The Legal News.

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INSURANCE LEGISLATION.

The appeals to the Judicial Committee of the Privy Council in the cases of *Parsons* v. *The Citizens Insurance Co.*, and *Parsons* v. *The Queen Ins. Co.*, (3 Legal News, 326) were, on the 26th November, allowed without costs, and the judgments in both cases reversed. The information transmitted by cable with reference to this important decision is meagre, but it is known that the judgment proceeded on the ground that the statutory conditions were presumed to be part of the contract in each case, although not printed in the policy; and that the Canadian Courts had misinterpreted the law. The Judicial Committee held, however, that the Act of the Provincial legislature was within the power of that body to pass.

CONTRIBUTORY NEGLIGENCE.

A singular case of contributory negligence—*Allan* v. *Mullin*, recently decided by the Superior Court, is reported in the present issue. A valuable stallion, while being shod in a smithy, sustained a horrible injury, and had to be destroyed. The accident would not have happened if the floor of the smithy had not been defective. But on the other hand, what immediately conduced to the accident was the imprudence of the owner's groom who accompanied the animal, and who caused him to start violently by striking him with a whip. The court held that there was contributory fault, and the blacksmith was freed from liability.

NEW BOOKS.

THE MUNICIPAL CODE OF THE PROVINCE OF QUEBEC, by E. Lef. de Bellefeuille, Esq. Montreal: E. Senecal & fils.

A French edition of this work was published some two years ago, and is well known to the profession. The Municipal Code, as the Judges have repeatedly declared, is a most intricate and, at times, incomprehensible piece of legislation, and needs all the light that can be thrown upon it by commentators. Few are more qualified for the task than Mr. de Bellefeuille. In this edition are comprised, together with the Municipal Code, the Quebec License Act, and the first part of the Quebec Election Act, with all the amendments made thereto up to and during the last session of the legislature. The decisions of the Courts are also cited. The latter are less numerous than might be expected, but under our system the judgments of the judges of country districts are seldom if ever reported, and many decisions are no doubt left in the limbo of obscurity from which they have never emerged. Mr. De Bellefeuille has done his best to fill the void, and we cordially commend his work to the attention of our English-speaking readers.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Nov. 26, 1881.

Before MACKAY, J.

BERNARD v. GAUDRY *et al.*

Non-registration of partnership—Defendants sued jointly and severally for one penalty.

An action will not lie against two defendants jointly and severally for one penalty, for non-registration of partnership.

PER CURIAM. The action was instituted against the two defendants as partners in Montreal, and is a *qui tam* action for $200 against the defendants jointly and severally, for not having duly registered their partnership.

The defendants pleaded by exception *à la forme* that this prosecution of two defendants for one penalty of $200 could not be allowed, as each wrong-doer had to be sued in such cases for his own misconduct, and for $200. Some other matters were pleaded of no importance now. After that there were two motions to, amend, one by plaintiff and one by defendant and these have been granted. The exception *à la forme* having been dismissed, the defendants pleaded to the merits, that the defendants could not be sued jointly and severally for one penalty; that the penalty has been enacted against each wrong-doer for $200 single penalty; that plaintiff's affidavit before suit is not such an one as the law has appointed for *qui tam* prosecutors; 27-28 Vic., c. 43. (It turns out that the word "dit" ought to have been repeated in

plaintiff's affidavit.) Then there is a plea that defendants had really no intention to transgress the law, and that they had registered their partnership, but by ignorance one of the registrations called for was at a wrong registry office: that they corrected this as soon as possible and have now perfectly registered, and there is a plea of general issue.

Before these pleas were filed, the plaintiff had filed a *désistement* as against one of the defendants, saving his demand as regards the other. Yet afterwards, on 5th March, he joined issue with both defendants, and the case is now submitted after *enquête*. I am of opinion that the defendants are right in their proposition that such an action as this, for a single $200 penalty against two wrong-doers, each of whom has to answer only for himself, and each of whom has incurred a penalty of $200, is bad. See Espinasse (Penal actions). Action dismissed.

Painchaud, for plaintiff.

St. Pierre & Scallon, for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 26, 1881.

Before MACKAY, J.

HENRY D. J. LANE v. TAYLOR *et al.*

Will—Legacy—Error in name of legatee.

An error in the name of the legatee does not annul the disposition of the will by which the legacy is bequeathed, when the person intended to be benefited is indicated beyond reasonable doubt.

PER CURIAM. The defendants are sued as executors and trustees under the will of the late Miss Lane for £250 currency. The declaration sets forth a clause of her will by which she gave and bequeathed unto her cousin, George Henry Lane, of Ottawa, £250 currency, and states that this meant himself, the plaintiff; for testatrix knew well that George Henry had died several years before the date of the will, and is in fact described as dead in a later part of the will gratifying his daughters; the plaintiff was the only male cousin at Ottawa that the testatrix had, she knew him to be Henry, and must have assumed him to bear his father's name, George Henry.

The plea is that no legacy has been made to the plaintiff, that he is not the person designated, and that Miss Lane had frequently said that she would leave plaintiff nothing.

The testatrix's will is of 19th June, 1878, it is full of noble charities, and names as universal residuary legatee, Catherine Ann Tubby, who is otherwise a legatee. The will shows perfect intelligence. The testatrix names a living cousin, George Henry Lane, of Ottawa, and twice names a dead George Henry Lane, of Ottawa, when referring to his daughters as her cousins. This George Henry was plaintiff's father. Some time before her death the testatrix entrusted Miss Tubby to give the plaintiff the family portrait of the testatrix's grandfather. Miss Tubby does not seek to favor the plaintiff, yet, asked the question: "If plaintiff's father was not meant, can you suggest any one that could have been meant if the plaintiff was not?" answers: "I cannot."

Considering all that is proved, I find that Miss Lane fell into an error in designating the plaintiff to have £250. She misnamed him. He was and is Henry, and his father was before him. The testatrix knew both by that name. No other male Lane, cousin of testatrix, was in Ottawa at the date of the will. Here is our law on misnomers in wills:—"Si l'erreur ne tombe que sur le nom ou sur le surnom du légataire, la disposition n'est pas annulée, pourvu qu'il conste de la personne, par quelque démonstration qui le fasse connaitre sans équivoque." Furgole, vol. 1, Testamens, p. 235. Pothier: Dons. Test. is to the same effect. So I pronounce judgment for the plaintiff.

Barnard, Beauchamp & Creighton, for plaintiff.

Ritchie & Ritchie, for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 26, 1881.

Before MACKAY, J.

THE CITY OF MONTREAL, petitioning for the sale of a land for arrears of assessments, and LOIGNON, claimant, petitioner.

Petition under the C. C. P. 900—Diligence required to ascertain owner.

A petition under Art. 900 C. C. P. cannot be presented to a judge in chambers.

The creditor's hypothecary recourse under the above article can only be exercised where the proprietorship remains uncertain after due diligence has been used to ascertain the owner.

PER CURIAM. Article 900 of the Code of Pro-

cedure allows proceedings in favor of mortgage creditors against lands, the proprietors of which, are uncertain or unknown. We have had that law for over 25 years. The corporation commenced proceedings under it on the 19th July, 1880, having a privilege for some arrears of assessments due by the proprietor of lot No. 593 of St. Ann's Ward, whoever he might be. They commenced by a petition that they had in good faith made enquiry and diligence to find out the owner's name, and this is sworn to. The Corporation has actually sold the land by a *décret*.

Now, Loignon comes in and claims the land, and says that he has always been the known owner of it, and so named in the *Livre de renvoi*, part of the cadastral plan of St. Ann's Ward, that the city had no right to the benefit of the Art. 900, and asks that all their proceedings be set aside, including the seizure and sale. In his petition he sets out his title. The trouble has arisen from the city's want of sufficient enquiries, and from the claimant's land having always been one vast lot; all that has happened to make it three is that the surveyors for the cadastre made three of it, but preserving in the *Livre de renvoi* the name of Loignon as the owner of all three. The city might have seen that all the time. Lawrence Barnes never was owner of it. The petitioner Loignon seems an exact enough man. What do half the people in Montreal know about all the lines that cadastral and other operators have drawn across their properties, on certain plans? Loignon has always been charged by the Corporation for what he supposed was his land there, now called by three numbers. He was never told that he was not paying enough, and what he did pay might fairly enough be taken by him to be the assessments on the whole land, for the amount has swelled to be larger, per annum, than it was before the cadastral plan was made.

The city pleads that all its proceedings have been formal, and that Loignon's allegations are untrue.

I find that Loignon's case is good, and I must grant his petition. The very first proceeding of the city is a nullity. The Art. 900 of the Code de Procedure does not allow to a Judge in the long vacation or in Chambers to entertain that first proceeding (*requête*). If a Judge in Chambers can grant such a *requête* there is no other proceeding or order, specially appointed for the "Superior Court" to take or make, that he may not as well take or make. The *décret* is a nullity, the very first proceeding being irregular, and apart from this, Loignon having proved enough.

Pagnuelo & Co., for petitioner.

Roy, Q. C., for the City.

SUPERIOR COURT.

MONTREAL, Nov. 30, 1881.

Before JOHNSON, J.

ALLAN v. MULLIN.

Damages—Farrier—Safe condition of premises—Contributory negligence.

A person carrying on a trade on his premises is bound to have the premises in a safe condition for persons and property coming there by implied invitation to give him their custom.

But although there may have been fault amounting to ordinary negligence on the part of such tradesman, he may relieve himself from damages caused by an accident, by showing that there was contributory fault on the other side, without which the accident would not have occurred; and therefore where a valuable horse received an injury while being shod by a farrier, and it appeared that the accident was caused by the groom who accompanied the animal, striking him with a whip, the farrier was relieved from liability, notwithstanding the unsafe condition of the floor of his smithy, but for which no damage to the horse would have resulted.

JOHNSON, J. The present action is to recover the value of a horse owned by the plaintiff, and which was so badly injured while being shod in the premises of the defendant, who is a farrier, and, as is further alleged, by his fault and negligence in respect of the bad condition of the floor of the smithy, that it had to be destroyed.

The answer made to the action by the defendant is that the horse was all the time in the exclusive charge of the plaintiff's groom, who needlessly struck it with a whip, and so caused the accident. That the floor was in good condition, and there was no fault on the defendant's part. That after the accident the plaintiff ought to have given over the horse to the defendant, instead of which he kept it, and destroyed it unnecessarily and on his own respon-

sibility, the injury being curable, and not detracting much from the value of the horse, which was denied to be worth $1,000 as claimed by the plaintiff.

The case was tried before me on the 12th instant, and the evidence disclosed the following facts:—The plaintiff owned a valuable and spirited stallion, which he imported from the United States in April last. On the night of the animal's arrival here, it was taken to the defendant's place (he being the farrier usually employed by Mr. Allan) to be shod, and the defendant was then told that the horse was nervous and rather difficult to shoe. A month or two later, on the 15th of June, the horse was sent again to the same farrier to be shod. It was led into the forge by Crosby, the groom, who was in charge of it, and who held it by the head while being shod; and while the smith had one of its fore feet on his knee, and was in the act of rasping the hoof, the horse reared, whereupon the groom struck him twice with a whip, the strokes, or one of them, causing the animal to spring or swerve suddenly back towards the wall. This wall was made of boards; and instead of the planks of the floor joining closely with the wall, there was an opening between the end of one of them and the bottom board of the wall. This opening was of uncertain width (the evidence making it vary from one and a half to four inches.) The point of the horse's off hind foot must have got into this opening, and the weight of the animal's tread or kick forced or bent back the board in the wall, so as to let the foot in completely, and then the board sprang back again to its old place, and held the foot so firmly round the coronet that a sudden tug of the leg actually pulled the bone of the foot out of the hoof, which, held as in a vice, remained behind with part of the broken bone sticking to it. Mr. Alloway, who had the superintendence of Mr. Allan's stud, got notice of what had happened, and came down immediately, but found the injury so serious that, acting on his own judgment (being a veterinary surgeon), and with his employer's leave, he destroyed the horse. As to the necessity for this step, there is a conflict in the evidence; but the weight of it is to show that a partial cure of the local injury might have been effected, but would not have been worth the cost, as the hoof in its natural form could never have been reproduced, and the animal, even if it survived, could only have been a shocking sight, and a useless cripple. It is also proved that sometime after the accident, the defendant, speaking to Mr. Alloway, asked him if the matter could not be arranged with the plaintiff, and offered, in the event of a settlement, to shoe Alloway's horses for nothing as long as he lived. The defendant also spoke of the condition of the floor, and said he would have it put right, but not just then, as it would look bad, and the floor, was, in fact, repaired shortly afterwards.

Upon this state of facts, the questions presented would be:—1st. Supposing there is nothing on the plaintiff's side conducive to the accident, what would be the extent of the defendant's responsibility of itself, and also considered with reference to the warning given in April that the horse was difficult to shoe? 2nd. Have we in this case proof of any contributory fault by the plaintiff's groom who had the horse in charge? 3rd. What is the fair and proper meaning and effect upon the case of the defendant's subsequent statements to Mr. Alloway, and the repairing of the floor?

I may disembarrass the case at once of everything extraneous to the principle of responsibility under the circumstances, by saying that, in my opinion, the warning, and the defendant's subsequent statements as proved ought not to affect the decision. As regards the warning in April when the horse, so to speak, was first introduced to the farrier, it seems to me that the defendant must have understood it as referring to the mode of handling the horse by the workman who might shoe him. It was the peculiarities of the horse to which attention was drawn; and the faulty condition of the floor, even if known at the time, would have been equally dangerous to any horse that might tread on that particular spot, without reference to their being unhandy to shoe. Then, the repairs to the floor of the forge, and the statements to Alloway, may safely imply, no doubt, an admission of the faulty state of the premises in that respect, an (admission probably rendered unnecessary by the other evidence); yet I think the offer to shoe the horses *gratis*, if the difficulty could be settled, can hardly be held to mean anything more than anxiety for peace, and for the retention of a valuable customer.

Therefore I think we must look at this case with reference to two points only : 1st. the *prima facie* liability of the farrier arising from the faulty condition of the premises, and 2ndly. with reference to any modification of that liability which might arise from the acts of the groom who held the horse while it was being shod.

I will not discuss authorities ; none were discussed before me, and none require to be discussed ; but I will merely state certain principles, which, in themselves, suffer no difficulty ; and then apply them to the case in hand. 1st, I say there attaches to any person carrying on any particular trade on his premises, a distinct legal liability to have those premises in a condition of safety for the persons and property coming there by his implied invitation, to give him their custom. Without discussing this principle (and I have said there has been no discussion, and can be none upon it), I will merely state the authority for it, from the well known concise treatise of Campbell on the law of negligence. I do not of course cite an *ex professo* treatise as authority ; but I rely upon the authorities there collected. At page 17 the author, after laying down that slight negligence is sufficient to infer liability, and after giving some illustrations says : "The inference seems to be that in a question with strangers being where they have right, every one is bound in exact diligence for the safe repair of his premises, and conduct of his operations, failing such safe repair of premises, or conduct of operations, *prima facie* evidence of negligence may be furnished, in case of resulting damage, by the maxim *res ipsa loquitur*." Then follows the list of authoritative decisions. Again, at page 28 : " The same responsibility in regard to the safety of his premises, which a person owes to the public being in places where they have a lawful right, he owes to those who by his invitation, come upon his premises in pursuit of a matter of common interest to both." He then proceeds to distinguish cases of being on the premises by invitation of the occupier, from cases of being there by his mere license ; but in both, the occupier is liable for ordinary negligence. It is also a principle underlying liability in such cases, that the negligence causing the damage should be the immediate or proximate and not the remote cause of it, (see No. 78, p. 66), and such was undoubtedly the case here.

Now, as matter of fact, I hold that the descriptive evidence, as well as the admissions after the fact, show that the spot where this thing happened, although it may not have been readily perceptible perhaps before the occurrence drew attention to it (and no one is proved to have ever seen it before), was nevertheless a dangerous spot, one where such a thing as actually happened, though probably not with the same dreadful consequences, might have happened, even though it could not readily be foreseen or apprehended, to any other horse taken there to be shod, and getting its foot caught in that place. The allowing such a thing in his forge was, in the case of the defendant, *culpa* under the Roman law. Under the French law it was *faute* ; and in the English cases (the principle there being precisely the same) it would be "ordinary negligence" in the occupier, and we have seen that, as such, it would subject him to liability for resulting damage to those who come there by what the law treats as his implied invitation.

Now, as to the second question, was there contributory or conducive fault on the other side? It is a settled rule in cases of ordinary negligence that the injury must be the result of the defendant's exclusive fault in order to make him liable. If, therefore, there has been a concurring and proximate cause of this horrible accident contributed directly by the fault of the other party, he would have no case against the defendant. I must make one qualifying observation, however, for it is also settled law that the cause contributed by the act of the other party will be no answer to the action in those cases where there is either direct intention to injure, or even that very gross negligence which the law equates to intention. I will take the rule from the same treatise with the authorities, at p. 70, par. 18. "Contributory negligence of a simple or ordinary degree is no answer to injury caused by such gross neglect as the law equates to intentional mischief." And the cases are cited of a horse and cart being left alone in a public place where a child had access to them and got hurt, and it was held that *some* mischief was a natural consequence ; and also the case of spring guns, it being held that trespass was no answer to the serious and intentional injury caused by such instruments.

The circumstances of the present case, however, clearly take it out of the operation of the last-mentioned rule; because it must be admitted, I think,—at least such is my appreciation of the proof—that the thing which happened here could hardly have been foreseen, even by a keen observer. I do not say that the defendant is not responsible for the defect in the floor; I say he is responsible. It was there—on his premises to which his customers were held by law to be invited by him, and no one else is responsible. *Res ipsa loquitur*—as the law says; but I say he is responsible not as for intentional mischief, but as for ordinary negligence, *i. e.* as for a thing which he might have known, and not for a thing which he must have known to be of such obvious and certain danger as is contemplated in the authorities and cases on the subject. The principle then as to the operation of contributory negligence of an ordinary and simple kind, in cases like the present where ordinary negligence is the ground of action against the defendant, is this:—"In all cases where ordinary negligence is sufficient to infer liability, it is a sufficient defence to show that there was contributory negligence on the part of the plaintiff, that is to say, to show that although the negligence of the defendant was a cause, and even the primary cause of the occurrence, yet that the occurrence would not have happened without a certain degree of blameable negligence on the part of the other." (Campbell, p. 69, paragraph 81, and cases there cited). There is, of course, in the books an infinite variety of cases presenting every conceivable condition of fact, but the rule itself is never varied. It is liable, of course, to mistaken application, but hardly in such a case as the present—and the only remaining question would seem to be: Was there contributory negligence of a simple and ordinary degree by the groom in striking the horse twice, as he is proved to have done, and not only needlessly, as one of the witnesses testifies, but, in a small space like that, imprudently, in my opinion. Of the fact itself there can be no doubt. It is proved by Crosby himself, by Drysdale, by Kinsley, and by Stohl, who, though not as near the horse as the others, is equally clear about the use of the whip. Besides this, there is the statement of the way it happened, made by Mullin himself to Swinburne, so that the use of the whip is certain. "He had no right to strike the horse," is the language of one of the witnesses. It was imprudent to say the least, according to the best view I can take of it. The horse was powerful and spirited and admittedly nervous. The space was small, and the accident, in the way already related, was the result of the concurrent causes of the strokes of the whip, and the defect in the floor. There is nothing to lead to the belief that the accident would have happened without the blows, nor yet, of course, without the state of the floor at the spot to which the blows drove the horse. In my opinion, and I have given every attention in my power to the case, there is ordinary negligence on the part of defendant proved. There is also contributory negligence on the part of the plaintiff (for of course the maxim of *respondeat superior* applies to the master and the servant here), and in such cases the action is dismissed without costs, *i. e.*, each party being in fault, each pays his own, and that is the judgment of the Court. The obligation to give over the injured horse to the party held responsible for the injury could only arise in estimating the extent of damages, and of course does not come up at all under the circumstances of this case.

L. N. Benjamin for plaintiff.

Doherty & Doherty for defendant.

SUPERIOR COURT.

MONTREAL, November, 1881.

Before PAPINEAU, J.

GREGORY v. THE CANADA IMPROVEMENT CO. *et al.*

Procedure—Enquête—Inscription.

A party to a cause may inscribe it on the roll at Enquête for the adduction of evidence without the consent of the opposite party.

Upon such an inscription a judge may name a clerk to take down the evidence, and thereupon the enquête may be proceeded with, without the consent of the opposite party, and out of the hearing of the Judge, in the manner heretobefore practised at enquête by such clerk taking down the depositions of the witnesses au long.

The plaintiff inscribed this cause on the roll *d'Enquête* for the adduction of evidence in the following form:—

"We hereby inscribe this cause upon the roll "*d'Enquête* for the adduction of evidence, on the "sixth day of July next, 1881."

The defendants moved to reject the inscription upon the ground that it was in effect an inscription to take the proof at length at *Enquête* sittings, and that the plaintiff could not so inscribe the case without the consent in writing of the defendants.

Tait, for the defendants, argued that the policy of recent enactments in that respect had been to restrict the old *enquête* system as much as possible, and to confine it to cases where both parties consented that the evidence should be taken in that way. He cited article 263 of the Code to the effect that in contested cases the witnesses are examined in presence of a Judge, the Judge asking them such questions as he may think proper. The Judge takes down or causes to be taken down in writing under his direction, notes of the material part of the evidence, &c. He also cited articles 284, 288 and 289, providing that upon the consent in writing of all parties to the cause, the proof may be taken down under the old *enquête* system; prescribing the mode of taking down the depositions of the witnesses in that case, and ordering the depositions to be taken at full length as much as possible in the words of the witnesses.

Trenholme, for the plaintiff, contended that he had inscribed the case under article 234, which prescribes that when a case is not to be tried by a jury, either party may inscribe it on the roll for the adduction of evidence in the mode he had adopted, which was the only mode in which it could be inscribed upon the roll, in order that the Judge might take notes of the evidence or cause notes to be taken as prescribed by article 263.

On the 5th October last the defendant's motion was rejected with costs on the ground taken by the plaintiff's counsel.

The defendants were then notified that the plaintiff would proceed with his *enquête* on the 7th October last.

On that day plaintiff appeared at the ordinary *Enquête* sittings with his witnesses, and was about proceeding to take the evidence at length, at one of the tables in the *Enquête* room, beyond the hearing of the Judge, in the usual way in which evidence is taken at *enquête*; whereupon Mr. *Tait*, for the defendants, objected to the evidence being taken in that manner, and insisted that notes of the material parts of the evidence should be taken by the Judge or under his immediate direction, and in his presence. That if the evidence was to be taken down by a clerk out of the hearing of the Judge the clerk was incompetent to decide what parts were material, and that the result would be that the evidence would necessarily be taken at full length precisely as under the old *enquête* system, and then the defendants would be subjected to the delay and inconvenience of an enquête without their consent, which he contended was not and could not be the intention of the law.

Mr. *Trenholme* declared his readiness to have the evidence taken in such manner as the Judge might determine; whereupon the Judge ordered the evidence to be taken in the *enquête* room by a clerk whom he indicated, he himself, as he stated, being present on the bench; and thereupon the parties retired to a table in the *Enquête* room, and the evidence was taken down at full length by the clerk in the manner practised for the taking of evidence under the old system of *enquête*.

On a subsequent day the clerk, who had thus been indicated by the Judge, not being present, and another Judge (Jette, J.,) presiding, the plaintiff's counsel procured another clerk and was proceeding to have the evidence taken as under the old system of *enquête*, when Mr. *Tait*, for the defendants, made the same objection as before, contending that the defendants were being forced to an *enquête au long* without their consent, contrary to the express provisions of the Code, and contrary to the policy of the recent amendments to the law; pointing out also how the *enquête* had been continued under the former ruling of the Judge who had previously presided at *enquête* sittings.

As defendants' objection was overruled, the Judge named another clerk, and the evidence was proceeded with *au long* as before.

Trenholme & Taylor for plaintiff.

Abbott, Tait, Wotherspoon & Abbotts for defendants.

COUR DE CIRCUIT.

Devant TASCHEREAU, J.

TÉMISCOUATA, Octobre 6, 1881.

Exparte PRUDENT BELISLE, Requérant *Certiorari*.

Certiorari—Avis.

Le jugement est comme suit:—"La Cour ayant entendu le Requérant, Prudent Belisle, et

l'Intimé, François Labrie, par leurs procureurs respectifs, tant sur la motion de l'Intimé, pour faire rejeter le bref de *certiorari* émis en cette cause, que sur la motion du Requérant pour faire casser le jugement rendu par le tribunal inférieur, et sur le mérite du dit bref de *certiorari;* ayant examiné la procédure, l'avis de *certiorari*, la requête du Requérant et toutes les pièces annexées au rapport fait au dit bref de *certiorari*, et sur le tout délibéré ;

" Considérant que l'avis de *certiorari* en cette cause a été signifié aux nommés Léandre Gagnon et Joseph Durette, deux des Commissaires pour la décision sommaire des petites causes dans la paroisse de St. Eloi ;

"Considérant que le jugement de la dite Cour des Commissaires n'avait pas été rendu par les dits Léandre Gagnon et Joseph Durette, mais bien par le dit Léandre Gagnon et par le nommé Prudent Hudon, un autre des dits Commissaires, auquel le dit avis de *certiorari*, n'a pas été signifié ;

" Considérant que par la loi le dit avis de *certiorari* devait être signifié aux deux Commissaires qui avaient rendu le jugement dont se plaint le requérant, et que le défaut de signification du dit avis à l'un d'eux est fatal à la validité du dit bref de *certiorari* (*Code de Procédure*, Article 1223 ; *Paley on Convictions*, 3e partie chap. IV, section 3, pages 439 et 440 de l'édition de Macnamara de 1879) ;

"Rejette la motion du Requérant ; accorde celle de l'Intimé, et en conséquence casse, annule, et met de côté le bref de *certiorari* émis en cette cause, et toutes les procédures sur icelui, avec dépens contre le Requérant, distraits à L. V. Dumais, Ecr., procureur de l'Intimé."

Dumais, procureur de l'Intimé.

Girard, procureur du Requérant.

NOTA.—Ce jugement qui est inattaquable, a cependant l'effet de faire maintenir un jugement qui est mauvais ; car il a été rendu pour une dette prescrite depuis longtemps.

IMPLIED CONTRACT TO SUPPLY GOODS OF ONE'S OWN MANUFACTURE.

It is a very unusual thing to find a point of law arising in common business affairs for which there is no precedent. Such a point seems to have arisen in *Johnson* v. *Raylton*, 7 Q. B. Div. 438, which holds that where goods are ordered of one who is a manufacturer of them, but is not otherwise a dealer in them, there is an implied contract on his part, if he undertakes to supply them, and there is no custom or stipulation to the contrary, that they shall be of his manufacture. There is said to be no precedent on this point in the English law. Two Scotch cases hold the contrary. Lord Justice Bramwell dissents in the principal case. The *Law Times* says of this case : " In spite of this great difference in the result, not only both courts, but also all the judges in both courts, agree up to a certain point. They agree that if a contract is made with a manufacturer of goods to whose name or skill a peculiar value attaches, to supply those goods he is bound to supply them of his own manufacture, even though there be no express agreement to that effect in the contract. For instance, if a man order a picture from the president of the Royal Academy, champagne from Moet and Chandon, or a piano from Broadwood, he is entitled to be supplied with an article of the manufacture of that man, or those firms ; and that the proposition is equally true whether the article is already in existence, or has to be made. Where however the conflict of judicial opinion commences is with regard to articles to which no such peculiar value can be said to attach, articles of which one maker's is as good as another's, and which have no special repute or name, or other distinction. With regard to these the majority of the Scottish judges and Lord Justice Bramwell are of opinion that there is no agreement by the seller though a manufacturer, that the goods shall be of his own make ; whereas the majority of the Court of Appeal and Lord Young (of the Scotch court) are of a contrary opinion." In a hasty search we can find nothing directly in point in the American reports. Perhaps some of our readers may be more successful. It is said, *obiter*, in *Chicago Packing and Provision Co.* v. *Tilton*, 87 Ill. 555, a pork case : " It is plain, however, that a party dealing with a corporation, engaged in business as a manufacturer, and in selling its manufactured goods, and whose name gives no suggestion to the contrary, has a right to assume, when it offers such goods for sale with nothing to suggest the contrary, that it proposes to sell as a manufacturer, and not as an ordinary dealer in the market, and unless the proof shows satisfactorily that plain notice of its acting in a different character was brought home to the party dealing with such corporation, it cannot insist on being treated as other than a manufacturer." This still leaves open the question how a manufacturer is presumed to sell. On principle we agree with the Court of Appeals, whose judgment is also approved of by the *Times*. The difficulty in the opposite doctrine is in drawing the line where the presumption arising from peculiar value attaches. The principal case was one of iron plates, and it may have been that the purchaser attached a peculiar value to those of the other party's own manufacture. Unless the purchaser attaches peculiar value to the manufacturer's production he usually goes to a mere dealer.—*Alb. L. J.*