The Legal News.

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APPEALS TO THE PRIVY COUNCIL FROM THE SUPREME COURT.

The general principle by which the Judicial Committee of the Privy Council is guided in considering applications for leave to appeal from decisions of the Supreme Court has been more than once stated; but in no instance have the considerations which influence the decision in such cases been explained by their lordships with more clearness than in a judgment pronounced on the 24th of June last, in the case of *Bank of New Brunswick* v. *McLeod*. We do not think that any report has appeared of this judgment; but we find a very clear synopsis in a letter, which has been communicated to us, from Messrs. Bompas, Bischoff & Dodgson, solicitors, to Mr. Kaye, Q.C., of St. John, N.B. These gentlemen write as follows:—

"The Petition of the Bank for special leave to appeal came on yesterday before the Privy Council. No one appeared for the respondent.

"We regret to have to inform you that after hearing our counsel very fully in support of the petition their lordships rejected the application and refused leave to appeal.

* * * * * *

"Their lordships' reasons were stated very shortly and were to the following effect:—

"First. The policy of the Dominion Legislature is to discountenance appeals in matters of Insolvency, so much so that not even an appeal to the Supreme Court of Canada is allowed, and the final decision is made to rest with the highest court in each province.

"Second. The Dominion Legislature cannot affect the Prerogative of the Crown to grant special leave to appeal, but in advising Her Majesty whether the prerogative should be exercised, the Privy Council pays attention to the expressed wishes of the colony, and will not recommend its exercise except in cases of general interest and importance, and then only when it manifestly appears that the Court below have erred in a matter of law.

"Third. But even if it should be shown that the Court below has so erred, leave will be refused if it appears that the Court below has decided the case independently of any point of law upon a particular view of the facts, for the Privy Council adopts the facts as found by the Court below, and will not review such findings in an appeal entertained as an act of grace.

"Fourth. Their Lordships without expressing any decided opinion as to whether the Court below were right or wrong on the point of law (*i. e.*, the construction of the Bill of Sale Act and the Insolvency Act of 1875), thought that the question was arguable, and if the decision had turned upon this alone would have been prepared to grant an appeal. But it appeared to their Lordships that the judgment of the Supreme Court was founded on the special facts of the case as found by the Court, the decision as to which affected only the parties to the case, and did not involve any general question. Their Lordships could not review the finding of the Supreme Court to the effect that there was, in fact, no agreement to allow the overdraft; that the transaction was a voluntary assignment on the part of the Insolvents, and that it was made in contemplation of bankruptcy to the knowledge of the Bank.

"It is fair to add that the views clearly expressed by their Lordships during the course of the argument, lent no colour whatever to any supposition that their Lordships agreed with the findings of the facts of the case by the Supreme Court.

"Thus it appears that although the tendency of their Lordships' opinions seemed to favour the views of the Bank, both as to the construction of the statutes and as to the true effect of the transaction between the parties, yet acting on the rules they have now for the first time laid down, their Lordships felt themselves constrained to reject the application.

"The propriety of these rules cannot, we think, be questioned, though we much regret that in the present instance they should bear so hardly on our clients."

IRREGULARITIES IN THE JURY ROOM.

In the case of *People* v. *Gray*, decided on the 12th of August, and reported in 9th Pacific Coast Law Journal, p. 778, the Supreme Court of California had occasion to pronounce upon the misconduct of a jury who seem to have been as thirsty as the Dublin jury in a recent famous

case were charged with being. It appears that some of the jurors, in addition to the "suitable" food furnished by the sheriff, obtained and consumed fifteen to twenty gallons of beer, two demijohns of wine, two bottles of whiskey, and also other wine and whiskey at each meal, including breakfast. The Court was of opinion that where there is reason to suspect that, on a trial for homicide, a juror has drank so much as to unfit him for the proper discharge of his duty, the verdict should be set aside, and in the case before the Court, it was held that the jurors had been guilty of such misconduct as made it the duty of the Court below to grant a new trial.

THE LAWSON-GRAY INQUIRY.

In the London correspondence of the *N. Y. Herald*, reference is made to a singular omission alleged to have been committed by Mr. Justice Lawson in passing sentence on a convict. Two or three months ago, one Patrick Walsh was put on trial charged with having murdered a neighbour who had rendered himself obnoxious by land-grabbing. The evidence against Walsh was circumstantial, and was rebutted, but ineffectually, by the evidence of a number of his friends, who swore to an *alibi* in his defence. On his first trial in Dublin the jury disagreed, but a second jury found Walsh guilty. In due course he was executed, and died protesting his innocence. Before the Parliamentary Committee in the Gray case, one Johnson, the official short-hand writer employed by the Crown, made the startling statement that Walsh had never been sentenced to death. The following questions were put to Mr. Johnson by Mr. Sexton, the member for Sligo:—

Mr. SEXTON—Were you present in Green Street Court House during the second trial of Patrick Walsh—the trial which ended in his conviction for murder?

Mr. JOHNSON—I was present during the whole of the commission.

Mr. SEXTON.—Did you hear the judge pass sentence on Patrick Walsh?

Mr. JOHNSON—I did.

Mr. SEXTON—Did he sentence Patrick Walsh to be buried within the precincts of the jail?

Mr. JOHNSON—He did.

Mr. SEXTON—But did he sentence Walsh to be hanged?

Mr. JOHNSON.—No; he did not.

Mr. SEXTON—Did he, in fact, omit the words, "that you be hanged by the neck until you are dead?"

Mr. JOHNSON—He did.

Mr. SEXTON—Do all the other reporters who were present in court concur in this statement of yours?

Mr. JOHNSON—They do.

Mr. SEXTON—Did the Judge ever question the accuracy of the reports attributing to him the omission of these essential words?

Mr. JOHNSON—No; if he had done so the reporters would have had something to say about it.

Mr. SEXTON—Then Patrick Walsh was hanged without having been sentenced to be hanged?

Mr. JOHNSON—Yes!

The evidence is said to have created a marked sensation in the Committee, and, if true, discloses a singular blunder on the part of the learned judge, however just may have been the verdict of the jury with whom after all, it must be said, rested the responsibility for the prisoner's punishment.

As to the result of the committee's work, three reports have been referred to in the despatches. The first, drafted by the Attorney General and favored by the majority of the committee, states that Judge Lawson acted within his jurisdiction in imprisoning Mr. Gray; the second, by Mr. Dillwyn, remarks upon the present state of the law of contempt; and the third, by the Irish members of the committee, suggests certain alterations of the law and reflects upon the conduct of Judge Lawson. The Attorney General's report presented to the committee, Nov. 14, further stated that Mr. Gray had been allowed to make before the committee a statement, which was, however, irrelevant. Mr. Dillwyn, in his report, maintained that Mr. Gray had not been guilty of contempt of court. He said the whole subject of the state of the law respecting punishments for contempt of court should be inquired into. After some discussion the committee decided that there was no occasion for the House of Commons to take further notice of the matter.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Oct. 16, 1882.

Before RAINVILLE, J.

MCMARTIN v. WALSH.

Jurisdiction—Declinatory Exception—Personal or Mixed Action.

An action to enforce a promise of sale of an immoveable and to compel the vendee to execute a deed, is purely personal, and personal service in the District of Montreal on the defendant

resident in Beauharnois, the property in question being situate in Terrebonne, gives the Court in Montreal jurisdiction.

This was an action to compel the defendant, resident in the District of Beauharnois, to carry out a promise, which the plaintiff alleged had been made by correspondence and telegrams, to purchase certain immoveable property situate in the District of Terrebonne, and to execute a deed of sale, which had been duly tendered to defendant;—the plaintiff asking by the conclusions of his declaration that the judgment should avail in place of the deed in default of defendant's executing the same.

The defendant was personally served in the District of Montreal, and denied the jurisdiction of the Court by a declinatory exception alleging that the action was a real or mixed one, involving the title to lands in another district, and contending that he should have been summoned before the Court of his domicile, or of the district where the immoveable was situate, under article 37 of the Code of Procedure.

Fleet, for the defendant, cited Dalloz, Jurisprudence, Vol. I, p. 228, subj. Mixed Actions.

H. Abbott, for plaintiff, cited Bonjean, Actions, Vol. II; §§ 273-5, 289, 292; Poncet, Traité des Actions, Titre 2, cap. 8, and cap. 10, sections 1, 2 & 3; *Scriver* v. *Stapleton*, 2 L. N. 190; *Menzies* v. *Bell*, 3 L. N. 159.

The COURT held that the action was purely personal, and dismissed the exception. The following is the judgment:—

"Attendu que le demandeur poursuit le défendeur à raison d'une obligation que ce dernier aurait contracté envers lui;

"Attendu qu'il allègue avoir vendu un immeuble au défendeur, et qu'il demande qu'il en soit passé acte afin de constater la dite vente;

"Considérant que par la loi la dite vente a eu pour effet de transporter la propriété du dit immeuble au dit défendeur du moment qu'elle a été consommée;

"Considérant que l'action personnelle est celle par laquelle on agit contre celui qui est obligé envers soi;

"Considérant que l'action réelle est celle par laquelle on agit contre quelqu'un, non en vertu d'une obligation qu'il aurait contractée, mais seulement à raison de la possession qu'il a d'une chose qu'on réclame ou qu'on prétend affectée d'un droit à son profit;

"Considérant que la présente action est purement personnelle et non réelle, et que l'assignation du défendeur devant la Cour Supérieure pour le district de Montréal est régulière et légale;

"Déboute le défendeur de son exception déclinatoire avec dépens." &c.

Abbott, Tait & Abbotts for plaintiff.

Robertson & Fleet for defendant.

[A motion by the defendant to be allowed to appeal from this judgment was rejected by the Court of Appeals, 28 Nov., 1882.]

SUPERIOR COURT.

MONTREAL, Nov. 25, 1882.

Before TORRANCE, J.

SEERY v. THE ST. LAWRENCE GRAIN ELEVATING CO. and THE ST. LAWRENCE GRAIN ELEVATING CO., plff. *en garantie*, v. THE MONTREAL ELEVATING CO., deft. *en garantie*.

Procedure — Amendment of Writ and Declaration.

The allowance of amendments to the writ and declaration is not subject to a fixed rule. The Court, in its discretion, will grant or refuse permission to amend, as may best tend to the furtherance of justice.

The defendant, plaintiff *en garantie*, made a motion to amend the writ and declaration, by erasing the word "elevating" wherever it occurred.

L. H. Davidson, for the defendant *en garantie*, *e contrà*, cited *Laurent* v. *Picard*, 4 Q. L. R. 73; *Pouliot* v. *Solo*, 5 Q. L. R. 326.

PER CURIAM. The motion is granted on payment of costs to the attorney of the defendant *en garantie*, and of his disbursements on the exception and its incidents. *Vide* C. C. P. Louisiana, with notes by M. Greiner, pp. 72 & 154. In Louisiana, it is allowed to plaintiffs to set out their full names after an exception on that ground. *Vide Dubuys* v. *Mollere*, 2 N. S. 627. The rule appears to be that amendments are reducible to no certain rule; but that each particular case must be left to the sound discretion of the Court; and that the best principle is that an amendment should or should not be permitted to be made, as it would best tend to the furtherance of justice. 7 Durn. & East, 699.

Motion granted.

Robertson & Fleet, for plaintiff *en garantie*.
L. H. Davidson, for defendant *en garantie*.

SUPERIOR COURT.

MONTREAL, November 25, 1882.

Before TORRANCE, J.

GANNON *et al.* v. WRIGHT.

Capias—Affidavit.

An affidavit for capias, alleging in the alternative that the defendant is secreting or is on the point of secreting his property and effects, &c., is insufficient.

The demand was for the price of goods sold, amounting to $101. The plaintiff accompanied the demand by a writ of *saisie-arrêt* before judgment.

The defendant presented a petition that the seizure made be vacated for insufficiency in the affidavit.

PER CURIAM. The following words in the affidavit are complained of: "Que le déposant est informé d'une manière croyable par Louis DesRosiers, commis de Montréal, que le défendeur cache, recele et dissipe ses biens, *ou* est sur le point de cacher, receler et dissiper ses biens," &c. The defendant complains of this statement as being in the alternative and wanting in positiveness and certainty, as required in an affidavit. It is an elementary rule in pleading, that a pleading shall not be in the alternative;—Stephen on Pleading, p. 415 of Edition of 1838; and the rule is as important for an affidavit on which an exceedingly harsh proceeding is founded. The Court has already decided this point in *Ostell* v. *Peloquin*, 20 L. C. Jur. 48, and *Macmaster* v. *Robertson*, 21 L. C. Jur. 161. The petition of defendant is granted.

A. Mathieu, for plaintiff.

Macmaster, Hutchinson & Weir for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 20, 1882.

DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

DESROCHES et al. (defts. below), Appellants, and GAUTHIER (plff. below), Respondent.

Negligence—Damages.

Where the damage results from an accident, without fault on either side, the loss is borne by the party who suffers it; and when the suffering party alone is in fault, the loss is borne by him. So, where a laborer employed in discharging railway iron through the hatch of a vessel, by his imprudence and disregard of orders, caused the breaking of a chain which was sufficiently strong for the purpose for which it was used, it was held that the damage which he suffered must be borne by himself alone.

This was a case arising out of an accident which occurred while the cargo of the "South Tyne," consisting of railway iron, was being discharged in the port of Montreal in May, 1880. The appellants are stevedores, and were employed in the unloading of the vessel. Gauthier, the respondent, and a fellow-workman named Archambault, were engaged by them, and while the unloading was proceeding during the night, one of the chains by which the rails were raised through the hatch gave way, and the rails fell upon the respondent and his fellow-workman, breaking a leg of each. Gauthier sued for $2,000 damages, and by the judgment of the Court below he was allowed $400. The appeal was by the defendants from this judgment.

The contention of the appellants was that the accident occurred through the negligence of Gauthier in not paying attention to the warnings of the foreman, Piché. The latter observed that the rails were not kept clear of the beam as they were about being raised by chains through the hatch, and seeing the danger he warned the workmen to push the rails out further or an accident would happen. These admonitions were disregarded, and the respondent thereby caused the misfortune that had befallen him. The judge in the Court below had held that employers are bound by law to protect their workmen even against their imprudence, but it was submitted that this was a doctrine which could not be entertained.

RAMSAY, J. This is an action of damages for the alleged negligence of the appellants, stevedores, brought by a laborer who had his leg broken (necessitating amputation), in unloading a ship. The particular negligence insisted upon is that there were two of the chains used in drawing up the cargo, railway iron, smaller than the others; that these smaller chains were unfit for the service, and that the accident happened by the breaking of one of them.

The plea is that defendants had used due care and diligence; that the chains were quite sufficient for the work, and that the plaintiff had, at any rate, contributed to the accident by his own negligence, and that, therefore, the defendants are not liable.

The judgment went for plaintiff; and certainly if he was entitled to recover, one can hardly say that the damages were excessive; and perhaps if the judgment had been merely an appreciation of the conflicting evidence of the parties as to negligence, it might not have been desirable to disturb it. But the learned judge in the Court below, to meet the plea of contributory negligence, went further, and gave the following as a motive of his judgment :—

"Considérant qu'il est prouvé que le demand-"eur est un jeune homme sans expérience, tra-"vaillant à la journée."

I cannot concur with the learned judge in his statement of this doctrine, which, as applied, is hardly supported by the somewhat exaggerated view of the law adopted by Laurent. On the other hand, the use of the term "contributory negligence" is open to serious criticism. It is one of those terms of the English law which has grown up to serve a practical purpose (if practical purposes are really ever served by inexact expressions); but it is as totally unknown to the French Law, ancient or modern, as it is to the Roman Law. Nay more, the idea it expresses is nowhere recognized in the Roman Law, or in the ancient French law, as a general principle; it is only admitted as a general principle by careful writers under the modern law apologetically, and as an abandonment of strict principle. The older systems do not appear to have considered a joint fault as a possible legal idea. The fault which renders the person guilty of it responsible, is such a fault as determines the result, so that if the person who suffers, by his fault determines the result he must suffer the consequences, no matter how far the other party is in fault.

Properly to understand the question one must bear in mind that it only arises on the *quasi délit*. As to the damages which arise owing to a *délit*, the malice decides as to the responsibility. If A acts wrongfully to B, with intention, *i. e.* with malice, the fault of B would be no excuse.

But if A and B are both in fault without malice, the only juridical question is whose fault determines the loss. The rule of the Roman law is perfectly clear: "Quod quis ex culpa sua damnum patitur non intelligitur damnum sentire." And both the French code and ours have adopted this rule without a shadow of difference, or making any distinction. Indeed, there is no logical room for a distinction. It may be difficult in practice to decide who is in fault; and if it be impossible to decide, then it is as though the result were accidental, and the plaintiff must lose.

The maritime rule of most modern States adopted modifications in the case of collision, but they are not quite agreed as to the extent of the innovation. Abbott says that by the law of most of the maritime states, in collision without fault, in collisions where both parties are in fault, and where the fault cannot be detected, the damages are equally divided. Emerigon does not, however, agree that this is the rule, and contends that the maritime rule goes no further than to divide the damages when there is fault, and it cannot be determined where it rests. This, too, is the rule of the *Code de Commerce* 407, which only mentions three contingencies:—

1st. Where the loss is due to accident, the loss is supported by the party who suffers.

2nd. Where by the fault of one of the parties, then by the party in fault; and

3rd. Where there is doubt as to the cause of the collision, then the damage is borne equally by the two ships.

We thus find that the *Code de Commerce* utterly rejects the idea of a joint damage, and only provides for the case where there is some evidence of fault, but not enough to say whose it is. Pardessus, commenting this article, says that the third may be called a *cas fortuit*. This is what, in principle, it should be, but what, under the rule of the *Code de Commerce*, it is not.

In England different rules seem to prevail. Lord Stowell said there were four possible contingencies:—1st. Where there is no blame, when the loss is borne by the party who suffers it. 2nd. Where both parties are to blame, when the loss is to be equally divided between the parties. 3rd. Where the suffering party is alone in fault, when he bears his own loss; and 4th. Where the fault is on the ship which did the damage, when the latter must bear all the loss.

These various views show the danger of leaving the strict principle in an attempt to do a sort of equity. Whether it was this idea borrowed from the Maritime law, which has worked on the modern French writers, I can-

not say, but they have given some countenance to the idea of a joint responsibility without adopting the equal division rule. Larombière evidently felt the difficulty, and he, after laying down the general principle of the Roman law in its precise terms, "*quod quis,*" &c., goes on to say:—"*La seule concession que nous puissions faire, c'est donc de permettre aux tribunaux de modérer dans ce cas (où il y a faute de la part du lésé), suivant les circonstances, le chiffre des dommages et intérêts*; vol. 5, Nos. 29 and 30. This moderating of the damages is under the discretionary power of the Court to assess damages like a jury, explained in No. 28, and which, though a departure from strict principle, is necessary in the practical application of the law.

Less effectively put, the same doctrine is to be found in Aubry & Rau: "Il en résulte encore qu'on ne peut considérer comme quasi-délit, un fait qui n'a porté préjudice à autrui, que par suite d'une faute imputable à la personne qui a éprouvée ce préjudice. Lorsqu'il y a eu faute, tant de la part de l'auteur d'un fait, que de la part de celui auquel ce fait a causé dommage, la question de savoir s'il y a lieu à la responsabilité, et la fixation de la part d'indemnité qui peut être due, restent abandonnées à l'arbitrage du juge. Vol. 4, § 446, p. 755. See also Proudhon on the three degrees of *faute* of the Roman Law, Vol. 3, No. 1495.

I am, therefore, of opinion that there is no difference between the English law and the old French law, and that through the technicality of "contributory negligence" we have, practically speaking, the real doctrine of the Roman law, and the only sound juridical rule. To say that because the Judge has a discretion to award damages, he has also an indefinable discretion to apportion them, appears to me to be an error of a two-fold character.

On the merits I am to reverse. There is no evidence that the chain was too weak for the work. Two of the smaller chains broke, but the weight of evidence is in favour of the pretention of appellants, that the breakage on both occasions was due to the persistent disobedience and recklessness of respondent and his single witness. It is, therefore, within the rule *volenti non fit injuria.*

DORION, C. J. I have already in two cases repudiated the doctrine of contributory negligence as existing in England. It is not our law. A person is not to be debarred from recovering damages because he has contributed in a very small degree to the accident. But, on the other hand, there must be fault on the part of the employer to make him responsible. If he does not use good materials, and an accident occurs in consequence, he is responsible. The question here is, were the chains strong enough for the purpose for which they were employed? If they were sufficient, and by mere accident they caught on the beam and broke, the employer is not responsible, for there is no fault on his side. *A fortiori*, if it was not a mere accident, but because the employee was in fault in using the chains, the employer is not responsible. The chains were being used alternately on each side; they never caught on the beam on one side, and never broke. On the side where the accident occurred, they caught on the beam, and, as one witness remarked, something had to break. Either the chain had to break, or the beam must give away. Now it was proved here that the chains used were sufficient to lift eight or nine thousand pounds; so they were more than sufficient to raise one thousand pounds. In addition to this, it was proved that the respondent did not know how to do his work, and that his disobedience of the directions given to him led to the accident. If it had been proved that the chain was insufficient, the employer would have been liable, however much the respondent might have contributed to the accident; but here the employer was not at all in fault.

The *motif* of the judgment is as follows:—

"Considering that the respondent, plaintiff in the Court below, has not established that the injury which he has suffered, and of which he complains by his action, has been occasioned by any fault, negligence, or imprudence attributable to the appellants," &c.

TESSIER, J., dissented.

Judgment reversed.

Kerr, Carter & McGibbon for the appellants.
Gaudet for the respondent.
Hon. R. Laflamme, Q. C., Counsel.

ERRATUM.—In the note of *Mackinnon* v. *Thompson*, in our last issue, the names of counsel were accidentally transposed. Messrs. *Wotherspoon, Lafleur & Heneker* were for the Appellant, and Mr. *Butler* for the repondent.

RAMBLING RECOLLECTIONS OF OLD GLASGOW.

The judges on circuit, we are told, took up their abode in the Star and Black Bull Inns alternately, and walked in procession therefrom, always on foot, with a guard of infantry, to the court house. Our readers may perhaps recollect a very amusing sketch of Lord Pitmilly in such a procession on a wet day, drawn by John Gibson Lockhart, and reproduced in Lord Cockburn's Journal. "In returning at night," Nestor says, "the cavalcade, attended by torchbearers, attracted great crowds. On one occasion at the Saltmarket, at the time of what was called the Radical Rebellion, seditious cries were raised by the populace, when Lord Hermand, one of the judges, snatched a torch from the hands of one of the attendants and gave a defiant response. This was the last of the flambeau peageants." The whole proceedings must indeed have been very curious. The court house was behind the old jail at the foot of the High street, and entered from the Trongate by a stair abutting on the prison. The accommodation for the public was but scanty. "Whenever a person was seen to come from the court he was surrounded by the motley crowd, with the question, "Who is their lordships now *sitting on?*" In those days, of course, few circuits passed without a sentence of death being pronounced, and before 1826 the verdicts of the jury were always in writing. The envelope containing the verdict was sealed with black wax if the prisoner had been found guilty, with red wax if otherwise; so the culprit and audience thus learned the result before the seal was broken. In the early part of the century the magistrates attended executions wearing white gloves and carrying white peeled rods or wands. The jury always stood during the judge's charge, and it was not until Lord Cockburn's day that this uncomfortable custom was abolished. Some good stories are given of juries; on one occasion a juror left the sheet of paper which had been supplied to him for the purpose of taking notes, behind him, and on examination it was found written in large text from top to botton, with one uniform line, "*John struck James first.*" There is another story of Lord Hermand which we may quote: There had been a riot in the Trongate between some soldiers and citizens; a young officer in endeavoring to lead his men back to barracks, drew his sword, which was immediately wrested from him by a painter, who was brought up at the bar to be tried for the offence. In charging the jury, Lord Hermand was very angry. "Gentlemen," he bawled, "the sword was given to this officer by his Majesty, and none dared to take it from him but he who gave it. Had it been I that had that sword, and the painter had sought to deprive me of that weapon, I would—I would—I do not know what the consequences might have been." His lordship at this stage almost lost the power of speech, and his colleague (Lord Justice Clerk Boyle) brought him a tumbler of water from the closet behind. The man was acquitted and the audience applauded, on which the judge ordered the court to be cleared, which was done by a party of soldiery with fixed bayonets! In transportation cases their lordships used to indulge at great length on the rigid nature of the law in the penal colonies. In one of these long addresses a young girl got tired and interrupted his lordship with the exclamation: "Never mind, my lord, I'll get a black man there." His lordship, nowise disconcerted, merely interjected, "Then, deeply sympathizing, as I certainly do, with the black man, I was going on to say, before you interrupted me, that if you are ever again found swerving from the paths of honesty, you will find a severer law in that region than you have found in this."

We have not space to do more than briefly to notice the amusing description of the sheriff and other courts, and of the way in which bnsiness was conducted therein. One figure, however, deserves to be alluded to before we conclude. This was a bailie who often astonished the audience in the police court by his use or abuse of the English language. All persons whose cases required more attention he ordered to be "*reprimanded*" (remanded) until next day or some further day. It was the same worthy magistrate who occasionally addressed abandoned offenders, solemnly telling them that henceforth they must be careful of their conduct, as "the eye of the Almighty and the Glasgow police would be on them." Remembering the formality he had witnessed at a Circuit Court recently held, the same functionary, in sentencing a man to sixty days' imprisonment, put on his cocked hat, and solemnly uncovering his head, implored a blessing on the culprit's soul. —*Scottish Law Magazine.*

RECENT U. S. DECISIONS.

Copyright—Exhibited play may not be reproduced from memory.—One who has obtained a copy of a play which has been produced on the stage, but has not been published, from memory alone, is not entitled to exhibit the same, and an injunction will issue to prevent his doing so. Keene v. Kimball, 16 Gray, 345, overruled. The question decided in Keene v. Kimball had never until then been determined in any reported case; it had been discussed in Keene v. Wheatley, 9 Am. Law Reg. 33, where a decision of it had not been necessary to dispose of that case. The case of Keene v. Kimball has not since been reaffirmed here nor elsewhere, nor has it been distinctly denied by the decision of any adjudicated case, except that of French v. Connolly, decided by the Superior Court of New York, which is not the final tribunal in that State. An examination will however show various and conflicting opinions expressed by jurists as well as by text writers of high respectability upon the question involved. Palmer v. DeWitt, 2 Sweeney, 530, and 47 N. Y. 532; Craine v. Aiken, 2 Biss. 215; Shook v. Rankin, 6 id. 477; Boucicault v. Fox, 5 Blatch. 98. The decision in Keene v. Kimball must be sustained, if at all, upon the ground that there is a distinction between the use of a copy of a manuscript play obtained by means of the memory or combined memories of those who may attend the play as spectators, it having been publicly represented for money, and of one obtained by notes, stenography or similar means by persons attending the representation; that in the former case the representation of the play, the copy of which was thus obtained, would be legal, while in the latter it would not be. The theory that the lawful right to represent a play may be acquired through the exercise of the memory, but not through the use of stenography, writing or notes appears entirely unsatisfactory. The author has a right to believe that in purchasing their tickets of admission, persons do so for the pleasure or instruction that the performance of his drama will afford; and that they do not do so in order to invade his privilege of representation which, as it is of value, he must desire to preserve. The special use made by the author for his own advantage of his play by a representation thereof for money is not an abandonment of his property or a complete dedication of it to the public, but is entirely consistent with an exclusive right to control such representation. Roberts v. Myers, 23 Am. Law Reg. 397. The ticket of admission is a license to witness the play, but it cannot be treated as a license to the spectator to represent the drama if he can by memory recollect it, while it is not a license so to do if the copy is obtained by notes or stenography. In whatever mode the copy is obtained, it is the use of it for representation which operates to deprive the author of his rights. *Tompkins* v. *Halleck*. Massachusetts Supreme Judicial Court, May, 1882.

GENERAL NOTES.

THE LATE JUDGE DRUMMOND.—The Hon. L. T. Drummond, an ex-Judge of the Court of Queen's Bench of the Province of Quebec, died on the 24th November, aged 66. The deceased was born in Coleraine, Ireland, on the 26th May, 1813, and came to this country in 1825. He was educated at the Nicolet College, studied law with Mr. Justice Day, was admitted to the Bar in 1836, and was soon afterwards engaged in the defence of the prisoners implicated in the rebellion. In 1844, during the exciting times of the Metcalf *régime*, he presented himself as a candidate for Montreal for election to the Legislative Assembly, and was successful, but owing to the dissolution did not take his seat. Having been defeated in the contest in which Messrs. Molson and DeBleury were elected for the city, he was elected for Portneuf, and in 1847 became member for Shefford, and immediately afterwards, on the formation of the Baldwin-Lafontaine Government, became Solicitor-General, an office which in those days did not include a seat in the Cabinet. On the formation of the Hincks Administration in 1851, he entered the Government as Attorney-General, retaining the position, on the formation of the Coalition Government, under Sir Allan McNabb in 1854. He remained a member of the Government until 1856, having the chief charge, with the late Sir George Cartier, of the bill for the settlement of the Seigniorial Tenure. He left the Government in 1856, going into opposition to his old colleagues. He remained in Parliament, however, representing Lotbiniere from 1858 to 1861, and Rouville, in which county he defeated the late Colonel Campbell, from 1861 to 1863, when he was defeated on the dissolution of Parliament by the late Mr. John Sandfield Macdonald. In 1864 he was elevated to the Bench, as Judge of the Court of Appeals, where he served until 1873, when he was compelled to retire on account of ill-health. His best work was done in a past generation, and his reputation as a lawyer is associated chiefly with the criminal side of the profession.

A new paper in New York called *Justice* has nothing to do with the Courts, but assumes to represent especially anti-monopoly principles. Who are the monopolists referred to may, we suppose, be gathered from the following list which it prints, with the estimate of their wealth:—W. H. Vanderbilt, $260,000,000; Jay Gould, $100,000,000; Leland Stanford, $100,000,000; C. P. Huntington, $100,000,000; Charles Crocker, $60,000,000; Mrs. Hopkins, $50,000,000; Russell Sage, $40,000,000; James Flood, $40,000,000; James G. Fair, $40,000,000; J. G. Mackey, 30,000,000; Cyrus W. Field, $25,000,000; James Keene, 20,000,000; Estate of Tom Scott, $20,000,000; John W. Garrett, $20,000,000; Samuel J. Tilden, $15,000,000. In the morning papers is a cabled extract from the London (Eng.) *Spectator* on American millionnaires, in which it declares that it expects to see a syndicate in New York controlling all the railroads and the telegraphs, and which syndicate, "at the end of a twelve-month, would smile at the Rothschilds as persons who, in the petty business of Europe, were accounted very rich."