was

made with such funds. *Stevens & Perkins*, 1 L. N. 290, Q. B. 1878.

XXVII. Registration of Title.

82. The plaintiff bought an immoveable on the 28th November, 1876, and registered his title on the 5th December following. In the interval, on the 30th November, the defendant having obtained judgment against the vendor, registered it against the immoveable in question as being still in possession of the vendor, the purchaser not having registered his title—*Held*, reversing the judgment of the court below, that a sale of an immoveable without registration has no effect with regard to third parties, and the hypothec must be maintained. *Lefebvre* v. *Branchaud*, 1 L. N. 230, & 22 L. C. J. 73, S. C. R. 1878.

XXIX. Remedy of Buyer where Goods are Inferior to Purchase.

83. The defendants were acceptors of a bill of exchange drawn upon them by the plaintiffs for £1,172 2s. 6d. stg., and representing a large shipment of iron of different dimensions made to them by the drawers. They paid £778 on account; but refused to pay the balance, for which the action was brought, but pleaded that they were not bound to pay this balance, because the contract respecting the iron was for the sale of 141 tons, 5 cwt., 1 quarter and 14 lbs. of Coates' iron; but that among the iron sent were 48 tons, 14 cwt., 3 quarters and 14 lbs. of iron in bars, and 1¼ inch wide and 7-16th of an inch thick, which at the price charged would come to £389 19s. stg. at the place of shipment. That upon the faith of the invoice they had both accepted the bill, and had sold the iron before its arrival to the Masson Manufacturing Company at Oshawa, who, immediately on getting it, discovered that the whole of the 4,269 bars were worthless and unmerchantable; and the defendants, on being made aware of it, gave notice to the vendors through their agent here, who directed that samples might be sent down for inspection, which was done, and the defendants also themselves got down a number of bars to be tested, and it was all inspected and tested in the agent's presence, by competent and skilled persons, and it was found that out of ten, only six bars were merchantable; and thereupon the defendants notified the sellers that they would not accept it, but would only hold it on their account. The evidence of plaintiffs sets up that the defendants have waived the right of pleading all this by taking and accepting the thing sold and treating it as their own, and disposing of it by sale to another. The evidence shows that the contract was for "Coates" iron of different dimensions; that the particular lot in question was not merchantable; that the bill was accepted before the iron arrived, and it was sold before arrival and taken from the ship to the canal or railway without being seen by the buyers; that it was objected to and refused by the Masson Manufacturing Co., who had bought it from the defendants, and that an inspection was had of samples which showed according to the great weight of evidence, that it was not at all the thing that it had been contracted to sell. By the court—It was contended that this was one of those cases where the purchase of the whole 141 tons must be repudiated to entitle the defendants to redress. The contrary of that proposition was clearly laid down in *Leduc* v. *Shaw* by the Court of Appeals, even in the case of the sale of one lot of flour, a portion of which had turned out bad, but all the authorities are clear where the thing sold is in separate lots as to size and price, which was the case here, the right to repudiate for one part only is certain. This is repeated without variation in all the series of books usually referred to. Toullier, No. 57 8; Duranton, who puts the case of a flock of sheep where one or more should turn out bad, and all the rest. It was contended also that the acceptance of the iron and the sale to others was conclusive against the defendants' right; and the well-known case of Morton v. Tibbets as to what constitutes an acceptance to satisfy the statute of frauds was cited, but there is a well-known and perfectly familiar distinction between such an acceptance and one that would be evidence of the fulfilment of all the conditions of an obligation. In that very case of *Morton* v. *Tibbets*, Lord Campbell used the well-known and oft-repeated words: "The acceptance to let in parole evidence of the contract appears to us to be a different acceptance from that which affords conclusive evidence of the contract having been fulfilled." Therefore I think that the defendants did all they were bound to do; that the thing sold, as regards the part in question, was not fit for the purposes for which it was bought; and that the purchaser has the right under the law to return it and keep that part of the price. *Maxwell & Cooper*, S. C. 1877.

84. The case arose out of the sale of 500,000 feet of sidings to appellant. The action was for the balance of price, and the question was as to quality. The sidings were sent down in barges to Montreal. On the arrival of the first shipment, the appellant complained to some extent that the sidings were not of the quality he expected, and claimed that there should be a deduction from the price. But he gave his notes, and left the question of deduction to a future period. Subsequently the appellant made objection to paying the price agreed upon, in consequence of the alleged inferior quality of the lumber. Being sued he resisted the action, but the court had sustained the plaintiffs' pretensions—*Held*, that the judgment must be confirmed, but the court considered that there was nothing to justify the imputation that the appellant was desiring to evade his liability. He ought to have put the plaintiffs *en demeure* to take back the sidings, but instead of that he relied upon their good faith, and the lumber got mixed so that even if the court wished to make a deduction from the price it would be impossible to estimate it. Judgment confirmed. *Ostell & McLaren*, Q. B. 1877.

XXX. Resolution of.

85. The petitioner having sold to insolvent, prior to his insolvency, a certain property with right of resolution in case of non payment of price, transferred all his rights and privileges

under such deed to the Trust & Loan Company with due notice. The debtor having failed, and the price not having been paid, the petitioner demanded the resolution of the sale, and the possession of the property out of the hands of the assignee. The assignee pleaded the transfer to the Trust and Loan Company, and also that petitioner had filed his claim in the hands of the assignee, and had taken part and acquiesced in the proceedings of the creditors, and thereby forfeited his right to act under the stipulation of the deed—*Held*, that the transfer to the Trust & Loan Company was but a pledge, and did not prevent the pledgor from exercising the rights and privileges pledged with the consent of the pledgee. *Farmer & Bell & The Trust & Loan Co.*, 6 Q. L. R. 1, S. C. R. 1879.

86. Where a property had been sold prior to the Code—*Held*, that the *bailleur* could exercise a right of resolution, even though not stipulated, and without renewal of registration. *La Cie. de Pret., etc.*, v. *Garand & Heney*, 3 L. N. 379, S. C. 1880.

87. Action in resiliation of certain lots of land which plaintiff had purchased from defendant at public auction. At the sale it was announced that the defendant's title to the property was perfect and indisputable, that the property was free and clear of all seigniorial claims and dues, and no mention was made of any charge or hypothec of any kind. Some time after the sale plaintiff, who had purchased some of the lots, discovered that there was a mortgage of $200,000 on the whole property, and that he could not give a clear title to the lots he wished to resell. He asked therefore that the sale be cancelled, and that he get back what he had paid on account of the price, and what he had paid for improvements, etc.—*Held*, maintaining the action. *Brewster* v. *Grand Trunk Railway Co. of Canada*, 3 L. N. 410, S. C. 1880.

XXXI. Rights of Vendor.

88. Respondent, by his action, claimed from appellant $750. He alleged that one L., now insolvent, and whom he represented on the 1st May, 1867, purchased from appellant the scow (*Chaland*) *venant* for $1,165; that the purchaser took possession of the scow and used it for three seasons; that in December, 1869, he failed, and during the winter of 1870, appellant illegally re-took possession of the scow and used it for two years; that the value of the use of it was $300 per year; that at the time of the insolvency there remained due of the purchase money to the appellant $730; that the scow was then worth $1,000; the amount claimed by the action was the balance left from the value of the scow and its use during two years after deduction of what was due to appellant. Appellant pleaded that he had never sold the scow to L., that there was only a promise of sale of it, that the title to it had always remained in his possession, and he had retaken the scow with the consent of the purchaser's assignee—*Held*, that notwithstanding no title had passed, that the defendant having delivered the scow and received payments on account could not retake possession of the vessel, and must pay the value of it after deduction of what was still due to him *Beaupré & Labelle*, 7 R. L. 589, Q. B. 1876.

XXXII. Simulated.

89. One N., being indebted to appellant in the sum of $1300, offered as security a mortgage on three pieces of land, and a deed was accordingly executed, but it being afterwards found that N. could not legally hypothecate one of the three lots a deed of sale was passed by which he conveyed to appellant the said lot for the expressed price of $400, with the verbal understanding that as soon as the amount due was paid to appellant he would reconvey to N. the lot in question. About two months after N. became insolvent, and fled the country. The two lots mortgaged being brought to sale realized some $900 for appellant, who then claimed the right to retain the third lot for the balance due him, whereupon respondent, a judgment creditor, while admitting the validity of the mortgages, attacked the deed of sale as simulated and fraudulent, and contested appellant's right to prevent a judicial sale of the said piece of land.—*Held*, that the deed of sale was simulated and void for total want of consideration, and the property never having passed under it the land could be brought to sale as still forming part of N.'s estate. *Pacaud & Huston*, 3 Q. L. R. 214, Q. B. 1877.

90. A firm of brewers sold to respondent, a notary, all the machinery, etc., in the brewery for one dollar in hand, and other good consideration, part of which was that respondent should endorse notes for the vendors from time to time as required to the extent of $2000. There was no delivery of the effects sold, but respondent leased them back to the vendors for three years at the rate of $100 per year.—*Held*, that the sale was simulated, and was in reality a pledging of the moveables claimed to have been sold rather than a sale. *Dupuy & Cushing*, 22 L. C. J. 201, Q. B. 1878, & 3 L. N. 171, & 24 L. C. J. 151, P. C. 1880.

XXXIII. Stoppage in Transitu.

91. The petitioner, a merchant, of Leeds, England, sought by revendication to recover possession of goods sold and sent to Montreal, where they had been deposited and were still lying in the Custom House, on the ground that the buyer had in the meantime become insolvent. The assignee opposed the revendication under sec. 82 of the Insolvent Act,—*Held*, maintaining the petition, that they had not been delivered in terms of art. 1513 of the Civil Code. *Thomson & Greenwood*, 9 R. L. 379, S. C. 1877.

XXXIV. To Avoid Sequestration.

92. Plaintiff brought an action against the defendant, founded upon an alleged sale to him by the former, through the agency of T., on the 30th of May, 1875, and asked for a title. The action was served on the 24th of June last; and on the 30th of this month the plaintiff presented a petition for sequestration, founded on the fact of the pendency of the action, and also upon one other allegation only, viz., that the defen-

dant retains possession of the property illegally. This petition was answered by the defendant by an allegation that he had sold the property to D., on the 21st June, by deed before notary on that day, and registered on the 23rd of June. The plaintiff replied that this sale to D. was simulated and fraudulent. T., the agent who sold to the plaintiff, swore that he met D. on two occensions—first, about the 5th or 6th of June, and subsequently on the 10th. On the first occasion T. told him he had sold this property to plaintiff, and the only remark D. made was that it was a considerable piece of land. On the second occasion, D. told T. that he had purchased the property. T., asked him how that could be, seeing what he had told him a few days before. The answer was that even at that time the sale had been completed.—*Held*, that the sale was simulated, and sequestration ordered. *Farmer & O'Neil*, S. C. 1876.

XXXV. To Two Persons.

93. Where a party has obliged himself successively to two persons to deliver to each of them a certain moveable article, that one of the two who, in good faith on his part, has been put in actual possession will be preferred, and remain owner of the thing, although the purchase by the other was anterior in date. *Staniforth* v. *McNeely*, 22 L. C. J. 50, S. C. R. 1877; & *Dupuis* v. *Racine*, 1 L. N. 486, S. C. R. 1878; 1027 C. C.

94. Action of damages for the demolition of a frame house which had been bought by the plaintiff from one of the defendants, who had subsequently sold it to his mother, as the plaintiff alleged, in order to defraud him. Plea *inter alia* that the house was an immoveable, and was in possession of vendor's mother who had registered.—*Held*, that as the house had been removed from one place to another, and as, moreover, the defendants themselves had already treated it as a moveable, that it was subject to art. 1027 C. C., and plaintiff was entitled to judgment. *Quintal* v. *Mondou*, 3 L. N. 166, S. C. 1880.

XXXVI. Vendor not Liable in Damages for Failure to Deliver What was Sold by Mistake and Which Proved to Belong to Another. *Fulton & McDonnell*, 1 L. N. 531, Q. B. 1878.

XXXVII. Warranty.

95. An imperfect wooden drain connecting the closets and sinks of a house with the common sewer in the street of a city is a latent defect against which the seller is obliged by law to warrant the buyer, where, from the character of the house the buyer had reason to believe the drains were constructed in a proper manner. *Ibbotson & Ouimet*, 21 L. C. J. 53, Q. B. 1876; 1522 C. C.

96. The plaintiff in the principal action purchased under a deed of sale containing a declaration that the emplacement sold was *libre de toutes dettes et hypothèques*. It appeared that at the time of sale the property of which the emplacement sold formed a part was subject to a hypothec of $2000, created by one L. F., by deed dated the 6th July, 1871, and registered the following day. The plaintiff, in consequence, brought an action praying that the deed of sale to him should be annulled, unless the defendant caused the said hypothec and another mentioned in the declaration to be discharged. The defendant sued his vendors *en garantie*, and they in turn sued their vendors *en arriere garantie*. The action *en arriere garantie* was founded on a deed of sale with warranty *contre toutes espèces de troubles ou évictions qui pourront leur survenir de n'importe quelle source*, but did not contain the clause of *franc et quitte*.—*Held*, that under this deed the purchaser could not demand resiliation of the sale in default of the removal of certain hypothecs which afterwards appeared to be charged upon the property. *Talbot* v. *Belivcau*, 4 Q. L. R. 104, S. C. R. 1876.

97. The vendor of a *créance* with promise to *garantie, fournier et faire valoir* is surety for the solvency of his debtor only, and is not *obligé* for the payment of the debt transferred, and the cessionaire therefore can exercise his recourse *en garantie* only after discussing the property of the debtor and establishing his insolvency. *Homier & Brosseau*, 1 L. N. 62, S. C. 1877.

98. Where action was brought on a *bon* given as boot in an exchange of horses, and defendant pleaded a redhibitory vice in the horse he received—*Held*, that his right waived by the delay which was from 23rd June to 20th Sept. *Verreau* v. *Poupart*, 21 L. C. J. 326, S. C. 1877.

99. An action brought by the purchaser of a horse for *vice redhibitoire* seventeen days after he had taken the horse home, was *held* too late. *Donihee & Murphy*, 2 L. N. 94, Q. B. 1879.

100. The defendant by deed of transfer of 31st May, 1875, transferred to plaintiffs a *prix de vente* with guarantee. The defendant on being sued objected that the plaintiff had not used diligence in discussing the principal debtor. As a matter of fact the plaintiff was not bound to discuss the principal debtor, being exempt by the deed, but had done so—*Held*, that in such case he could only be held liable for gross negligence. Action maintained. *Montreal Loan & Mortgage Co.* v. *Belle*, 2 L. N. 284, S. C. 1879.

101. Where the defendants returned a consignment of goods purchased from the plaintiffs as not being according to sample, except one piece which was detained as security for freight which had been paid—*Held*, that under the circumstances they had a right to return the goods, and their having retained one piece in order to reimburse themselves for money disbursed was not a waiver of their right to do so. *McInnes & Vezina*, 2 L. N. 315, Q. B. 1879.

102. The plaintiff and defendant exchanged horses, and the defendant got $40.52 swap money. That was on the 10th December. On the 13th plaintiff tried the horse, and found him unsound and worthless. Plaintiff says "*le cheval avait le rale et l'asthme.*" He accordingly prayed that the defendant be condemned to take back his horse and to refund him the $40.52. The plea was to the effect that the *vice* in the horse was easily discernible; that the horse was known by plaintiff to have the *souffle*, and de-

fendant further said that plaintiff had never tendered the horse back—*Held*, that as the vice complained of was not a *defaut caché*, and as no express warranty was proved, that the action would be dismissed. *Crevier* v. *Chayer*, 3 L. N. 84, S. C. 1880.

XXXVIII. What is, *see* PLEDGE.

103. In a seizure of certain horses, harness, etc., an intervention was filed, based on a deed the material portion of which was as follows: "*Et pour sureté du remboursement et paiement* "*d'icelle somme le dit D.C. débiteur à trans-* "*porté et mis en mains du dit C. G. les chevaux* "*et harnais et ce dernier pourra en jouir à sa* "*disposition néanmoins en courir aucuns ris-* "*ques jusqu'au paiement par le dit comparant* "*de la somme susdite temps auquel le dit C. G.* "*remettra les dits objets en mains du dit débiteur* "*n'a pas effectua le remboursement de la dite* "*somme le dit C. G. gardera pardevers lui les* "*dits objets et en sera et restera propriétaire.*" The debt was not paid before 1st August, but at the time of the seizure (August 31) the intervenants were not in possession of the horses—*Held*, confirming judgment of court below,* that the agreement was simply a pledging of the horses and not a sale. *Cotté* v. *Currie*, 2 L. N. 348, Q. B. 1879.

104. Where a firm of grain brokers borrowed 25,000 bushels of corn to be returned in kind, and deposited a sum of money as security—*Held*, that the return of the corn, according to this arrangement, did not constitute a sale so as to give them a privilege for a balance of the money unpaid. *Borrowman & Angus*, 2 L. N. 92, 24 L. C. J. 1, Q. B. 1879.

SALES.

I. Commission on, *see* AGENCY, BROKERS.

SALVAGE.

I. Lien for, *see* MERCHANT SHIPPING.
II. Remuneration for, *see* BOTTOMRY AND RESPONDENTIA.

SCHOOL COMMISSIONERS—*See* COMMON SCHOOLS.

I. Liability of, on Contracts with Teachers.

105. The defendants, as school commissioners, engaged a school teacher for a certain section under their control, and afterwards, without apparent cause, engaged another in her place to whom they paid the salary. Action by their successors in office to recover the amount of salary so paid—*Held*, that pleas of want of notice and of prescription would not hold, but as the action was stated to have been by reason of the money having been illegally paid to the other, and without cause, whereas the payment was perfectly legal, and damages only should have been demanded, the action would be dismissed without costs. *School Commissioners of St. Marthe* v. *St. Pierre*, 2 L. N. 343, S. C. 1879.

* 22 L. C. J. 34.

SCHOOL TAXES.

I. Action for.
II. Damages for Illegal Seizure for, *see* DAMAGES.
III. Prescription of, *see* PRESCRIPTION.

I. Action for.

106. School taxes cannot be sued for in the Superior Court. *Corporation of Township of Acton & Felton*, 24 L. C. J. 113, S. C. R. 1879.

SEALS.

I. Power of Provinces to Appoint and Alter.*
II. Removal of. †

*Power of Provinces to Appoint and Alter.

Whereas doubts have arisen as to the power of appointing and altering the Great Seals of the Provinces, other than Ontario and Quebec, and also as to the validity of instruments sealed with the seal heretofore used as the Great Seal of the Province of Nova Scotia, and whereas it is right that all the Provinces should be on the same footing with respect to their Great Seals, and whereas the Legislature of the Province of Nova Scotia has passed an Act empowering the Lieutenant Governor in Council to alter the Great Seal, and also an Act validating all instruments sealed with the seal heretofore used as the Great Seal, and whereas the Legislative Council and Assembly of Nova Scotia have passed addresses praying for legislation in the Parliament of the United Kingdom to the same intent, and whereas it is expedient, so far as the Parliament of Canada may have power to act in the premises, to remove the said doubts, therefore Her Majesty by and with the consent of the Senate and House of Commons of Canada enacts and declares as follows:—The Lieutenant-Governor of each Province in Council has the power of appointing and of altering from time to time the Great Seal of the Province. All instruments sealed with the seal heretofore used as the Great Seal of the Province of Nova Scotia are hereby declared to have been and to be legal and valid notwithstanding any doubt which may exist as to such seal being the Great Seal.

†Removal of.

Act respecting the notification for, and the attendance at the removal of seals and inventories.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

1. Whenever any of the persons entitled to be present at the removal of seals, or to take part in an inventory, reside outside of the Province, they need not be summoned; but in such case a judicial procurator is named by a judge of the Superior Court, on application of the person demanding the removal of seals or the making of an inventory, to represent such persons; and such judicial procurator must be present or have been notified to be present.

2. Notwithstanding the nomination of a judicial procurator to represent the persons mentioned in the preceding section such persons or any of them may also be

SECRETARY-TREASURER.

I. Of School Commissioners. Account of Administration of, *see* ACCOUNT.

SECRETION.

I. Of Estate of Co-partitioners, *see* PARTITION.
II. Outside the Province.
III. What is.

II. Outside the Province.

107. Secretion committed in Ontario may be ground of capias in Quebec, if the debtor be found there. *Gault* v. *Robertson*, 21 L. C. J. 281, S. C. R. 1877.

III. What is, *see* CAPIAS.

108. Appellant borrowed a large sum of money on a property which it appeared subsequently did not belong to him absolutely, but was subject to a substitution in favor of his wife and children. The money was first deposited in a bank in his own name, but subsequently the words "mortgage" in trust for E. A. M. were added; shortly afterwards the money was all withdrawn and expended—*Held*, to constitute secretion. *Molson & Carter*, 3 L. N. 258, Q. B. 1880.

109. Where a defendant, not being a trader, whose effects were under seizure, made an assignment of them to an assignee, who sold them to the father-in-law of the defendant, the whole transaction being evidently simulated and effected for the purpose of defrauding the plaintiffs—*Held*, that this constituted secretion under art. 782 C. C. P., so as to make the defendant liable to *contrainte par corps*. *Jacques Cartier Permanent Building Society* v. *Roy*, 3 L. N. 314, C. C. 1880.

SECURITY.

I. For Appropriation in Building Societies, *see* BUILDING SOCIETIES.
II. In Appeal, *see* APPEAL.

SEDUCTION.

I. Action for.

110. An action in declaration of paternity and for maintenance of the child may be brought by the mother in her own name. *Kingsborough & Pownd*, 4 Q. L. R. 11, Q. B. 1878.

present and take part, or may send a power of attorney to the judicial procurator or to any other person whom they think fit to do so; and such appearance or appointment of mandatory shall terminate the mandate of the judicial procurator.

3. Section 4 of the Act 39 Vic. cap. 33 shall apply to proceedings under this Act.

4. Articles 1293 and 1305 of the Code of Civil Procedure are supplemented in the particulars contained in this Act. Q. 41 Vic. cap. 11.

SEIGNIORIAL RIGHTS.

I. Censitaires
II. Delay to File Hypothec.
III. Errors in Cadastre.
IV. Lods et Ventes.
V. Opposition to Preserve Privilege under.
VI. Property Acquired by Crown.
VII. Ranking of Claims for Cens et Rentes.
VIII. Registration of.
IX. Reunion of Lands.

I. Censitaires.

111. The advantages granted to *censitaires* by the Statute 22 Vic. cap. 48 are intended for the benefit of the proprietors then existing, and cannot be claimed by their *auteurs* and predecessors. *Mongenais & Rochon*, 7 R. L. 674, Q. B. 1876.

II. Delay to File Hypothec.

112. The delay of six months prescribed by sec. 41 of cap. 40 of the Con. Stats. of Lower Canada for the production of hypothecary oppositions in cases where the funds for a seigniorial indemnity are still in the hands of the Government does not apply to the legal representatives of a personal debtor. *Hart & David*, 4 Q. L. R. 88, Q. B. 1878.

III. Errors in Cadastre.

113. Plaintiffs alleged that by error the defendant's property within their seigniory was set down in the cadastre of the seigniory as containing 335 arpents 8 perches, whereas it really contained 1,084 arpents, 35 perches. They claimed $159.20 for five years' arrears of rent on the excess of land on which nothing had been paid. Plea that the plaintiffs could not claim *rente* for more land than was set down in the *cadastre*, which constituted a final title between the parties—*Held*, that under 29-30 Vic. cap. 30, sec. 2, the plaintiff was entitled to *rente* for the whole amount of land, but that he should have had a survey made establishing the extent of the land before bringing the action, and as that was not done the action would fail. *DeBellefeuille* v. *Piché*, 2 L. N. 115, & 2 L. J. 314, S. C. 1879.

114. And *held*, also, that notice of such survey should have been given to the [illegible], the only evidence of which was a bailiff's return, which was insufficient. *Ib.*

IV. Lods et Ventes.

115. A constituted rent created for the abolition of *lods et ventes*, in virtue of 8 Vic. cap. 42,

sec. 23, is, by the Seigniorial Act of 1854 and its amendments, placed to the charge of the public treasury, and is no longer due by the land which it affected. *Stuart* v. *Gagné & Paquin*, 5 Q. L. R. 227, S. C. R. 1879.

V. Opposition to Preserve Privileges Under.

116. In order to preserve the privileges for indemnity arising under the Seigniorial Act abolishing *lods et rentes* and other casual rights, and paid by the Dominion Government to the transferee of the legal possessor of the seigniory at the time of the transfer of the indemnity, the *appelés* to a substitution are bound in terms of the said Seigniorial Act, by themselves or by their tutors or curators, to file an opposition to the distribution of the money arising from the redemption of the seigniorial rights in the seigniory within the six months following the first publication of the notice of the deposit of the cadastre; and in case of neglect or default on their part to conform themselves to the provisions of the Seigniorial Act in this respect the moneys arising from the redemption of the seigniorial rights will cease to be affected by or subject in any way to their privilege and rights arising under the substitution, and will become a claim purely personal and independent of the *grèvé de substitution* who is in possession of the seigniory, and who will from that time be free to legally sell or transfer them. *Panet & Boissean & Dionne*, 10 R. L. 163, Q. B. 1879.

117. The default to produce within six months from the deposit of the cadastre of a seigniory the opposition required by sections 40 and 41 of the Seigniorial Act, is fatal and third parties interested have the right to avail themselves of it. *Panet & Brosseau*, 5 Q. L. R. 377, Q. B. 1879.

VI. Property Acquired by Crown.

118. The respondents, the seigneuresses of the *fief* St. Augustin, claimed certain seigniorial dues on an immoveable in the *fief*, which the appellant had acquired from the Provincial Government in 1874, by exchange for other property. The appellant pleaded that the property had been acquired by the Crown for a purpose of public utility, and the tenure had been changed; that the respondents had been indemnified for this change of tenure; that while the land was the property of the Crown the seigniorial rights in the *fief* were abolished, and the land passed into the possession of the appellant free from all seigniorial rights—*Held*, reversing the judgment of the court below, that having been acquired by the Crown for a purpose of public utility, viz., for a lunatic asylum, it was free forever from all seigniorial rights of the *fief* St. Augustin, with the exception of the right to indemnity for loss of the *mouvance*, which had been paid; and the exchange made by the Provincial Government of this lot for another owned by the appellant did not revive the seigniorial rights which had been abolished by its reunion with the Crown domain. *Middlemiss & Nuns of l'Hotel Dieu of Montreal*, 1 L. N. 51, Q. B. 1877, & 22 L. C. J. 149, & 2 L. N. 96, P. C. 1878.

VII. Ranking of Claims for Cens et Rentes.

119. Where the proceeds of a sale by the sheriff of an immoveable are insufficient to pay the claims in full of two rival claimants having the same kind of privilege, namely, the one for arrears of *cens et rentes* accrued prior to the *grèvé de substitution*, and the other for arrears accrued since, the proceeds will be divided *pro rata* between the claimants, according to the amount of their respective claims. *Hamilton & Christie*, 24 L. C. J. 140, Q. B. 1844.

VIII. Registration of.

120. A lessee under an emphyteutic lease from a seignior is also a seignior, and concessions granted by him *à titre de rentes constituées* are exempt from registration. *McCord & Les Religieuses Sœurs de l'Hotel Dieu de Montréal*, 2 L. N. 417, Q. B. 1879.

IX. Reunion of Lands.

121. Before 1854, when a seignior became proprietor of a property in his seigniory, either by purchase, succession, exchange, or by any other title, there was reunion of this land to the seigniorial domain. *Pouliot & Fraser*, 3 Q. L. R. 349, S. C. 1877.

122. And in the case of inheritance this reunion took place not in virtue of the rule "*subrogatum capit naturam subrogati*, but in virtue of Art. 53 of the Customs of Paris. *Ib.*

123. Nevertheless where the seignior was subject to a substitution the reunion was in law only temporary, and ceased at the opening of the substitution. *Ib.*

124. But if in the case of exchange by a seignior *grèvé de substitution* the *appelé* ratified the exchange, either expressly or tacitly, the immoveable received in exchange was then subrogated for that, subject to substitution. *Ib.*

125. *Grèvés de substitution* are proprietors, and though they cannot bind the *appelés* they can alienate the substituted property, and their acts of alienation are valid until the opening of the substitution. *Ib.*

I. Of Property of Succession, *see* SUCCESSION, Liability of Ascendant.
II. Of Railways, *see* RAILWAYS.

SEPARATION DE PATRIMOINE

—*See* PARTITION of Property Bequeathed.

SEQUESTRATION.

I. Action by Sequestre.
II. Judicial.
III. Power to Order.
IV. Right of.
V. Sale to Avoid.

I. Action by Sequestre.

126. To an action by a *sequestre* to set aside a pretended donation of the property sequestrated, and for an account, the defendants pleaded an exception to the form, which was dismissed as wrongly pleaded, and on the merits the court said the reasons for denying the right of action in the person of the *sequestre judiciare* are bad. In the first place, however, I should observe there is a precedent directly in point in favor of the right. It is the case of this same plaintiff, I believe, against Jones. In the next place, the reason on which the argument is founded has no application. It is said that the functions of a *sequestre* are of an administrative nature only, but the plaintiff answers truly that even admitting that as law, yet that the present action is an act of administration merely, for there is a plain distinction between an action to annul an instrument valid *prima facie*, and one to have it declared that such a donation never was or could have been valid under any circumstances whatever; between an action to cause the thing to be annulled, and one to have it declared that it is null already and of no effect. *Laframboise* v. *D'Amour*, S. C. 1876.

II. Judicial.

127. On a demand for the appointment of a sequestrator to an immoveable during the pending of litigious proceedings concerning—*Held*, that the powers of a judge were not confined to the cases laid down in the Code,* which were simply indicative, but extended to all cases in which it seemed in the interests of the parties that a sequestration should be ordered. *Drummond* v. *Holland*, 2 L. N. 286, & 23 L. C. J. 241; & *The Heritable Securities and Mortgage Association* v. *Racine*, 2 L. N. 287, & 23 L. J. C. 242, S. C. 1879.

128. And thus when a plaintiff has obtained judgment against defendant upon a mortgage, the plaintiff, upon affidavit that the property is insufficient security for the mortgage debt, may prevent the defendant from collecting the rents of the property, and to that end may have a sequestrator appointed to collect the rents, even while an inscription in review from the judgment is pending. *Ib.* & 876 C. C. P.

129. On a *requête afin d'opposition* on the ground that the judgment ordering the appointment of a sequestrator had not been properly served—*Held*, that the court (Practice division) had no jurisdiction to revise the judgment ordering the *sequêstre*, and that it would have to stand. *Ib.*, 2 L. N. 300.

III. Power to Order.

130. A judge of the Superior Court has power to appoint a sequestrator *pendente lite* in an action to remove executors under a will from office for maladministration. *Brooke & Bloomfield*, 23 L. C. J. 140, Q. B. 1875.

IV. Right of.

131. Where, by the terms of a will, certain bonds were left to a person "to be used for the support of his family."—*Held*, that the family was the real legatee, and that they could demand *sequêstre* if he was misusing the trust. *Noad* v. *Noad*, 21 L. C. J. 312, S. C. 1874.

* The court upon application by the interested party may, according to circumstances, order the sequestration of a thing, moveable or immoveable, concerning the property or possession of which two or more persons are in litigation. 1823 C. C.

SEQUESTRATOR.

I. Appointment of Assignee in Insolvency does not affect, *see* INSOLVENCY, Effect of.

II. Intervention in Appointment of.

132. Petition for the appointment of a sequestrator pending a hypothecary action. Demand in intervention of the ground of purchase of the property in question by deed passed before the institution of the action. It appeared, however, that the deed was not registered until after the institution of the action.—*Held*, dismissing the demand in intervention, that although it would stay proceedings on the principal action it could not stay proceedings already commenced for the appointment of a sequestrator. *Crossley & McKeand & Baylis*, 3 L. N. 263, S. C. 1880.

SEQUESTRE—*See* SEQUESTRATION.

SERMENT JUDICIARE—*See* EVIDENCE, Judicial Oath.

SERMENT SUPPLETOIRE—*See* EVIDENCE.

SERVANTS—*See* MASTER AND SERVANTS.

SERVICE.

I. Of Writs, &c., *see* PROCEDURE.

SERVICES.

I. Of Volunteers, *see* MILITIA.

SERVITUDES.

I. Mitoyenneté.
II. Possession of not Equivalent to Registration.
III. Right of Passage.
IV. Views.
V. Watercourses.
VI. What are.

I. Mitoyenneté.

133. Appellant complained of the respondent that he had caused a three-story house to be built on the lot adjoining her house, and had used the wall without having previously established the value by experts and paid for it. The appellant asked for the demolition of the building and for damages. The court below ordered the appointment of experts to ascertain the value of the *mitoyenneté*. The article of the Code 518 said that every owner of property adjoining a wall has the privilege of making it common in whole or in part, by paying to the proprietor of the wall half the value of the part he wishes to render common, and half the value of the ground on which the wall is built—*Held*, that this should be done in advance, and that the respondent had not acted in accordance with law in proceeding with his building before making any arrangement, and the sum of $100 damages would be awarded for the contravention of the law. But the court would not order the demolition of the wall until the respondent had an opportunity of getting the value of the *mitoyenneté* determined. *Hart & Joyce*, Q. B. 1876, 1 S. C. Rep. 321, Su. Ct. 1877.

134. Action under art. 519 of the Civil Code.* In December, 1872, appellant acquired from the representatives of the succession of the late H. B. S., a lot of land in Durocher St., in the City of Montreal, containing 31 feet in front and 100 feet in depth, with right of passage through lane in rear, and without buildings. He afterwards built a two storey house on the lot with French roof, with rough stone front and cut stone facings. In the spring of 1874 the respondent built a brick house of three storeys on the neighboring lot. In July, 1874 almost immediately after the respondent had commenced his work, the appellant protested him for certain illegal acts, notwithstanding which the respondent continued his work, and without notice, and without the knowledge and consent of appellant, built into his north-west wall, using it as a *mur* mitoyen, and to which he had no right.—*Held*, that he would be condemned to demolish his building unless within a certain delay he did not take means to acquire the right of *mitoyenneté*, and in any case would be condemned in damages. *Hart & Joyce*, 8 R. L. 239, Q. B. 1876, & 1 S. C. Rep. 321, Su. Ct. 1877.

* One neighbor cannot make any recess in the body of a common wall, nor can he apply or rest any work there without the consent of the other, or, on his refusal, without having caused to be settled by experts the necessary means to prevent the new work from being injurious to the rights of the other. 519 C. C.

II. Possession of not Equivalent to Registration.

135. In an action concerning a right of passage which was granted by a deed executed some twenty-eight years previously, but which was not registered until the institution of the action—*Held*, that, notwithstanding public use and possession during that time, that such possession would not serve to establish a title to a servitude on the property of another, although it might prevent the acquisition of a servitude on your own. *Stringer & Crawford*, 5 Q. L. R. 89, S. C. 1875, & 1 S. C. Rep. 321, Su. Ct.

III. Right of Passage.

136. Where the proprietor of a *fonds enclavé*, within the meaning of Article 540 of the Civil Code,* had enjoyed a right of passage with others over an adjoining property for thirty years and upwards—*Held*, that such road was to be deemed a public road, and that he was not liable to be disturbed in his enjoyment by reason merely of his being unable to produce a written title as the basis of his enjoyment. *Parent* v. *Daigle*, 4 Q. L. R. 154, S. C. R. 1871; & *Theoret & Ouimet*, 4 Q. L. R. 250, S. C. R. 1878.

137. By deed of the 25th April, 1854, the late J. G. conveyed to the appellant and his brother, firstly, a lot in the lower town of Quebec, thirty feet two inches and a half in front by seventy-one feet in depth, bounded in front by St. Peter st., in rear by the lot hereinafter described, on the north by a property belonging to the said J. G., with whom the division walls are common *mitoyens*, and on the south by J. M., together with the house, store and other buildings which were erected on the said lot of ground at the time of the passing of the said promise of sale, *and the right of passage to and from the store and yard in common with the adjoining properties, by and through the passage which is under the adjoining house on the side which belongs to the said J. G.*, which said passage is to be maintained and kept in repair at the joint expense of all those using the same according to the old titles of the property, whereof the one presently used forms part. The difficulty which arose was as to the exercise by one of the respondents of certain servitudes upon the adjoining properties, which servitudes he claimed had been ceded to him and to his brother by the deed in question, he having since acquired the rights of his brother—*Held*, that under the evidence a sufficient title was established, and that the appellant had only a simple right of passage, and not right to make openings and otherwise encumber the passage. *Tetu & Gibb*, 5 Q. L. R. 172, & 10 R. L. 483, Q. B. 1879.

IV. Views.

138. Action complaining that the defendant, whose property adjoined the plaintiff's, had con-

* A proprietor whose land is enclosed on all sides by that of others, and who has no communication with the public road, may claim a way upon that of his neighbors for the use of his property, subject to an indemnity proportionate to the damage he may cause. 540 C. C.

structed a stable within two or three feet of the plaintiff's property, and with doors one above the other looking on to the plaintiff's property and asking that the defendant be condemned to remove the servitude thus created—*Held*, that as the plaintiff had in turn built a shed which stopped the view he could not complain of the servitude. *Touchette & Roy*, 3 Q. L. R. 260, S. C. R. 1877.

V. WATER COURSES.

139. Action of damages for loss suffered by the construction of a dam in a water course which crossed plaintiff's property—*Held*, that the Act 19-20 Vic. cap. 104, which permits proprietors to build dams in water courses on their property for the use of mills, creates a legal servitude on the adjoining properties on to which the water is made to reflow in consequence; the proprietors of which have only a right to an indemnity, and cannot demand the demolition of the dam, except where unable to obtain payment of such indemnity. *Jean* v. *Gauthier*, 5 Q. L. R. 138, S. C. R. 1879.

140. And *held*, also, that as the building of the dam is neither an offence nor a *quasi* offence the prescription of two years does not apply to the claim for damages, nor is there any solidarity between the proprietors of the constructions which caused the damage, each being held only for the part to which he contributed. *Ib.*

141. That the special means provided by the Act referred to for establishing and determining the amount of the indemnity does not take away the means provided by the common law, which can only be done by an express enactment. *Ib.*

VI. WHAT ARE.

142. The plaintiff sold a property in St. Antoine suburbs, in the city of Montreal, and in the deed of sale inserted a clause in the following words: "*It est encore entendu que toute "batisse qu'érigera le dit acquéreur sur le dit "terrain sera en ligne avec celle du dit vendeur.*" The vendee having resold the property his transferee commenced to build 12 ft. 6 in. in front of the line of plaintiff's building—*Held*, that the above words created a servitude, and the new building must be demolished. *Hamilton* v. *Wall*, 2 L. N. 210, & 24 L. C. J. 49, Q. B. 1879.

143. On the 16th of November, 1804, the Seminary conceded to one S. a farm at Sault au Recollet, upon the condition, among others, that he should furnish from the land conceded a quantity thereof sufficient for the road in front, between the farm thus conceded and the domain of the Seminary; that he, his heirs and assigns, should not only furnish the requisite portion of land for the road, but should make it, maintain it in good repair, and keep the ditches and fences on each side in thorough order so long as the Seminary and their successors should hold and possess the opposite domain. In the French language it is as follows:—Pour entr'autres charges et conditions "celle de fournir toute la largeur du chemin sur le front de la dite terre et ensuite de le faire et l'entretenir et meme de faire les fosses et clotures des deux cotés du dit chemin tant que les dits Intimés possederaient [illegible] de leur domaine opposée et de plus a la charge avec les autres concessionnaires de la petite Cote St. Michel, du chemin de ligne de trois ou quatre arpents qui repond a la Cote St. Laurent a proportion de l'etendue de leur terre." It was then formally agreed that S., his heirs and assigns, should hold and enjoy the farm, subject to the above condition among others. The deed was duly enregistered on the 31st of October, 1844, eighteen years prior to the appellant's acquisition from the sheriff—*Held*, that this constituted a servitude under Art. 499 of the Civil Code* and the ruling in *Murray* and *McPherson*.† *Dorion & Seminary of Montreal*, Q. B. 1877, & 5 L. R. 362, P. C. 1880.

144. And that such servitude still existed notwithstanding the sheriff's sale of the property, and notwithstanding no opposition was filed to protect it at the time of the sale.‡ *Ib.*

145. Nor was the property liberated from the servitude by appellant's possession under the sheriff's title for upwards of ten years without molestation, as it held good as long as the road remained open and used. *Ib.*

146. And in such case it was the duty of the appellant, the owner of the land, to keep the road in repair and to *garantie* the Seminary from all costs in connection therewith.§ *Ib.*

SESSIONS OF THE PEACE.

I. ACT RESPECTING.‖

---

* "A real servitude is a charge imposed on one real estate for the benefit of another belonging to a different proprietor."

† 1. Dig. p. 1219, art. 448.

‡ "A sheriff's sale does not discharge immoveables "from the servitudes with which they are charged." 709 C. C. P.

§ In regard to making the road and keeping it in repair, the following articles of the Code were cited;

"No. 554. These works are made at his cost, and not at that of the proprietor of the servient land, unless the title constituting the servitude establishes the contrary.

"No. 555. Even in the case where the proprietor of the servient land is charged by the title with making the necessary works for the exercise and for the preservation of the servitude, he may always free himself from the charge by abandoning the servient immoveables to the proprietor of the land to which the servitude is due."

‖ ACT RESPECTING THE TERMS OF THE COURT OF GENERAL SESSIONS OF THE PEACE IN THE DISTRICTS OF QUEBEC AND MONTREAL.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

1. The Lieutenant-Governor in Council may order that in future only two terms of the Court of General Sessions of the Peace shall be held in each of the districts of Quebec and Montreal, and he may, by proclamation, fix the period of such terms, and change the same from time to time as he shall deem advisable.

But it shall be lawful for the Lieutenant-Governor in Council at any time by proclamation to discontinue the holding of one or both of the said terms of the said Courts of General Sessions of the Peace in either of the said districts of Quebec or Montreal, and also by proclamation to re-establish the same if, in his opinion, the despatch of criminal business in each such district respectively so requires.

2. The Act of this Province 37 Vic. chap. 7, intituled, "An Act to diminish the number of terms of the Court of

SETTLEMENT.

I. Of Accounts, *see* ACCOUNTS.

SETTLERS.

I. Privileges of, Under Act, *see* EXECUTION, Exemptions.
II. Rights of, *see* SQUATTERS.

SETTING FIRE.

I. Indictment for, *see* CRIMINAL LAW, Indictment.

SET-OFF—*See* COMPENSATION.

SEWING MACHINES.

I. Privilege of Lessor on, *see* LESSOR AND LESSEE.

SHAREHOLDERS—*See* COMPANIES, CORPORATIONS, ETC.

SHARES.

I. Banks may make Advances on Security of, *see* BANKS.
II. Transfer of, *see* COMPANIES.

SHERIFF.

I. Powers of.
II. Sale of Lands by, *see* SALE, Judicial.
III. Security Given by.

I. Powers of.

147. A sheriff has no right to take from an *adjudicataire*, though a creditor, a bond for the purchase money, and an action brought on such an obligation was held bad. *Berard dit Lepine & Mathieu*, 21 L. C. J. 234, Q. B. 1876.

III. Surety Given by.

148. A surety bond given by a sheriff to Her Majesty for the faithful performance of his duties, and signed by his sureties, is valid, whether the formalities required by chap. 92 of the Con. Stat. of Lower Canada have been observed or not, and therefore although sec. 4, par. 2, of such statute provides that such surety bond will not be considered valid unless the sureties have justified as to their solvability up to the amount for which they have become surety, the omission of the sureties to justify their solvability will not render the suretyship invalid. *Blais & Gleason*, 6 Q. L. R. 202, Q. B. 1880.

149. And although sections 5 and 6 of said statute require the sheriff in case of the insolvency of one of the sureties to replace him within thirty days by another, and provides that if he neglects to do so he will be discharged from the office of sheriff, nevertheless the omission of the executive to discharge the sheriff in such case will not relieve the surety, who will remain responsible as well for the past as for the fut[illegible] *Ib.*

SHERIFF'S REPORT.

I. Inscription en faux against, *see* SALE, Judicial.

SHERIFF'S SALE—*See* SALE, Judicial.

SHERIFF'S TITLE.

I. Improbation of, *see* IMPROBATION.

SHIPPING—*See* MARITIME LAW, MERCHANT SHIPPING.

SHORT-HAND.

I. Depositions by, *see* PROCEDURE.

SICK NURSE.

I. Prescription of Claim of, *see* PRESCRIPTION.

SIGNATURE.

I. Pleading Denial of, *see* PLEADING.
II. Proof of.

II. Proof of.

150. Plaintiffs sued the defendant upon his

General Sessions of Peace in the districts of Quebec and Montreal," [illegible] hereby repealed; and sub-section 2 of section 2 of chapter 97 of the Consolidated Statutes for Lower Canada is amended by striking out in the third line of the said sub-section 2 of the said section the following words, " except those of Quebec and Montreal."

3. This Act shall come into force on the day of the sanction thereof.

obligation in favor of L. G., an insolvent, and represented by the plaintiffs, his assignees. The defendant's plea was that the obligation was simulated, and G. afterwards, in 1861, gave him a discharge, and later still, in April, 1870, G. gave him his note for $1,400, containing a promise that if it was not paid it was to acquit the obligation of the defendant. The answer specially denied all this, and said besides that if anything of the kind was done it was done by fraud and connivance, and G. was notoriously insolvent at that time. The plaintiff asked for judgment upon an authentic *acte*. The defendant produced the two documents purporting to discharge him; neither party made any proof. *Per Curiam*—Does the rule requiring an affidavit of the party denying the signature to be his own apply here? I think not. If this were opposed to G. himself, his affidavit would be required. The text of the law is there; but the reason of it does not apply any more than the text does to any but the party himself. The assignee here represents not G., but the creditors of G. If the latter could throw upon his assignee the burden of denying on oath a signature which no law or reason obliges him to know, he could defraud his creditors by giving antedated discharges for everything that was owing to his estate. There was no motion made to reject the plaintiff's answers, and in such a case it is to be observed that the date is all-important, and that, at all events, affidavit or no affidavit, ought to have been proved under the special denial that any such writing was ever made, and the fraud and connivance alleged against any such thing. Judgment for plaintiff. *Mclaugon & Prevost*, S. C. 1876.

SIGNIFICATION.

I. Of Transfer, *see* TRANSFER, Notice.

SKILL.

II. Damages Caused by Want of, *see* DAMAGES.

SLANDER—*See* LIBEL.

SNOW.

I. Liability for Accidents Caused by Snow Falling from Roofs of Buildings, *see* DAMAGES.

SOCIÉTÉS DE CONSTRUCTION—*See* BUILDING SOCIETIES.

SOLDIERS—*See* MILITIA.

SOLICITORS—*See* ADVOCATES, ATTORNEYS, &c.

SOUS SEING PRIVÉ—*See* CONTRACTS.

SPECIAL REPLICATION—*See* PLEADING.

SQUATTERS.

I. Sale of Improvements by.

151. In 1874 appellant sold to respondent his rights and pretensions in a certain lot of land in West Chester, which he had occupied for several years, and which belonged to one C. in Upper Canada. The sale to respondent was for $150, $50 of which was paid in cash, and the balance by two notes of $50 each. After respondent had been in possession a year C., the proprietor, turned up to sell the property he owned there. Appellant, who occupied other lots adjoining, entered into a lease with the proprietor, and respondent, who was very poor, asked to have his included in the same lease, which was done; and respondent continued in his possession without trouble or fear of trouble. He afterwards brought action to recover his money from appellant, on the ground that the latter had guaranteed his possession. In the Superior Court his action was dismissed. In review the judgment of the Superior Court was reversed and respondent was granted his conclusions, but in appeal the judgment of the Superior Court was restored. *Dubois & Croteau*, 8 R. L. 245, Q. B. 1876.

STAMPS.

I. Crown Exempt from Paying on Law Proceedings, *see* CROWN.

II. On Bills and Notes, *see* BILLS AND NOTES.

III. On Insurance Policies.

152. Insurance companies are liable to repay the amounts paid for stamps on insurance policies under Q. 39 Vic. cap. 7. *David* v. *Stadacona Insurance Co.*, 3 L. N., 118, C. C. 1880.

STATUS—*See* CIVIL STATUS.

I. Of Bailiff, *see* BAILIFFS.
II. Of Creditors in Insolvency, *see* INSOLVENCY.

STATUTES—*See* ACTS.

STEAMBOAT COMPANIES.

I. Liability of, *see* CARRIERS.

STEAMBOATS.

I. Liability of.

153. A steamboat company carrying passengers is liable for an accident occurring on the wharf where passengers are landed, to one of its passengers, owing to want of due precaution in not placing lights at night to show where there is danger from a slip constructed, and down which the respondent fell and was seriously injured. *St. Lawrence Steam Navigation Co. & Barlase*, 3 Q. L. R. 329, S. C., & 1 L. N. 32, Q. B. 1877.

STENOGRAPHER.

I. Notes of an Evidence to Support an Indictment for Perjury, *see* CRIMINAL LAW, Perjury.

STENOGRAPHERS' FEES.

I. Party Proceeding in Forma Pauperis Exempt from, *see* PROCEDURE.

STENOGRAPHY.

I. Depositions by, *see* PROCEDURE.

STOCK.

I. Subscription to, *see* COMPANIES.

STOCK IN TRADE.

II. Liability of Transferee, *see* TRANSFER.

STOLEN PROPERTY.

I. Pledge of, *see* PLEDGE.
II. Possession of not Proof of Having Received them Knowing them to be Stolen, *see* CRIMINAL LAW.

STOPPAGE IN TRANSITU—*See* SALE.

STORAGE—*See* BAILMENTS, WAREHOUSE, &c.

STREAMS—*See* RIVERS.

STREET RAILWAY—*See* QUEBEC STREET RAILWAY.

I. Right of Passage.

154. The Montreal City Passenger Railway Company was authorized by Statute (24 Vic. cap. 84) to construct a track upon and along the highways in the parish of Montreal leading into the streets of the city, and to use and occupy any and such parts of any of the streets or highways aforesaid as may be required for the purpose of their railway track and the laying of the rails and the running of their cars and carriages—*Held*, reversing the decision of the court below,* that it had exceeded its power, by laying the track on one side of a highway, within six feet from the line of the adjoining property, the value of which was thereby greatly diminished, and their duty was to have laid the track on the part of the highway used by vehicles, and not on one side where it was used by persons on foot, and where the running of the cars interfered with the access to the adjoining property. *Attorney General & Montreal City Passenger Railway Co.*, 2 L. N. 338, & 24 L. C. J. 60, & 10 R. L. 27, Q. B. 1879.

155. And *held*, also, that where a right of passage is given to a corporation or public body it should be exercised *ex æquo et bono* in accordance with the use and destination of the highway, so as to cause as little inconvenience as possible to the public and adjoining proprietors. *Ib.*

STREETS—*See* MUNICIPAL CORPORATIONS.

I. Change of Level of.

15[illegible] Where a corporation changes the level

*1 L. N. 380.

of a street as it has actually existed for several years, although no grade for such street has been formally determined previously, it is bound to proceed under 37 Vic. cap. 51, secs. 176 and 183, to the appointment of commissioners to fix the amount of the indemnity to be paid to owners of property aggrieved by the change, the same as in an ordinary case where a level is changed. *Joseph* v. *The City of Montreal*, 21 L. C. J. 232, S. C. 1877.

SUB-LEASE—*See* LEASE.

SUBPŒNAS—*See* PROCEDURE, WITNESSES.

SUBROGATION—*See* OBLIGATIONS.

I. Costs of Action by Surrogée, *see* COSTS.
II. Of Companies in Rights of Promoters, *see* COMPANIES.
III. Of Insurers, *see* ACTION, Interest in.

SUBSCRIPTION.

I. Demurrer to Action on, *see* PLEADING, Demurrer.
II. To Railway by Municipal Corporations, *see* MONTREAL.
III. To Stock in Companies, *see* COMPANIES.

SUBSTITUTION.

I. Alienation of Substituted Property.
II. Curator Cannot Purchase Property of.
III. Of Attorneys, *see* ATTORNEYS.
IV. Prohibition to Alienate.
V. Rights of Substitutes, *see* USUFRUCT.
VI. Rights of Parties Under.
VII. Tutor to, cannot Purchase Property of.
VIII. What is.

I. Alienation of Substituted Property.

157. *Grevés de substitution* are proprietors, and though they cannot bind the *appelés* they can alienate the substituted property, and their acts of alienation are valid until the opening of the substitution. *Pouliot & Fraser*, 3 Q. L. R. 349, S. C. 1877.

II. Curator Cannot Purchase Property of.

158. A curator to a substitution cannot by interposing a third person purchase the immoveable property of the substitution when sold by licitation. *Benoit & Benoit*, 8 R. L. 425, Q. B. 1876.

IV. Prohibition to Alienate.

159. By 18 Vic. cap. 250 appellant and his brother were authorized to sell certain entailed property in consideration of a non-redeemable rent representing the value of the property. On 7th September, 1860, appellant and E. F. assigned to their brother A. F. a piece of land forming part of the above entailed property in consideration of a *rente foncière* of six pounds, payable the first day of October of each year. The deed was registered and contained the following stipulation: "But it is agreed that "the assignee cannot alienate in any manner "whatsoever the said land nor any part thereof "to any person without the express and written "consent of the assignors under penalty of "the nullity of the said deed." The property was subsequently seized by a judgment creditor of A. F., and appellant opposed the sale and asked that the seizure be declared null, because the property seized could not be sold by reason of the above prohibition to alienate—*Held*, on appeal, affirming the judgment of the court below, that the deed was made in accordance with the provisions of 18 Vic. cap. 250, and being a purely onerous title on its face the prohibition to alienate contained in said deed was void. *Fraser & Pouliot*, 4 S. C. Re 515, Su. Ct. 1879; 970 C. C.*

VI. Rights of Parties Under.

160. The plaintiff and his sister claimed under the will of their father that two pieces of land which had fallen to the share of their brother deceased in a provisional partage of substituted properties had returned to them, because the deceased brother left no legitimate issue to take up the substitution at his death, and they asked that the defendants be condemned to restore the two lots or their value.

Held, that land purchased by the *grevé de substitution*, arising out of the redemption of a constituted rent which belongs to the substitution, takes the place in all respects of the constituted rent, so much so that the *appelés* to the substitution have a right to the land or its value, and not merely to the value of the constituted rent. *Guy & Guy*, 22 L. C. J. 213, Q. B. 1877.

161. And, in another case, arising out of the same property, to which the thirty years' prescription was pleaded—*Held*, that a usufructuary could confer no title on which prescription could be founded. *Guy & Guy*, 2 L. N. 109, S. C. 1879.

162. And in still another case, arising out of the same property, plaintiff brought action to recover the difference between the value of the property as found by the experts after the judgment in their favor and the value of it at the time of the death of the brother, from whom

* The prohibition to alienate things sold or conveyed by purely onerous title is void. 970 C. C.

they claimed three years previously—*Held*, that no such right existed, especially as the property was entailed on their children, and they could not have sold it in any case, so that it made no difference to them whether they got the thing that has since diminished in value, or whether they got the now diminished value of the thing. *Guy & Guy*, 2 L. N. 110, S. C. 1879.

VII. Tutor to, cannot Purchase Property of.

163. On the merits of a petition *en nullité de decrêt* it appeared that the defendant, both personally and in his quality of tutor to the substitution created in favor of the minor children of whom the petitioner was tutor, caused to be sold by voluntary licitation the land in question belonging to the succession of which his wife was one of the heirs. The deed of sale was passed to one Goyette, who the same day signed a declaration that he had bought the land for the account and profit of the defendant, one of the vendors named in said deed of sale, and that he had only lent his name to the defendant in doing so. Defendant was a party to this declaration and made the deed his own personal affair—*Held*, that the defendant, from his position as tutor to the substitution, could not buy the land, and that the sale was consequently a nullity. *Rawley & Monarque & Quintal*, 3 L. N. 114, S. C. 1880.

VIII. What is.

164. Where by a will it was stipulated that: "*Pour ma dite épouse jouir de la dite terre sa "vie durant seulement après quoi cette terre "retournera à Joseph Calixte Courchêne, mon "fils, en toute propriété, ma dite épouse sera "privée de sa jouissance si elle convole en "secondes noces et de ses secondes noces mon fils "prendra la dite propriété comme si sa mère était "morte. Je donne et lègue à dit Joseph "Calixte Courchêne le total des biens que je "possèderai au jour de ma mort, pour par lui "jouir faire et disposer du total des dits biens en "toute propriété dès l'instant de mon décès sauf "le don fait ci-dessus à ma femme et à la condi-"tion à elle imposée."—*Held*, that these clauses created a substitution, and not a donation of usufruct simply. *Pepin & Courchêne*, 2 L. N. 397, Q. B. 1879.

SUBSTITUTIONS.

I. When Created, *see* WILLS.

SUCCESSION.

I. Account of Administration of Property of, *see* ACCOUNTS.
II. Action against Representatives.
III. Jurisdiction Concerning.
IV. Liability of Ascendant Donateur.
V. Proof of Heirship.
VI. Registration of Rights in.

II. Action against Representatives.

165. Where action was brought against the widow of a person deceased on an obligation made by her late husband, and she pleaded that the delays had not yet expired for accepting or renouncing the succession.—*Held*, on proof that she had intermeddled with the estate, that she had forfeited her right to plead insufficient delay. *Hay* v. *Hands*, 2 L. N. 270, S. C. 1879.

III. Jurisdiction Concerning.

166. *Per Curiam.*—This was a proceeding by McCorkill to be authorized, as heir-at-law of the late Robert McCorkill, with benefit of inventory. The succession opened in the district of Bedford, and the law said that the letters can be granted only in the district where the succession opened. The *delibéré* would be discharged to enable the party to take the proper steps. *McCorkill exp.*, S. C. 1879.

IV. Liability of Ascendant Donateur.

167. Property given to children which reverts to an ascendant, under art. 630 of the Civil Code, is a succession, and liable for the debts of the deceased donee, and such property may be seized by a creditor in execution of a judgment for a debt of the succession without first calling upon the ascendant, who has accepted the succession under benefit of inventory, to render an account. *Corse* v. *Drummond*, 3 L. N. 341, S. C. 1880.

V. Proof of Heirship.

By Q. 41 Vic. cap. 10, provision is made for proving heirship to abintestate successions.

VI. Registration of Rights in.

168. The claim of the children of a deceased consort to her half of the property of the community which existed between her and her husband, though unregistered, cannot be affected by a mortgage given by the husband subsequent to the dissolution of the community though duly registered. *Dallaire & Gravel*, 22 L. C. J. 286, & 2 L. N. 15, Q. B. 1878; 607 & 2098 C. C.

SUFFERING.

I. Damages Allowed for, *see* DAMAGES.

SUGGESTION.

I. Of Death of Defendant, *see* DEATH.

SUMMARY CONVICTIONS ACT.

I. Certiorari from Conviction under, *see* CERTIORARI.

SUMMARY TRIAL—*See* CRIMINAL LAW.

I. Amending Act, *see* C. 42 vic. cap. 44.

SUMMONS.

I. Writs of, *see* WRITS.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

I. Powers of, *see* COMMON SCHOOLS.

SUPPLIES.

I. To Vessels, Liability for, *see* MERCHANT SHIPPING.

SUPREME COURT.

I. Appeal to, *see* APPEAL.

SURETIES.

I. In Appeal, *see* Appeal.

SURETYSHIP.

I. Acceptance of Guarantee.
II. Action by Surety.
III. Agreement to pay Commission to Surety is Legal.
IV. Claim of Surety on Insolvent Estate of Debtor.
V. Continuing, *see* WARRANTY.
VI. Delay Given to Debtor.
VII. Discharge of Surety.
VIII. Discussion of Principal.
IX. Judicial Sureties, *see* CAPIAS.
X. Liability of Surety.
Of Official Assignee appointed by Creditors, see INSOLVENCY.
While Appeal Pending, see CAPIAS.
XI. Of Wife for Husband, *see* MARRIAGE CONTRACTS.
XII. Power of Surety.
XIII. Surety Released by Fraud, *see* INSOLVENCY.

I. Acceptance of Guarantee.

169. The defendant who was receiving large quantities of leather from one H., a tanner, and interested in the success of his business, wrote to plaintiff that if he would endorse for H. to the extent of $2,000 he, defendant, would hold any surplus from the sale of the leather to the extent of $2,000 on account of plaintiff. Plaintiff endorsed accordingly to the extent of $2,200. On action to account—*Held*, that there had been a sufficient acceptance of the offer to constitute a contract, and plaintiff was entitled to an account. *Beattie & Workman*, 2 L. N. 212, & 24 L. C. J. 15, Q. B. 1879.

II. Action by Surety.

170. An endorser of a note may bring action as surety against the maker in order to secure himself, though the note be not in his possession. *Desbarats* v. *Hamilton*, 2 L. N. 279, S. C. 1879; 1953 C. C.

III. Agreement to Pay Commission to Surety is Legal.

171. An agreement by which a contractor obliges and binds himself to pay a commission on a certain sum to a person who furnishes security to the Government with whom he has a contract is legal and can be enforced. *Derlin & Beemer*, 10 R. L. 681, S. C. R. 1880.

IV. Claim of Surety on Insolvent Estate of Debtor.

172. Claim of $450 guarantee money on insolvent estate of debtor. The claimant had given a letter of guarantee to T. & Co. that they would guarantee the account of the debtor, subsequently insolvent, to the extent of $450, which he was subsequently obliged to pay. On a contestation of the assignee's dividend sheet—*Held*, that he could not rank on the estate of the debtor for the amount paid under the letter of guarantee until after the creditor to whom he had guaranteed had been paid in full. *Duclos & Thibodeau*, 7 R. L. 620, S. C. 1877.

VI. Delay Given to Debtor.

173. *Effect of.*—By granting delay to the maker and first endorser of a note without the consent of the second endorser the holder's recourse against such second endorser is lost. *Desrosiers* v. *Guerin*, 21 L. C. J. 96, S. C. 1876; 1961 C. C.

174. A surety jointly and severally bound is not discharged by delay given by the creditor to the principal debtor. *Bourassa* v. *Roy*, 9 R.L. 553, S. C. 1879.

VII. Discharge of Surety.

175. The plaintiffs sent to their agent the following letter: "Dear Sir,—By referring to "my letter of 21st inst. it will be observed that "the old balance due from you is $309.14 U. S. "currency. If you will remain in N. B. dur- "ing the year 1875, giving your entire attention "exclusively to promoting the Ætna Life In- "surance Company's business therein, taking "pay therefor in the shape of a commission of "20 per cent. on new business procured after "January 1st, 1875, together with 5 per cent. "on the renewals of all the Company's business "in that province as they are collected by you, "as specified in your original contract, I will "wipe out all the above balance of $309.14 and "interest thereon at the end of said 12 months, "that is, on December 31st, 1875. It is under- "stood that you may take the one-third out of "the first premiums paid on any new business "procured before the 1st January, 1875, "whether it be annually or semi-annually, and "whether paid this year or during next, pro-

"vided they are paid within the Company's "rule of 60 days. Your acceptance or rejection "of this offer, expressed in the fewest possible "words, you will please to indicate to me some "time previous to the 15th December, and "oblige." The terms were accepted, but the agent continuing remiss in his accounts he was dismissed on the 21st August, 1875, when the deficiency had increased to $830. The Company having sued the surety—*Held*, that a new agreement was effected by the letter, and the surety was discharged. *Ætna Life Insurance Co. & Rookledge*, 1 L. N. 29, Q. B. 1877.

176. Where the secretary-treasurer of an Agricultural Society uses some of the surplus funds of the Society, with the knowledge and authority of the directors, for private speculation—*Held*, that his bondsmen or sureties were thereby discharged. *La Société d'Agriculture du Comté de Verchères* v. *Robert et al.*, 2 L. N. 51, S. C. 1879.

VIII. Discussion of Principal.

177. The transferee of a *créance* with warranty can exercise his recourse *en garantie* only after discussion of the property of the principal debtor. *Homier* v. *Brosseau*, 1 L. N. 62, & 22 L. C. J. 135, S. C. 1877.

X. Liability of Surety.

178. The surety of a lessee remains liable under a tacit reconduction of the lease without any new obligation on his part. *Kerr* v. *Hadrill*, 10 R. L. 192, S. C. 1879.

179. Action against a *caution solidaire* under an obligation. Plea that the money was payable in March following the execution of the deed, and the obligation of the defendant was limited to that time, and that no demand was then made, and he thought the debt had been paid. Also that the debtor had hypothecated his property, and the plaintiff, by not registering his obligation, had put the defendant in a worse position—*Held*, as to the first, that the surety was not discharged by delay given to the debtor;* and, as to the second, that the surety could at any time have done what was necessary to secure his own interests. *Bourassa* v. *Roy*, 2 L. N. 247, S. C. 1879.

180. The two defendants, G. and L., were sued for gas supplied to G. L. was sued as security for G. The supply was between October, 1877, and May, 1878. On the 30th June, 1877, G. went into insolvency, and, obtaining a settlement with his creditors, resumed possession of his estate on 11th September, 1877. On the 29th December, 1877, another writ of compulsory liquidation issued against the defendant G., and the assignee sold his goods. The assignee paid the rent of G.'s premises down to May, 1878. There was no doubt that G. used the gas in his family and in his business. The plaintiffs appeared as creditors under the failure of December, 1877, for $65. The judgment complained of condemned the surety to pay $175. The surety contended that the security was annulled by the insolvency on 30th June, 1877, and at any rate from 11th December, 1877, when the assignee finally took possession of the estate. His pretensions were that the insolvent could not contract after his insolvency—*Held*, that he could. He required the necessaries of life, and could make himself liable for them. He was not interdicted or civilly dead by his insolvency. Judgment confirmed. *New City Gas Co.* v. *Giraldi et al.*, S. C. R. 1880.

XI. Of Wife.

181. A wife cannot become surety for her husband, and if she have done so and paid the money she will have an action to recover. *Buckley & Brunelle et vir.*, 21 L. C. J. 133, Q. B. 1873; 1301 C. C.

XII. Power of Surety.

182. A person who is surety for a tenant, holding under a lease terminable on giving six months' notice, cannot exercise the right stipulated in favor of the tenant if the latter fails to exercise it. *Leonard* v. *Lemieux*, 1 L. N. 614, S. C. 1878.

* 1961 C. C.

SURVENANCE D'ENFANS.

I. Does not Revoke Donation, *see* NATION.

SURVEY.

I. Of Land Held by Censitaires, *see* SEIGNIORIAL RIGHTS.

SURVEYOR.

I. Fees of, *see* FEES.
II. In Action En Bornage, *see* ACTION.

SURVIVORSHIP.

I. Rights of, *see* MARRIAGE CONTRACTS.

SUSPENSION.

I. Of Action by Death of Party, *see* ACTION.

T.

SUMMARY OF TITLES.

TARIFF..... 719
TAVERN LICENSES..... 719
TAXATION.. 719
TAXES..... 720
TELEGRAMS..... 721
TELEGRAPH COMPANIES..... 721
TEMPERANCE 721
TEMPORALITIES FUND OF CHURCH OF SCOTLAND..... 722
TENDER..... 722
TENDER AND DEPOSIT..... 722
TENDERS..... 722
TERROR..... 722
TESTAMENTARY EXECUTRIX 722
TESTATOR..... 723
THEFT 723
TICKETS 723
TIERCE..... 723
TIERS SAISI..... 723
TIERS DETENTEUR 723
TIMBER..... 724
TIMBER LIMITS..... 724
TIRAGE AU SORT..... 724
TITHES..... 724
TITLE 724
TOIT CONJUGAL..... 724
TOLLS..... 724
TOLL BRIDGES..... 725
TOOLS..... 725
TORT..... 725
TORTUOUS CONVERSION..... 725
TOWAGE..... 725
TRADE MARKS..... 725
TRADE 726
TRADERS 726
TRADES UNIONS..... 726
TRADING..... 727
TRADITION 727
TRANSACTION..... 727
TRANSFER..... 728
TRAVAIL MITOYEN..... 732
TRAVELLERS 732
TREATING 732
TRESPASS..... 733
TRIAL..... 733
TRIPARTITE COMMUNITY..... 733
TROUBLE..... 733
TRUSTEE..... 733
TRUSTS..... 733
TUGS..... 733
TURNPIKE ROADS..... 734
TURNPIKE ROAD COMMISSIONERS. 734
TURNPIKE ROAD TRUSTEES..... 734
TUTOR..... 734
TUTORSHIP..... 734

TARIFF.

I. Of Charges for Booming Timber, *see* BOARD OF TRADE.

TAVERN LICENSES--*See* LICENSE LAW.

TAXATION.

I. Exemption from, *see* RELIGIOUS INSTITUTIONS.
II. Of Bills of Costs, *see* COSTS.
III. Power of Provincial Legislature to Impose, *see* LEGISLATIVE AUTHORITY.

TAXES—*See* MUNICIPAL CORPORATIONS.

I. Action for.
II. Apportionment of Between Tenants, *see* LESSOR AND LESSEE.
III. Interest on, *see* INTEREST.
IV. Prescription of, *see* PRESCRIPTION.
V. Recovery of, when Paid in Error, *see* ACTION en Repetition.

I. Action for.

1. A lessor has no right to an action for taxes due under the lease until he has himself paid to the Corporation. *Maillé* v. *Richler*, 2 L. N. 414, S. C. 1879.

IV. Prescription of.

2. The taxes of the City of Montreal cannot be prescribed inside thirty years. *Guy* v. *Normandeau*, 21 L. C. J. 300, S. C. 1877.

TELEGRAMS.

I. Errors in Transmission of, *see* INSURANCE.

TELEGRAPH COMPANIES.

I. Liability of.

3. A telegraph company is responsible to the party to whom the message is directed for negligence in failing to deliver a telegram, and the fact that the sender did not repeat the message does not affect the rights of the person to whom the message is addressed. *Bell & Dominion Telegraph Co.*, 3 L. N. 405, S. C. 1880.

TEMPERANCE.

I. In Quebec.
II. Power of Local Legislatures Concerning.
III. Validity of By-Laws Under.
IV. Voting Under.

I. In Quebec.

4. The Municipal Code of the Province of Quebec has not totally abrogated the provisions of the Temperance Act of 1864.* *Sauré & The Corporation of the County of Argenteuil*, 21 L. C. J. 119, S. C. 1876; & *Covey & The Municipality of the County of Brome*, 21 L. C. J. 182, S. C. 1877.

II. Power of Local Legislatures Concerning.

5. The 23rd March, 1876, the municipal council of the county of Missisquoi passed a bye-law prohibiting the sale of intoxicating liquors within the limits of the county, in virtue of the authority given by the Act. 27 & 28 Vic. cap. 18, otherwise known as the Temperance Act of 1864. Action to annul the said bye-law, on the ground that the 10 first secs. of said Act had been abrogated by art. 1086 of the Municipal Code, had arrogated to itself rights and a jurisdiction belonging solely to the local councils.—*Held*, that, by the said art. of the Municipal Code, the Legislature had not the intention of abrogating the ten first sections of the Temperance Act, and that in any case they had not the power to legislate on commercial matters, except for the raising a revenue for provincial purposes. *Hart* v. *Corporation of the County of Missisquoi*, 3 Q. L. R. 170, C. C. 1876.

6. And that there is nothing incompatible in the local and county councils having both the power to prohibit the sale of liquor. *Ib.*

III. Validity of Bye-laws Under.

7. The petitioner, a municipal elector of the county of Brome, demanded under art. 698 of the Municipal Code that a bye-law passed under authority of the Temperance Act of 1864, be annulled and set aside. He alleged that the bye-law was null, because the Temperance Act of 1864 was not then in force in the Province, and added that, as a matter of fact, the electors of the county had not voted for the adoption or rejection of the bye-law, and that more particularly in the township of Bolton in said county, not a single vote was taken in the county, and no opportunity given to the electors to vote on it. It appeared by the evidence that the bye-law was in the form prescribed by the Temperance Act; that the number of votes taken in its favor was 579, and those against it only 58, leaving a majority of 521 in its favor, and that the number of electors in West Bolton was about one-sixth of those in the county.—*Held*, that, under these circumstances, the bye-law was valid. *Covey* v. *Corporation of County of Brome*, 9 R. L. 289, C. C. 1877.

IV. Voting Under.

8. In a vote of the ratepayers under the Dunkin Act, the failure to keep one of the polls open during the day of voting is a fatal irregularity. *Covey & Corporation of County of Brome*, 1 L. N. 519, Q. B. 1878.

TEMPORALITIES FUND OF CHURCH OF SCOTLAND—*See* ACTS OF PARLIAMENT.

TENDER.

I. Of Payment, *see* PAYMENT.

TENDER AND DEPOSIT—*See* PROCEDURE, Deposits.

TENDERS.

I. Agreement Concerning, *see* CONTRACT, Breach of.

TERROR.

I. Death Caused by, Will Support an Indictment for Manslaughter, *see* CRIMINAL LAW.

TESTAMENTARY EXECUTRIX.

I. Contestation of Report of Distribution by, *see* DISTRIBUTION.

* The present Act. is C. 41 Vic. cap. 16.

TESTATOR.

I. Registration of Death of, *see* REGISTRATION.

THEFT—*See* CRIMINAL LAW.

I. Evidence of, *see* EVIDENCE.
II. Liability for Loss by.
III. Presumption of.

II. Liability for Loss by.

9. The defendant, a clerk of plaintiffs, was entrusted by them with a considerable sum of money for the purpose of making purchases, etc., in England. The money was packed by the plaintiffs in a valise, and that valise was put into a cabin No. 101, which had been taken for the defendant in the Quebec steamer. This money, as defendant alleged, was stolen from his cabin in the Quebec steamer after she reached Quebec, and on being sued for it pleaded loss by *force majeure—Held*, in all the courts, that he was bound to prove that the money was stolen, and without fault or negligence on his part, in order to be relieved from liability, and not having done so must account for it. *Gravel & Martin*, 22 L. C. J. 272, P. C. 1876.

III. Presumption of.

10. In an action for effects lost or stolen from the plaintiff's trunk during a voyage from Liverpool to Portland—*Held*, that the fact that a trunk when opened by a passenger towards the close of the voyage bore traces of the lock having been tampered with raised a presumption that goods afterwards discovered to be missing had then been abstracted, though no examination was made by the passenger at the time. *Allan & Woodward*, 1 L. N. 458, Q. B. 1878.

TICKETS—*See* RAILWAYS.

TIERCE.

I. Measure of, *see* INSPECTION LAW.

TIERS SAISI—*See* ATTACHMENT BY GARNISHMENT.

TIERS DETENTEUR.

I. Rights of, *see* HYPOTHEC.

TIMBER.

I. Action for Fees for Measurement.
II. Attachment of by Conservatory Process, *see* ATTACHMENT.
III. Tariff of Charges for Booming, *see* BOARD OF TRADE.

II. Action for Fees for Measurement of.

11. A suit for fees for measuring timber by licensed cullers acting under the supervisor of cullers at Quebec, pursuant to C. S. C. cap. 46, is properly brought in the name of the Crown. *Laflamme* v. *Prendergast*, 4 Q. L. R. 285, S. C. 1878.

TIMBER LIMITS.

I. Sale of, *see* WARRANTY.

TIRAGE AU SORT—*See* LOTTERY.

TITHES.

I. Liability to Contribute, *see* CHURCH FABRIQUES. Rights and Powers of Cure.

TITLE—*See* TRANSFER.

I. Founded on Public Possession—*see* PRESCRIPTION.
II. Of Lessor cannot be called in Question in Action for Rent, *see* LESSOR AND LESSEE, Rights of Lessor.
III. Plea of Bars Criminal Prosecution for Malicious Injury to Property, *see* CRIMINAL LAW.
IV. Pleading, *see* CRIMINAL LAW.
V. To Immoveables, *see* PRESCRIPTION of Immoveables.
VI. To Land must be in Good Faith, *see* PRESCRIPTION.
VII. When Sufficient to Found Opposition to Real Estate, *see* OPPOSITION, Grounds of.

TOIT CONJUGAL.

I. Where is, *see* MARRIAGE.

TOLLS.

I. Exemption from.

12. Plaintiff sued to get back money charged and exacted as toll by the defendants on

loads of manure passing through their toll-gates to farms in the vicinity—*Held*, that notwithstanding the 4 Vic. cap. 22, which gave the defendants the right to charge toll, the statute C.S. C. cap. 86, sec. 3, which exempted manure going from cities into country parts must prevail, and the defendants must return the money. *Henderson* v. *St. Michel Road Co.*, 2 L. N. 262, S. C. 1879.

TOLL BRIDGES—*See* Q. 43-44 Vic. Cap. 30.

TOOLS.

I. Lien of Workman on, *see* PRIVILEGE.

TORT—*See* DAMAGES.

TORTUOUS CONVERSION—*See* CRIMINAL LAW.

TOWAGE—*See* MARITIME LAW.

TRADE MARKS.

I. Act Concerning, *see* C. 42 Vic. cap. 22.
II. Right to.
III. Violation of.

I. Right to.

13. Where a biscuit maker sold his stock in trade "with the good-will and all advantages pertaining to the name and business" of the vendor—*Held*, that the exclusive right to use the trade mark of the vendor passed to the purchaser without express mention thereof in the contract. *Thompson* v. *Mackinnon*, 21 L. C. J. 335, & 1 L. N. 64, S. C. R. 1877.

14. Action for an injunction to prevent defendant from selling a certain brand of cigars called O K cigars, the right of plaintiff to sell which was protected by a Government certificate and trade mark. It appeared, however, that the plaintiff's trade mark was registered by R. F. for another purpose entirely, R. F. having a particular kind of soap called O K soap. Defendant pleaded that the O K cigar was not new, nor the exclusive property of the plaintiff; also that the cigars, although they purported to be made in Havana, were really made in Germany. On proof of these allegations action dismissed with costs. *Labbatt* v. *Trester*, 7 R. L. 386, S. C. 1874.

II. Violation of.

15. The term "Syrup of Red Spruce Gum" being only the name of a substance does not properly constitute a trade mark, and the sale of another preparation differing essentially in external appearance and composition under the name "Syrup of Spruce Gum" is no violation of such mark. *Kerry & Les Sœurs de L'Asile de la Providence*, 1 L. N. 472, Q. B. 1878.

TRADE.

I. Legislation in Restraint of, *see* LEGISLATURE OF QUEBEC.

TRADERS.

I. Registration of Marriage Contract of, *see* MARRIAGE CONTRACTS.

TRADES UNIONS.

I. Powers of.

16. Action of damages against 38 stonecutters by another stonecutter. The plaintiff alleged that he could gain from $2.50 to $5 per diem as a stonecutter; that the defendants, in December, 1875, conspired together in order to prevent him from working at his calling, and in consequence the plaintiff was unable to work at his calling by the conspiracy against him, as the master masons and contractors were menaced with the closing of their yards if they persisted in employing the plaintiff. The plaintiff complained that by the unlawful combination of the defendants and others as an association he was prevented from gaining a living, and he claimed $1,000 as damages. The defendants pleaded the general issue. *Per Curiam.*—The Constitution of the Society has been produced and there is nothing in it to condemn. It appears to be of a benevolent character for the support of widows and orphans and of sick members. The only clause which might elicit comment as of a singular description reads as follows:—"Art. XIII. "Tout membre qu'on trouvera a créer une division parmi nous relativement a l'organization d'une autre association, en opposition a celle-ci, sera denonce comme le plus 'vilain Gueux,' et son nom devra être connu a toutes les Sociétés de Tailleurs de pierre a l'étranger." If it be true, as is probable, that this epithet means that the offending member is under the ban of the society everywhere, it is plain that the work of benevolence is not the only aim of the society. We have at any rate this fact, that the funds of the society were used to support members in the time of a strike, and also to send its members by scores to foreign parts, at a time when work could be bad here. It is also in evidence that members of the society are contributing 25 cents per week to the expenses of the defendants in

this suit, though the witness, Dulain, who gives this information, adds that those only contributed to the defence fund who pleased to do so. But the offerings are received by Joseph Bertrand, the treasurer of the society. On the 5th July it was unanimously agreed to that "tous ceux qui ont été trouver les avocats pour information soit tous payés," &c. This was a few days after the institution of plaintiff's action. On the 18th October, 1876, it was proposed and seconded that all the superintendents collect the money due the widows and the contributions of the lawsuit. On the 25th October it was proposed and seconded that the secretary notify the members sued and the witnesses, in order to name a committee to come to an understanding with the lawyers asked by them. There has been some difficulty in extracting from witnesses all the facts which the counsel for the plaintiff desired to made public. The witnesses were unwilling and evasive. Nevertheless a number of significant facts have been established, and there has been proved beyond a doubt the existence of an association many of whose operations are unlawful in the extreme. It proves the existence of a nefarious and most abominable conspiracy against the rights of every citizen to make such contract as he pleases for such price as he pleases. No combination of men can be tolerated which shall dictate to others what they shall do. Each man is free to do as he pleases so long as order in a well governed community is observed, and so long as the liberty of others is not violated. I find here that Narcisse Valin, the plaintiff, had been a member of the society, but he had offended against its rules and was put under its ban—was "*scabbé*," to use their significant but coarse expression. He certainly was deprived of work by its will and the will of its members in May, 1876, and probably a portion of June. The defendants were members of the society and responsible for the damages suffered by the plaintiff, and the damages under the circumstances should be exemplary. The court takes into consideration the character of the offence, the unlawfulness of the acts complained of, and doing so, the judgment will go against the defendants jointly and severally for the sum of $500 and the costs of the suit. *Valin & Lebrun*, S. C. 1877.

TRADING.

I. In Real Estate not a Commercial Matter, *see* PARTNERSHIP.

TRADITION—*See* DELIVERY.

TRANSACTION.

I. Effect of.

17. Where the defendants in a petitory action in order to a settlement agreed to return and release to the plaintiff a portion of the land in dispute, and the plaintiff accepted the arrangement—*Held*, that it was binding on both parties, and where it was not carried out, owing to faults on both sides, the costs of an action to enforce it would be borne by each. *Chenard & Lafond & Desroberts*, 6 Q. L. R. 96, Q. B. 1880.

II. What is.

18. A deed of resiliation of a donation obtained by fraud and *dol*, and without consideration of the legal questions involved, does not constitute a transaction in terms of 1918 C. C. *Doutney & Richard*, 24 L. C. J. 30, 1878.

TRANSFER.

I. Acceptance of.
II. Effect of, *see* PAYMENT.
III. How Attacked when Fraudulent.
IV. In Fraud of Creditors.
V. Liability of Transferree of Stock in Trade.
VI. Nature of, *see* INSURANCE.
VII. Notice of.
VIII. Of Claims by Garnishee Order takes away Right of Action.
IX. Of Immoveable after Action Brought.
X. Of Insurance, *see* INSURANCE.
XI. Of Records, *see* PROTHONOTARY.
XII. Of Shares, *see* COMPANIES.
XIII. Of Warehouse Receipt, *see* WAREHOUSE RECEIPT.
XIV. Right of Transferree.
XV. With Warranty.

I. Acceptance of.

19. A transfer of bank shares by a father to his minor son, by a deed in which the father appears both for himself and his son, the donee, is void for want of legal acceptance. *Walsh* v. *Union Bank*, 5 Q. L. R. 289, S. C. 1879.

III. How Attacked when Fraudulent.

20. A transfer in fraud of creditors may be attacked on the contestation of the garnishee's declaration. *Kane & Racine*, 3 L. N. 66, & 24 L. C. J. 216, Q. B. 1880.

IV. In Fraud of Creditors, *see* DONATION, SALE.

21. An appeal from a judgment of the Superior Court, maintaining a contestation of the declaration made by the *tiers saisis*, appellants. Respondent had a judgment against one L., and was disposed to enforce it; but appellants, for whom L. was working, told him not to be in a hurry, that L. was going to receive money from them, and then he, respondent, would be paid. Appellant did not admit that he undertook to be surety for the money. In March, L., having completed his operations at the *chantier*, transferred to the appellants a large part of his effects, and became insolvent. Thereupon respondent, surprised at this, took out a

saisie arrêt in the hands of appellants. They came into court, and declared that they had nothing belonging to L. in their hands. Respondent contested this, alleging that the transfer had been made by L. in view of insolvency. There was some verbal evidence of record to show that appellant undertook to pay respondent's claim, but it was urged that such evidence as this could not be legally adduced, as there was no commencement of proof in writing. The judgment of the court below, which sustained the contestation, did not rest entirely upon this promise, but also upon the fact of L.'s insolvency at the time he transferred his effects to the appellants. Although there might be no positive evidence of his insolvency up to the time of the transfer there could be no doubt that he became insolvent then, and appellant knew his position. The court would, therefore, apply the article of the Code (1036), and the judgment of the court below must stand confirmed. *Boyer & Duperreault*, Q. B. 1876.

22. Plaintiff sold to defendant a soda water apparatus for $450, for the greater part of which he gave his promissory notes for nine monthly payments of $45 each, subject to the condition that no title was to pass to defendant until all the notes were paid, and that plaintiff should have the right to enter and retake possession of the apparatus in case of non-payment at maturity of either of said notes. None of the notes were paid, and on 12th October, 1878, defendant went into insolvency, having previously transferred to the other defendant, who was his brother-in-law and also a clerk in his employ, the property in question in payment of an antecedent debt—*Held*, on an attachment in revendication, that the transfer between the defendants was not in good faith, and could not prevent plaintiff from regaining possession of the property. *Tufts & Brownrigg*, 2 L. N. 323, S. C. 1879.

23. Contestation to set aside a deed by which the bankrupts, on the 7th September, 1877, being thirty-one days before their assignment in insolvency, transferred to the claimant 300,000 red bricks, being somewhat more than the half of their estate. By the deed E. L., for the insolvents "*a cédé et transporté à P. P. 300,000 red bricks pour sureté collaterale d'un certain billet promissoire, daté du 27 aout courrant, fait payable apres quatre mois de la susdite date pour* $697.54," made by the insolvents in favor of the said P. P. It was admitted that the bricks in question and the shed mentioned in the deed were in the insolvents brick yard at the date of the transfer, and that the bricks remained there from the date of the transfer until the insolvents made their assignment. There was no evidence tending to show that the claimant or his agent ever obtained delivery or had actual possession for any time of the bricks mentioned in the transfer—*Held*, that the transfer was merely a pledge of the bricks, which was never completed by delivery, and was therefore inoperative, null and void, and must be set aside. *Lemay in re.*, 6 Q. L. R. 35, S. C. R. 1879.

24. A commercial firm made a voluntary assignment of their stock, etc., to defendant, who took possession and paid some of the creditors, but not the plaintiff. The firm was in reality insolvent, the assets being insufficient to pay in full—*Held*, that defendant was liable to all the creditors equally, but as he had not pleaded the insolvency of the estate he must pay plaintiff in full. *Duguay* v. *Seath*, 2 L. N. 108, S. C. 1879.

25. Much the same principle was laid down in another case, which arose, however, in a different way. A quantity of timber was pledged by way of warehouse receipt for the payment of a draft, and if the draft was not paid the holder was to sell the wood and place the proceeds to the owner's credit. The owner, some months afterwards, became insolvent, the draft was not paid, and the pledgee sold the wood of which he never had actual delivery—*Held*, that the pledgee could not place the balance of the proceeds of the sale after payment of the draft to the credit of a former indebtedness of the owner. *Perkins & Ross*, 6 Q. L. R. 65, & 10 R. L. 263, Q. B. 1880.

26. Plaintiff having a judgment against defendant transferred it immediately to his son, in order to avoid its being set off by a judgment which defendant was about to get against him. Defendant obtained judgment against him, and when plaintiff proceeded to execution set it up in compensation. *Per Curiam.*—In this contestation there is brought before the court the merits of the transfer by plaintiff to his son, 15th November, 1879. The son is endeavoring to levy the amount of the judgment of date 7th November, 1879, and the defendant is setting off against it his judgment of date 29th November, 1879, for $250 and costs, invoking the fraudulent character of transfer by plaintiff to his son. I am of opinion that this transfer should be disregarded and set aside, as made in fraud of the rights of defendant. Plaintiff appears to be a man without means. The attachment was wantonly made, and the property in his house does not belong to him. Opposition maintained. *Watson* v. *Thompson & Thompson*, S. C. 1880.

V. Liability of Transferree of Stock in Trade.

27. F., a merchant, transferred his stock in trade to the defendant, a creditor, as security, but continued the business in his own name as before. A counter agreement was also entered into between them stipulating that the transfer would be null from the moment that F. should have paid the debt by him due to the defendant. F. afterwards purchased from the plaintiffs goods for the purposes of the business, and gave a promissory note for them, signed by himself. The note not being paid at maturity action was taken against the defendant, the transferree, for the price—*Held*, that having profited by the transaction, although his name was not mentioned in it, he was liable for the debt, and that F. should be considered as his agent. *Vezina & Coté*, 3 Q. L. R. 32, C. C. 1875.

VII. Notice of.

28. Where a debtor allows judgment to be taken against him by default on a transferred claim, he cannot afterwards appeal from such judgment on the ground that there was no signification of

the transfer. *Stanley* v. *Hanlon*, 21 L. C. J. 75, Q. B. 1876.

29. P. & Co. sold some goods to defendant, and P. now sued alone, alleging himself to be entitled to collect the debts due to the firm, which had been dissolved—*Held*, that the action must be dismissed. A suit could not be brought by one member of a firm, supported by the evidence of the other member, where no notice had been given. *Prescott & O'Brien*, S. C. 1876.

30. When the *cessionaire* of a claim had accepted notice of the transfer, but no service or other signification had been made—*Held*, that the *cessionaire* only had the right to sue and recover the amount of the transfer. *Berthelot* v. *Theoret*, 1 L. N. 387, S. C. R. 1875.

31. And in another case, in which an heir had sold all his rights in the succession of his father to a third party, and had caused the deed of sale to be duly registered, but the transfer had not been signified—*Held*, reversing the judgment of the court of first instance,* that a deed of sale or succession of *droits de succession*, duly enregistered, does not require signification, and therefore an *acte sous séing privé* subsequently passed between the parties, purporting to annul and set aside the deed of cession, but which *acte* has been neither registered nor signified, does not give the *cedant* a right of action. *Sauvé* v. *Sauvé*, 1 L. N. 546, S. C. R. 1878.

32. Action in declaration of a hypothec for the balance of a price of sale transferred to the plaintiff. He obtained judgment, and defendant inscribed in review, on the ground *inter alia* of want of notice of the transfer—*Held*, that as the transfer had been registered that the action was a sufficient notice of it. 10 R. L. 266, S. C. R. 18.†

33. Declaration of *tiers saisi* in answer to the attachment was that he owed nothing. His declaration was contested, and it was sought to be made out that he really was indebted under a building contract. It appeared, however, that the contractors, finding themselves unable to carry on the work, had made a transfer to H., who took the contract off their hands, and *tiers saisi* had paid H. for the work, which he did. The plaintiff said that this could not relieve the *tiers saisi*, because the transfer was not signified until two days after the attachment was served. The court, however, was against the plaintiff's pretension that the transfer was one which came under the article of the Code requiring signification. Seeing the declaration made in the agreement by the original contractors, that they were unable to go on with the work, *tiers saisi* was justified in paying H. for the work performed by him. Besides this, there was not sufficient evidence to establish that any money was due. The contestation, therefore, must be dismissed as not supported by evidence. *Versailles* v. *Paquet & Waddell*, T. S., S. C. 1879.

IX. Of Immoveable After Action Brought.

34. The female opposant opposed the seizure made of certain land abandoned by the defendant. She alleged that she was proprietor in possession on 22nd January, 1879, date of the *delaissement*, that on the 26th June, 1877, the defendant sold the land to opposant, and her deed was duly registered on the 22nd January, 1878—*Held*, that as the deed was not registered prior to the institution of the action it conferred no title as against the creditor bringing the action.* *La Société de Construction Metropolitaine* v. *Beauchamp & David*, 3 L. N. 135, S. C. 1880.

XIV. Rights of Transferree.

35. The parties, plaintiff and defendant, were advocates, and had been *en société* as such, and had during the time they were *en société* purchased with the funds of the *société* a number of shares in the building society *mis en cause*. The parties had since dissolved partnership, and defendant had transferred to plaintiff, by *acte* of transfer, regularly notified to the *mis en cause*, all his interest in the said shares. Plaintiff now sued for the money arising from said shares, and asked that the building society *mis en cause* be condemned to pay the money to him, with costs against defendant, his quondam partner. Defendant pleaded that plaintiff owed him a considerable balance, and had always kept the books of the partnership, and refused to render an account—*Held*, that he could not plead money due him by the transferree in order to defeat plaintiff's rights under the transfer. *Gauthier & Roy & La Société de Construction Permanente de Québec*, 10 R. L. 443, Q. B. 1880.

XV. With Warranty.

36. The transferree of a claim cannot sue the transferror on his guarantee to *fournir and faire valoir* without having first discussed the property of the debtor and established legally his complete insolvability. *Labelle & Sayer*, 10 R. L. 545, S. C. R. 1880.

37. And such insolvability cannot be establish by means of verbal testimony. *Ib.*

TRAVAIL MITOYEN—*See* TRESPASS.

TRAVELLERS.

I. Rights of, *see* BAILMENTS, CARRIERS, HOTELKEEPERS.

TREATING.

I. At Elections, *see* ELECTION LAW.

---

* 1 L. N. 387 S. C.

† Title of case not reported.

* The alienation of an immoveable by the holder against whom the hypothecary action is brought is of no effect against the creditor bringing the action, unless the purchaser deposits the amount of the debt, interest and costs due to such creditor. 2074 C. C.

TRESPASS.

I. Of Cattle, *see* ACTION Qui Tam.

II. What is.

38. Defendant was sued for having gone on plaintiff's land and dug holes in it. The holes were, it appeared, of a very trifling character and were for a *travail mitoyen*—*Held*, no trespass. *Arcese* v. *Dubreuil*, 2 L. N. 246, S. C. R. 1879.

TRIAL—*See* CRIMINAL LAW.

TRIPARTITE COMMUNITY—*See* MARRIAGE CONTRACTS, Community.

TROUBLE.

I. Fear of, *see* SALE, Eviction.

TRUSTEE—*See* LEGATEE.

I. Effect of Signing as, *see* AGENCY, Liability of Agent.

II. Of Turnpike Roads, *see* TURNPIKE ROAD.

TRUSTS.

I. Act Concerning, *see* Q. 42-43 Vic. cap. 29.

II. Rights of Trustee.

39. B., as trustee for H. C. & Co., deposited with D. twelve bonds of the M. C. & S. Railway Company as collateral security, to be availed of only subsequent to the failure of the Government to pay $10,000 subsidy previously transferred to D., and obtained a receipt from D. that on the subsidy being paid D. would return these bonds to B. The subsidy was paid, and B. sued D. to recover the twelve bonds. H. C. & Co. did not intervene—*Held*, that B. being a party personally liable on the bills held by D., which the Government subsidy of $10,000 transferred, was intended to pay, and having complied with the conditions mentioned in the receipt entitled him to recover possession of the bonds as against D., the legal owner of the bonds. *Drummond & Baylis*, 2 S. C. Rep. 61, Su. Ct. 1877.

TUGS.

I. Liability of, *see* MARITIME LAW, Towage

TURNPIKE ROADS—*See* TOLL.

TURNPIKE ROAD COMMISSIONERS.

I. Powers of.

40. By order in council of 16th January, 1880, the Government of the Province of Quebec revoked the Commission of the South Shore Turnpike Road Commissioners and named others. The commissioners whose commissions were thus revoked discharged the inspector before the term of his engagement had expired, and appointed the plaintiff in his place, with a stipulation that he should not be discharged before the expiration of three years, except for bad conduct. The new commissioners, however, refused to recognize the engagement of the plaintiff and re-instated the former inspector who had been discharged. On action by the plaintiff for his salary—*Held*, that the law gave to the commissioners the power to dismiss an inspector at pleasure, and the agreement not to discharge the plaintiff before three years was illegal and null, and could not bind their successors in office. *Samson* v. *Les Syndics des Chemins à Barrière de la Rive Sud*, 6 Q. L. R. 86, C. C. 1880.

TURNPIKE ROAD TRUSTEES.

I. Liability of.

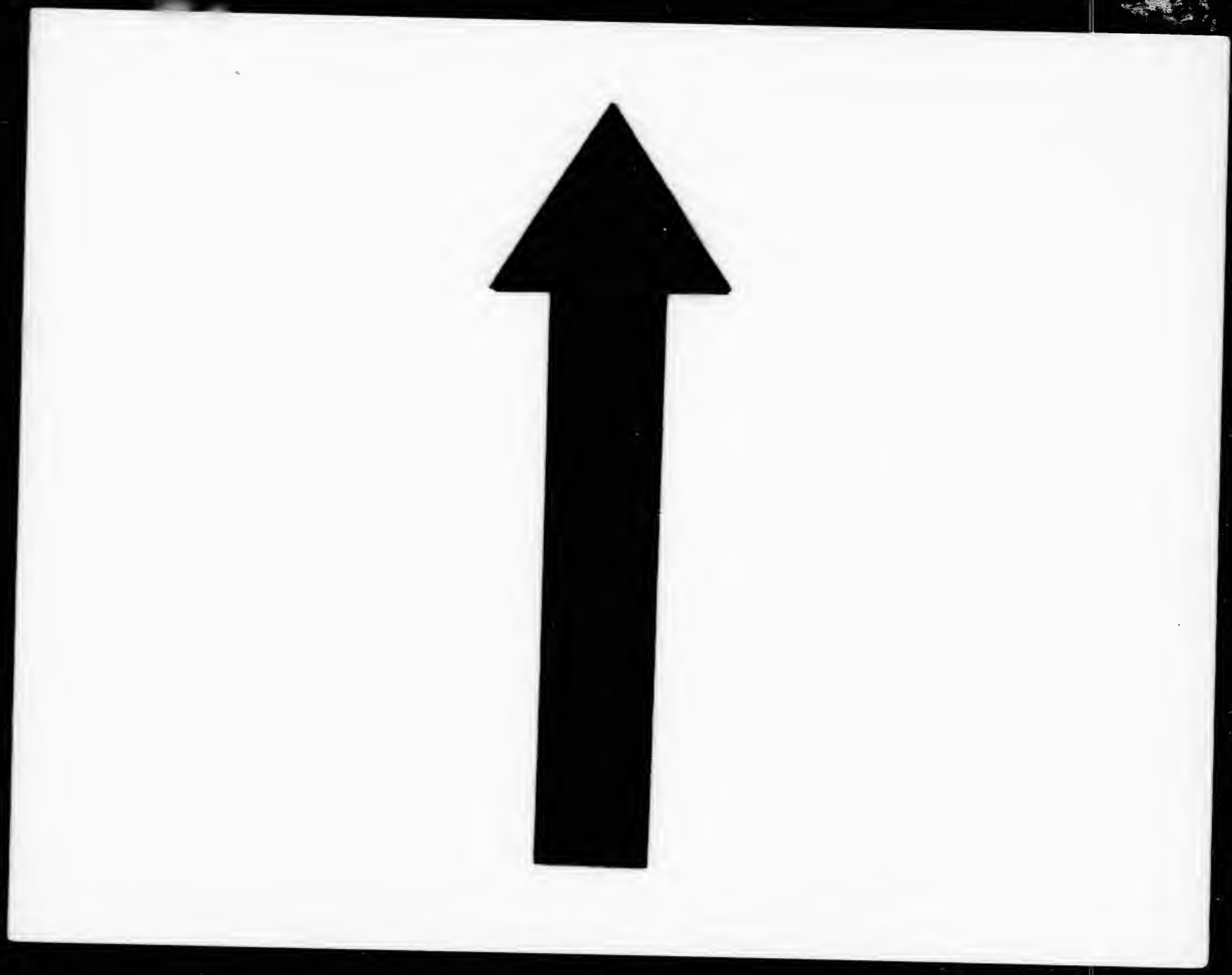
41. Action of damages for an accident caused by the bad state of a temporary road constructed by the Corporation of Montreal in connection with the new aqueduct, to serve the place of the portion of the turnpike road of which the appellants are trustees, necessarily cut off during the progress of said works.—*Held*, that as the defendants had taken toll, they were bound to provide a good road. *Trustees of Montreal Turnpike Roads & Daoust*, 1 L. N. 506, & 23 L. C. J. 175, Q. B. 1878.

TUTOR.

I. To Substitution cannot buy Land of Substitution, *see* SUBSTITUTION.

TUTORSHIP.

I. Accounting, *see* ACCOUNTS.
II. Accounts of.
III. Action by Tutor.
IV. Appointment of Tutor.
V. Liability of Tutor for Costs in Action for Account of, *see* COSTS.
VI. Pleading by Tutor, *see* PLEADING.
VII. Power of Tutor.
VIII. Registration of.
IX. Rights of Tutor.



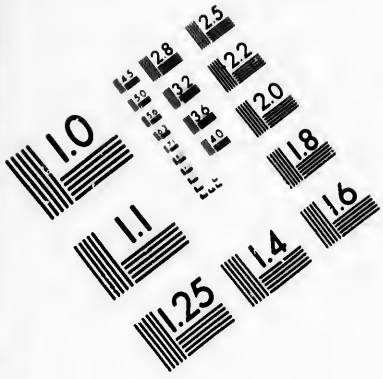
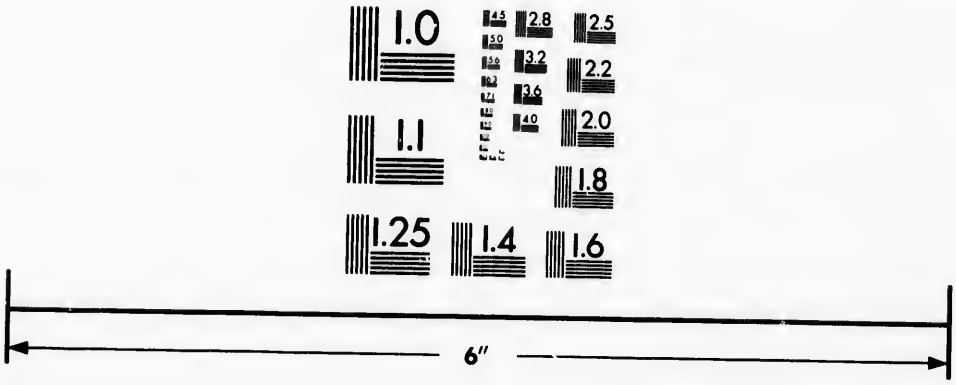
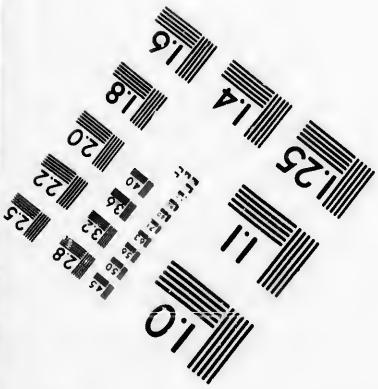
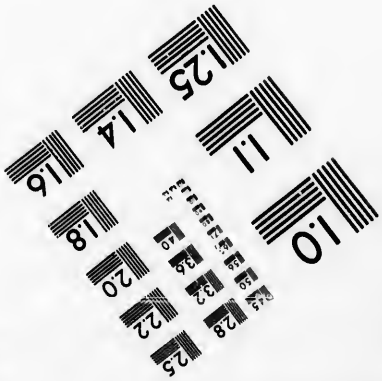


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.0
2.8
3.2
3.6
2.5
2.2
2.0
1.8
1.6
1.1
1.0

II. Accounts of.

42. In an action by a minor against her tutor to account—*Held*, that having accepted an account and approved of it while she was only emancipated by marriage, was obliged to ask to be released from it before she could get an order against the tutor to render another account of his tutorship. *Degrosseillers & Riendeau*, 24 L. C. J. 170, Q. B. 1877.

43. In an action against a tutor to account—*Held*, that a tutor was relieved from his liability to render an account of his tutorship because he should have in his hands a small sum of money which he has disbursed to the knowledge of the minor, since become major, and done other acts of administration since ratified by the minor. *Pelletier & Pelletier*, 10 R. L. 476, S. C. 1879.

III. Action by Tutor.

44. Inscription from a judgment rendered in the Circuit Court at Terrebonne against the the defendant for $85, for the occupation of a lot in the village of St. Andrews. The action was brought as tutor to the minor children of W H. C. and to the minor child of C. J. C. to recover $170; and the occupation alleged was for the time between the deaths of the parents of the minors and the subsequent purchase of the property by the defendant from the plaintiff under authority on the 1st February, 1875. The defendant pleaded, 1st, a demurrer to the declaration on the grounds that it did not allege a right of action in the tutor, either under a lease or under any special promise. This was dismissed, the allegation of the promise by the defendant being held sufficient. The defendant pleaded further that the two Cs. to whose children the plaintiff was tutor had held the property in question *par indivis;* that in June, 1868, C. J. became insolvent, and made an assignment; and that the plaintiff was only entitled to sell one-half as representing the children of W. H., the other half being vested in the assignee of C. J. That the defendant had paid $400, the price of the lot, to the plaintiff, and was therefore entitled to set off half of that sum against this demand; the defendant further pretended that there had been no authority given to the plaintiff to receive the price at all, which ought to have remained secured on the property. The judgment maintained the defendant's pretensions as to the one-half. As regards the question of compensation raised against the demand for the other half, the answer was, the plaintiff was tutor to the children of two persons, he held two offices; what the defendant sought to oppose to the demand of W. H.'s children or to their tutor was not a debt due in his capacity of tutor to those children, but merely a claim for money paid in error to him in the other and distinct office of tutor to the children of C. J. Judgment confirmed. *Clunie* v. *Ladouceur*, S. C. R. 1877.

IV. Appointment of Tutor.

45. The recommendation of a majority of a family council touching the appointment of a tutor to a minor should be homologated by the prothonotary if there be no legal impediment or objection to such appointment, and, other things being equal, the preference should be given to a paternal relative; and where the prothonotary followed the advice of one maternal relative of the minor in preference to that given by twelve paternal relatives, and no cause was shown why the person recommended by the paternal relatives should not be appointed, his decision was overruled by the court, and the choice of the paternal relatives adopted. *Smith & Baptist & Tuggey*, 23 L. C. J. 191, Q. B. 1874.

VII. Power of Tutor.

46. A tutor may bring or defend an action on behalf of the minor without the authorization of a family council. *Breakey* v. *Carter*, 4 Q. L. R. 333, S. C. 1878; 304 C. C.

VIII. Registration of.

47. In an action by a tutor for an alimentary allowance for an illegitimate child—*Held*, that where the tutor alleges registration, and it is not especially denied, it will be held to be admitted. *Poissant & Barrette*, 3 L. N. 12, Q. B. 1879.

IX. Right of.

48. It is no answer to a tutor who seeks for aliments for a ward to say: "I should be tutor, and I will take care of the child." *Poissant & Barreite*, 3 L. N. 12, Q. B. 1879.

U.

SUMMARY OF TITLES.

ULTRA PETITA..... 737
ULTRA VIRES..... 737
UNDER TENANT..... 737
UNDIVIDED OWNERSHIP..... 737
UNDUE INFLUENCE..... 737
UNIVERSAL LEGATEE..... 737
USUFRUCT..... 737

ULTRA PETITA—*See* JUDGMENTS.

ULTRA VIRES—*See* LEGISLATURE OF QUEBEC.

I. What is, *see* STREET RAILWAY.

1 Commissioners for the civil erection of parishes—*Held*, to have acted *ultra vires* in homologating an *acte of cotization* made by the church fabrique. *La Fabrique de la Paroisse du St. Enfant Jesus* v. *Poirier*, 23 L. C. J. 155, S. C. 1879.

UNDER TENANT—*See* LESSOR AND LESSEE.

UNDIVIDED OWNERSHIP—*See* PARTITION.

UNDUE INFLUENCE.

I. At Elections, *see* ELECTION LAW.

UNIVERSAL LEGATEE—*See* EXECUTORS, LEGATEES.

USUFRUCT.

I. Attachment of.
II. Donation of.
III. Liability of Usufructuary.
IV. Power of Usufructuary.
V. What is, *see* SUBSTITUTION.

I. Attachment of.

2. The usufruct of furniture and things which, without being actually consumed, deteriorate by usage, and which are held in usufruct, cannot be seized and sold by the creditors of the usufructuary. *Bertrand* v. *Pepin*, 6 Q. L. R. 352, C. C. 1880.

II. Donation of.

3. A universal donation in usufruct by contract of marriage is a donation *causa mortis*. *Hudon & Painchaud & Rivard*, 3 L. N. 414, & 24 L. C. J. 268, Q. B. 1880.

III. Liability of Usufructuary.

4. A widow against whom judgment has been obtained as universal usufructuary of her husband deceased is in the same position as a universal legatee, and is personally liable for the amount of the judgment. *Hudon & Painchaud & Rivard*, 3 L. N. 414, & 24 L. C. J. 268, Q. B. 1880.

IV. Power of Usufructuary.

5. The usufructuary of a piece of land *grevé de substitution* in favor of his children sold to the defendants the right to take sand from the property for five years. At the death of the usufructuary, his children, the *substituées*, brought action to recover the value of the sand so taken, on the ground that the usufructuary had no power to make such a sale—*Held*, that the terms of art. 460 of the Civil Code include also sand beds, and the plaintiffs were, therefore, entitled to recover the value of the sand so taken, such value to be based on its value at the time the substitution opened.* *Dufresne* v. *Bulmer*, 21 L. C. J. 98, 1877, & 1 L. N. S. C. 303, Q. B. 1878.

*Confirmed in Su. Ct.

V.

SUMMARY OF TITLES.

VACATION..... 739
VALUATION..... 739
VENDITIONI EXPONAS..... 739
VENDORS AND PURCHASERS..... 739
VENUE..... 739
VERDICT..... 739
VESSELS..... 740
VETERINARY SURGEON..... 740
VICE REDHIBITOIRE..... 740
VIEWS..... 740
VIS MAJOR..... 740
VOID AND VOIDABLE..... 740
VOL..... 740
VOLUNTARY SERVICES..... 740
VOLUNTEERS..... 740
VOTING..... 740
VOUCHERS..... 740

VACATION.

I. Powers of Judge in.

1. During the long vacation a judge has the same powers that he has at any other time of the year with respect to matters to be done out of term. *Nolan* v. *Dastous*, 4 Q. L. R. 335, S. C. R. 1878.

VALUATION.

I. Of Land in Cases of Expropriation, *see* EXPROPRIATION.

VENDITIONI EXPONAS.

I. Opposition to, *see* OPPOSITION.

VENDORS AND PURCHASERS—*See* SALE.

I. Delegation of Price.
II. Privilege of Vendor, *see* PRIVILEGE.
III. Rights of Purchaser.

I. Delegation of Price.

2. The vendor of real property has a right to sue the purchaser, notwithstanding that by the deed of sale the price was delegated to a third party and the deed registered, so long as there is no express acceptance of the delegation. *Mallette et al.* v. *Hudon*, 21 L. C. J. 199, S. C. 1877.

III. Rights of Purchaser.

3. The remedy of a purchaser of real estate in case of deficiency of quantity in the land sold is not in damages, but to claim either a diminution of the price or the revocation of the sale. *Doutney* v. *Bruyere et al.*, 21 L. C. J. 95, S. C. 1877; 1502 C. C.

VENUE—*See* ACTION, Right of.

I. On Bills and Notes, *see* BILLS OF EXCHANGE.

VERDICT—*See* CRIMINAL LAW.

I. Motion to Set Aside.

4. A verdict for damages for a railway accident cannot be set aside because the judge in determining the questions to be submitted to the jury made no reference to the contributory negligence of the person killed, the question of the negligence of the plaintiff impliedly including that of contributory negligence. *Grand Trunk Railway Co. & Godbout*, 6 Q. L. R. 63, Q. B. 1877.

VESSELS.

I. Liability for Repairs to, *see* MERCHANT SHIPPING.
II. Lien on, *see* PRIVILEGE of *Dernier Equipeur*.

VETERINARY SURGEON.

I. Damages Caused by Acting as, *see* DAMAGES.

VICE REDHIBITOIRE—*See* SALE, Warranty, and ACTION, Redhibitory.

VIEWS—*See* SERVITUDES.

VIS MAJOR—*See* FORCE MAJEURE.

VOID AND VOIDABLE.

I. Difference Between, *see* SEQUESTRATION, Action by Sequestre.

VOL—*See* LARCENY, THEFT.

VOLUNTARY SERVICES.

I. Right to Compensation for, *see* ACTION Quantum Meruit.

VOLUNTEERS.

I. Rights and Liabilities of, *see* MILITIA LAW.

VOTING.

I. Under Temperance Act, *see* TEMPERANCE ACT.

VOUCHERS.

I. With Accounts, *see* ACCOUNTS.

W.

SUMMARY OF TITLES.

WAGES..... 741
WAIVER..... 741
WARDENS..... 743
WAREHOUSEMEN 743
WAREHOUSE RECEIPT..... 744
WARRANTY..... 744
WATER COURSES..... 745
WEIGHTS AND MEASURES..... 745
WHARVES..... 745
WIDOWS..... 745
WIFE..... 745
WILLS..... 745
WINTER ROADS..... 750
WITNESSES..... 750
WOMEN 751
WOOD..... 751
WORK AND LABOR..... 751
WORKMEN..... 751
WRIT..... 751

WAGES.

I. Action for Wages Due to Minor Son by Father, *see* ACTION.
II. Of Master and Crew of Vessel, *see* MERCHANT SHIPPING.
III. Of Persons Working for the Quebec Government at so much a day not Seizable, *see* EXECUTION, Exemptions.
IV. Privilege for, *see* PRIVILEGE.
V. Right of Action for, *see* ACTION.

WAIVER.

I. Of Conditions in Insurance Policy, *see* INSURANCE.
II. Of Damages for False Arrest.
III. What is.

II. Of Damages for False Arrest.

1. Where defendant having been arrested on a capias settled the matter without reserve on explanation, having never been imprisoned—*Held*, that the court would readily presume a waiver of any claim for damages. *Lapierre & Gagnon*, 1 L. N. 32, Q. B. 1877.

III. What is.

2. The silence of an insurance company with regard to conditions of a policy which have not been adhered to after a fire, does not amount to a waiver of those conditions. *Whyte & The Western Assurance Co.*, 22 L. C. J. 215, P. C. 1875.

3. Where secondary evidence is adduced and filed at trial without objection it cannot afterwards be objected to at argument. *Thwaites* v. *Coulthurst*, 3 Q. L. R. 104, S. C. R. 1874.

4. When an insurance company on a claim for loss refuses to pay, but does not object to the notice, that is a waiver of its right to do so afterwards. *Garceau* v. *Niagara Mutual Insurance Co.*, 3 Q. L. R. 337, S. C. R. 1877.

5. The plaintiff sued to set aside a sale which had been made of his land for taxes by the municipality in which it was situated, and the defendants pleaded *inter alia* that as the plaintiff was present at the sale and made no opposition thereto that he had acquiesced therein—*Held*, that his presence at the sale could not affect its validity in any way, and consequently there was no waiver. *Smart* v. *Wilson*, 2 L. N. 26, S. C. 1878.

6. A reference to arbitration on the part of an insurance company, of the amount of loss suffered by a fire, is not a waiver of a condition of the policy which stipulated that the insured by making a false and fraudulent claim for loss would lose all right to recover. *Larocque* v. *Royal Insurance Co.*, 23 L. C. J. 217, S. C. 1878.

7. Where an insurance company, with knowledge of all the facts, joins in an arbitration as to the amount to be paid the insured, it waives its right to object to the notices and proofs of loss. *Canadian Mutual Fire Insurance Co. & Donovan*, 2 L. N. 229, Q. B. 1879.

8. Where an insurance company had submitted the claim of the insured to another company for adjustment—*Held*, that they had waived their right to complain of insufficient notice. *Black* v. *National Insurance Co.*, 3 L. N. 29, & 24 L. C. J. 65, Q. B. 1879.

9. An application for an extension of time for payment of a promissory note is not a waiver on the part of the debtor of the right to pay at the place specified in the note. *Dorion & Benoit*, 1 L. N. 350, S. C., & 2 L. N. 171, Q. B. 1879.

10. Where a defendant appears and pleads without excepting to the jurisdiction he waives his right to do so afterwards in review. *Dufour* v. *Beaugrand*, 2 L. N. 180, S. C. 1879.

11. And where a party pleads to a warrant of arrest and is convicted he cannot afterwards make alleged irregularities in the service of the warrant a ground for *certiorari*. *Marion & Marion*, 2 L. N. 180, S. C. 1879; 119 C. C. P.

12. A demand for security for costs under the ordinary procedure is not a waiver of defendants' right to demand increased security under the Injunction Act. *Dobie* v. *Board of Management of Temporalities Fund, &c.*, 2 L. N. 277, & 23 L. C. J. 71, S. C. 1879.

13. Where a party expropriated had received his share of the indemnity, and was afterwards assessed for his share of the cost—*Held*, that the fact of his having received the indemnity was not an acquiescence in the assessment roll. *Demers & City of Montreal*, 2 L. N. 226, Q. B. 1879.

14. Where a person after the institution of an action to set aside an assessment roll paid the amount for which he was assessed by it in order to save execution—*Held*, to be no waiver of his right. *Bisson* v. *City of Montreal*, 2 L. N. 341, & 23 L. C. J. 306, Q. B. 1879.

15. But where the purchasers of a quantity of cloth returned the goods as not being according to sample—*Held*, that their having retained one piece as security for freight paid was no waiver of their right to do so. *McInnis* v. *Vezina*, 2 L. N. 315, Q. B. 1879.

16. Where an insurance company had, by resolution of its board, nearly three months after a fire, objected to a claim, without referring to the delay in filing—*Held*, that they had waived the right to use that as a plea. *Ducharme* v. *The Mutual Insurance Co. of Laval, Chambly & Jacques Cartier*, 2 L. N. 115, S. C. 1879.

17. Where a master retained a servant for some time subsequent to a loss by theft, for which the servant was to some extent to blame, and had paid him his wages as formerly——*Held*, that he had waived the right to retain his wages on account of the theft. *Watson* v. *Thomson*, 2 L. N. 387, S. C. 1879.

18. Filing a plea to the merits is not a waiver of a preliminary plea where there is reserve of the latter. *Prévost* v. *Jackson*, 3 L. N. 128, C. C. 1880.

19. Where, to an action for the amount of a fire insurance policy, the company pleaded *inter alia* want of compliance with the requirements of the policy as to notice, and it appeared that they had received the information given by the insured without objection, and afterwards furnished him with a form on which to make out his claim—*Held*, that they had waived their right to plead insufficient notice. *Kelly* v. *Hochelaga Mutual Fire Insurance Co.*, 2 L. N. 347, & 3 L. N. 63, S. C. R. 1880.

WARDENS.

I. Of Churches, *see* CHURCH-WARDENS.

WAREHOUSEMEN.

I. Liability of.

20. Where goods had been, by order of the harbor master, placed in a private warehouse, subject to the order of the importer who had not entered them, and were afterwards sold by order of the collector of customs for non-entry—*Held*, that it was the duty of the warehouseman not to deliver them except on presentation of the warehouse receipt, which was in the hands of the importer. *Simpson & Vaile*, 22 L. C. J. 229, Q. B. 1877.

WAREHOUSE RECEIPT.

I. Granted by Officers of Company.
II. Must Represent Goods in Possession.
III. What is.

I. Granted by Officers of Company.

21. Warehouse receipts granted without authority by the president and secretary of a company, not doing business as warehousemen, are invalid. *Hearle* v. *Rhind*, 1 L. N. 101, & 22 L. C. J. 239, Q. B. 1878.

II. Must Represent Goods in Possession.

22. A warehouse receipt given by a warehouseman when the goods in question are not in his possession is null and void. *Williamson & Rhind*, 22 L. C. J. 166, Q. B. 1877.

IV. What is.

23. A document in the following form is a warehouse receipt and not a mere delivery order:

Received from R. G. G. & Co., on storage in yard Grey Nun st., the following merchandize, viz, (300) three hundred tons No. 1 Clyde Pig Iron, storage free until opening of navigation. Deliverable only on surrender of this receipt properly endorsed.

Montreal, March 5th, 1873. (Signed),

Robertson et al. & Lajoie, 1 L. N. 100, & 22 L. C. J. 169, Q. B. 1878.

24. And *held*, also, that the parties signing such warehouse receipt, unpaid vendors of the iron, could not pretend that it was not a warehouse receipt, inasmuch as they were not warehousemen, as against a holder of such receipt in good faith. *Ib.*

25. And *held*, also, that such warehouse receipt may be transferred by endorsement as collateral security for a debt contracted at the time in good faith, the pledgee having no notice that the pledgor is not authorized to pledge, the proof of such knowledge being on the party signing the receipt. *Ib.*

26. And *held*, also, that an obligation contracted at the time may be made to cover future advances but not past indebtedness. *Ib.*

WARRANTY—*See* SALE.

I. Continuing.
II. Effect of.
III. Of Promissory Note, *see* BILLS OF EXCHANGE.

IV. Of Transfer, *see* SURETYSHIP.

I. Continuing.

27. An order to "give bearer what he wants" does not contain a continuing guarantee. *Lacroix & Bulmer*, 21 L. C. J. 327, Q. B. 1877.

II. Effect of.

28. A sale of timber limits contained a clause that it was made subject to the usual condition that it was not to intertere with limits granted or to be renewed in virtue of regulations, which stipulation was well known to the purchaser. The limits did in fact interfere with anterior grants—*Held*, that this did not come under a *garantie de tous troubles* if such warranty existed in the present case. *Cushing & Duconda*, 3 L. N. 350, Q. B. 1880.

WATER COURSES—*See* RIVERS, SERVITUDES, ETC.

I. Damage by.

29. The recourse granted by cap. 51 of the Con. Stats. of Lower Canada is not exclusive, and the right to a direct action before a competent court is not taken away by the statute. *Emond & Gauthier*, 3 Q. L. R. 360, S. C. 1877.

WEIGHTS AND MEASURES—*See* INSPECTION LAW.

WHARVES.

I. Jurisdiction in Cases of Damage to, *see* JUSTICES OF THE PEACE.
II. Liability for Accidents on, *see* CARRIERS.

WIDOWS.

I. Married Women Sued as, *see* ACTION, Against *Women*.
II. Rights of, *see* DISTRIBUTION, Contestation of Report of.

WIFE.

I. Liability of, *see* MARRIAGE.

WILLS.*

I. Action Against Executor for Account.
II. By.
Insane Persons.
III. Interpretation of.
IV. Liability of Legatees Under, *see* LEGATEES.
V. Made by Fraudulent Suggestion.
VI. Prescription of.
VII. Reading of.
VIII. Registration of Death of Testator, *see* TESTATOR.
IX. Substitution Created by.

I. Action Against Executor for Account Under.

30. Action to account brought by two of the three residuary legatees under the will of the late L. H., of which the defendant was executor. The plea was to the effect that no account was due until the majority of the third residuary legatee, who was still a minor. *Per Curiam.*—The clauses of the will requiring particular attention are as follows: "To my niece, Rebecca Hoyle, wife of the Reverend James Augustus Devine, of Montreal, during her natural life an annuity of £320 currency per annum, to begin to run from and after the date of my decease, and then to be paid to her and to her sole use, and upon her own receipts, without requiring the consent or authorization of her husband, either in half-yearly or in quarterly equal instalments, and at such regular periods of the year as to my said executor shall seem most convenient, and said annuity shall be free from the control of the annuitant's husband, and shall not be subject to be alienated or pledged or to be attached or taken in execution for any cause whatsoever. And the foregoing devise and bequest of the residue of my real and personal estate to my said executor upon trust as aforesaid are also made upon the further trust, that after securing the regular payment of the several annuities, hereinbefore given and bequeathed, my said executor shall invest in like securities as are hereinbefore mentioned, the capital sum of £4,000 currency; and as the interests or dividends arising therefrom shall from time to time become sufficient shall in like manner and in like securities invest the accumulated interests or dividends for the use and benefit of the lawful children of my said niece, Rebecca Hoyle, wife of the said Reverend James Augustus Devine, to whom, and the survivors or the survivor of them, I give and bequeath the securities in which the said capital sum of £4,000, and the securities in which the accumulated interests and dividends arising therefrom shall be invested, with such also as shall have arisen, but shall not yet be invested, in equal shares; the share of each child to be paid or assigned to him or her on his or her attaining the age of 21 years, and not sooner. In the case, however, of any such child being a daughter, it shall be at the discretion of my said executor either to pay or assign her share to her for her sole use at her said age of 21 years, or to secure the same in such manner as that the interests or dividends arising therefrom only shall be paid to her for her sole use and upon her own receipt during her natural life, free from the control of her husband, and not

* By Q. 42-43 Vic. capt 36, and also by Q. 44-45 Vic. cap. 28, provision is made for rendering valid certain wills passed before a notary and two witnesses, one of whom only could sign his name, or without the mention of the reading and signature.

subject to be alienated or pledged, or to be attached or taken in execution for any cause whatsoever; and also upon the further trust that my said executor shall pay or assign the ultimate residue of my estates, real and personal, in equal shares to the use of the said lawful children of my said niece, Rebecca Hoyle, whom I hereby constitute my residuary devisees and legatees, with the same discretionary power, however, to my said executor as is hereinbefore given to him, in the case of any such child being a daughter." It is admitted that the two plaintiffs and the minor are the residuary legatees of the testatrix, and that the annuitants are all dead. The words of the will are explicit: —"the share of each child to be paid or assigned to him or her on his or her attaining the age of 21 years." What is asked for is not the account of the minor, but of the plaintiffs who are now majors. It would be unreasonable to require the plaintiffs to wait till the minor is a major. We here apply the ordinary rule which entitles each minor to his portion on reaching the age of majority. An account is ordered. *Devine & Griffin*, S. C. 1877.

II. By.

31. *Insane Persons.*—In a contest over a will—*Held*, null, as the testator was at the time of making it suffering from delirium tremens and congestion of the brain. *Chapleau & Chapleau*, 1 L. N. 473, Q. B. 1878.

III. Interpretation of.

32. In an action concerning a succession—*Held*, that the designation of the *substitués* by the words, "*Enfants nés de mon mariage*" in a will creating a substitution is the manifestation of the intention of the testator that representation should take place, and that it needs very clear and precise words to take away from the word *enfants* the meaning that the law expressly gives to it. *Marcotte* v. *Noel*, 6 Q. L. R. 245, S. C. R. 1877.

33. A clause in a will was as follows: "I hereby give and bequeath unto my brother, William L. Noad, $3000, which said sum I hereby direct to be invested by my executors in United States Government bonds bearing interest, and the said bonds to be issued in his name and to be forwarded to him to be used for the support of his family."—*Held*, that under this the legatee was simply a fiduciary legatee or trustee such as is mentioned in art. 869 C. C., and that the family was in effect the real legatee and proprietor of the bonds. *Noad* v. *Noad*, 21 L. C. J. 312, S. C. 1874.

34. By the will of the defendant's wife defendant was left sole testamentary executor of all her property, with full powers of administration. By one clause of the will the deceased gave to her husband power also to divide the property among their children, *dans la proportion qu'il jugera convenable et à l'époque qu'il croira la meilleure à sa discrétion sans que les héritiers de la testatrice puissent jamais revenir du réclamer contre les actes, opérations ou dispositions du défendeur qui est laissé entièrement libre sous tous rapports.* By another clause the testatrix declared that she did not wish her property to be seized and sold for other debts than those of her succession. "*C'est-à-dire celles aux quelles elle aura souscrit et sera partie, et pour nulles autres dettes.*" After the testatrix's death one of the sons, being in business, obtained his father's endorsement in his capacity of executor on certain notes, and these notes not being paid at maturity his father was sued thereon, and judgment being obtained against him the property of the succession had been seized under execution. Another of the sons opposed the execution, on the ground that in endorsing the notes in question as executor of the estate of his wife the defendant had exceeded his powers under the will, and that the property of the succession could not be seized and sold for such debt.—*Held*, that the endorsements in question were nothing but a donation *entre vifs*, and were quite within the terms of the will. The opposition was therefore dismissed.* *Molsons Bank & Lionais & Lionais*, 3 L. N. 82, S. C. 1880.

IV. Made by Fraudulent Suggestion.

35. Action by a son against his father to set aside a will made by his mother in 1851, on the ground of fraudulent suggestion and threats on the part of the husband, the defendant. The defendant denied these allegations. The proof was that the will was made in a curious way, that the defendant was continually urging his wife to make a will. The testatrix declared so herself, and having asked for the means of making a will witnesses were got into the house on a kind of false pretence. The testatrix dictated a will, but the witnesses did not sign it in her presence. Nevertheless they got a declaration in it from her that she was *obsédée*, tormented by her husband to make a will in his favor disinheriting her children. By that will she left all her property to her children, subject only to a life enjoyment of part of it in favor of the husband. The will attacked was made five days afterwards before notaries, and left the husband everything, naming him sole executor. One of the notaries deposed that after she had executed it she exclaimed: "Now the rascals are happy." Menaces by the husband were also proved, and there was proof also that the testatrix wished to change the second will, but her husband put her off, and said the next day would do. She died, however, the next morning.—*Held*, to be proved that the last will was not in accordance with the actual *volonté* of the testatrix, and will set aside. *Dorion* v. *Dorion*, 7 R. L. 402, S. C. 1875, & 9 R. L. 97, Q. B.

V. Prescription of.

36. Wills are not prescribed by ten years under Art. 2258 of the Civil Code, but by thirty years under Art. 2242. *Dorion & Dorion*, 7 R. L. 402, S. C. 1875.

VI. Reading of.

37. Plaintiff's mother by her will of November, 1848, bequeathed all her property of every kind to her husband, subject to the express charge and condition that he should not dispose

* Confirmed in Appeal Sept. 20, 1882.

of it in any way except to one of several boys mentioned, and that should he do so contrary to the meaning of such condition the will should be null. The immoveable claimed by the action formed part of the property of the community between the testatrix and her said husband, and the half of it belonging to the testatrix was therefore part of that bequeathed by the will to the husband subject to the condition mentioned. In February, 1858, the husband, the legatee, thus charged with a substitution in order to the carrying out of the provisions of the said condition by deed of donation gave to one of his sons a part of the immoveable property, and one-half of the moveables, representing altogether about one-half in value of all the property left by the testatrix. By a clause in the deed of donation it was provided that the donor (the father) and the donee (one of the sons) should live and cultivate together the portion of the land intended for the plaintiff, another of the sons. A year afterwards the plaintiff having left his father's house and refused to work there any longer the father sold the property, including that belonging to plaintiff, to one A. T., and after passing through several hands it came into that of the defendant. Action by plaintiff under the will to recover—*Held*, that as it did not appear that the will under which plaintiff claimed had ever been read and published, as required by law, at the time of the death of the testatrix, and as defendant held the property by good and sufficient title, the action of plaintiff should have been dismissed with costs. *Boulé* v. *Langis*, 10 R. L. 135, Q. B. 1879.

IX. Substitution Created by.

38. Petition to have a curator named to a substitution. The petition set out that by a codicil to the will of the late Alfred Pinsonneault a substitution had been created of certain property designated as lands of La Tortue bequeathed to Alfred Charles Pinsonneault, who had so far neglected to have a curator named to the substitution so created. The legatee answered that the property in question had been given to him absolutely, and that there was no substitution. The words of the codicil governing the matter were as follows:—"*Je désire que "tous mes biens soient divisés entre tous mes "enfans d'après la loi en force dans ce pays. "J'excepte cependant de cette disposition "générale mes terres de La Tortue situées dans "la paroisse de St. Phillipe et de St. Constant. "Je lègne ces terres à mon fils aîné Charles "Alfred. * * * Mais mon fils aîné devra "donc faire tous ses efforts pour conserver cette "propriété, améliorer les différentes terres quelle "renferme, et les transmettre plus tard à ses "enfants. S'il n'avait pas d'enfants je lui "conseille de légner cette propriété à un des "enfants mâles de ses frères Adolphe ou Ber-"nard. Si ces derniers n'avaient pas d'enfants "mâles il choisirait alors parmi les enfants de "ses sœurs un garçon qu'il instituerait son "héritier à la condition que ce dernier prenne "le nom de Pinsonneault, qu'il lui suffise dans "le choix qu'il fera d'un héritier de bien rem-"plir mes intentions qui sont de conserver pour "toujours intacte dans la famille cette propriété "à laquelle je suis attaché pour les raisons ci-"dessus déclinées.*" By another article it was said:—"*Mon fils aîné Charles Alfred parta-"gera également avec ses sœurs et frères dans "tous mes autres biens en sus de ma propriété "à La Tortue que je lui lègue pour les causes "ci-dessus mentionnées.*" By a second codicil it was said:—"*Il sera loisible à mon fils aîné "Charles Alfred de transmettre mon domaine "à La Tortue ci-dessus mentionné à celui de ses "enfants qu'il en jugera le plus digne.*"—*Held*, that by these clauses or dispositions a substitution was created, and the petition for a curator was granted. *Drummond exp.*, 3 L. N. 114, S. C. 1880.

WINTER ROADS.

I. Liability for, *see* MUNICIPAL CORPORATIONS, Liability of.

WITNESSES.

I. Attorneys ad Litem Cannot be, *see* ATTORNEYS AD LITEM.
II. Competency of.
III. Examination of.
IV. Guilty of Contempt.
V. Need not Answer Questions Tending to Criminate them.
VI. Rule Against.

II. Competency of.

39. One endorser of a note or bill is competent as a witness against another, the maker or another endorser. *McLeod & Eastern Townships Bank*, 2 L. N. 239, Q. B. 1879.

III. Examination of.

40. An insolvent is not bound to answer a question which may tend to criminate him. *Beaudry in re. & Wilkes*, 21 L. C. J. 196, S. C. 1877.

IV. Guilty of Contempt.

41. A witness neglecting to appear before an accountant, appointed by the court, in obedience to a subpœna duly served on him, is guilty of contempt. *Prevost & Ganthier*, 23 L. C. J. 323, S. C. 1879.

V. Need not Answer Questions Tending to Criminate them.

42. A defendant sued for penalties under 37 Vic. cap. 9 is not obliged to answer questions tending to criminate him. *Langlois* v. *Valin*, 6 Q. L. R. 249, S. C. 1880.

VI. Rule Against.

43. A witness who has failed to appear cannot be condemned to a fine on motion to that effect served upon him, but only on service of a

rule upon him.* *Goodson* v. *Levis & Kennebec R. R.*, 4 Q. L. R. 382, S. C. 1878.

WOMEN.

I. Action Against, *see* ACTION.
II. Authorization of, *see* MARRIAGE.
III. Rights of, *see* MARRIAGE, MARRIAGE CONTRACTS.

WOOD.

I. Sale of, *see* SALE *en bloc*.

WORK AND LABOR.

I. Hire of, *see* HIRE.

WORKMEN.

I. Act to Secure the Payment of, *see* Q. 44-45 Vic. cap. 17.
II. Privilege of, *see* PRIVILEGE.
III. Seizure of Wages of, *see* Q. 44-45 Vic. cap. 18.

WRIT.

I. Description of Parties in, *see* PROCEDURE.
II. Of Error, *see* CRIMINAL LAW.
III. Of Possession, *see* POSSESSION.
IV. Of Prohibition.
V. Of Summons.
VI. Validity of.

IV. Of Prohibition.

44. A writ of prohibition will lie to prevent the secretary-treasurer of a county from proceeding to a sale of land for school taxes pretended to be due.* *Morgan & Coté*, 3 L. N. 274, Q. B. 1880.

45. And also to prevent a municipality from proceeding with the opening of a street. *Mayor & Council of Iberville & Jones*, 3 L. N. 277, Q. B. 1880.

V. Of Summons.

46. *Delays on.*—The delay of one intermediate day provided by the Code of Procedure † on service of summons under the Lessor and Lessee Act must be of one juridical day, and therefore a service made on the 24th December of a writ returnable on the 27th, the two intermediate days being Christmas and Sunday, was held insufficient. *Metayér dit St. Onge* v. *Larichelière*, 21 L. C. J. 27, S. C. 1876.

VI. Validity of.

47. An error in the date of a writ is not fatal. *Nolan* v. *Dastous*, 4 Q. L. R. 335, S. C. R. 1878.

48. And a question as to whether the deputy prothonotary is or is not of age cannot be raised incidentally so as to invalidate a writ signed by him. *Ib.*

* *Semble*, that the motion for a rule must also be served, except when made on the return day of a subpœna.

* Affirmed in Supreme Court.

† The delay upon summons is only one intermediate day, etc. C. C, P. 890.

ERRATA ET ADDENDA.

Windsor Hotel Co. & Lewis, p. 172, art. 162, should have been noted as reversed in Appeal (see 4 L. N. 331).

Pudney & Chartrand, p. 243, art. 54, confirmed in Appeal.

TABLE OF CASES.

A

	PAGE
Abbott *v.* Fraser	645
Abbott *v.* Macdonald	74, 76
Abrahams *v.* Regina	215, 217, 220
Adam *v.* Flanders	649
" *v.* Mercier	295
Adams *v.* Brooks	12
" *v.* McIntyre	208
Aikens *v.* Holton	48, 534, 623, 634
Aitkin *v.* National Insurance Co.	402
Aikin *v.* Hood	203
Alcock *v.* Howie	24
Alexander *v.* Taylor	117
Allair *v.* Les Syndics, etc., of the Parish of St. Ours	154
Allaire *v.* Smallwood	418, 574
Allan *v.* Belleisle	350
" *v.* Cross	144
" *v.* McLagan	34, 250
" *v.* Woodward	144, 724
Allard *v.* Quintal	461
Alloway *v.* Saunders	199
Ambrois *v.* Malleval	139
Amiot *v.* Tremblay	260, 350, 498, 650
Amos *v.* Moss	159, 384
Anctil *v.* Dechene	309
Anderson *v.* Brusgaard	81, 206
" *v.* Gervais	389
" *v.* Sanborn	581
Andrews *v.* Holton	17, 205
Angers *v.* Trudel	143
Angus *v.* Borrowman	74, 378, 607, 693
" *v.* Montreal, Portland & B. Railway	194, 371, 612, 643
Ansell *v.* Bank of Toronto	99, 248
Ansell *v.* Simpson	671
" *v.* Thayer	651, 683
Antaya *v.* Poulet	139
Archambault *exp.*	203, 348, 474
" *v.* Beaudry	619
" *v.* Belanger	394, 659
" *v.* Bourgeault	578
Archambault *v.* Citizens Insurance Co.	324, 325, 413, 519
" *v.* City of Montreal	235, 528
" *v.* Compte	676
" *v.* Dansereau	179, 626
" *v.* Gahrneau	411
" *v.* Pangman	210
" *v.* Westcott	58, 91, 186, 203
Archer *v.* Boissonault	395
" *v.* Lortie	115, 426, 575
Archibald *v.* Brown	48
Aresse *v.* Dubreuil	733
Armitage *v.* Evans	26, 351
Armstrong *v.* Delinelle	563
" *v.* Pangborn	162
Arpin *v.* Dixon	555
" *v.* Lamonreux	259, 263, 417
" *v.* Poulin	110, 382
Arres *v.* Gardner	357, 490
Astill *v.* Hallec	493
"Atalaya" The	337
"Attila" The	311, 484, 485
Attorney General *v.* City of Montreal	36, 62, 445
" *v.* Coté	35, 455, 458
" *v.* Middlemiss	16, 255
" *v.* Montreal City Passenger Railway	710
" *v.* Murray	60, 72, 467
" *v.* Queen Ins. Co.	37, 454
Aubert *v.* Dumont	677
Audette *v.* Bank of Montreal	110, 387
" *v.* Beaudette	137
Augé *v.* Mayrand	131
Auger *v.* Gilmor	571
" *v.* O'Meara	260
Auld *v.* Fraser	398
Aussant *v.* Vandal	601
Aylmer *v.* Maher	51, 421
Ayotte *v.* Duhaine	7
" *v.* Lagace	84

B

Baby *v.* Bourget	358, 602
Bachand *v.* Bisson	613
Bachlaw *v.* Cooper	489
Badeau *v.* McNichols	85, 307
Baillie *v.* Desmarteau	488, 583
" *v.* Provincial Insurance Co.	401, 434
Bain *v.* Regina	222
Bain *v.* Whyte	430, 434
Baker *v.* Clayes	280, 295
" *v.* Cie. de Prêt, &c.	205, 679
" *v.* Welch	31, 167
Baldwin *v.* Fair	397
Bank of British North America *v.* Bureau	615
Bank of Commerce *v.* Brown	585, 587, 622
Bank of Montreal *v.* Audette	110, 387
Bank of Montreal *v.* Geddes	103, 387
" *v.* McLachlan	113
" *v.* Thompson	171
Bank of Toronto *v.* Ansell	99
Bank of Toronto *v.* European Assurance Society	248, 400
" *v.* Girard	98, 183
" *v.* Hood	189
" *v.* Perkins	356, 497
Bannatyne *v.* Canada Paper Co.	133, 243
Baptist *v.* Smith	736
Barbeau *v.* Larochelle	377
Barbeau *v.* Levy	385
Baird *v.* Dionne	306, 589
Barlow *v.* O'Halloran	85, 618

PAGE

Barnes *v.* Bruneau 489
Barrette *v.* Poissant 54, 362, 736
Barrette *v.* School Commissioners of St. Columban 164, 245
Barrie *v.* Downie 50, 353
Barron *v.* Coultry 308
" *v.* Francœur 209
Barsalou *v.* Hood 386
" *v.* School Commissioners of Hochelaga 163
Barthe *v.* Beliveau 516
" *v.* Boudreault 246, 471
" *v.* Dugg 247, 366
" *v.* Hubert 122, 187
Bass *v.* Borrowman 87
Bastien *v.* Booth 321, 558
Bates *v.* Lauzon 24, 338
Bayard *v.* Martin 200
" *v.* Stewart 427, 654
Baylis *v.* City of Montreal 18, 417, 523
" *v.* Drummond 734
" *v.* Hibbard 193
Beamish *v.* Kaulbach 76
Beard *v.* Hart 233
" *v.* Thompson 384
Beattie *v.* Riddell 394
" *v.* Workman 5, 715
Beauchamp *v.* La Société de Construction 647, 732
Beauchemin *v.* Desilets 267
" *v.* Simon 19, 504
" *v.* Trudeau 247
Beauchene *v.* Hamilton 201, 279, 300, 302, 303
" *v.* Lahaie 64
Beaudet *v.* Mahoney 58, 675
" *v.* Martel 501
Beaudette *v.* Audette 137
Beaudrette *v.* Corporation of St. Christophe 528
Beaudoin *v.* Duchaine 84
" *v.* Lachapelle 490
" *v.* Thibadeau 381, 383
Beaudry *in re* & Wilkes 387, 751
" *v.* Archambault 619
" *v.* Bissonnette 572, 595
" *v.* Brosseau 300
" *v.* Brown 343, 345
" *v.* City of Montreal 59, 522
" *v.* Grant 623
" *v.* Lafleur 461, 609
" *v.* Lareau 178, 312
" *v.* Les Curé, etc., of Montreal 186, 549
" *v.* Rolland 442
Beaugrand *v.* Dufour 744
Beaubien *v.* Dupuy 392
" *v.* Farmers Insurance Co. 207, 618
" *v.* Les Curé, etc. of St. Enfant Jesus 153
Beaupré *v.* Bourbault 345, 512
" *v.* Labelle 690
Beauregard *v.* Dufour 429
Beausoleil *v.* Bourgoin 207
" *v.* Canada Mutual Fire Insurance Co. 403
" *v.* Deladurantaye 378
" *v.* La Banque Jacques Cartier 396
" *v.* Therien 577
Beautronc *v.* Thymens 456, 459, 574
Beckham *v.* Farmer 123, 313, 325
Bedard *v.* Lebrun 20, 355, 617

PAGE

Bedard *v.* Lusignan 346
Beemer *v.* Devlin 46, 123, 716
Begin *in re* 358
" *v.* Chaloult 632
Beique *v.* Bury 108
Belair *v.* Lajoie 385
" *v.* Plessis 490
Beland *v.* L'Heureux 165
Belanger *v.* Archambault 394, 659
" *v.* Benoit 600
" *v.* Caron 296
" *v.* Chalifoux 619
" *v.* Champagne 180
" *v.* Guiner 97, 532
" *v.* Kelly 431, 436
" *v.* Lalonde 550, 601
" *v.* Roy 320, 460
Beling *v.* Meier 83
Belisle *v.* Pellerin 561
" *v.* Perron 59
" *v.* Slater 134, 612
Beliveau *v.* Barthe 516
" *v.* Duchesneau 357, 516
" *v.* Talbot 692
Bell *v.* Burland-Desbarats Co. 464
" *v.* Corporation of Quebec 660
" *v.* Dominion Telegraph Co. 237, 721
" *v.* Farmer 594, 682
" *v.* Gailleux 201, 335
" *v.* Hartford Insurance Co. 414, 600
" *v.* Menzies 22, 440
" *v.* Montreal Loan & Mortgage Co. 692
" *v.* Prevost 111
" *v.* Rickaby 38, 204, 669
" *v.* Sulte 51, 456
Bellay *v.* Guay 64, 210, 426, 621
Bellehumeur *v.* Valade 139
Belleisle *v.* Allan 350
" *v.* L'Union St. Jacques 449
Bellerose *v.* Hebert 599
Benard *v.* Dupuy 47, 379
Benoit *v.* Belanger 600
" *v.* Benoit 228, 712
" *v.* Dorion 577, 744
" *v.* Petit Clerc 137
" *v.* Vincent 263, 488
Berard *v.* Letendre 568, 583, 584
" *v.* Mathieu 675, 705
Berger *v.* Devlin 588
" *v.* Poitras 439, 464
Bergeron *v.* Brossard 246
" *v.* Fleury 19
Bergevin *v.* Gauthier 289
" *v.* Onimet 91, 550
" *v.* Roulean 431, 629
" *v.* Vermillan 87
Bernard *v.* Latulippe 205
" *v.* Quesnel 335, 344
Bernier *v.* Boisvert 90
" *v.* Carrier 271, 552
" *v.* Hogan 670
" *v.* Pelletier 239
Berthe *v.* Regina 219
Berthelot *v.* Burroughs 614
" *v.* Theoret 731
Bertrand *v.* Chouinard 612
" *v.* Decelles 113, 386
" *v.* Gault 34
" *v.* Gnaedinger 33, 108
Bertrand *v.* Pepin 88, 738

PAGE

Bertrand v. Pouliot 492, 561, 624
" v. Robert 283, 391
Bessemer v. Melancon 340, 644
" v. Deguspe 27
Bethune v. Charlebois 604, 652
" v. McMillan 346
Bickell v. Richard 628
Bickerdike v. Murray 45
Bienvenu v. Eastern Townships Insurance Co. 33, 415
Billy v. Lepage 32
Bisson v. Rachand 613
" v. City of Montreal 306, 523, 744
" v. Philion 555, 631
" v. Trudeau 84
Bissonette v. Beaudry 572, 595
" v. Morin 265, 558
" v. Regina 216, 227
Black v. National Insurance Co. 416, 744
" v. Rhodes 551
Blagdon v. Lebel 684
Blaiklock v. Macduff 169
Blain v. Vautrin 603
Blais v. Gleason 705
" v. Learmonth 678
Blake v. Ostell 227
Blanchard v. Lamarche 612, 617
" v. Lang 150, 260, 430
" v. Theroux 19, 652
Blanchet v. Gray 298
" Sargeant 58
Blea v. St. Jean 589
Bleau v. Regina 217
Blinn v. Magistrates Court of County of Brome 431
Bloomfield v. Brooke 423, 700
Blouin v. Bouchard 179, 379
" v. Dontre 322
" v. Langelier 209, 584, 672
Board of Temporalities v. Dobie, 38, 72, 208, 371, 375, 448, 744
" " v. Lang, 372, 427, 587
" " v. Minister of St. Andrews, 58, 91, 197, 626
Bocage v. Larimée 240
Boissonnault v. Archer 395
Boisvert v. Bernier 90
Bolduc v. Lefuntun 246, 480
" v. Marois 243, 364
" v. Robitaille 320, 463
Bombardiere v. Darby 614
Bonin v. Bonin 314
Bonnet v. Bongé 90, 334
Boomer v. McGreevy 187
Booth v. Bastien 321, 558
" v. Lacroix 89, 626
Borlase v. St. Lawrence Steam Navigation Co. 144, 238, 709
Borrowman v. Angus 74, 378, 607, 693
" v. Bass 87
Borthwick v. Dillon 46, 123
Boscovitz v. Rice 503
Boston v. School Commissioners of Roxton 258, 314
Bothwell v. Corporation of West Wickham 539
Bouchard v. Blouin 179, 379
" v. Dawson 619
" v. Thivierge 588, 668

PAGE

Bouchard v. Tourigny 592
Boucher v. Carrier 259
" v. Dorval 20, 355
" v. Major 96
" v. O'Halloran 550, 574, 618
" v. Regina 218
" v. Sansfacon 455
Boudreau v. Dorais 12, 455, 459
" v. Suite 65
Boudreault v. Barthe 246, 471
Bouffard v. Nadeau 14
Bougé v. Bonnet 90, 334
Bougie v. Normandeau 88
Boulé v. Langis 750
Boulerisse v. Hebert 614
Boulton v. Court Mount Royal 106, 195
Bourassa v. Regina 316
" v. Roy 716, 717
Bourbault v. Beaupré 345, 512
Bourgeau v. Brossard 499
Bourgeault v. Archambault 578
" v. Hamel 358, 602
" v. Shaw 320
Bourgoin v. Beausoleil 207
" v. Malhiot 370, 627
" v. Montreal Ottawa and Western Railway 37, 174, 194, 326, 449, 481, 617, 626, 639, 641
" v. Plante 17
Bourbeau v. Cartier 512
Bourk v. Sewell 597, 681
Bourke v. Langlois 681
Bourret v. Bongé
" v. Hurtubuise 133
Bousquet v. Brown 516, 656
" v. Rousseau 9, 515, 516
Bouthillier v. Cairns 456
" v. Hart 547
" v. Ottawa Agricultural Insurance Co. 57
Bowdon v. Hart 240, 470
Bowen v. Robinson 199
Bowie v. Whyte 391
Boyer v. Duperrault 729
" v. Irwin 54
" v. McIver 440, 463
Boynton v. Grose 393
Bradford v. Driscoll 289
Bradley v. Logan 617
Brais v. Racette 674
Bramley v. Mechanics' Bank 51, 110
Branchaud v. Lefebvre 360, 649, 687
Brassard v. Langevin 60
" v. Lepage 118
" v. O'Farrell 70, 71, 104
Brault v. Brault 267
" v. Marsolais 245
Breakey v. Carter 78, 373, 736
Brennan v. McAnnally 491, 589
" v. Waldron 262, 627
Brewis v. Stewart 120
Brewster v. G. T. R. Co. 622, 688
" v. Lamb 71, 72
Bridgewater The 485
Brien v. Fausse 656
Brigham v. Hall 202
Brillon v. Gingras 324
Brisbin v. Campeau 188, 442
Brissette v. Sylvestre 288
British American Land Co. v. Cross 411

	PAGE
British American Land Co. *v.* Laverdiere	686
Brochu *v.* Duquette	69
Brockville & Ottawa Railway Co. *v.* Foster	389, 394
Brodeur *v.* Marais	207
Brody *v.* Rendall	461
Brooke *v.* Bloomfield	423, 700
Brooks *v.* Adams	12
Brossard *v.* Bergeron	246
" *v.* Bourgeau	499
" *v.* Langevin	60, 298, 303, 654
" *v.* O'Farrell	630, 656
Brosseau *v.* Beaudry	300
" *v.* Crevier	135
" *v.* Homier	692, 717
" *v.* Panet	697
Brouillard *v.* Gunn	648
" *v.* Langelier	471
Brown *v.* Archibald	48
" *v.* Bank of Commerce	585, 587, 622
" *v.* Beaudry	343, 345
" *v.* Bousquet	516, 656
" *v.* Darling 160, 308, 324, 476, 600,	603, 604
" *v.* Dorion	42
" *v.* Ker	48, 168
" *v.* Mayor of Montreal	64, 328
" *v.* Mullin	201, 383
" *v.* Perkins	14, 15
Browne *v.* Pinsonneault	22, 467
Browning *v.* Vissiere	675
Brownrigg *v.* Tufts	730
Bruce *v.* Dudevoir	613
Bruckhert *v.* Maher	136
Bruneau *v.* Barnes	489
" *v.* Gagnon	205
" *v.* Massé	61, 281, 282, 293, 302
" *v.* McCaffrey	57
Brunelle *v.* Buckley	18, 178, 417, 490
" *v.* Lafleur	650
Brunet *v.* Corporation of Village of Cote St. Louis	536
" *v.* Pinsonneault	600
" *v.* Saumure	263
" *v.* Wilson	628
Brusjaard *v.* Anderson	81, 206
Bruyere *v.* Doutney	28, 739
Bryant *v.* Fitzgerald	576
Buckley *v.* Brunelle	18, 178, 417, 490
Budden *v.* Knight	631
Bulmer *v.* Dufresne	647, 738
" *v.* Lacroix	746
Burch *v.* Carillon & Grenville Railway	614, 618, 633
Bureau *v.* Bank of B. N. A.	615
" *v.* Roussel	360, 651
Burke *v.* Colfer	86
Burland Desbarats Co. *v.* Bell	464
Burroughs *v.* Berthelot	614
" *v.* Malhiot	209
Burstall *v.* Stevenson	118
Bury *v.* Beique	108
" *v.* Hatchette	394
" *v.* M. O. & O. Railway	29
Buss *exp.*	192
Butters *v.* Pierce	6, 442

C

Cable *v.* Stewart	427, 654
Cadieux *exp.*	161
" *v.* Cadieux	591, 619
" Canadian Mutual Fire Insurance Co.	86
Caffrey *v.* Hawkes	134
Cahill *v.* Hatchette	500
Caille *v.* Rhéaume	497
Cairns *v.* Bouthillier	456
Caldwell *v.* Macfarlane	387, 391
Callahan *v.* Corporation of St. Gabriel West	530
" *v.* Gauthier	615
" *v.* Holton	534, 537
" *v.* Vincent	13, 79, 191
Calmel *v.* City of Montreal	18, 530, 540
Campbell *v.* Chabot	122, 474
" *v.* Filion	607
" *v.* Latour	174, 200
" *v.* Molson's Bank	131
" *v.* Reeves	242
Campeau *v.* Brisbin	188, 442
Canada Building Society *v.* La Banque Nationale	109, 196, 260
" Copper and Sulphur Co. *v.* Hall	234
" Guarantee Co. *v.* Dominion Type Founding Co.	434, 659
" Mutual Building Society *v.* O'Brien	126, 506
Canada Mutual Fire Insurance Co. *v.* Sanboken	404
" Paper Co. *v.* Bannatyne	133, 245
" " " *v.* Cary	426, 440, 595
" Shipping Co. *v.* Hudon Cotton Co.	46
" " " *v.* Leaf	144
" " " *v.* Wilson	483
" Steel Co. *v.* Chinic	171, 552
Canadian Meat and Produce Co. *v.* Wiseman	69
" Mutual Insurance Co. *v.* Beausoleil	403
" Mutual Insurance Co. *v.* Cadieux	86
" Mutual Insurance Co. *v.* Kerouack	409
" Mutual Insurance Co. *v.* Donovan	406, 743
" Navigation Co. *v.* McConkey	143, 622
Canadienne, The	433
Cannon *v.* Fournier	66, 200
Cantin *v.* Corporation of St. Martin	538
Cantwell *v.* Corporation of Chateauguay	521, 531
" *v.* Madden	322
Cardinal *v.* Dominion Fire Insurance Co.	405
Carey *v.* Canada Paper Co.	426, 440, 595

PAGE

Carillon *v.* Grenville Railway & Burch 614, 618, 633
Caron *v.* Belanger 296
" *v.* Cloutier 600
" *v.* Soucy 589, 618
Carpenter *v.* Dery 367, 652, 676
" *v.* Smiley 597, 623
Carreau *v.* McGinnis 201
Carrier *v.* Bernier 271, 552
" *v.* Boucher 259
" *v.* Coté 199
" *v.* Les Curé, etc. 152, 589, 622
" *v.* Plante 81, 310
Carslake *v.* Wyatt 112
Carter *v.* Breaky 78, 373, 736
" *v.* Ford 69, 202, 592
" *v.* Holmes 426, 654
" *v.* Lalanne 68
" & Molson *v.* Holmes 72, 90, 141, 312, 423, 425, 654, 695
Cartier *v.* Bourbeau 512
" *v.* Germain 206, 614
" *v.* National Insurance Co. 32, 108
Casey *v.* Shaw 427, 592
Cassant *v.* Catellier 84
" *v.* Heaton 84
Cassidy *v.* Cuddy 33, 108
" *v.* Trust & Loan Co. 627
Cassils *v.* Crawford 595
" *v.* Fair 180, 427, 583, 612
" *v.* Holme 24,619
Catafard *v.* Clement 35, 547, 673
Catellier *v.* Cassant 84
Caty *v.* Court 584
" *v.* Marchand 467
Cauchon *v.* Lawlor 592
Caverhill *v.* Robillard 72, 73, 241, 548
Canter *v.* Corporation of Chatham 291
Central Vermont Railway *v.* Paquette 236, 640
Chabot *v.* Campbell 122, 474
Chadwick *v.* Major 425
Chagnon *v.* Giroux 555
Chalifoux *v.* Belanger 619
Chaloult *v.* Begin 632
Chalut *v.* Valade 613
Champagne *v.* Belanger 180
" *v.* Griveau & Boisjoli 625
" *v.* Lanthieux 30, 583
" *v.* Lapierre 125
Chanteloup *v.* Dominion Oil Cloth Co. 326
Chapdelaine *v.* Chevallier 579
Chapleau *v.* Chapleau 748
Chapman *v.* Lancashire Insurance Co. 408
" *v.* Larin 183
Charbonneau *v.* Charbonneau 317
" *v.* Corbeil 84
" *v.* Loyseau 61, 365
Charest *v.* Veilleux 162
Charlebois *v.* Bethune 604, 652
" *v.* Charlebois 569
" *v.* La Société de Construction 647
" *v.* Lemaire 684
Chartrand *exp.*
" *v.* Lambert 659
" *v.* Major 95, 96, 628
" *v.* Pudney 243
Chassé *v.* Pelletier 28, 557, 676
Chaussé *v.* Larose 251
Chauveau *v.* Evans 379

PAGE

Chayer *v.* Crevier 31, 693
Chenard *v.* Laliberté 24, 108
Cherrier *v.* Torcapel 613
Chester *in re* 384
Chevalier *v.* Chapdelaine 573
" *v.* Cuvillier 7, 76, 329
Chevrier *v.* City of Montreal 266
Chevrier *v.* National Insurance Co. 172, 313
Chicoine *v.* Rhicard 17, 603
Chinic *v.* Canada Steel Co. 171, 552
Choquet *v.* Hart 430
Choren *v.* Grant 659
Chouinard *v.* Bertrand 612
" *v.* Lafond 728
" *v.* Regina 227
Chretien *v.* Smith 11, 487
Christie *v.* Hamilton 676, 698
" *v.* Hills 295
Christin *v.* Valois 173, 307, 308, 314, 619
Cimon *v.* Perrault 279, 292
" *v.* Tarte 293, 295, 430
" *v.* Thompson 118
Cinq Mars *v.* Ga[illegible] 209, 386, 466
Citizens Insuran[illegible]o. *v.* Archambault 324, 325, 413, 519
" " " *v.* Grand Trunk Railway Co. 63, 400
" " " *v.* Lafleur 404
" " " *v.* Lajoie 59
" " " *v.* Paquet 404
" " " *v.* Rawlings 47
186, 401, 404
" " " *v.* Rolland 204
" " " *v.* Ross 587
City Expropriations Cases *in re* 528
" of Fredericton *v.* The Queen 37, 448
"City of Manitowac," The 511
City of Montreal *v.* Archambault 235, 528
" " *v.* Attorney General 36, 62, 445
" " *v.* Baylis 18, 417
" " *v.* Beandry 59
" " *v.* Bisson 306, 744
" " *v.* Calmel 18, 540
" " *v.* Chevagny 266
" " *v.* Corbeil 529
" " *v.* Cox 669
" " *v.* Demers 326, 744
" " *v.* Devlin 70, 71, 535
" " *v.* Dubuc 80
" " *v.* Dugdale 505, 526
" " *v.* Forté 529
" " *v.* Fraser 513
" " *v.* Green 491, 530, 597
" " *v.* Grenier 249, 529, 601
" " *v.* Guillaume 236, 529, 621
" " *v.* Guy 263, 313, 539, 605, 662
" " *v.* Joseph 711
" " *v.* Larose 236, 529
" " *v.* Levesque 525
" " *v.* Luckhurst 235, 528
" " *v.* Mallette 36, 372, 533
" " *v.* McEachern 513
" " *v.* Molson 427, 524
" " *v.* Perkins 36, 418, 452
" " *v.* Richelieu 525
" " *v.* Riopel 236, 528
" " *v.* State 531, 591
" " *v.* Trudeau 536
" " *v.* Wilson 417

PAGE

City of Quebec *v.* Bell 660
" " *v.* Hough 148
" " *v.* Hunt 520
" " *v.* Kelly 234, 539
" " *v.* Piton 613
" " *v.* Poitras 37, 143, 449, 473
Clark *v.* Exchange Bank 174, 308, 338
" *v.* Lortie 673
Claxton *v.* McCaffrey 343, 365
Chaves *v.* Baker 280, 295
Clement *v.* Catafard 35, 547, 673
Clement *v.* Gravel 425, 439
" *v.* Heath 390, 430
" *v.* Heroux 41, 333, 438
" *v.* Lorunger 463, 553
" *v.* Oakes 316, 488
Cloutier *v.* Caron 600
" *v.* Huot 615
" *v.* Lapierre 32
Clunie *v.* Ladouceur 658, 735
Condy *v.* Fraser 613
Cochrane *v.* Phaneuf 313, 580
Copping *v.* Marshall 66
Coindet *v.* Gilbert 88, 346
Colebrook Rolling Mills *v.* Oliver 511, 518
Colfer *v.* Burke 86
Collette *v.* Vaillancourt 203
Com. Mutual Building Society *v.* McIver 205, 680
Commissioners of Q. M. O. & O. R. R. *v.* O'Neil 31, 327
" " St. Louis School *v.* Delisle 165
"Commodore," The 483
Cie. de Chemin de Fer de Laurentides *v.* Corporation of St. Lin 182
" " " Fer *v.* Tiernan 370
" " " Fer de Laurentides *v.* Gauthier 95, 625, 628
" " " " *v.* La Corporation de St. Lin 182
" " " " Sud Est *v.* Crebassa 85, 574
" de Fonderie *v.* Mulholland 32, 108
" des Moulins de Pierreville *v.* Les Curé, etc., of St. Thomas 152
" de Pret, etc. *v.* Baker 205, 679
" " " *v.* Garand 610, 688
" " " *v.* Jeannotte 359, 648
Compte *v.* Archambault 676
Connolly *v.* Horne 378
" *v.* Murphy 379, 397
" *v.* Provincial Insurance Co. 313, 403
Consolidated Bank *v.* Davidson 390, 395, 507
Constant *v.* Pacaud 651
Converse *v.* Provincial Insurance Co. 408
Convey *v.* Renouf 389
" *v.* Smiley 597, 623
Conway *v.* Gibeau 626
Cooey *exp. v.* Municipality of Brome 37, 422, 443, 722
Cook *v.* Hart 554
Cooley *v.* Dominion Building Society 109, 115, 124
Cooney *v.* Mullins 200
Cooper *v.* Bachlaw 489
" *v.* Maxwell 688
Coté *v.* Regina 449
Coquereau *v.* Cramp 53, 364
Corbeil *v.* Charbonneau 84
" *v.* City of Montreal 529

PAGE

Corbeille *v.* Veligny 654
" *v.* Corporation of St. Jean Baptiste 35, 524
Coristine *v.* Montreal City Passenger Railway 240
Cornell *v.* Rhichard 558
Corrigan *v.* School Commissioners of Tewkesbury 165
Corporation of Acton *v.* Felton 432, 442, 541, 694
" " Argenteuil *v.* Sauvé 722
" " Ascott *v.* Martin 235
" " Bagot *v.* McElvila 479, 536
" " Beauville *v.* Gillespie 430, 542, 574
" " " *v.* Morisette 623
" " " *v.* Nadeau 623
" " Brome *v.* Covey 722
" " Chambly *v.* Yule 122
" " Chateauguay *v.* Cantwell 521, 531
" " Chatham *v.* Center 291
" " Compton *v.* Eastern Townships Bank 114, 524
" " Cote St. Paul *v.* Corporation of Verdun 525
" " Drummond *v.* Corporation of St. Guillaume 479, 524, 531, 590, 645
" " Drummond *v.* South Eastern Counties Railway 317, 643
" " Grantham *v.* Couture 60, 109, 111, 196, 534
" " Hochelaga *v.* Lussier 72
" " Hull *v.* Martin 111, 534
" " Levis *v.* Grand Trunk Railway 38, 522
" " " *v.* Meunier 62
" " " *v.* Roberge 536
" " Missisquoi *v.* Hart 443, 722
" " Montmorenci *v.* Simard 533, 534, 537, 630
" " Parish of St. Jerome *v.* Scott 538
" " Princeville *v.* Pacaud 620, 621, 622
" " Salaberry *v.* Montreal Cotton Co. 62, 328, 587, 590
" " Stanbridge *v.* Whitman 234, 530
" " St. Alexandre *v.* Mailloux 537
" " St. Christophe *v.* Benadette 528
" " St. Gabriel West *v.* Callahan 530
" " St. Gabriel West *v.* Holton 26
" " St. Germain *v.* Ringuet 525
" " St. Guillaume *v.* Corporation of Drummond 479, 524, 531, 590, 645
" " St. Jean Baptiste *v.* Corbeil 35, 524
" " St. Jean Baptiste *v.* Riendeau 35
" " St. Jean Chrysostome *v.* Giroux 521
" " St. Lin *v.* Cie. de Chemin de Fer de Laurentides 182
" " St. Martin *v.* Cantin 538
" " St. Scholastique *v.* Gratton 290
" " St. Sauveur *v.* Regina 200, 530
" " Stoke *v.* Rolfe 62, 522, 235

PAGE

Corporation of Three Rivers *v.* Lambert 235
" " Three Rivers *v.* Lessard 235
" " Tingwick *v.* Grand Trunk Railway 206, 601, 640
" " Valleyfield *v.* Montreal Cotton Co. 62, 328, 587, 590
" " Varennes *v.* Jodoin 292
" " Verdun *v.* Corporation of Côte St. Paul 525
" " Verdun *v.* Les Sœurs de Notre Dame 651
" " Village of Cote St. Louis *v.* Brunet 536
" " West Wickham *v.* Bothwell 539
Corrigan *v.* School Commissioners of Tewkesbury 165
Corriveau *v.* Eastwood 200, 656, 657
" *v.* Sproul 208
Corse *v.* Drummond 351, 714
Corse *v.* Hudson 464
Corwin *exp.* 62, 226, 430
Coté *exp.* 62
Coté *v.* Attorney General 35, 455, 458
" *v.* Carrier 199
" *v.* Jacob 317, 346
" *v.* Massé 20, 314, 354, 430, 577
" *v.* Morgan 630, 752
" *v.* Rochon 15, 202
" *v.* Sladacona Insurance Co. 173, 183
" *v.* Vezina 52, 731
" *v.* Watson 37, 443, 450, 473
Cot noir *v.* Parenteau 307
Cotté *v.* Currie 693
" *v.* Regina 217
Cotton *v.* Ontario Bank 66
Couillard *v.* Union Navigation Co. 172
Coulthurst *v.* Thwaites 49, 743
Coultry *v.* Barron 308
Coupal *v.* Goyer 281
Coupal *v.* Turgeon 379
Courchene *v.* Garneau 95, 312
Courchene *v.* Pepin 270, 497, 648, 713
Court *v.* Caty 584
" *v.* Cuvillier 67
" *v.* Empey 493
Court Mount Royal A. O. F. *v.* Boulton 106, 192
Court *v.* Stewart 45
Courtemanche *v.* Ganthier 569
Courtemanche *v.* Mailloux 29, 152
Courville *v.* Nagy 516
Cousineau *v.* Hague 496, 4987

PAGE

Cousineau *v.* Société de Construction Montarville 497
Coutu *v.* Huot 588
Couture *v.* Corporation of Grantham 60, 109, 111, 196, 534
Couture *v.* Delery 671
" *v.* Marais 184
Coveney *v.* Mullins 200
Cowan *v.* Bouillard 461
Cowell *v.* Kennedy 594
Cowie *v.* Trudeau 193
Cox *v.* City of Montreal 669
Coyle *v.* Richardson 242
Craig *v.* Melver 440
Cramp *v.* Coquereau 53, 364
" *v.* Mayor of Montreal 193
Crawford *v.* Cassills 595
" *v.* Great Western Railway Co. 50
Crawford *v.* Stranger 702
Crebassa *v.* Jones 624
" *v.* La Cie. du Chemin de Fer du Sud Est 85, 574
Crehen *v.* Hagerty 316
Crepeau *v.* Glover 50, 383
Crevier *v.* Brosseau 135
" *v.* Chayer 31, 693
" *v.* Crevier 54, 202, 550
Cross *v.* Allan 144
" *v.* British American Insurance Co. 411
Crossen *v.* O'Hara 253, 269, 555
Crossley *v.* McKeand 421, 700
Croteau *v.* Dubois 18, 708
Cruickshank *v.* Lavoie 208
Cuddy *v.* Cassidy 33, 108, 627
Currie *v.* Delorme 557
" *v.* Hotte 82, 132, 645, 693
Cushing *v.* Ducondu 746
" *v.* Owens 450
" *v.* Dupuy 37, 71, 452, 669
Cusson *v.* Lamy 562
Cutler *exp.* 348
Cutting *v.* Jordan 157, 315, 494
Cuvillier *v.* Chevallier 7, 76, 322
" *v.* Court 673
" *v.* Erichson 272
" *v.* Symes 268
" *v.* Lionnis 602
"Cybele" The 484

D

Dagen *v.* Roy 426
Dagg *v.* Barthe 247, 366
Daigle *v.* Parent 604, 662, 702
Dalbec *v.* Portelance 526
" *v.* School Commissioners of St. Louis 164
Dallaire *exp.* 161, 192, 347
" *v.* Gravel 359, 495, 649, 714
Dalton *v.* Doran 203, 208, 556, 561, 618
" *v.* King 18, 493
Damour *v.* Laframboise 13, 184, 264, 588, 699
Dandurand *v.* Ethier 33, 88
Danjou *v.* Marquis 65, 76, 520
" *v.* Thibodeau 34
Dansereau *v.* Archambault 179, 626
" *v.* Dontre 46, 47
" *v.* Keller 45
Daoust *v.* McDonald 507, 511, 609
" *v.* Montreal Turnpike Road Trustees 735
" *v.* Proulx 14
" *v.* Trustees of Montreal Turnpike Road 237
Darby *v.* Bombardiere 614
Darling *v.* Brown 160, 308, 324, 476, 600, 603, 604
" *v.* McIntyre 39, 393
" *v.* Oliver 208
" *v.* Stafford 379

PAGE

Darling *v.* Stvee 182
Dastous *v* Nolan 423, 657, 739, 754
Daudelin *exp.* 149
" *v.* Miller 118
David *v.* Dudevoir 187
" *v.* Hart 696
" *v.* Smith 143
David *v.* Stadacona Insurance Co. 411, 708
Davidson *v.* Consolidated Bank 390, 395
" *v.* Riddel 392
Dawes *v.* Fulton 20, 355
Dawson *v.* Bouchard 619
" *v.* Defosses 321
" *v.* McDonald 91
" *v.* Ogden 180, 563
" *v.* Trestler 239, 337
De Bellefeuille *v.* Piché 96, 130, 696
Deblois *v.* Glass 189, 238
Decary *v.* Poirier 335
Decelles *v.* Bertrand 113, 386
Dechene *v.* Anctil 309
Deeman *exp.* 213
Defoy *v.* Foote 56, 367
Defosses *v.* Dawson 321
De Gaspé *v.* Bessener 27
" *v.* Loranger 358
De Grosseillers *v.* Riendeau 6, 735
Deguire *v.* Marchand 439, 461
De la Durantaye *v.* Beausoleil 378
" *v.* Posé 259
Delaney *v.* Lazarus 593
Delaronde *v.* Walker 627
Delaware & Lackawanna Western Railway Co. *v.* Healy 389
Delbar *v.* Landa 117, 614
Delery *v.* Couture 671
" *v.* Jalbert 289
Delinelle *v.* Armstrong 563
Delisle *v.* Commissioners of St. John's Schools 165
Delisle *v.* Fortier 398
" *v.* Fournier 206
" *v.* Letourneux 390
" *v.* Robert 141
" *v.* Valade 428
Delorme *v.* Currie 557
Delvecchio *v.* Lesage 464
Demers *v.* City of Montreal 326, 744
" *v.* Lamarche 371
" *v.* Neilan 622
Demontigny *v.* Globensky 42
" *v.* Olivier 210
Dempsey *v.* Macdougall 26, 596
Denachaud *v.* Robitaille 476, 552
Denault *v.* Morin 465
Denis *v.* Poitras 312, 506
Dental Association *v.* Young 254
Derouin *v.* Gnædinger 365
Derrick *v.* Regina 220, 435
Dery *v.* Carpenter 367, 652, 676
Dery *v.* Fabre 471
Delery *v.* Jalbert 289
Desautels *v.* La Soc. de Construction Can. 357, 360
Desbarats *v.* Hamilton 13, 108, 716
Deseve *v.* Dussault 497, 649
" *v.* Gareau 584
Desilets *v.* Beauchemin 267
" *v.* Gingras 248
Desilets *v.* Martel 359

PAGE

Desjardins *v.* Ducasse 41, 333
" *v.* Hamilton 63
" *v.* Ouimet 57, 69, 85, 366
" *v.* Perrault 360
" *v.* Pinsonneault 50, 314
Deslauriers *v.* Larue 280, 289, 298, 302
Deslorge *v.* Larin 613
Desmarchais *v.* Leduc 601
Desmarteau *v.* Baillie 488, 583
" *v.* Mansfield 34
Desmarteau *v.* Pepin 559
Desroberts *v.* Lafond 728
Desrosiers *v.* Guerin 112, 716
Destimauville *v.* Tousignant 624
Devarennes *v.* School Commissioners of St. David 21
Devine *v.* Griffin 617, 748
Devlin *v.* Beemer 46, 123, 716
" *v.* Berger 588
" *v.* City of Montreal 70, 71
" *v.* M. O. & O. Ry. 33
" *v.* Ryan 450, 657
D'Extras *v.* Perrault 208
Dickson *v.* M. & O. Forwarding Co. 657
Dillon *v.* Borthwick 46, 123
" *v.* Prive 615
Dinnin *v in re* 64, 618, 661
" *v.* Gironard
" *v.* Samson 57, 380, 571
" *v.* Wurtele 374, 375, 395, 509, 512
Dion *v.* Fogarty 353, 609
" *v.* Roy 573, 681
Dionne *v.* Baril 306, 589
" *v.* Lortie 265
" *v.* Ross 57, 59
Dixon *v.* Arpin 555
" *exp.* 449
" *v.* Perkins 397
Dobie *v.* Board of Management, etc. 38, 72, 208, 371, 375, 448, 744
Dolan *v.* Fair 184
Dominion Bldg. Soc. *v.* Cooley 109, 115, 124
Dominion Fire Ins. Co., *v.* Cardinal 405
Dominion Oil Cloth Co. *v.* Chanteloup 326
Dominion Telegraph Co. *v.* Bell 237, 721
Dominion Type Founding Co. *v.* Canada Guarantee Co. 434, 659
Dominion Type Founding Co. *v.* Lafond 141
Dompierre *v.* Periou 249, 543
Donihee *v.* Murphy 31, 352, 692
Donovan *v.* Canadian Mu. Ins. Co., 406, 743
" *v.* Joseph 132
" *v.* McCormick 384
Dorais *v.* Boudreau 12, 455, 459
" *v.* School Commissioners of Warwick 6, 12, 166, 396
Doran *v.* Dalton 203, 208, 567, 561, 617
Dorion *v.* Benoit 577, 744
" *v.* Brown 42
" *v.* Dorion 605, 748,
" *v.* Marsil 657
" *v.* Positive Life Ass. Co. 411, 414
" *v.* Roy
" *v.* Seminary of Montreal 704
Dorval *v.* Boucher 21, 355
Doucet *v.* McGreevy 68
" *v.* O'Farrel 630
" *v.* Pinsonneault 188
" *v.* St. Amand 65
Dougall *v.* Gilman 434

	PAGE
Dougall *v.* Regina	214
Douglas *v.* Douglas	678
Doutney *v.* Bruyere	28, 739
" *v.* Richard	270, 728
Doutre *v.* Blouin	322
" *v.* Dansereau	46, 47
" *v.* Laurin	469
" *v.* Ste. Marie	47
" *v.* Walker	174, 381
Downie *v.* Barrie	50, 353
Doyer *v.* Walsh	134
Doyon *v.* Doyon	269, 586
Drapeau *v.* Lacy	68
" *v.* Pacaud	133, 134
Drew *v.* Gelinas	382
" *v.* McLaren	322
Driscoll *v.* Bradford	289
Drolet *v.* Lalonde	28, 187, 670
Drummond *exp.*	751
" *v.* Baylis	734
" *v.* Corse	351, 714
" *v.* Holland	4, 550, 699
" *v.* Mayor of Montreal	234, 536
Dubois *exp.*	149
" *v.* Croteau	18, 708
" *v.* Fauteux	311
Dubord *v.* Dufresne	20, 264, 354, 355
Dubreuil *v.* Aresse	733
Dubrule *v.* Lallamme	29
Dubuc *exp.*	148
" *v.* City of Montreal	80
" *v.* Valleé	297
Ducasse *v.* Desjardins	41, 333
Duchaine *v.* Beaudoin	84
Ducharme *v.* Etienne	495
" *v.* Mutual Insurance Co.	744
" *v.* Theriault	290
Duchesnay *v.* Laroeque	585, 629
Duchesnean *v.* Beliveau	357, 516
Duclos *v.* Duhamel	557
" *v.* Thibadeau	716
Ducondu *v.* Cushing	746
Dudevoir *v.* Bruce	613
Dudevoir *v.* David	187
Dufaux *v.* Robillard	228
Dufour *v.* Beaugrand	429, 744
Dufresne *v.* Bulmer	647, 738
" *v.* Dubord	20, 264, 354, 355
" *v.* Duplessis	178
" *v.* Lafonde	251, 368
" *v.* Mechanics Bank	21, 259
" *v.* Munro	684
Dugal *v.* Regina	222
Dugdale *v.* City of Montreal	505, 526
Duggan *v.* Henderson	138
Dugnay *v.* Seath	730
Duhaine *v.* Ayotte	7
Duhamel *v.* Duclos	557
Duhamel *v.* Payette	384
Ducharme *v.* Mutual Ins. Co., etc.	412
Dumas *v.* Guimond	43, 250, 315
Dumont *v.* Aubert	677
" *v.* Gelinas	89, 96, 334
Dumontier *v.* Montizambert	646
Duncan *exp.*	443
Dunkerly *v.* Lord	254
Dupas *exp.*	150
Duperrault *v.* Boyer	729
Duplessis *v.* Dufresne	118
Dupras *v.* Trust and Loan Co.	357, 646
Dupres *v.* Symes	251
Dupuis *v.* Racine	691
Dupuy *v.* Beaulieu	392
" *v.* Benard	47, 379
" *v.* Cushing	37, 71, 452, 669
" *v.* McClanaghan	458
" *v.* Rolland	397, 626, 677
Duquette *v.* Brochu	69
Durand *v.* Lioni	320
Durocher *exp.*	347
Dussault *v.* Deseve	497, 649
" *v.* Renaud	13
Dustin *v.* Hochelaga Mutual Fire Insurance Co.	405
Duval *v.* Northern Assurance Co.,	410
" *v.* Trudel	32
Duvernay *v.* Irvine	32, 429, 469, 471
Dwyer *v.* Fabre	359, 387, 648
Dynes *v.* Falardeau	11

E

Eastern Townships Bank and Corporation of Compton	114, 524
" " " *v.* McLeod	113, 313, 751
" " " *v.* Morrill	569, 626
Eastern Townships Mutual Fire Ins. Co. *v.* Bienvenu	33, 415
Eastwood *v.* Corriveau	200, 656, 657
Edson *v.* Ross	596
"Edward Barrow," The, *ui re*	433
Egan *v.* Rev. Dames Ursulines	90, 312
Electoral Lists of Berthier *v.* Rolston	95, 334
Electoral Lists of Kamouraska *in re*	290, 300
"Eliza Keith" *in re*	482, 483
Elliott *v.* National Insurance Co.	414
" *v.* Phaneuf	581
Emond *v.* Gauthier	746
Empey *v.* Court & Mathews	492
Ennis *v.* Godin	241, 470
Erichson *v.* Cuvillier	272
Ethier *v.* Dandurand	33, 88
Etienne *v.* Ducharme	495
" *v.* Perrault	351, 492, 609
European Assurance Society *v.* Bank of Toronto	400
Evans *v.* Armitage	26, 351
" *v.* Chauveau	379
" *v.* Genereux	391
" *v.* Hodson	465
" *v.* Hudon	36, 318, 454, 634
" *v.* Laramée	486, 621
" *v.* Lionais	590
" *v.* Lortie	383
" *v.* McLea	48, 240
" *v.* Paige	671
Exchange Bank *v.* Clark	174, 308, 338
" *v.* Massé	674
" *v.* Napper	612

F

		PAGE
Fabvre	*v.* Perrault	394
Fabre	*v.* Dery	471
"	*v.* Dwyer	359, 387, 648
Fair	*v.* Baldwin	397
"	*v.* Cassils	180, 427, 583, 612
"	*v.* Dolan	184, 187
"	*v.* Scath	390
Falardeau	*v.* Dynes	11
"	*v.* Marcotte	115, 574
Falardeau	*v.* Smith	114, 117
Falkner	*v.* Lapointe	67, 207
"	*v.* Regina	216
Farmer	*v.* Beckham	123, 313, 325
"	*v.* Bell	594, 688
"	*v.* Milloy	114, 588
"	*v.* O'Neil	77, 690
"	*v.* Stewart	9, 377
Farmer's Insurance Co.	*v.* Beaulieu	207, 618
" "	*v.* Grammon	414
Farquhar	*v.* Fuller	23, 69
Farrell	*v.* Ritchie	123, 170, 172
Faucher	*v.* Painchaud	22
Fausse	*v.* Brien	118
Fauteux	*v.* Dubois	311
"	*v.* Fisher	392
"	*v.* Gault	387
"	*v.* Hird	389
"	*v.* Jackson	615, 667
"	*v.* Leclaire	388
"	*v.* Montreal Loan and Mortgage Co.	676, 680
"	*v.* Parent	591
Felton	*v.* Corporation of Acton	432, 442, 541, 694
"	*v.* Parker	670
Fevre	*v.* Regina	222
Ferguson	*v.* Rohland	456
Ferland	*v.* Frechette	201
Filibien	*v.* Moir	461
Filiatrault	*v.* Larose	491
Filion	*v.* Campbell	607
"	*v.* Guenette	500
"	*v.* Leclaire	20, 202, 355
Findlay	*v.* McWilliam	30, 342
Firla	*v.* Hamel	67
Fiset	*exp.*	148, 431
"	*v.* Fournier	115, 520, 601, 638, 658
"	*v.* Lepine	25
Fisher	*v.* Fauteux	392
"	*v.* Malo	389
"	*v.* McKnight	24, 593
Fitzgerald	*v.* Bryant	576
"	*v.* Maloney	90
Flanagan	*v.* Mitchell	624
Flanders	*v.* Adam	648
Fletcher	*v.* Forbes	569
"	*v.* Mutual Fire Insurance Co.	434, 633
Fletcher	*v.* Smith	322
Fleury	*v.* Bergeron	19
Fogarty	*v.* Dion	353, 609
Foley	*v.* Martin	203
Fontaine	*exp. v.* Rooney	384
"	*v.* Montreal Loan and Mortgage Co.	620
"	*v.* Vermette	364
Forbes	*v.* Fletcher	569
Ford	*v.* Carter	69, 202, 592
"	*v.* Hutchison	421, 583
"	*v.* Ledger	132
"	*v.* Short	385, 617
Forget	*v.* Mathieu	241, 470
"	*v.* Regina	293
Forneret	*v.* Lavallée	24
Forte	*v.* Defoy	56, 367
"	*v.* City of Montreal	529
Fortin	*v.* Delisle	398
"	*v.* Robert	203, 557
"	*v.* Say	308, 620
Foster	*v.* Brockville and Ottawa Railway Co.	389, 394
"	*v.* Meigs	189
"	*v.* Thompson	11
"	*v.* Wright	69
Fournier	*v.* Cannon	66, 200
"	*v.* Delisle	206
"	*v.* Fiset	115, 520, 601, 638, 658
"	*v.* Theberge	31
"	*v.* Union Bank	101
Fourquin	*v.* McGreevy	312
Fox	*v.* Miller	57
Fradet	*v.* Guay	77
Francœur	*v.* Barrow	209
"	*v.* Mathieu	492, 493
"	*v.* Michaud	490, 569
Frank	*in re*	229
Fraser	*v.* Abbott	645
"	*v.* Auld	398
"	*v.* Coody	613
"	*v.* Gagnon	26
"	*v.* Garant	678
"	*v.* Larue	667
"	*v.* City of Montreal	513
"	*v.* Pouliot	698, 711, 712
"	*v.* Roy	431, 622, 625
"	*v.* Simard	57
"	*v.* Tupper	349
Frechette	*v.* Ferland	201
Fuchs	*v.* Legaré	309, 599
Fuller	*v.* Farquhar	25, 69
"	*v.* Smith	322
Fulton	*v.* Dawes	20, 355
"	*v.* Lefebvre	391
"	*v.* McDonnell	28, 182, 240, 669, 691
"	*v.* McNamee	307

G

Gagné	*v.* McGreevy	620
"	*v.* Stuart	697
Gagnier	*v.* Hamel	626
Gagnon	*v.* Bruneau	205
Gagnon	*v.* Fraser	26
"	*v.* Hamel	67
"	*v.* Lapierre	242, 743
"	*v.* Levi	246

PAGE
322
19
353, 609
203
384

oan and Mortgage
620
364
569
69, 202, 592
421, 583
132
385, 617
241, 470
293
24
56, 367
ntreal 529
398
203, 557
308, 620

and Ottawa Rail-
389, 394
189
11
69
66, 200
206
115, 520, 601, 638, 658
31
k 101
312
57
77
209
492, 493
490, 569
229
645
398
613
26
678
667
treal 513
698, 711, 712
431, 622, 625
57
349
201
309, 599
25, 69
322
20, 355
391
28, 182, 240, 669, 691
307

26
67
242, 743
246

PAGE

Gagnon *v.* Morin 531
" *v.* Noel 589, 670
" *v.* Robitaille 573
" *v.* Sorel Gas Co. 555
" *v.* Stadacona Insurance Co. 561
" *v.* Sylva 10, 515
Gaherty *v.* Morey 10, 591
Gailloux *v.* Bell 201, 335
Galarneau *v.* Archambault 411
Galipnt *v.* Mutual Fire Insurance Co. of Stanstead 34, 415
Garand *v.* Cie de Pret, etc. 610, 688
Garant *v.* Fraser 678
Garceau *v.* Niagara Mutual Insurance Co. 406, 743
Gardner *v.* Arres 357
Gareau *v.* Cinq Mars 209, 386, 466
" *v.* Deseve 584
" *v.* Gareau 188, 340
" *v.* Perkins 176, 381
" *v.* Courchene 95, 312
" *v.* O'Farrel 623, 628, 629
Garon *v.* Globensky 113, 382
" *v.* Tremblay 359, 556
Garrigan *v.* Garrigan 489
Gates *exp. v.* Stewart 149, 614, 652
Gaudrier *v.* Ayres 490
Gaudry *v.* McDonnell 670
Gault *v.* Bertrand 34
" *v.* Fauteux 387
" *v.* Robertson 137, 695
Gauthier *exp.* 347, 366
" *v.* Bergevin 289
" *v.* Callaghan 615
" *v.* Cie de Chemin de Fer de Laurentides 95, 625, 628
" *v.* Courtemanche 562
" *v.* Emond 746
" *v.* Jean 550, 601, 703
" *v.* Lalonde 557
" *v.* Latour 622
" *v.* Lepine 319
" *v.* Picard 113
" *v.* Prevost 181, 506, 751
" *v.* Roy 733
Gauvreau *exp.* 348, 366
" *v.* Longobardi 344
Gear *v.* Sinclair 387
Geddes *v.* Bank of Montreal 103, 170
" *v.* La Banque Jacques Cartier 102, 475
" *v.* Montreal City and District Savings Bank 645
Gelinas *v.* Drew 382
" *v.* Dumont 89, 96, 334
" *v.* Lemire 18
"Gen. Birch," The 484
Gendron *v.* Jasmin 377
Genereux *v.* Evans 391
" *v.* Gordon 360, 682
" *v.* Howley 365, 431
" *v.* Springle 19
Georgian Bay Lumber Co. *v.* Macdonald 337, 386
Gerard *v.* Lemire 19, 199, 257
Geriken *v.* Grannis 97, 313, 353
" *v.* Reeves 356
" *v.* Renihan 13, 191, 246, 480
Germain *v.* Cartier 206, 614
" *v.* Girouard 262, 378, 452

PAGE
Germain *v.* Lacoursiere 580
Gervais *v.* Anderson 389
" *v.* Heywood 208, 397
Gibb *v.* Tetu 316, 702
Gibbs *v.* Wheeler 74, 283
Gibeau *v.* Conway 626
Gibson *v.* Regina 223, 256
Gilbert *v.* Coindet 88, 346
" *v.* Lionais 176
" *v.* St. Patrick's Hall Association 124
Gillaume *v.* City of Montreal 621
Gillespie *v.* Corporation of Bienville 430, 542, 574
Gilman *v.* Dougall 434
Gilmor *v.* Anger 571
Gingras *v.* Brillon 324
" *v.* Desilets 248
" *v.* Gingras 581
" *v.* McGreevy 421, 460, 621
" *v.* School Commissioners of Sillery 430, 542
" *v.* Vezina 320, 553
Giraldi *v.* New City Gas Co. 718
Girard *v.* Bank of Toronto 98, 183
" *v.* Heney 140
" *v.* Morgan 619
" *v.* Trudel 160, 571
Girouard *v.* Dinning 64, 618, 661
" *v.* Germain 262, 378, 452
" *v.* Guindon 108
" *v.* Hudon 23, 108, 109
Giroux *v.* Chagnon 555
" *v.* Corporation of St. Jean Chrysostome 521
Glass *v.* Deblois 189, 238
" *v.* Regina 214, 225
Gleason *v.* Blair 705
" *v.* Van Courtland 58, 84
Glen *v.* Mackay 284
Globe Mutual Insurance Co. *v.* Sun Mutual Insurance Co. 89, 167, 206
Globensky *v.* Garon 113
" *v.* Demontigny 42
Glover *v.* Crepeau 50, 383
Gnaedinger *v.* Bertrand 33, 108
" *v.* Deroun 365
Goad *v.* Macdonald 504
Godbout *v.* Grand Trunk Railway 65, 640, 740
Godfrey *v.* Western Hospital 588
Godin *v.* Ennis 241, 470
Goff *v.* Grand Trunk Railway 63, 203
Goldring *v.* Hochelaga Bank 71, 135, 138, 426
Goodbody *v.* McGrath 176, 441
Goodenough *v.* Osgood 16, 363
Gooderham *v.* Hatchette 88, 684
Goodson *v.* Levis and Kennebec Railway 752
Gordon *v.* Genereux 360, 682
" *v.* Hudson 59
" *v.* Scroggy 44
Gossett *v.* Stoddart 484
Govino, The 281
Goyer *v.* Coupal 61
Graftis *v.* Sleeper 560
Graham *v.* Hurlbert 469
" *v.* Morrisette 30, 531, 616
" *v.* Mullin 414
Grammon *v.* Farmers' Insurance Co. 622, 688
Grand Trunk Railway Co. *v.* Brewster 63, 400
Grand Trunk Railway *v.* Citizens Insurance Co.

PAGE

Grand Trunk Railway Co. *v.* Corporation of Levis 38, 601
" " Railway Co. *v.* Corporation of Tingwick 236
" " Railway Co. *v.* Godbout 65, 640, 740
" " " *v.* Goff 63, 203
" " " *v.* Kellert 143
" " " *v.* Livingstone 145, 643
" " " *v.* McDonald 643
" " " *v.* Lovett 236
" " " *v.* Ramsay 419
" " " *v.* Ruel 23, 240
" " " *v.* Ruest 13, 239
" " " *v.* Tingwick 640
" " " *v.* Wilson 236, 543, 646
Grannis *v.* Geriken 97, 313, 353
Grant *v.* Beaudry 623
" *v.* Choren 659
" *v.* Lavoie 205, 613
" *v.* Regina 564
" *v.* Watson 386, 387
Graphic Co. *v.* Prentice 207
Gratton *v.* Corporation of St. Scholastique 290
" *v.* Labelle 14, 29, 588
Gravel *v.* Clement 425
" *v.* Dallaire 359, 495, 649, 714
" *v.* Mallette 206
" *v.* Martin 724
Gray *v.* Quebec Bank 176, 323
" *v.* Vanalstyne 392, 610
Gray's Creek Dairy Co. *v.* Mullin 14
Grent Western Railway Co. *v.* Crawford 50
Green *v.* City of Montreal 491, 530, 597

PAGE

Greenshields *v.* Wyman 418, 571, 627
Greenwood *v.* Thompson 88, 253, 690
Grenier *v.* Leroux 271, 667
" *v.* Mayor of Montreal 235, 529, 601
" *v.* Pothier 116, 314
Grier *v.* Normandeau 639
Griffin *v.* Devine 617, 748
Griffith *v.* Page 449
Griveau *v.* Champagne 625
Grose *v.* Boynton 393
Grosleau *v.* Quebec Road Trustees 90, 334, 624
Grothé *v.* Langevin 379
Guay *v.* Bellay 64, 209, 426, 621
" *v.* Blanchet 298
" *v.* Fradet 77
" *v.* Mallette 468
" *v.* Mercier 239
Guenette *v.* Filion 500
Guerin *v.* Desrosiers 112
Guertin *v.* Nolan 244, 317
" *v.* Paquette 489
" *v.* Patenaude 557
" *v.* Trust and Loan Co. 4, 574
Guest *v.* Macpherson 248
Guevremont *v.* Tunstall 289
Guilbault *v.* Larocque 379
Guilbault *v.* Michaud 460
Guilmette *v.* Lafleur 468
Guimont *v.* Methot 57
Guindon *v.* Girouard 108
Gunn *v.* Brouillard 648
Gunner *v.* Belanger 97, 352
Guy *v.* City of Montreal 263, 313, 539, 605, 662
" *v.* Guy 603, 712, 713
" *v* Normandeau 605, 721

H

H. *v.* T. 236, 582
Hache *v.* McGauvran 457
Hadrill *v.* Kerr 459, 717
Hagerty *v.* Crehen 316
Haggerty *v.* Morris 58, 569
Hale *v.* Robertson 134
Hall *v.* Brigham 202, 666
" *v.* Canada Copper and Sulphur Co. 234, 506
" *v.* McLaren 89
" *v.* Price 207, 460
" *v.* Regina 349, 657
" *v.* Robertson 379
" *v.* Zernichon 132, 616
Hallee *v.* Astill 493
" *v.* Hallée 344
Hamel *v.* Bourget 358, 602
" *v.* Fiola 67
" *v.* Gagnier 626
" *v.* Gagnon 67
" *v.* Lafiberté 624
" *v.* Marchildon 345, 346
" *v.* Panet 367, 497
Hamilton *v.* Beauchene 201, 279, 300, 302, 303
" *v.* Christie 676, 698
" *v.* Desbarats 13, 108, 716
" *v.* Desjardins 63
" *v.* Roy 385
" *v.* Wall 703

Haming *v.* Turcotte 320
Hampson *v.* Thompson 64, 655
Hands *v.* Hay 500, 714
Hanlan *v.* Stanley 64, 731
Harbor Commissioners of Montreal *v.* McClanaghan 257, 623
" Commissioners of Montreal *v.* St. Lawrence Steam Elevating Co. 194, 370
Hardy *v.* Scott 425, 616
Harmburger *v.* Hillyard 377
" *v.* McDougall 457
Hart *v.* Beard 253
" *v.* Bouthillier 547
" *v.* Bowdon 240, 470
" *v.* Choquet 430
" *v.* Cook 554
" *v.* Corporation of Missisquoi 443
" *v.* David 696
" *v.* Hart 16, 620
" *v.* Joyce 25, 433, 701
" *v.* Smith 547
" *v.* Therien 469
Hartford Fire Insurance Co. *v.* Bell 414
Hartlaub *v.* Siegert 613
Harwood *v.* McCallum 626
Hatchette *v.* Bury 394
" *v.* Cahill 500
" *v.* Gooderham 88, 684

	PAGE
Hatchette v. Robertson	394
Hatton v. National Insurance Co.	167
Hawkes v. Catlery	134
Hay v. Hands	500, 714
Hayvern v. Ritchot	9
Head v. Murray	45
Healey *exp.*	348, 349
" v. Delaware, Lackawanna and Western Railway	389
Hearle v. Rhind	170, 625, 745
Hearn v. Maloney	616, 618, 625, 628
" v. McGoldrick	456
" v. Vezina	460
Heath v. Clement	390, 430
Heaton v. Cossant	84
Hebert v. Bellerose	599
" v. Boulerisse	614
" v. Menard 3, 416, 418, 516, 599, 603, 647, 649	
Henderson v. Duggan	138
" v. Henderson	208
" v. Morin	90, 391
" v. St. Michel Road Co.	454, 725
" v. Stafford	552
" v. Tremblay	86, 683
Heney v. Girard	140
" v. Ireland	462
Hennessey v. Sheridan	133, 140
Herald Printing Co. v. Workman	290
Heritable Securities v. Racine 385, 423, 583, 658, 699	
" " v. Wright	561
Heron v. Souliere	202
Heroux v. Clement	41, 333, 438
Heyneman v. Smith	59, 134
Heywood v. Gervais	208, 397
Hibbard v. Baylis	193
Hickson v. Regina	217, 221, 472
Hills v. Christie	295
Hilyard v. Harmburger	377
Hird v. Fauteux	388
Hochelaga Bank v. Goldring 71, 135, 138, 426	
" Mutual Fire Insurance Co. v. Dustin	405
" v. Kelly	407, 413, 745
" v. Massé	404
Hodson v. Evans	465
Hoe v. Mullins	549
Hogan v. Bernier	670
Hogue v. Cousineau	496, 498
Holland v. Drummond	4, 550, 699
Holme v. Cassils	21, 619
Holmes v. Carter	426
" v. Scanlan	234, 458, 459
Holton v. Aikens	48, 534, 623, 634
" v. Andrews	17, 205
" v. Callaghan	534, 537
" v. Corporation of St. Gabriel West	26
Home v. Connolly	378
" Fire Insurance Co. v. Stanton	71, 405
Homier v. Brosseau	692, 717
" v. Morin	68, 69
" v. Renaud	497, 498
Hood v. Aikin	203
" v. Bank of Toronto	189
" v. Barsalou	386
" v. Western Assurance Co.	409
Horner v. Regina	451, 473
Hotte v. Currie	82, 132, 645
Hough v. Corporation of Quebec	148
Howard v. Yule	208
Howie v. Alcock	24
Howley v. Genereux	365, 431
Hubert v. Barthe	122, 187
" v. Mayor of Montreal	67, 423
" v. McLennan	88, 243, 633
Hudson Cotton Co. v. Canada Shipping Co.	46
" v. Evans	36, 318, 454, 634
" v. Girouard	23, 108, 109
" v. Mallette	573, 574, 739
" v. Marceau	489
" v. Painchaud	84, 269, 738
" v. School Commissioners of Hochelaga	523
" v. Trudelle	203, 321, 556
" v. Corse	464
Hughes v. Rees	54, 622
Hunt v. Corporation of Quebec	520
Huntingdon v. White	58
Huot v. Cloutier	615
" v. Contu	588
" v. Roy	29, 78, 314
Hurlburt v. Graham	560
Hurteau v. Pelletier	192, 502
Hurtubuise v. Bourret	133
Hus v. Joseph	15, 680
" v. Millet	56
Huston v. Pacaud	396, 672, 690
Hutchinson v. Ford	421, 583

I

Ibbotson v. Ouimet	691
Ireland v. Heney	462
Irvine v. Duvernay	32, 429, 469, 471
Irwin v. Boyer	54
Ivers v. Lemieux	266

J

Jackson v. Fauteux	615, 667
" v. Lighthall	41, 438
" v. Middlemiss	4, 549
" v. Prevost	34, 618, 744
Jacob v. Coté	317, 346
Jacques Cartier Permanent Building Society v. Roy	365, 695
Jaeger v. Sauvé	21, 465
Jalbert v. Delery	29
Jameson v. Steele	327

		PAGE
Janes	*v.* Sun Mutual Insurance Co.	
Jaques	*v.* Worthington	644
Jasmin	*v.* Gendron	
"	*v.* Thibodeau	377
Jean	*v.* Gauthier	550, 607, 703
Jeannotte	*v.* Société de Pret et Credit Foncier	359, 648
Jetté	*v.* McNaughton	66
Jobin	*v.* Regina	39
"	*v.* Shuter	678, 679
Jodoin	*v.* Varennes	
Johnson	*v.* Leaf	61, 385
"	*v.* Longtin	97, 159, 307, 315
"	*v.* Scott	110, 488
Joly	*v.* Macdonald	65, 71, 369, 371, 374
"	*v.* Moreau	639
Jones *exp.*		213
"	*v.* Crebassa	624
"	*v.* Mayor of Iberville	38, 630, 753
"	*v.* McNamee	135, 308
Jones	*v.* Montreal Cotton Co.	172
"	*v.* Pearson	208
"	*v.* Powell	6
"	*v.* Regina	226
"	*v.* Shea	341
"	*v.* Sun Mutual Insurance Co.	414, 603
"	*v.* Trust & Loan Co.	681
"	*v.* Vanvliet	208
Jordan	*v.* Cutting	157, 315, 494
Joseph	*v.* City of Montreal	711
"	*v.* Donovan	132
"	*v.* Hus	15, 680
"	*v.* Saunders	464
"	*v.* Smith	464, 652
Jouffray	*v.* L'Archevêque	546
Joyce	*v.* Hart	25, 433, 701
Jubinville	*v.* Mulcair	183, 240, 460
Judah	*v.* Mason	238
"	*v.* Richler	472, 474

K

Kane	*v.* Racine	11, 84, 550, 674, 729
"	*v.* Wright	183, 570
Kaulbach	*v.* Beamish	76
Keane	*v.* Moore	317
Kearns	*v.* O'Reilly	181
Kearney	*v.* Logan	383
Keller	*v.* Dansereau	45
"	*v.* Watson	50, 90, 334
Kelfert	*v.* Grand Trunk Railway	143
Kelly	*v.* Belanger	431, 436
"	*v.* City of Quebec	234, 539
"	*v.* Hochelaga Mutual Insurance Co.	407, 413, 745
"	*v.* Short	489
"	*v.* Symons	262
Kemp	*v.* Smith	508
Kennedy	*v.* Cowell	594
Kennedy	*v.* McKinnon	200, 206, 618
"	*v.* Molsons Bank	101
Kerouack	*v.* Canada Fire Insurance Co.	409
Kerr	*v.* Brown	48, 168
"	*v.* Hadrill	459, 717
"	*v.* Regina	214, 223
Kerry	*v.* Les Sœurs de L'Asile, etc.	196, 726
Kershaw	*v.* Kirkpatrick	575
King	*v.* Dalton	18, 493
"	*v.* Pinsonnault	42
Kingsborough	*v.* Pownd	14, 16, 362, 696
Kirkpatrick	*v.* Kershaw	575
Knapp	*v.* Quebec Bank	385
Knight	*v.* Budden	631
Knight	*v.* La Banque Nationale	383
"	*v.* McCorkill	496, 559
"	*v.* Ross	390
Knox	*v.* Lafleur	203, 619
Krans	*v.* Sabine	367
Kyte	*v.* Reynolds	111

L

La Banque Jacques Cartier	*v.* Beausoleil	396
" " "	*v.* Geddes	102, 475
La Banque Nationale	*v.* Knight	383
" "	*v.* Lemieux	545
" "	*v.* Société de Construction	109, 196, 260
La Banque Ville Marie	*v.* Laurin	422, 626
" "	*v.* McLean	23
" "	*v.* Primeau	109
" "	*v.* Wilson	101, 417
Labatt	*v.* Trester	726
Labelle	*v.* Beaupré	690
"	*v.* Gratton	14, 29, 588
"	*v.* Le Clercs de St. Viateur	194
"	*v.* Sayer	315, 733
Laberge	*v.* Leduc	535
Labonté	*v.* Lainesse	249
Lacerte	*v.* Lajoie	298
"	*v.* Philibert	299
Lacey	*v.* Drapeau	68
Lachapelle	*v.* Beaudoin	490
La Congregation de la Croix	*v.* Metivier	78
Lacoursiere	*v.* Germain	580
"	*v.* Terreau	397
Lacroix	*v.* Booth	89, 626
"	*v.* Bulmer	746
"	*v.* Thompson	141
Ladouceur	*v.* Currie	648, 736
"	*v.* Morasse	182
La Fabrique de St. Enfant Jesus	*v.* Poirier	153, 154, 430, 737
" " "	Jesus *v.* Pigeon	154
Laferrière	*v.* Nouveau Monde	31, 544
"	*v.* Provost	204
Laflamme	*v.* Dubrule	29
"	*v.* Owens	488, 561
"	*v.* Prendergast	19, 333, 724
"	*v.* Somerville	285, 286, 292

	PAGE
Lafleur v. Beaudry	461, 609
" v. Brunelle	650
" v. Citizens Insurance Co.	404
" v. Guilmette	468
" v. Knox	203, 619
Lafond v. Chouinard	728
" v. Desroberts	
" v. Dominion Type Foundry	141
Laframboise v. Damour	13, 184, 264, 588, 699
Laframboise v. Lajoie	489
" v. Windsor Hotel Co.	173
Lafreniere v. Marier	507
" v. Richelieu & Ontario Navigation Co.	22, 415
Lagace v. Ayotte	84
Laggett *exp.*	192
Lahaie v. Beauchêne	64
" v. McMartin	29
Lainesse v. Labonté	249
" v. Lavergne	470
Laineville v. Lecours	608
Lajoie v. Belair	385
Lajoie v. Citizens Insurance Co.	59
" v. Lacerte	298
" v. Laframboise	489
" v. Migneault	115, 574
" v. Mullin	57, 142
" v. Plessis	393, 624
" v. Robertson	745
" v. Woods	31
"Lake Champlain," The	484
"Lake St. Clair," The	483
Lalancette v. Lizotte	526
Lalanne v. Carter	68
" v. Regina	225, 432
Laliberté v. Chenard	24, 168
" v. Hamel	624
" v. Paris	61
" v. Regina	214
" v. Ruelle	161
La Liste Electoral of Berthier v. Ralston	95, 334
Lalonde v. Belanger	550, 601
" v. Drolet	28, 187, 670
" v. Dufresne	251, 368
" v. Gauthier	557
" v. McGlinn	353
" v. St. Denis	266
Lamarche v. Blanchard	612, 617
" v. Demers	371
Lamartelliere v. Seers	147
Lamb v. Brewster	71, 72
Lambert v. Chartrand	659
" v. Corporation of Three Rivers	235
Lambkin v. South Eastern Railway Co.	63, 70, 236, 427, 544, 641
Lamoureux v. Arpin	259, 263, 417
Lamy v. Cusson	562
Lancashire Ins. Co. v. Chapman	408
L. & K. Ry. v. Wason Mnfg. Co.	643
Landa v. Delbar	117, 614
" v. Pouleur	174, 247
Landry v. Theberge	70
Lang v. Blanchard	150, 260, 430
" v. Board of Temporalities	372, 427, 587
Langelier v. Blouin	209, 584, 672
" v. Brousseau	471
" v. Laroche	124
" v. Perrault	302
Langevin v. Brossard	60, 298, 303, 654
" v. Grothé	379
Langis v. Boulé	750
Langlois v. Bourke	681
" v. Normand	213, 364
" v. Valin	36, 41, 71, 279, 282, 285, 287, 296, 306, 333, 451, 752
"Langshaw," The	482, 483
Lanouette v. Les Curé, etc. of St. Paul	160
Lanthier v. Champagne	30, 583
Laperriere v. Martineau	395
" v. Mu. Fire Ins. Co.	657
Lapierre v. Champoux	125
" v. Cloutier	32
" v. Gagnon	242, 743
" v. London & Lancashire Ins. Co.	400, 411
" v. L'Union St. Joseph	59, 106, 482
" v. Pelletier	456
" v. Tessier	85
Laplante v. Laplante	199
Lapointe v. Faulkner	67, 297
Laprise v. Methot	24, 585
" v. Regina	215
Laramée v. Evans	486, 621
L'Archeveque v. Jouffray	546
Lareau v. Beaudry	178, 312
" v. Poirier	338, 628, 632
Laricheliere v. Metayer	614, 754
Larimée v. Bocage	240
Larin v. Chapman	183
" v. Deslorges	613
Laroche v. Langelier	124
" v. Matte	441, 569
Larochelle v. Barbeau	377
" v. Reid	57, 207
Larocque v. Duchesnay	585, 629
" v. Guibault	379
" v. Royal Ins. Co.	406, 743
" v. Willett	246
Larose v. Chausse	251
" v. City of Montreal	236, 529
" v. Filiatrault	491
" v. St Michaud	489
" v. Rousseau	506
Larouche v. Regina	225
Larue v. Deslauriers	280, 289, 298, 302
" v. Fraser	667
" v. Loranger	42, 333
La Sisseraye v. McMahon	558
La Soc. d'Agriculture v. Robert	717
" " de Construction v. Beauchamp	647, 732
" " " v. Charlebois	647
" " " v. Desautels	360
" " " Can. v. La Banque Nationale	109, 196, 260
" " de Construction v. Robillard	4, 592
La Soc. Per. de la Baie de Febvre v. Parent	425
" " " de Construction v. Leonard	356
" " " " " Jacques Cartier v. Posé	259
" " " de Construction Montarville v. Couvineau	497
" " " de Construction St. Jacques v. Peloquin	359, 649
" " " de Construction v. Prevost	125
" " " " " de St. Louis v. Villeneuve	477
" " " de Construction v. Wilson	173, 315
Latouche v. Latouche	568
Latour v. Campbell	174, 200
" v. Gauthier	622

	PAGE
Latulippe *v.* Bernard	205
Laumière *v.* Poulet	135
Laurent *v.* Dupire	
Laurentian Ry. *v.* Legge 159, 315, 507, 579	
Laurin *v.* Banque Ville Marie	422, 626
" *v.* Doutre	469
Lauzon *v.* Bates	24, 338
Lauzon *v.* Quebec Street Ry.	636
Lavallée *v.* Forneret	21
Laviolette *exp. v.* Trudel 147, 148, 204, 431	
" *v.* Ryan	216
Laverdiere *v.* B. N. A. Land Co.	686
Lavergne *v.* Lainesse	470
Lavigne *v.* McKenzie	560
Lavoie *v.* Cruickshank	208
" *v.* Grant	205, 613
" *v.* Racine	278
Lawlor *v.* Cuuchon	592
Lazarus *v.* Delaney	593
" *v.* Soulier	572
Leaf *v.* Canada Shipping Co.	141
" *v.* Johnson	61, 385
Learmonth *v.* Blais	678
Lebel *v.* Bagdon	684
" *v.* Pacaud	59
Leblanc *v.* Leblanc	550
Le Bontillier *v.* Morgan	134, 159, 514
Lebr[illegible] *v.* Bedard	20, 355, 617
" *v.* Valin	728
Lecavalier *v.* Robillard	280, 282, 293
Leclaire *v.* Fauteux	388
Leclair *v.* Filion	20, 202, 355
" *v.* Joseph	464
Lecours *v.* Lameville	608
Ledoux *v.* Picotte	110, 534
Leduc *v.* Desmarchais	601
" *v.* Jackson	550
" *v.* Laberge	535
" *v.* Western Assurance Co.	411
Lefebvre *v.* Branchaud 360, 649, 687	
" *v.* Fulton	391
" *v.* Plamondon	461
" *v.* Proulx	601
" *v.* Quintal	356
" *v.* Steam Navigation Co.	243, 364
" *v.* Turgeon	21, 386, 560
Lefebvre *v.* Vezina	178, 488
Lefuntun *v.* Bolduc	246, 480
Legare *v.* Fuchs	309, 599
" *v.* Mignault	662
" *v.* Ross	606
Legendre *v.* Plante	15
Leger *v.* Ford	132
Legge *v.* Laurentian Railway 159, 315, 507, 579	
" *v.* Legge	16, 228
Lemaire *v.* Charlebois	684
" *v.* Payment	600, 652
Lemay *in re*	593, 730
Lemieux *v.* Ivers	266
" *v.* La Banque Natio[illegible]	545
" *v.* Leonard	40, 718
" *v.* Regina	226
Lemire *v.* Gelinas	18
" *v.* Genereux	
" *v.* Gerard	18, 199, 257
Lemoine *v.* Lionais	201
Leonard *v.* La Soc. de Construction	356
" *v.* Lemieux	440, 718
" *v.* Regina	216, 224
Lenoir *v.* Mallette	66, 67

	PAGE
Lenoir *v.* Ritchie	37, 73, 454, 637
Lepage *v.* Billy	32
" *v.* Brassard	118
" *v.* Piton	352
" *v.* Watson	320, 632
" *v.* Wylie	469
Lepine *v.* Fiset	25
" *v.* Gauthier	319
" *v.* Mathieu	477
Leprohon *v.* Rocher	646
Leroux *v.* Gremer	271, 667
" *v.* Merchant Marine Ins. Co.	411
Lesage *v.* Develecchio	464
Les Clercs de St. Viateur *v.* Labelle	194
Les Curé & Marguilliers de Montréal *v.* Beaudry	186, 549
" " & Marguilliers de Montréal *v.* Carrier	152, 589
" " etc. de St. Clement de Beauharnois *v.* Robillard 7, 156, 321, 480	
" Marguilliers de la Paroisse de St. Enfant Jesus *v.* Beaulieu	153
" " de la Paroisse de St. Enfant Jesus *v.* Poirier	153
" Curé, etc., of St. Enfant Jesus *v.* Roy	154
" " & Marguilliers of St. Hyacinthe *v.* Renaud	146
" " & Marguilliers of St. Paul *v.* Lanouette	160
" " etc., of St. Thomas *v.* La Cie. de Moulin de Pierreville	152
Les Religieuses, etc., *v.* McCord	647, 698
Les Rev. Dames Religieuses, etc. *v.* School Commissioners of Riviere du Loup	163, 605
Lessard *v.* Corp. of Three Rivers	235
Lessor *v.* Misell	247
Les Sœurs de L'Asile, etc., *v.* Kerry	196, 726
" " " Notre Dame *v.* Corpn of Verdun	651
Les Syndics de St. Ours *v.* Allair	154
" " etc., *v.* Samson	734
Letendre *v.* Berard	568, 583, 584
Letourneux *v.* Delisle	390
Leveillé *exp.*	447, 474
Levesque *v.* City of Montreal	525
" *v.* McCready	120
Levi *v.* Gagnon	246
" *v.* Reed	76
Levis & Kennebec Ry. *v.* Goodson	757
" " *v.* Lewis	657
" " *v.* Wason Manufacturing Co.	343
" " *v.* Wyatt	632
Levy *v.* Barbeau	385
Lewis *v.* Levis & K. Ry	657
" *v.* McGinley	209
" *v.* Windsor Hotel Co.	172
L'Heureux *v.* Beland	165
" *v.* Martineau	81
" *v.* May	316
L'Hostie *v.* Wagner	23, 106
Lighthall *v.* Jackson	41, 438
Lim[illegible] *v.* Western Assurance Co.	413
Ling *v.* Regina	219
Lionais *v.* Cuvillier	602
" *v.* Evans	590
" *v.* Gilbert	176
" *v.* Lemoine	201
" *v.* Molsons Bank	86, 749

PAGE

Lionais *v.* Ontario Bank 320
Lise *exp.* 350
Liverpool & London & Globe Ins. Co., *v.* Wyld 73
Livingstone *v.* Grand Trunk Ry. 145, 643
Lizotte *v.* Lalancette 526
Logan *v.* Bradley 617
" *v.* Kearney 383
London *v.* Lancashire Life Ins. Co. *v.* Lapierre 400, 411
Long *v.* Blanchard 150, 260, 430
Longobardi *v.* Gauvreau 344
Longpré *v.* Pattenaude 89
Longtin *v.* Johnson 97, 159, 307, 315
" *v.* Mount Royal Permanent Building Society 591
Loranger *v.* Clement 439, 463, 552
" *v.* DeGaspé 358
" *v.* Larue 42, 333
Lord *v.* Dunkerly 254
" *v.* Morin 398

PAGE

Lortie *v.* Archer 115, 426, 575
" *v.* Clark 673
" *v.* Dionne 265
" *v.* Evans 383
" *v.* Rouleau 66
Lottinville *v.* McGreevy 427, 658
Louis *v.* Rochette 396
Lovett *v.* Grand Trunk Railway 236
Loyseau *v.* Charbonneau 365
Lozeau *v.* Charbonneau 61
Luckhurst *v.* City of Montreal 235, 528
Luke *v.* Wicklitfe 495
L'Union St. Jacques *v.* Bellisle 449
" St. Joseph *v.* Lapierre 59, 106, 439, 482
Lusignan *v.* Bedard 346
Lussier *v.* Corporation of Hochelaga 72
Lynn *v.* Nivin 52, 316
Lymburner *v.* Stadacona Insurance Co. 412
Lynott *exp.* 474
Lynch *v.* Regina 216

M

Macaulay *v.* Semple 573
Macdonald *v.* Abbott 74, 76
" *v.* Georgian Bay Lumber Co. 337, 386
" *v.* Gond 504
" *v.* Joly 65, 71, 369, 371, 374
" *v.* Mackay 3, 9, 32, 625
Macdongall *v.* Dempsey 26, 596
" *v.* Montreal Warehousing Co. 169, 417, 418, 453
" *v.* Union Navigation Co. 170, 172, 448, 654
Macduff *v.* Blaiklock 169
Macfarlane *v.* Caldwell 387, 391
" *v.* Niagara District Insurance Co. 206
Mackay *v.* Glen 284
" *v.* Routh 3, 9, 32, 85, 625
" *v.* St. Lawrence Salmon Co. 61, 378
Mackenzie *v.* White 61, 281
Maclean *v.* Banque Ville Marie 23
Macpherson *v.* Guest 248
Madden *v.* Cantwell 322
Magistrates Court for Co. of Brome *v.* Blum 431
Magnan *v.* Marsan 657
Maguire *v.* Rackett 131
Maher *v.* Aylmer 51
" *v.* Bruckhart 136
Mahony *v.* Beaudet 58, 675
Maillé *v.* Richler 19, 464, 721
Mailloux *v.* Corporation of St. Alexandre 537
" *v.* Courtemanche 29, 155
" *v.* Trudeau 614
Major *v.* Boucher 96
" *v.* Chadwick 425
" *v.* Chartrand 95, 96, 628
Malhiot *v.* Bourgoin 370, 627
" *v.* Burroughs 206
Mallette *v.* City of Montreal 36, 372, 533
" *v.* Gravel 206
" *v.* Guay 468
" *v.* Hudon 573, 574, 739
" *v.* Lemoir 66, 67
Malleval *v.* Ambrois 139
Malo *v.* Fisher 389
" *v.* Melancon 189
Maloney *v.* Hearn 616, 618, 625, 627
Mansfield *v.* Desmarteau 34
Marais *v.* Brodeur 207
" *v.* Couture 184
Marceau *v.* Hudon 489
" *v.* Ross 625
Marchand *v.* Caty 467
" *v.* Deguire 439, 461
" *v.* Wilkes 21, 110
Marchildon *v.* Hamel 345, 346
Marcott *v.* Robitaille 439
Marcotte *v.* Falardeau 115, 574
" *v.* Noel 748
" *v.* Paquin 291
Marier *v.* Lafreniere 507
Marion *v.* Morin 148
Marleau *v.* Martineau 91
Marler *v.* Molsons Bank 103, 188
Marlow *v.* Robertson 90, 626
" *v.* Stewart 111
Marois *v.* Bolduc 243, 364
Marquis *exp.* 443
" *v.* Danjou 65, 76, 520
" *v.* Vancourtlandt 63, 425
Marson *v.* Magnan 657
" *v.* Simard 13, 80, 191, 240, 365
" *v.* Tessier 555
Marshall *v.* Cotting 66
Marsil *v.* Dorion 657
Marsolais *v.* Brault 245
Martel *v.* Beaudet 501
" *v.* Desilets 359
" *v.* Rocheleau 292, 293, 294, 298
" *v.* Seneca! 616
Martin *exp.* 348
" *v.* Bayard 200
" *v.* Corporation of Ascot 234
" *v.* Corporation of Hull 111, 534
" *v.* Foley 203
" *v.* Gravel 724
" *v.* Perkins 573
" *v.* Quebec Permanent Building Society 681

		PAGE
Martin	*v.* Regina	223
Martineau	*v.* Laparriere	395
"	*v.* L'Heureux	81
"	*v.* Marleau	91
Mason	*v.* Judah	238
Massé	*v.* Cotè 20, 314, 354, 430,	578
"	*v.* Hochelaga Mutual Insurance Co.	404
"	*v.* La Banque d'Echange 85,	674
"	*v.* Robillard 295, 315,	424
Massue	*v.* Bruneau 61, 281, 282, 293,	302
"	*v.* Primeau	36
Mathewson	*v.* O'Reilly 210,	612
Mathieu	*v.* Berard	705
"	*v.* Forget 241,	470
"	*v.* Francœur 492,	493
"	*v.* Lepine 477,	675
Matte	*v.* Laroche 441,	569
Maxwell	*v.* Cooper	688
May	*v.* L'Heureux	316
Maybury	*v.* Phœnix Life Insurance Co.	403
Maynard	*v.* Regina	215
Mayor of	Iberville *v.* Jones 38, 630,	753
"	&c. of Montreal *v.* Brown 64,	328
" "	" *v.* Cramp	193
" "	" *v.* Drummond	234
" "	" *v.* Grenier	234
" "	" *v.* Hubert 67,	423
" "	" *v.* Molson 372,	51
" "	" *v.* Morrison 10,	518
" "	" *v.* Stephens	327
" "	Sorel *v.* Parsons	540
Mayrand	*v.* Augé	131
McAnnally	*v.* Brennan 491,	589
McArthur	*v.* Mulholland 391,	577
"	*v.* Riddell 67,	206
"	*v.* Whyte	672
McAuley	*v.* Semple	373
McCaffrey	*exp.* 349,	366
"	*v.* Bruneau	57
"	*v.* Claxton 343,	365
McCallum	*v.* Harwood	626
McCambridge	*exp.*	148
McClanaghan	*v.* Dupuy	458
"	*v.* Harbor Commissioners of Montreal 257,	623
"	*v.* St. Ann's Mutual Building Society 37, 125, 205,	450
McConkey	*v.* Canadian Navigation Co. 143,	622
McCord	*v.* Les Religieuses, &c. 647,	698
McCorkill	*exp.* 11,	714
"	*v.* Knight 496,	559
McCormick	*v.* Donovan	384
McCready	*v.* Levesque	120
McDonald	*v.* Dionne 507, 511,	609
"	*v.* Dawson	91
"	*v.* Grand Trunk Railway	643
"	*v.* Senez 113,	386
McDonnell	*v.* Fulton 28, 182, 240, 669,	691
"	*v.* Gaudry	670
McDougall	*v.* Harmburger	457
McEachern	*v.* City of Montreal	513
McEvila	*v.* Corporation of Bagot 479,	536
McGauvran	*v.* Hache	457
"	*v.* Stewart 392,	648
M. Gibbon	*v.* Moise	489
McGillivray	*v.* Ross	615
McGinley	*v.* Lewis	209
McGinnis	*v.* Carreau	201
McGlinn	*v.* Lalonde	353
McGoldrick	*v.* Hearn	456
McGrail	*v.* Merchants Bank	97
McGrath	*v.* Goodbody 176,	441
McGreevy	*v.* Boomer	187
"	*v.* Doucet	68
"	*v.* Fourquin	312
"	*v.* Gagné	620
"	*v.* Gingras 421, 460,	621
"	*v.* Lottinville 427,	658
"	*v.* Vanasse	313
McIldibe	*in re*	436
McInnes	*v.* Vezina 692,	744
McIver	*v.* Boyer 440,	463
"	*v.* Commercial Mutual Building Society	205, 680
McIntyre	*v.* Adams	208
"	*v.* Darling	39, 393
McKeand	*v.* Crossley	21, 700
McKenzie	*v.* Lavigne	560
"	*v.* Shaw	139, 241
McKinnon	*v.* Kennedy 200, 206,	618
"	*v.* Thompson 64, 67, 207, 624,	726
"	*v.* Trudel 342, 390,	428
McKnight	*v.* Fisher	24, 593
McLachlan	*v.* Bank of Montreal	113
McLagan	*v.* Allan	34, 250
McLaughlin	*exp.*	147, 204
McLaren	*v.* Drew	322
"	*v.* Hall	89
"	*v.* Ostell	688
McLea	*v.* Evans	48, 240
McLean	*v.* Sinclair	580
McLennan	*v.* Hubert 88, 243,	693
"	*v.* Trenholme 47, 123,	314
McLeod	*v.* Eastern Townships Bank 113, 313,	751
McLynn	*v.* O'Brien	68
McMahan	*v.* Lasisseraye	558
McMartin	*v.* Lahaie	29
McMaster	*v.* Moreau 253,	269
"	*v.* Robertson 132,	135
McMillan	*v.* Bethune	346
McMinn	*v.* Molsons Bank	136
McNamee	*exp.* 179,	180
"	*v.* Fulton	307
"	*v.* Jones 135,	308
McNaughton	*v.* Jetté	66
McNeely	*v.* Stainforth	691
McNichols	*v.* Badeau 85,	307
McQueen	*v.* Phœnix Insurance Co.	406
McWilliams	*exp.*	474
McWilliam	*v.* Findlay 30,	342
Mechanics Bank	*v.* Bramley 51,	110
"	" *v.* Dufresne 21,	259
"	" *v.* St. Jean 61, 62, 98, 99,	378, 420
Meier	*v.* Beling	83
Meigs	*v.* Foster	189
Melançon	*v.* Bessemer 340,	644
"	*v.* Malo	189
"	*v.* Prevost 251, 578,	707
Melles	*v.* Swales	207
Menard	*v.* Hebert 3, 416, 418, 516, 599, 603, 647,	649
Menzies	*v.* Bell 22,	440
Merchants Bank	*v.* McGrail	97
"	" *v.* Murphy 558,	616
"	" *v.* Samson 380,	382
"	" *v.* Whitfield	63

PAGE

le 353
456
ants Bank 97
ody 176, 441
er 187
t 68
uin 312
620
s 421, 460, 621
ville 427, 658
se 313
436
692, 744
440, 463
ercial Mutual Build-
iety 205, 680
208
39, 393
'21, 700
560
139, 241
y 200, 206, 618
son 64, 67, 207, 624, 726
342, 390, 428
24, 593
Montreal 113
34, 250
147, 204
322
89
688
48, 240
580
88, 243, 633
ie 47, 123, 314
Townships Bank
113, 313, 751
68
ye 558
29
253, 269
n 132, 135
346
Bank 136
179, 180
307
135, 308
66
691
85, 307
surance Co. 406
474
30, 342
mley 51, 110
fresne 21, 259
lean 61, 62, 98, 99,
378, 420
83
189
340, 644
189
251, 578, 707
207
3, 416, 418, 516,
599, 603, 647, 649
22, 440
rail 97
hy 558, 616
son 380, 382
field 63

PAGE

Merchants Marine Insurance Co. *v.* Leroux 411
Mercier *v.* Adam 295
" *v.* Guay 239
Merino *v.* Ouimet 420
Metacomet National Bank *v.* Paine 64, 65, 138
Metayer *v.* Laricheliere 614, 754
Methot *v.* Guimont 57
" *v.* Laprise 24, 585
Metivier *v.* La Couv. des Sœurs de St. Croix 78
Metropolitan Bank *v.* Serré 51, 313
" " *v.* Symes 49
" Building Society *v.* Beauchamp 647, 732
" Building Society *v.* Roman Catholic School Commissioners 439, 457
Meunier *v.* Corporation of Levis 62
Meyers *v.* Regina 214
Michaud *v.* Francœur 490, 569
" *v.* Guilbault 460
" *v.* Larose 489
" *v.* Rolland 535
" *v.* Vezina 17
Michon *v.* Morency 20, 355
" *v.* Mullin 683
Middlemiss *v.* Attorney General 16, 255
" *v.* Jackson 4, 550
" *v.* Nuns of L'Hotel Dieu 697
Migneraud *v.* Legaré 662
Millar *v.* Dandelin 118
Miller *v.* Fox 57
Millet *v.* Hus 56
Millette *v.* St. Cyr 18, 666
Milloy *v.* Farmer 114, 588
" *v.* O'Brien 378, 396
" *v.* Rooney 667
Mills *v.* Weare 63
Miner *v.* Shaw 176, 381
Mineault *v.* Lajoie 115, 574
Minister of St. Andrew's *v.* Board of Temporalities 58, 91, 197, 626
Misell *v.* Lessor 247
Mitchell *v.* Flanagan 624
Moat *v.* Maison 681
" *v.* Renny 71, 578
Moffat *v.* St. Amour 481
Moher *v.* Bruckert 136
Moir *v.* Filibien 461
Moisan *v.* Moat 681
" *v.* Roche 88, 346
Moise *v.* McGibbon 489
Molleur *v.* Murphy 509
Moloney *v.* Fitzgerald 90
Molson *v.* Carter 72, 90, 141, 312, 423, 425, 614, 695
" *v.* City of Montreal 427, 524
" *v.* Kennedy 101
" *v.* Mayor of Montreal 372, 518
" *v.* O'Brien 183, 307
Molsons Bank *v.* Campbell 131
" " *v.* Kennedy 101
" " *v.* Lionais 86, 749
" " *v.* Marler 103, 188
" " *v.* McMinn 136
" " *v.* Railway and Newspaper Advertising Co. 101, 173
" " *v.* Seymour 114
Monarque *v.* Rawley 713
Mondelet *v.* Regina 213
Mondou *v.* Quintal 632, 691

PAGE

Mongeau *v.* Larocque 379
Mongenais *v.* Rochon 696
Montchamps *v.* Perras 187, 315, 418, 603
Montizambert *v.* Dumontier 646
Montrait *v.* Williams 199, 591
Montreal Centre Election, *in re* 286
" City and District Savings Bank *v.* Geddes 645
" City Passenger Railway *v.* Attorney General 710
" City Passenger Railway *v.* Correstine 240
" Cotton Co. *v.* Corporation of Salaberry 62, 67, 541
" Cotton Co. *v.* Jones 173
" " *v.* Parham 503
" and Ottawa Forwarding Co. *v.* Dickson 657
" Loan and Mortgage Co. *v.* Bell 692
" " " *v.* Fauteux 676, 680
" Loan and Mortgage Co. *v.* Fontaine 620
" Ottawa and Occidental Railway *v.* Bourgoin 37, 174, 194, 326, 449, 481, 617, 626, 639, 641
" Ottawa and Occidental Railway *v.* Devlin 33
" Ottawa and Occidental Railway *v.* Tiernan 180
" Ottawa and Western Railway *v.* Bury 29
" Permanent Building Society *v.* Desautels 357
" Portland and Boston Railway *v.* Angers 194, 371, 612, 643
" Turnpike Road *v.* Daoust 735
" Warehousing Co. *v.* Macdougall 169, 417, 418, 450
" " " *v.* Royal Canadian Insurance Co. 169, 418, 453
Moore *v.* Keane 317
Morasse *v.* Ladouceur 182
Moreau *v.* Joly 639
" *v.* McMaster 253, 269
Morency *v.* Michon 20, 355
" *v.* Morency 269
Morey *v.* Gaherty 10, 591
Morgan, *in re.* 395
" *v.* Baillie 626
" *v.* Coté 636, 752
" *v.* Girard 619
" *v.* Leboutillier 134, 159, 514
" *v.* Rees 421, 422, 612
" *v.* Wiggins 18, 493
Morin *v.* Bissonnette 265, 558
" *v.* Denault 465
" *v.* Gagnon 531
" *v.* Henderson 90, 391
" *v.* Homier 68, 69
" *v.* Lord 398
" *v.* Morin 251
" *v.* Marion 148
Morisette *v.* Corporation of Bienville 623
" *v.* Graham 30, 531, 616
Morrier *v.* Rascony 526
Morrill *v.* Eastern Townships Bank 569, 626
Morris *v.* Haggerty 58, 569
Morrison *v.* Mayor of Montreal 10, 518, 533
Moss *v.* Amos 159, 384

	PAGE
Moss *v.* Rafter	551
Motz *v.* Paradis	587
Mount Royal Permanent Building Society *v.* Longtin	591
Mulcair *v.* Jubinville	183, 240, 460
Mulholland *v.* Cie de Fonderie	32, 108
" *v.* McArthur	391, 577
Mullarky *v.* Phaneuf	133
Mullin *v.* Brown	201, 383
" *v.* Graham	469
" *v.* Gray Creek Dairy Co.	14
" *v.* Lajoie	57, 136, 142
" *v.* Michon	683
" *v.* Niagara District Fire Insurance Co.	206
Mullins *v.* Cooney	200
" *v.* Hoe	549
Municipality of Brome *v.* Covey	37, 422, 443
" Mile End *v.* Picotte	110, 534
Munro *v.* Dufresne	684
Murphy *v.* Connolly	379, 397
" *v.* Donihee	31, 352, 692
" *v.* Merchants Bank	558, 616
" *v.* Molleur	509
" *v.* Stadacona Bank	391
" *v.* Thomas	28, 676
" *v.* Windsor Hotel Co.	171
Murray *v.* Attorney General	60, 72, 467
" *v.* Bickerdike	45
" *v.* Head	45
" *v.* Stewart	382
Mutual Fire Insurance Co. *v.* Duharme	412, 744
" " " " *v.* Fletcher	434, 633
" " " " of Stanstead *v.* Galipnt	34, 415
" " " " of Stanstead *v.* Laperriere	657

N

Nadeau *v.* Bouffard	14
" *v.* Corporation of Bienville	623
" *v.* Pacaud	56, 117
Nagy *v.* Courville	517
Napper *v.* Exchange Bank	612
Narbonne *exp.*	150, 349
National Insurance Co. *v.* Aitken	462
" " " *v.* Black	407, 744
" " " *v.* Cartier	32, 108
" " " *v.* Chevrier	172, 313
" " " *v.* Elliott	414, 416
" " " *v.* Hatton	167
" " " *v.* Paige	33, 167
" " " *v.* St. Cyr	43, 117, 308
Neault *v.* St. Cyr	299
Neilan *v.* Demers	622
Neild *v.* Sait	425, 502
Nelson *v.* Snowdon	579
Neven *v.* Salois	684
New City Gas Co. *v.* Giraldi	718
" " " *v.* Salvas	190, 194, 239
New York Life Insurance Co. *v.* Parent	412
" " " " *v.* Talbot	412
" " " " *v.* Vezina	409
Niagara Mutual Insurance Co. *v.* Garceau	406, 743
" " " " *v.* Macfarlane	206
Niagara District Fire Insurance Co *v.* Mullin	206
Niagara District Fire Insurance Co. *v.* Perry	407
Niagara District Fire Insurance Co. *v.* Quintal	169
Nitsch *v.* Osborne	11
Nivin *v.* Lynn	52, 316
Noad *v.* Noad	437, 442, 700, 749
Noel *v.* Gagnon	589, 670
" *v.* Laverdiere	686
" *v.* Marcotte	748
Noiseux *v.* Vigneux	156, 233, 468
Nolan *v.* Dastous	423, 657, 739, 754
" *v.* Guertin	244, 317
Normand *v.* Langlois	243, 364
" *v.* Shortis	65, 259, 556
" *v.* St. Lawrence Navigation Co.	454, 661
Normandeau *v.* Bougie	88
" *v.* Grier	639
" *v.* Guy	605, 721
"Normanton," The	484, 485
Northern Assurance Co. *v.* Duval	410
" *v.* Robert	680
Nouveau Monde *v.* Laferriere	31, 544
Nowell *v.* Reeves	381
Nuns of Hotel Dieu *v.* Middlemiss	697
Nye *v.* Perkins	678

O

Oakes *v.* Clements	316, 488
O'Brien *v.* Commercial Mutual Building Society	126
" *v.* Fausse	
" *v.* McLynn	68
" *v.* Milloy	378, 396
" *v.* Molson	183, 307
" *v.* Prescott	731
" *v.* Regina	225
" *v.* Thomas	251, 307
" *v.* Weaver	170
Œtna Life Insurance Co. *v.* Rooklidge	717
O'Farrel *v.* Brassard	70, 71, 104, 630, 656
" *v.* Doucet	630
" *v.* Garneau	623, 628, 629
" *v.* Reciprocity Mining Co.	90, 334
Ogden *v.* Dawson	180, 563
O'Halloran *v.* Barlow	85, 618
" *v.* Boucher	4, 550, 574
O'Hara *v.* Crossen	253, 269, 555
Oliver *v.* Colebrook Rolling Mills	511, 518
" *v.* Darling	208

PAGE

Olivier *v.* Demontigny 210
Omalley *v.* Scottish Commercial Insurance Co. 32, 414
Omeara *v.* Auger 260
Onaskenerat *exp.* 213
O'Neil *v.* Commissioners of Q. M. & O. Railway 31, 327
" *v.* Farmer 77, 690
Ontario Bank *v.* Cotton 66
" " *v.* Lionais 320
" " *v.* Union Bank 114, 339
O'Reilly *v.* Kearns 181
" *v.* Mathewson 210, 612
Osborne *v.* Nitsch 81
Osgood *v.* Goodnough 16. 363
Ostell *v.* Blake 227

PAGE

Ostell *v.* McLaren 688
Ottawa Agricultural Insurance Co. *v.* Sheridan 73, 416
Ottawa Agricultural Insurance Co. *v.* Tourigny 34, 409, 415
Ouellette *v.* Regina 158, 220
Ouimet *v.* Bergevin 91, 550
" *v.* Desjardins 57, 69, 85, 366
" *v.* Ibbotson 691
" *v.* Merino 420
" *v.* Piché 587
" *v.* Theoret 662, 702
Owens *v.* Cushing 450
" *v.* Laflamme 488, 561
" *v.* Union Bank 609

P

Pacaud *v.* Constant 651
" *v.* Corporation of Princeville 620, 621, 622
" *v.* Drapeau 133, 134
" *v.* Huston 396, 672, 690
" *v.* Lebel 59
" *v.* Nadeau 56, 117
" *v.* Queen Insurance Co. 70, 406
" *v.* Theroux 89, 96, 334
Page *v.* Griffith 449
" *v.* Tellier 649
Paige *v.* Evans 671
" *v.* National Insurance Co. 33, 167
" *v.* Ponton 116, 306
Painchand *v.* Faucher 22
" *v.* Hudon 84, 269, 738
" *v.* Wadley 209
Paine *v.* Metacomet National Bank 64, 65, 138
Panet *v.* Brais 697
" *v.* Brosseau 367, 497
" *v.* Hamel 162
Pangborn *v.* Armstrong 210
Pangman *v.* Archambault
Panneton *v.* Rheaume 237, 249, 438, 465, 612, 622
Papin *exp.* 449
Paquet *v.* Citizens Insurance Co. 404
" *v.* Versailles 732
" *v.* Watts 516
Paquette *v.* Central Vermont Railway 236, 640
" *v.* Guertin 489
" *v.* Regina 215, 217, 221, 226
Paquin *v.* Marcotte 291
Paradis *v.* Motz 587
Paré *v.* Scottish Imperial Insurance Co. 410
Parent *v.* Daigle 604, 662, 702
" *v.* Fauteux 591
" *v.* La Société de la Baie de Febvre 425
" *v.* New York Life Insurance Co. 412
" *v.* Picard 616
" *v.* Shearer 409, 632
Parenteau *v.* Cotnoir 307
Parham *v.* Montreal Cotton Co. 503
Paris *v.* Laliberté 614
Parker *v.* Felton 670
Parson *v.* Sundry Insurance Cos. 37, 418
" *v.* Mayor of Sorel 540
Patenaude *v.* Guertin 557
" *v.* Longpré 89
Patrick *v.* Corporation of l'Avenir
Patterson *v.* Knight 43
" *v.* Powell 244
Paxton *v.* Preston 623
Payard *in re.* 197
Payette *v.* Duhamel 384
" *v.* Scott 325, 326
Payment *v.* Lemaire 600, 652
Pearson *v.* Jones 208
Pell *v.* Perry 83, 208, 243
Pellerin *v.* Belisle 561
Pelletier *v.* Bernier 239
" *v.* Chassé 28, 557, 676
" *v.* Hurteau 192, 502
" *v.* Lapierre 456
" *v.* Pelletier 6, 735
Peloquin *v.* Sincennes McNaughton 483
" *v.* La Soc. de Cons. St Jacques 359, 648
" *v.* Workman 242
Penisson *v.* Penisson 269
Pepin *v.* Bertrand 88, 738
" *v.* Courchêne 270, 497, 649, 713
" *v.* Desmarteau 559
Perion *v.* Dompierre 249, 543
Perkins *v.* Bank of Toronto 356, 497
" *v.* Brown 14, 15
" *v.* City of Montreal 36, 418, 452
" *v.* Dixon 397
" *v.* Gareau 176, 381
" *v.* Martin 573
" *v.* Nye 678
" *v.* Prime 88, 322
" *v.* Ross 176, 730
" *v.* Stevens 687
" *v.* Trempe 245
Perras *v.* Montchamps 187, 315, 418, 603
Perrault *v.* Cimon 279, 292
" *v.* Desjardins 360
" *v.* D'Extras 208
" *v.* Etienne 351, 492, 609
" *v.* Farbore 394
" *v.* Langelier 302

	PAGE
Perrault *v.* Slater	487
" *v.* Thibadeau	498
Perron *v.* Belisle	59
Perry *v.* Niagara District Ins. Co.	407
" *v.* Pell	83, 208, 243
" *v.* Regina	225
Peters *v.* Seneeal	427, 564
Petit Clerc *v.* Benoit	137
Phaneuf *v.* Cochrane	313, 580
" *v.* Elliott	581
" *v.* Mullarky	133
Philibert *v.* Lacerte	299
Philion *v.* Bisson	555, 631
Phœnix Life Ins. Co. *v.* Maybury	403
" " " " *v.* McQueen	406
Picard *v.* Gauthier	713
" *v.* Parent	616
" *v.* Vallee	209, 658
Piché *v.* Debellefeuille	96, 130, 696
" *v.* Quimet	587
Picotte *v.* Ledoux	110, 534
Pierce *v.* Butters	6, 442
Pigeon *v.* Fabrique de St. Paul	154, 155
Pinsonnault *v.* Brown	22, 467
" *v.* Brunet	600
" *v.* Desjardins	50, 314, 600
" *v.* Doucet	188
" *v.* King	42
Piton *in re.*	382, 394, 613
" *v.* Corporation of Quebec	613
" *v.* Lepage	352
Plamondon *v.* Lefebvre	461
Plante *v.* Bourgoin	17
" *v.* Carrier	81, 310
" *v.* Legendre	15
" *v.* Rontaille	463, 652
Plessis *v.* Belair	490
" *v.* Lajoie	393, 624
Plouffe *v.* Poirier	555, 675
Poirier *v.* Decary	335
" *v.* La Fabrique de St. Enfant Jesus	154, 430, 737
" *v.* Larean	338, 628, 632
" *v.* Plouffe	555, 675
Poissant *v.* Barrette	54, 362
Poitras *v.* Berger	439, 464
" *v.* Chaloner	200
" *v.* City of Quebec	37, 443, 449, 473
" *v.* Denis	312, 506
Pontbriant *v.* Vigneux	318
Ponton *v.* Paige	116, 306
Portelance *v.* Dalbec	526
Posé *v.* La Soc. de Con. Jacques Cartier	259
Positive Life Assurance Co. *v.* Dorion	411, 414
Pothier *v.* Grenier	116, 314
Poulet *v.* Antaya	139
" *v.* Launière	135
" *v.* Regina	219
Pouleur *v.* Landa	174, 247
Poulin *v.* Arpin	110, 382
" *v.* Williams	4, 669
Pouliot *v.* Bertrand	492, 561, 623
" *v.* Fraser	6:8, 711, 712
" *v.* Solo	616
Poupart *v.* Veronceau	692
Powell *v.* Jones	6
" *v.* Patterson	244
" *v.* Robb	576
" *v.* Walkers	472
Pownd *v.* Kingsborough	14, 16, 362, 696
Prendergast *v.* Laflamme	19, 333, 724
Prentice *v.* The Graphic Co.	207
Prescott *v.* O'Brien	731
Preston *v.* Paxton	623
Prevost *v.* Bell	111
" *v.* Gauthier	180, 506, 751
" *v.* Jackson	34, 618, 744
" *v.* Laferrière	204
" *v.* La Soc Can. Fran. de Cons. de Montreal	125
" *v* Melançon	251, 578, 707
" *v.* Rodgers	559
" *v.* Wilson & Rodgers	610
Price *v.* Hall	207, 460
Prime *v.* Perkins	88, 322
Primeau *v.* Banque Ville Marie	109
" *v.* Massue	36
" *v.* Trudeau	83
"Princess Royal," The	484
Privé *v.* Dillon	615
Proulx *v.* Daoust	14
" *v.* Lefebvre	602
Provincial Insurance Co. *v.* Baillie	401, 434
" " " *v.* Connolly	313, 403
" " " *v.* Converse	408
" " " *v.* Roy	50, 400
Pudney *v.* Chartrand	243

Q

"Quebec," The	485, 486
Quebec Bank *v.* Gray	176, 323
" " *v.* Knapp	385
" M. O. & O. Railway *v.* Sims	312
" Permanent Building Society *v.* Martin	681
" Road Trustees *v.* Groslean	90, 334, 624
" " " *v.* Walsh	435
" Street Railway *v.* Lanzon	636
Queen Insurance Co. *v.* Attorney General	37, 454
Queen Insurance Co. *v.* Pacaud	70, 406
" " " *v.* Parsons	448
" " " *v.* Regina	37
Quesnel *v.* Bernard	335, 344
Quinn *v.* Dumas	43, 250, 315
Quintal *v.* Allard	461
" *v.* Lefebvre	356
" *v.* Mondou	632, 691
" *v.* Niagara District Fire Insurance Co.	169
" *v.* Trust & Loan Co.	621

PAGE
318
116, 306
526
Jacques Cartier 259
Co. v. Dorion 411, 414
116, 314
139
135
219
174, 247
110, 382
4, 669
492, 561, 623
6:8, 711, 712
616
692
6
244
570
472
14, 16, 362, 696
19, 333, 724
Co. 207
731
623
111
180, 506, 751
34, 618, 744
204
ran. de Cons. de
125
251, 578, 707
559
ers 610
207, 460
88, 322
Marie 109
36
83
484
615
14
602
v. Baillie 401, 434
v. Connolly 313, 403
v. Converse 408
v. Roy 50, 400
243

Pacaud 70, 406
Parsons 448
Regina 37
335, 344
43, 250, 315
461
356
632, 691
riet Fire Insur-
169
Co. 621

R

PAGE
Racette *v.* Brais 674
Racine *v.* Dupuis 691
" *v.* Heritable Securities 385, 422, 583, 658, 699
" *v.* Kane 11, 84, 550, 674, 729
" *v.* Lavoie 278
Rafter *v.* Moss 551
" *v.* Wilson 88, 618, 627
Railway & Newspaper Advertising Co. *v.* Molsons Bank 101, 173
Rainville *v.* St. Pierre 390
Ralston *v.* La Liste Electoral 95, 334
Ramsay *v.* Grand Trunk Railway 419
"Ranger," The 483
Rasconi *v.* Morrier 526
Rascony *v.* Union Navigation Co. 172
Rawley *v.* Monarque 712, 713
Rawlings *v.* Citizens Insurance Co. 47, 186, 401
Raymond *v.* Valin 294
Reay *v.* Riddel 175
Reciprocity Mining Co. *v.* O'Farrel 90, 334
Reed *v.* Levi 76
Rees *v.* Hughes 54, 622
" *v.* Morgan 421, 422, 612
Reeves *v.* Campbell 242
" *v.* Geriken 356
" *v.* Nowell 381
Regina *v.* Abrahams 215, 217, 220
" *v.* Bain 222
" *v.* Barthe 219
" *v.* Bissonnette 216, 227
" *v.* Bleau 216
" *v.* Boucher 218
" *v.* Bourassa 316
" *v.* Chouinard 227
" *v.* City of Fredericton 37, 448
" *v.* Coote 449
" *v.* Corporation of St. Sauveur 200, 530
" *v.* Cotté 217
" *v.* Derrick 220, 435
" *v.* Dougall 214
" *v.* Dugal 214, 222
" *v.* Falkner 276
" *v.* Fevre 222
" *v.* Forget 293
" *v.* Gibson 223, 256
" *v.* Glass 225
" *v.* Grant 564
" *v.* Hall 349, 657
" *v.* Hickson 217, 221, 472
" *v.* Horner 451, 473
" *v.* Jobin 39
" *v.* Jones 226
" *v.* Kerr 214, 223
" *v.* Lalanne 225
" *v.* Laliberté 214, 432
" *v.* Laprise 215
" *v.* Larouche 225
" *v.* Lemieux 226
" *v.* Leonard 216, 224
" *v.* Ling 219
" *v.* Lynch 216
" *v.* Martin 223, 224
" *v.* Maynard 215
" *v.* Meyers 214
" *v.* Mondelet 213
Regina *v.* O'Brien 225
" *v.* Ouellette 158, 220
" *v.* Paquet 215, 217, 221, 226
" *v.* Perry 225
" *v.* Poulet 219
" *v.* Queen Insurance Co. 37
" *v.* Scott 220
" *v.* Severn 447
" *v.* Sir Francis Hincks 98, 101, 217, 223, 477
" *v.* Smith 218
" *v.* Sprungli 217
" *v.* Taylor 432
" *v.* Warner 221
" *v.* Wood 206
" *v.* Wyllie 215, 311
Regnier *v.* Turcotte 140, 429
Reid *v.* Larochelle 57, 207
" *v.* Smith 441
Remillard *v.* Cowan 461
Renahan *v.* Geriken 246, 480
Renaud *v.* Dussault 13
" *v.* Homier 497, 498
" *v.* Les Curé, etc., of St. Hyacinthe 146
" *v.* Vandusen 136, 337
Rena *v.* Convey 389
Rendall *v.* Brody 461
Renny *v.* Moat 71, 578
" *v.* Workman 272
Rev. Dames Ursulines *v.* Egan 90, 312
Reynolds *v.* Kyte 111
Rhicaume *v.* Caille 497
" *v.* Panneton 237, 249, 438, 465, 612, 622
Rhicard *v.* Chicoine 17, 603
Rhichard *v.* Cornell 558
" *v.* Doutney 270, 728
Rhind *v.* Hearle 170, 625, 745
" *v.* Williamson 617, 745
Rhodes *v.* Black 551
" *v.* Robinson 133
" *v.* Starnes 197
Rice *v.* Boscovitz 503
" *v.* Stadacona Insurance Co. 168, 384
Richard *v.* Bickell 628
" *v.* Wurtele 611
Richardson *v.* Coyle 242
Richelieu *v.* City of Montreal 525
" and Ontario Navigation Co. *v.* Lafreniere 22, 415
Richler *v.* Judah 472, 474
" *v.* Maillé 19, 464, 721
Rickaby *v.* Bell 38, 204, 669
Ricker *v.* Simon 25, 147, 251
Riddell *v.* Beattie 394
" *v.* Davidson 392
" *v.* McArthur 67, 206
" *v.* Reay 175
Riendeau *v.* Corporation of Village of St. Jean Baptiste 35
" *v.* Degrosseillers 6, 735
Rinahan *v.* 13, 191
Ringuet *v.* Corporation of St. Germain 525
Riopel *v.* City of Montreal 236, 528

		PAGE
Rioux	*v.* Turcotte	241, 308
Ritchie	*v.* Farrell	123, 170, 172
"	*v.* Lenoir	37, 73, 454, 637
Ritchot	*v.* Mayvern	9
Robb	*v.* Powell	570
Roberge	*v.* Corporation of Levis	536
Robert	*v.* Bertrand	283, 301
"	*v.* Delisle	141
"	*v.* Fortin	203, 557
"	*v.* La Société d'Agriculture	717
"	*v.* Northgraves	680
"	*v.* Robert	78
"	*v.* Trust and Loan Co.	68
"	*v.* Vautrin	576
Robertson	*v.* Gault	137, 695
"	*v.* Hall	134, 379
"	*v.* Hatchette	394
"	*v.* Lajoie	745
"	*v.* Marlow	90, 626
"	*v.* McMaster	132, 135
"	*v.* Smith	385, 392
"	*v.* Stevenson	132
Robillard	*v.* Caverhill	72, 73, 241, 548
"	*v.* Dufaux	228
"	*v.* Lecavallier	280, 282, 293
"	*v.* Les Curé, etc., of Beauharnois	7, 156, 321, 480
"	*v.* Massé	295, 315, 424
"	*v.* Société Can. Fran. de Construction	592
Robinson	*v.* Bowen	199
"	*v.* La Société Per. de Construction	4
"	*v.* Rhodes	133
Robitaille	*v.* Boldue	320, 463
"	*v.* Denechaud	476, 552
"	*v.* Gagnon	573
"	*v.* Marcotte	439
"	*v.* Plante	463, 652
Roche	*v.* Moisan	88, 346
Rochelean	*v.* Martel	292, 293, 294, 298
"	*v.* Sinclair	205
Rochette	*v.* Louis	396
Rocher	*v.* Leprohon	646
Rochon	*v.* Coté	15, 202
"	*v.* Mongenais	696
Rockett	*v.* Maguire	131
Rodgers	*v.* Prevost	559
Rodrigue	*exp.*	473
Rohland	*v.* Ferguson	455
Rolfe	*v.* Corporation of Stoke	62, 522
Rolland	*v.* Beaudry	442
"	*v.* Citizens Insurance Co.	204, 404
"	*v.* Dupuy	397, 626, 677
"	*v.* Ferguson	456
Rolland	*v.* Michaud	5, 35
"	*v.* Seymour	381, 553
"	*v.* Tiffin	390, 463
"	*v.* Villeneuve	260
Rooklidge	*v.* Ætna Life Insurance Co.	717
Roome	*v.* Ward	135, 338
Rooney	*v.* Fair	187
"	*v.* Milloy	667
Ross	*v.* Citizens Insurance Co.	587
"	*v.* Dionne	57, 59
"	*v.* Edson	596
"	*v.* Knight	390
"	*v.* Legaré	606
"	*v.* Marceau	625
"	*v.* McGillivray	615
"	*v.* Perkins	176, 730
"	*v.* Smith	509, 680
"	*v.* Tetu	496
"	*v.* Torrance	36, 39, 417, 418, 420, 452
"	*v.* Webster	377
Rouleau	*v.* Bergevin	431, 629
"	*v.* Lortie	66
"	*v.* Tremblay	556
Rousseau	*v.* Bousquet	9, 515, 516
"	*v.* Larose	506
Roussel	*v.* Bureau	360, 651
Routh	*v.* Mackay	3, 9, 85
Roy	*v.* Belanger	320, 460
"	*v.* Bourassa	716, 717
"	*v.* Dagen	426
"	*v.* Dion	573, 681
"	*v.* Dorion	320, 460
"	*v.* Fraser	431, 622, 625
"	*v.* Gauthier	733
"	*v.* Hamilton	385
"	*v.* Hnot	29, 78, 314
"	*v.* Jacques Cartier Per. Building Society	365, 695
"	*v.* Les Curé, etc., of St. Enfant Jesus	154, 155
"	*v.* Provincial Insurance Co.	50, 400
"	*v.* Thibault	535, 638
"	*v.* Touchette	703
Royal Canadian Insurance Co.,	*v.* Montreal Warehousing Co.	169, 418, 453
"	Institution *v.* Simpson	385
"	Insurance Co. *v.* Larocque	406, 743
Ruel	*v.* Grand Trunk Railway	23, 240
Ruelle	*v.* Laliberte	161
Ruest	*v.* Grand Trunk Railway	13, 239
Ryan	*v.* Devlin	450, 657
"	*v.* Laviolette	246
Ryder	*v.* Vaughan	11

S

Sabine	*v.* Krans	367
Sait	*v.* Nield	425, 502
Salois	*v.* Neveu	684
Salvas	*v.* New City Gas Co.	190, 194, 239
Samson	*v.* Dinning	57, 380, 571
"	*v.* Les Syndics	734
"	*v.* Merchants Bank	380, 382
"	*v.* Watson	380, 395
Sanboken	*v.* Can. Mutual Insurance Co.	404
Sanborn	*v.* Anderson	581
Sanderson	*exp.*	347
Sanschagrin	*v.* Sauvageau	591
Sansfaçon	*v.* Boucher	455
Saucy	*v.* Caron	
Saumure	*v.* Brunet	263
Saunders	*v.* Alloway	199
"	*v.* Joseph	464
"	*v.* Shuter	467
Sauvageau	*v.* Sanschagrin	591
Sauvé	*v.* Corporation of the Co. of Argenteuil	722
"	*v.* Jaeger	21, 465

PAGE

Sauvé *v.* Sauvé 731
" *v.* Veronneau 307, 308
Say *v.* Fortin 308, 620
Sayer *v.* Labelle 315, 733
Scanlan *v.* Holmes 234, 458, 459
Scantlin *v.* St. Pierre 110, 489
School Commissioners of Hochelaga *v.* Barsalou 163
" Commissioners of Hochelaga *v.* Hudon 523
" Commissioners of Montreal *v.* Met. Building Society 439, 417
" Commissioners of Riviere du Loup *v.* Les Rev. Dame, etc. 163, 605
" Commissioners of Roxton *v.* Boston 258, 314
" Commissioners of Sillery *v.* Ginigras 430, 542
" Commissioners of St. Columban *v.* Barrette 164, 245
" Commissioners of St. David *v.* Devarennes 21
" Commissioners of St. John 165
" " St. Judes *v.* Daudelin 163
" Commissioners of St. Louis *v.* Dalbec 164
" Commissioners of St. Marthe *v.* St. Pierre 10, 237, 589, 694
" Commissioners of Tewkesbury *v.* Corrigan 165
" Commissioners of Warwick *v.* Donais 6, 12, 166, 396
Scott *v.* Corporation of Parish of St. Jerome 538
" *v.* Hardy 425, 616
" *v.* Johnson 110, 488
" *v.* Payette 325, 326
" *v.* Regina 220
Scottish Commercial Insurance Co. *v.* O'Malley 32, 414
" Imperial Insurance Co. *v.* Pare 410
Scriver *v.* Stapleton 22
Scroggy *v.* Gordon 59
Seath *v.* Duguay 730
" *v.* Fair 390
Seers *v.* 53
" *v.* Lemartelliere 147
Seguy *v.* Venner 584
Seminary of Montreal *v.* Dorion 704
Semple *v.* Macaulay 573
Seneca *exp.* 192
" *v.* Martel 616
" *v.* Peters 428, 564
" *v.* Wyatt 86
Senez *v.* McDonald 113, 386
Sergeant *v.* Blanchet 58
Serré *v.* Metropolitan Bank 51, 313
Severn *v.* Regina 447
Sewell *v.* Bourk 597, 681
Seymour *v.* Molsons Bank 114
" *v.* Rolland 381, 552
Shaw *v.* Bourget 320
" *v.* Casey 427, 592
" *v.* McKenzie 139, 242
" *v.* Miner 176, 381
" *v.* St. Louis 123, 340
Shea *v.* Jones 341
Shearer *v.* Parent 409, 632
Sheridan *v.* Hennessey 133, 140

PAGE

Sheridan *v.* Ottawa Agricultural Insurance Co. 73, 416
Short *v.* Ford 385, 617
" *v.* Kelly 228, 489
Shortis *v.* Normand 65, 259, 556
Shupe *v.* Vasey 32
Shuter *v.* Jobin 678, 679
" *v.* Saunders 467
Sicotte *v.* Vien 49
Siegert *v.* Harthaub 613
Simard *v.* Fraser 57
" *v.* Corporation of Montmorenci 533, 534, 537, 630
" *v.* Marsan 13, 80, 191, 240, 365
Simms *v.* Q. M. O. & O. Railway 312
Simon *v.* Beauchemin 19, 504
" *v.* Rieker 25, 147, 251
Simpson *v.* Royal Institution 385
" *v.* Ansell 671
" *v.* Yuill 236, 667, 745
Sincennes McNaughton *v.* Peloquin 483
Sinclair *v.* Gear 387
" *v.* Rochelean 209
" *v.* McLean 580
Sioni *v.* Durand 320
Sir Francis Hincks *v.* Regina 98, 217, 223, 101, 477
Slater *v.* Belisle 134, 612
" *v.* Perrault 487
Sleeper *v.* Graftis 61
Smallwood *v.* Allaire 418, 574
Smart *v.* Wilson 671, 743
Smiley *v.* Convey 597, 623
Smith *v.* Baptist 736
" *v.* Chretien 11, 487
" *v.* David 143
" *v.* Fulardeau 114, 117
" *v.* Fletcher 322
" *v.* Fuller 322
" *v.* Hart 547
" *v.* Hyneman 59, 134
" *v.* Joseph 464, 652
" *v.* Kemp 508
" *v.* Leclaire 464
" *v.* Regina 218
" *v.* Reid 440
" *v.* Robertson 385, 392
" *v.* Ross 509, 680
" *v.* Young 285
" *v.* Wingate Chemical Co. 137
Snowdon *v.* Nelson 579
Solo *v.* Pouliot 616
Sonne *v.* Stonehouse 199
Somerville *v.* Lafamme 285, 286, 292
Sorel Gas Co. *v.* Gagnon 555
Soucy *v.* Caron 589, 618
Soulier *v.* Lazarus 572
Soubere *v.* Leron 202
South Eastern Company's Railway *v.* Corporation of Drummond 317, 643
" " Railway Co. *v.* Lambkin 63, 70, 236, 427, 544, 641
Springle *v.* Generenx 19
Sproule *v.* Corriveau 208
Sprungli *v.* Regina 217
St. Amand *v.* Doucet 65
St. Amour *v.* Moffat 481
St. Ann's Mutual Building Society *v.* McClanaghan 37, 125, 205, 450
St. Aubin *v.* St. Aubin 6, 492

PAGE

St. Cyr *v.* Millette 18, 666
" *v.* National Insurance Co. 43, 117, 308
" *v.* Neault 299
St. David *v.* Devarennes 27
St. Denis *v.* Lalonde 266
St. Jean *v.* Blea 589
" *v.* Mechanics Bank 61, 62, 98, 99, 378, 420
St. Lawrence Navigation Co. *v.* Borlase 144, 238, 709
" " " *v.* Normand 454, 661
St. Lawrence Salmon Fishing Co. *v.* Mackay 61, 378
St. Lawrence Steam Elevating Co. *v.* Harbor Commissioners 194, 370
St. Louis *v.* Shaw 123, 340
Ste. Marie *v.* Doutre 47
" *v.* Wood 554
St. Michel Road Co. *v.* Henderson 454, 725
St. Patrick's Hall Association *v.* Gilbert 124
St. Pierre *v.* Rainville 390
" *v.* Scantlin 110, 489
" *v.* School Commissioners of St. Marthe 10, 237, 589, 694
Stadacona Bank *v.* Murphy 391
" " *v.* Walker 184
" Insurance Co. *v.* Coté 173, 183
" " " *v.* David 411, 708
" " " *v.* Gagnon 561
" " " *v.* Lymburner 412
" " " *v.* Rice 168, 384
" " " *v.* Trudel 168, 583
Stafford *v.* Darling 379
" *v.* Henderson 552
Stainforth *v.* McNeely 691
Stanley *v.* Davidson 390, 395
" *v.* Hanlan 64, 731
Stanton *v.* Home Fire Insurance Co. 71, 405

PAGE

Stapleton *v.* Scriver 22
Starnes *v.* Rhodes 197
State *v.* City of Montreal 531, 591
Steam Navigation Co. *v.* Lefebvre 243, 364
Steele *v.* Jamieson 457
Stephens *v.* Mayor of Montreal 327
Stevens *v.* Perkins 687
Stevenson *v.* Burstall 118
" *v.* Robertson 132
Stewart *v.* Bayard 427
" *v.* Brewis 120
" *v.* Cable 427, 654
" *v.* Court 49
" *v.* Farmer 9, 377
" *v.* McGauvran 392, 648
" *v.* Marler 111
" *v.* Murray 382
Stoddart *v.* Gossett 44
Stonehouse *v.* Sonne 199
Strange *v.* Thompson 13, 249, 351, 513
Stringer *v.* Crawford 702
Stuart *v.* Gagné 697
" *v.* White 52, 686
Styce *v.* Darling 182, 233
Sulte *v.* Bell 51, 456
" *v.* Boudreau 65
Sun Mutual Insurance Co. *v.* Globe Mutual Insurance Co. 89, 167, 206
" " " " *v.* Janes 414, 603
Swales *v.* Melles 207
Sweet *v.* Walker 115, 600
Sylva *v.* Gagnon 10, 515
Sylvestre *v.* Brissette 288
Symes *v.* Cuvillier 268
" *v.* Duprès 251
" *v.* Metropolitan Bank 49
" *v.* Voligny 203
Symons *v.* Kelly 262
Syndics de St. Henri *v.* Carrier 622

T

Talbot *v.* Beliveau 692
" *v.* New York Life Insurance Co. 412
Tarte *v.* Cimon 293, 295, 430
Tate *v.* Torrance 509, 570
Taylor *v.* Alexander 117
" *v.* Regina 432
Terreau *v.* Lacoursiere 397
Tellier *v.* Pagé 649
Tessier *v.* Lapierre 85
" *v.* Marsan 555
Tetu *v.* Gibb 316, 702
" *v.* Ross 496
Thayer *v.* Ansell 651, 683
Theberge *v.* Fournier 31
" *v.* Landry 70
Theoret *v.* Berthelot 731
" *v.* Ouimet 662, 702
Theriault *v.* Ducharme 290
Therien *v.* Beausoleil 577
" *v.* Hart 469
Theroux *v.* Blanchard 19, 652
" *v.* Pacaud 89, 96, 334
Thibadeau *v.* Beaudoin 381, 383
" *v.* Danjou 34
" *v.* Duclos 716
Thibadeau *v.* Jasmin 377
" *v.* Perrault 498
Thibault *v.* Roy 535, 638
Thiffault *v.* Vaillet 623
Thivierge *v.* Bouchard 588, 618, 668
Thomas *v.* Murphy 28, 676
" *v.* O'Brien 251, 307
Thompson *v.* Bank of Montreal 171
" *v.* Beard 384
" *v.* Cimon 118
" *exp.* 148, 149, 150, 205, 348, 349, 364, 513
" *v.* Foster 11
" *v.* Greenwood 88, 253, 690
" *v.* Hampson 64, 655
" *v.* Lacroix 141
" *v.* Mackinnon 64, 67, 207, 342, 390, 624, 726
" *v.* Strange 13, 249, 351, 513
Thomson *v.* Watson 35, 244, 506, 731, 744
Thwaites *v.* Coulthurst 49, 743
Thymens *v.* Beautranc 456, 459, 574
Tiernan *v.* Cie. de Chemin de Fer 180, 370
Tiffin *v.* Rolland 390, 463
Torcapel *v.* Cherrier 613

		PAGE
Torrance	*v.* Ross	36, 39, 417, 418, 420, 452
"	*v.* Tate	509, 570
Touchette	*v.* Roy	703
Tourigny	*v.* Bouchard	592
"	*v.* Ottawa Agricultural Insurance Co.	321, 409, 415
Tousignant	*v.* D'Estimauville	624
Trahan	*v.* Trudel	86, 608
Tremblay	*v.* Amiot	260, 350, 498, 650
"	*v.* Garon	359, 556
"	*v.* Henderson	86, 683
"	*v.* Rouleau	556
Trempe	*v.* Perkins	215
Trenholme	*v.* McLennan	47, 123, 314
Trepannier	*exp.*	348
Trestler	*v.* Dawson	239, 337
Trester	*v.* Labatt	726
Trudeau	*v.* Beauchemin	247
"	*v.* Bisson	84
"	*v.* Cowie	193
"	*v.* Mailloux	614
"	*v.* Primeau	83
Trudel	*v.* Angers	143
Trudel	*v.* Duval	32
"	*v.* Girard	160, 571
"	*v.* Hudon	203, 321, 556
"	*v.* Stadacona Insurance Co.	168, 583
"	*v.* McKinnon	428
"	*v.* Trahan	86, 608
Trust and Loan Co.	*v.* Cassidy	637
"	" *v.* Dupras	357, 646
"	" *v.* Guertin	4, 574
"	" *v.* Jones	681
"	" *v.* Quintal	621
"	" *v.* Robert	68
Trustees of Montreal Turnpike Road	*v.* Daoust	237
Trutean	*v.* City of Montreal	536
Tufts	*v.* Brownrigg	730
Tunstall	*v.* Guevremont	289
Tupper	*v.* Fraser	349
Turcotte	*v.* Haming	320
"	*v.* Regnier	140, 429
"	*v.* Rioux	241, 308
Turgeon	*v.* Coupal	379
"	*v.* Lefebvre	21, 386, 560

U

"Underwriter," The		483
Union Bank	*v.* Fournier	101
Union Bank of Lower Canada	*v.* Ontario Bank	114, 339
" " " "	*v.* Owens	609
" " " "	*v.* Walsh	5, 104, 729
Union Navigation Co.	*v.* Christin	173, 314
" " "	*v.* Couillard	172
" " "	*v.* Macdougall	170, 172, 448, 654
" " "	*v.* Rascony	172
" St. Joseph	*v.* Lapierre	59, 106, 482

V

Vaillancourt	*v.* Collette	203
Valade	*v.* Bellehumeur	139
"	*v.* Chalut	613
"	*v.* Delisle	428
Valin	*v.* Langlois	36, 41, 71, 279, 282, 285, 287, 296, 306, 333, 451, 752
"	*v.* Lebrun	728
"	*v.* Raymond	294
Vallée	*v.* Dubuc	297
"	*v.* Picard	209, 658
Valois	*v.* Christin	173, 307, 308, 620
Vanalstyne	*v.* Gray	392, 610
Vanasse	*v.* McGreevy	313
Vancourtland	*v.* Gleason	58, 84
"	*v.* Marquis	63, 425
Vandal	*v.* Aussant	601
Vandusen	*v.* Renaud	136, 337
Vanvleit	*v.* Jones	208
Varennes	*v.* Jodoin	
Vasey	*v.* Shupe	32
Vaughan	*v.* Ryder	11
Vautrin	*v.* Blain	603
"	*v.* Robert	576
Veillet	*v.* Thiffeault	623
Veilleux	*v.* Charest	162
Venner	*v.* Segny	584
Ventini	*v.* Ward	135, 338
Vermette	*v.* Fontaine	364
Vermillon	*v.* Bergevin	87
Veroneau	*v.* Poupart	30, 692
"	*v.* Sauvé	307, 308
Versailles	*v.* Paquet	732
Vezina	*v.* Coté	52, 731
"	*v.* Gingras	320, 553
"	*v.* Hearn	460
"	*v.* Lefebvre	178, 488
"	*v.* McInnes	692, 744
"	*v.* Michaud	17
"	*v.* New York Life Insurance Co.	409
Vien	*v.* Sicotte	49
Vigneux	*v.* Noiseaux	158, 233, 468
"	*v.* Pontbriant	318
Villeneuve	*v.* La Société de Cons.	477
"	*v.* Rolland	260
Vincent	*v.* Benoit	263, 488
"	*v.* Callahan	13, 79, 191
Vissiere	*v.* Browning	675
Voligny	*v.* Corbeille	654
"	*v.* Symes	203

W

	PAGE
Wadleigh *v.* Painchaud	209
Wagner *v.* L'Hostie	23, 106
Wait *exp.*	150
Waldron *v.* Brennan	262, 627
Walker *v.* Delaronde	627
" *v.* Doutre	174, 381
" *v.* Powell	472
" *v.* Stadacona Bank	181
" *v.* Sweet	115, 600
Wall *v.* Hamilton	703
Walsh *v.* Doyer	134
" *v.* Quebec Road Trustees	435
" *v.* Union Bank	5, 104, 729
Ward *v.* Ravine	338
" *v.* Ventini	135, 338
Warner *v.* Regina	221
Wason Manufacturing Co. *v.* L. & K. Ry.	643
Watson *v.* Coté	37, 443, 450, 473
" *v.* Grant	386, 387
" *v.* Keller	50, 90, 331
" *v.* Samson	389, 395
" *v.* Thomson	35, 244, 506, 731, 744
Watts *v.* Paquet	516
Watzo *v.* Lepage	320, 632
Wear *v.* Mills	63
Weaver *v.* O'Brien	170
Webster *v.* Ross	377
Welch *v.* Baker	31, 167
Wells *v.* White	571
Westcott *v.* Archambault	58, 91, 186, 203
Western Assurance Co. *v.* Hood	409
" " " *v.* Leduc	411
" " " *v.* Limer	413
" " " *v.* Whyte	402, 406, 743
Western Hospital *v.* Godfrey	588
Wheeler *v.* Gibbs	71, 283
White *v.* Bain	430, 434
" *v.* Huntingdon	58
" *v.* Mackenzie	61, 281
" *v.* Wells	571
Whitfield *v.* Merchants Bank	63
Whitman *v.* Corporation of Stanbridge	234, 529, 587, 590
Whyte *v.* Bowie	391
" *v.* McArthur	672
" *v.* Stuart	52, 686
" *v.* Western Assurance Co.,	402, 406, 743
Wickliffe *v.* Luke	439, 459
Wiggins *v.* Morgan	18, 493
Wilkes *v.* Beaudry	387, 391, 751
" *v.* Marchand	21, 110
Willet *v.* Larocque	246
"Williams," The	486
Williams *v.* Montrait	199, 591
" *v.* Poulin	4, 669
Williamson *v.* Rhind	617, 745
Wilson *v.* Brunet	628
" *v.* Canada Shipping Co.	483
" *v.* City of Montreal	417
" *v.* La Banque Ville Marie	417
" *v.* Grand Trunk Railway	236, 543, 640
" *v.* La Société de Construction de Soulanges	173, 315
" *v.* Prevost	610
" *v.* Rafter	88, 618, 627
" *v.* Smart	671, 743
Windsor Hotel Co. *v.* Laframboise	173
" " " *v.* Lewis	172
" " " *v.* Murphy	171
Wingate Chemical Co. *v.* Smith	137
Wiseman *v.* Canada Meat, etc., Co.	69
Wood *v.* Regina	206
" *v.* Ste. Marie	554
Woods *v.* Lajoie	31
Woodward *v.* Allan	144, 724
Workman *v.* Beattie	5, 715
" *v.* Peloquin	242
" *v.* Renny	272
" *v.* The Herald Printing Co.	290
Worms *exp.*	329, 330, 339
Worthington *v.* Jaques	614
Wright *v.* Foster	69
" *v.* Heritable Securities	561
" *v.* Kane	183, 570
Wurtele *v.* Dinning	374, 375, 395, 509, 512
" *v.* Richard	611
Wyatt *v.* Carslake	112
" *v.* Levis & Kennebec Railway	632
" *v.* Senecal	86
Wyld *v.* Liverpool & London & Globe Insurance Co.	73
Wylie *v.* Lepage	469
" *v.* Regina	215, 314
Wyman *v.* Greenshields	418, 571, 627

Y

Young *v.* Dental Association	254
" *v.* Smith	285
Yuile *v.* Simpson	230, 667, 745
Yule *v.* Corporation of Chambly	122
" *v.* Howard	208

Z

Zernichon *v.* Hall	132, 616
Zink *exp.*	328, 329

PAGE
439, 459
18, 493
387, 391, 751
24, 110
246
486
199, 591
4, 669
617, 745
628
Shipping Co. 483
Montreal 417
ne Ville Marie 417
Trunk Railway
236, 543, 610
é de Construction
ges 173, 315
610
88, 618, 627
671, 743
framboise 173
ewis 172
urphy 171
. Smith 137
t, etc., Co. 69
206
554
31
144, 724
5, 715
242
272
l Printing Co. 290
329, 330, 339
644
69
arities 561
183, 570
374, 375, 395, 509, 512
611
112
ebec Railway 632
86
ndon & Globe In-
. 73
469
215, 311
418, 571, 627

f Chambly 122
208

328, 329