THE LEGAL NEWS.

Vol. IX. MONTREAL, JANUARY 9, 1886. No. 2.

Editor.—James Kirby, D.C.L., LL.D., Advocate.
Office, 67 St. François Xavier Street, Montreal.

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Montreal:
GAZETTE PRINTING COMPANY.
1886.

The Legal News.

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Appeals on matters of fact have been discouraged more than ever of late, both in Review and in Appeal. The superior tribunal is of course bound, under our system, to examine the evidence, but the principle has been frequently laid down, that where it is a mere question of appreciation of damage, the appellate court will not disturb the judgment for the sake of adding or taking away a few dollars from the award of the court below; and where the evidence is contradictory or evenly balanced, the opinion of the lower court will prevail, unless manifestly erroneous. So far has this principle been carried that in the case of *Papineau & Taber*, decided by the Court of Appeal, Dec. 30, the Court, while reducing the award of damages from $100 to $20, condemned the appellant to all the costs. In another case, *Lafricain* v. *Legris*, the Court of Review refused to touch a judgment on a matter of fact, on the ground that it was not manifestly erroneous; and reference was made to the ruling of the Courts in Louisiana. It is useless to encumber the regular series of reports with such cases, but as these appeals are constantly coming up, we have reported *Lafricain* v. *Legris* in the present issue, for the information of the bar.

The Franchise Acts in England have given rise to a multitude of difficulties, and numerous appeals are being made from the rulings of the revising barristers. If our Canadian Act proves to be equally fruitful of perplexities, the revising officers will soon have their hands full. The London *Law Journal*, referring to these difficulties, has the following:—"The ingenious writer of the epilogue to the Westminster Play, detailing the woes of a revising barrister, thus hits off the claimants of the service franchise:—

Ambit idem servus, pincerna, coquusque, popinæ
Tonstrinæque puer, Martis et acre genus.

Servus, as expressing the servant who does not, like the *famulus*, live in the master's house, may well be allowed the vote. Chremes as revising barrister, would also allow his vote to the *Martis acre genus*, according to Lord Coleridge's decision. The *puer popinæ*, or Spiers & Pond's waiter, would be denied the vote, although probably the *tonstrinæ puer*, or young man at Truefitt's, would obtain it. The *pincerna* is expressly dealt with in the examples in the schedule to the Act, and the *coquus* by implication. We miss a latinisation of Shoolbred's and Maple's young men, the main inheritors of the service franchise, but more than might be thought possible has been done to make classic the *Labyrinthiacæ leges* of the Franchise Acts."

Mr. Travis who, in his Treatise on Constitutional Powers, so forcibly depicted the chaotic condition of the judicial mind in Canada and England, (7 Leg. News, 234), has it seems, been made a stipendiary magistrate in the North-West; at least, we assume that it must be the same individual, for surely this Dominion does not contain within its borders two legal gentlemen named alike and possessing such markedly similar characteristics. As might have been anticipated, something like a blizzard has attended the entrance of this vivacious critic on his new sphere of duty. A writer who characterized the views of the Judicial Committee as "excessively ridiculous," and their "actual, stupid, stolid, ignorance of the matter they are examining" as "positively painful," is just the person to suppress most peremptorily any criticism upon his own decisions. So we are not surprised to see that he has already got an editor lodged in gaol for presuming to criticize the judgments rendered at Calgary by the new dispenser of justice, and he has also pronounced some sharp sentences upon the Mayor and other functionaries.

The origin of the trouble, according to the information received by the *Gazette*, appears to have been the sentences pronounced by the magistrate upon a couple of offenders brought before him. One of these was an alderman of the town, who was accused of assaulting one of the mounted police, who, in plain clothes, entered his premises to search for liquor supposed to be concealed there in violation of the law. He was sentenced to im-

prisonment for six months. The other was a settler, who had got into a street brawl, and was brought up for an assault with intent to do grievous bodily harm, and was sentenced to three years in the penitentiary. These severe sentences excited much feeling in the community and were the subject of adverse criticism in one of the local papers, the Calgary *Herald*, edited by Mr. Cayley, a son of the Hon. Wm. Cayley, of Toronto. The editor was summoned by the stipendiary magistrate for contempt, and the result was the penalty, a statement of which has been telegraphed to the press. The statement thus communicated is that Mr. Travis was quite convinced that Mr. Cayley was himself disposed to be conciliatory, but that he had been urged on by ill-advised and wicked men, and that "in order that these men should bear the penalty instead of Mr. Cayley, he imposed a sentence of $400 fine, $100 counsel's fee to the Crown prosecutor and costs, to be paid by Monday next, failing which, Mr. Cayley would be sentenced to three months' imprisonment and $200 fine, and if the fines were not paid at the expiration of three months that the prisoner remain in gaol until the fines are paid."

The vicarious system of punishment introduced by Mr. Travis reminds us of the unlucky youth mentioned in *Gil Blas*, who was whipped whenever his noble playfellow deserved chastisement. The fines intended for the punishment of those "ill-advised and wicked men" not being paid, Mr. Cayley languishes in gaol to atone for their perverseness. Apart from the other aspects of this most extraordinary case, a summary proceeding for contempt by a magistrate against the writer of a newspaper article criticizing his decisions is of very doubtful legality. See 8 Legal News, p. 72, which shows that in England judges do not assume any such power.

APPEAL REGISTER—MONTREAL.

Dec. 30, 1885.

McDougall & Demers.—Re-hearing ordered.

Gilman & Campbell.—Judgment reversed.

Stearns & Ross.—Judgment confirmed.

Northwood & Borrowman.—Judgment confirmed.

Papineau & Taber.—Judgment reformed. Condemnation reduced to $20; appellant condemned to all the costs. Tessier, J., dissenting.

Corporation of Hereford & Guay.—Judgment confirmed.

Eastern Townships Bank & Paquette.—Judgment confirmed.

Dorion & Crowley.—Judgment confirmed.

Ross et vir & Ross.—Heard on motion to dismiss appeal. C. A. V.

Normor & Parker.—Motion for leave to appeal. C. A. V.

Trudeau & La Société de Construction Metropolitaine.—Motion to dismiss appeal; granted by consent.

Kieffer & Whitehead.—Respondent files a *retraxit*.

Canadian Pacific Railway Co. & Barry.—Motion for leave to appeal from interlocutory judgment. C. A. V.

The Court adjourned to January 15, 1886.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1885.

Before SICOTTE, TORRANCE, LORANGER, JJ.

TREBAT dit L'AFRICAIN v. LEGRIS.

Appeal on question of fact—Judgment of Court below will not be disturbed unless manifestly erroneous.

The action was under the Lessor and Lessee Act, to recover rent of premises from 25th July to 1st November, namely $112.50, at the rate of $37.50 per month. Judgment went for this amount, less $50 proved to have been due by plaintiff. Costs were given in favor of plaintiff for the action as brought, except the costs of *enquête*, as to which each party bore his own. The witnesses were heard in open court.

R. Préfontaine for plaintiff.

C. A. Geoffrion, Q.C., for defendant.

TORRANCE, J. The grievance of the defendant is that the action was not dismissed for want of proof, in place of a condemnation for $62.50 besides costs. It is fair here to say that the same judgment disposed of a prior action brought by plaintiff against defendant to recover $1,627.50. The cases were united and tried together, and the first case was decided in favor of defendant, except as

to the *enquête*, costs of which were divided by defendant, as in the second case, being condemned to pay his own costs of *enquête*. I have already said that the witnesses were heard in open court before the same judge, the first witness being heard on the 13th of November, 1883, and the last on the 9th of April, 1884.

The defendant, gaining in the first suit, and having the demand reduced from $112.50 to $62.50, complains that the Court made an error in estimating the value of the occupation at $37.50 in place of $10, or $5, or nothing. The evidence written extends over 200 folio pages, and the twenty-two witnesses were before the judge, who had the advantage of seeing them, which we have not had. I cannot say that the judgment is wrong. The judge may have judged from the manner and expressions and appearance of the witnesses, of which we can have no record, no photograph, in this Court of Appeal. I dare not take the responsibility of touching this judgment. Here is what is said in Louisiana in similar cases, 2 Martin's Reports, N.S. [55]: "Judgments of inferior courts, on matters of fact, always prevail in this court, unless manifestly erroneous." Idem [56]: "Under these circumstances we are unwilling to deviate from a rule as firmly established as any other in this tribunal, namely, that the judgment of the Court below, on matters of fact, always prevails here, unless manifestly erroneous."

Judgment confirmed, Sicotte, J., *diss.*

Préfontaine & Lafontaine for the plaintiff.

Geoffrion, Lafleur, Rinfret & Dorion for the defendant.

COUR SUPÉRIEURE.

MONTRÉAL, 16 nov. 1885.

Coram MATHIEU, J.

WINTELER v. DAVIDSON.

Substitution de Procureur—Frais.

JUGÉ:—Que sur une demande de substitution de procureurs, la partie requérant la substitution n'est tenue, en vertu de l'article 205 C. P. C., à l'égard de ses avocats qui eux mêmes en avaient remplacé d'autres durant l'instruction de la cause, qu'au paiement des déboursés et honoraires par eux gagnés depuis la date où ils ont commencé à occuper dans la cause, et qu'ils n'ont pas le droit de réclamer en outre le mémoire de frais dû a leurs prédécesseurs malgré qu'il n'apparaisse pas que ces derniers aient été payés.

[Cette question avait été decidée incidemment dans le même sens par la Cour du Banc de la Reine.—*Montrait & Williams*, 24 L. C. J., p. 144.]

CIRCUIT COURT.

MONTREAL, Nov. 17, 1885.

Before CARON, J.

ARCHAMBAULT v. THE GAZETTE PRINTING CO.

Master and servant—Rule requiring vaccination of employee.

The action arose out of the smallpox epidemic. The defendants had issued a notice to their employees requiring them to be vaccinated before a certain mentioned date, offering vaccination free, and stating that any employee who refused to protect himself against the smallpox contagion would be dismissed. Archambault refused to be vaccinated, and he accordingly was dismissed. The action was taken to recover $10, amount of one week's salary as compensation.

CARON, J., in delivering judgment, held that Archambault had no right to refuse vaccination, and that the Gazette Company, in dismissing him, acted properly and with due regard for the health of the other employees.

Action dismissed.

Mercier, Beausoleil & Martineau for the plaintiff.

Busteed & White for the defendants.

COURT OF APPEAL (ENGLAND.)

Nov. 27, 1885.

LORD ESHER, M.R., COTTON, L.J., BOWEN, L.J.

EMMENS v. POTTLE & SON.

Defamation—Publication of Newspaper—Newsvendor—Knowledge of Defamatory Matter—Newspaper of Defamatory Character.

Appeal of the plaintiff from the decision of WILLS, J., entering judgment for the defendants upon the findings of the jury in an action of libel.

The libel complained of appeared in a periodical newspaper called *Money* on February 11 and 18, 1885. The publication relied

upon by the plaintiff was the sale by the defendants, who carried on the business of newsvendors in the city of London, of copies of the newspaper in the ordinary course of the defendants' business.

The jury found first that the defendants did not, nor did either of them, know that the newspapers at the time when they sold them contained libels on the plaintiff; secondly, that it was not by reason of any negligence on the defendants' part that they did not know that there was any libel in the newspapers; and thirdly, that the defendants did not know that the newspaper was of such a character that it was likely to contain libellous matter, nor ought they to have known it. The jury assessed the damages of the plaintiff at one farthing.

Upon these findings the judge directed that judgment should be entered for the defendants, with costs.

Their lordships held that a newsvendor who, in the ordinary course of business, sells a newspaper containing a libel without knowing, and without negligence in not knowing, that there is a libel in it, and without knowing, and without negligence in not knowing, that the newspaper was of such a character as to be likely to contain libellous matter, is not liable in damages as publisher of the libel.

Appeal dismissed.

COUR DE CASSATION (France).

Septembre 1885.

Re CONSTANTIN et al.

Prescriptions particulières—Entrepreneurs.

JUGÉ—*Que les courtes prescriptions mentionnées au Code Civil, articles* 2271-2272, *contre les ouvriers et gens de travail, ne sont pas applicables aux entrepreneurs, quand même le travail qu'ils ont fait ne l'aurait pas été à prix fait ou n'aurait été que des menus ouvrages.*

Ainsi jugé par la Cour de cassation (Chambre des requêtes), sur le moyen unique du pourvoi pris de la violation des art. 7 de la loi du 20 avril 1810, et 2271 et 2272 Code Civil, par les motifs suivants:

"Attendu que le tribunal de Toul déclare pressément que: Constantin frères sont des entrepreneurs auxquels n'est pas applicable pour le prix des travaux par eux effectués, la prescription des articles 2271-2272;

"Attendu qu'il y a là une constatation souveraine en fait, et suffisante en droit pour justifier la décision attaquée;

"Attendu dès lors, qu'aucun des textes susvisés n'a été violé.

"Rejette le pourvoi."

(Rapport de Mtre. Louis Albert).

(J. J. B.)

PRIVILEGE OF THE CROWN.

The case of *Exchange Bank of Canada*, Appellants, and *The Queen*, Respondent (M. L. R., 1 Q. B. 302), was heard before the Judicial Committee of the Privy Council in December. The question is whether the Crown has a privilege over other creditors in respect of a debt due from a company in liquidation. It is an appeal from the decision of the Court of Queen's Bench, Province of Quebec, which reversed a decision of the Superior Court, Province of Quebec.

The counsel for the appellants were Mr. Horace Davey, Q.C., Mr. Macmaster, Q.C., and Mr. N. W. Trenholme; and for the respondents, Sir Farrer Herschell, Q.C., Mr. G. W Burbidge, Mr. L. Ruggles Church, Q.C., and Mr. F. H. Jeune.

The material facts of the case, shortly stated, are as follows:—In September, 1883, the Exchange Bank of Canada was put in liquidation under the provisions of the Act 45 Vic., chap. 23 (Canada), and Alex. Campbell, F. B. Mathews and Thos. Darling were appointed liquidators. On the 15th of March, 1884, the Attorney-General for the Province of Quebec filed with the liquidators, in the name of Her Majesty, a claim against the estate of the bank for $75,000, being the amount of a deposit made with the bank on the 8th of September, 1883, payable with interest at the rate of five per cent. per annum, and demanded that the amount due in principal and interest be paid by privilege out of the assets of the bank. Mr. L. H. Massue, a creditor for $20,000, deposited with the bank on the 7th of February, 1883, and the Merchants Bank, another creditor for $3,050, as holders of unredeemed bills issued by the Exchange Bank, contested the privilege

claimed by Her Majesty to be paid her claim by preference to other creditors out of the assets to be distributed by the liquidators. On the 10th March, 1884, the Attorney-General for the Dominion of Canada filed another claim on behalf of Her Majesty for $237,840, of which $200,000 were for two loans of $100,000 each, made by the Government of Canada to the Exchange Bank, at the rate of five per cent. per annum, and $37,840 were for an ordinary deposit, and he also demanded that this last claim, in principal and interest, be paid by privilege in preference over the other creditors out of the assets of the bank. Mr. L. H. Massue, the Merchants Bank, D. M. Wilmer, C. Wells and other creditors of the Exchange Bank, contested the privilege claimed on behalf of Her Majesty for the payment of this last claim. The liquidators had been made parties to these proceedings but they took no part in the arguments, simply declaring that they would abide by the judgments. The several claims made by the parties were admitted, as well as their origin. The only disputed points were, first, whether the claims of the Crown on behalf of the Dominion of Canada and of the Province of Quebec, and which would absorb a large proportion of the assets of the insolvent Exchange Bank, were to be paid first and in preference to all the ordinary creditors of the bank; and second, whether they were to be paid in preference to the Merchants Bank claim for unredeemed bank bills, which by the Banking Act (43 Vic. chap. 22, section 12, Canada) was declared in case of insolvency to be a first charge on the assets of the bank. The Superior Court held that the Government of the Province of Quebec and the Dominion Government were mere ordinary creditors of the estate. On appeal to the Court of Queen's Bench for Lower Canada, on the 2nd of April, 1885, the judgment of the Superior Court was reversed by a majority of three to one, Chief Justice Dorion dissenting from Justices Monk, Ramsay and Baby.

Mr. Horace Davey, Q.C., on behalf of the appellants, now submitted that the judgment of the Court of Queen's Bench was erroneous and ought to be reversed. In the Court of Queen's Bench, all the judges concurred in the opinion of Mr. Justice Mathieu, "That the privilege of the Crown for its claims over those of private competing creditors was to be governed by the law of Canada and not by the law of England." He should argue that the claim of the respondents was not supported by the provisions of the civil code of Lower Canada, nor the long established jurisprudence of the country, both of which limited the general privilege of the Crown to "claims against persons accountable for its moneys," that the banks were not a "comptable" or person accountable for the Crown's moneys in the contemplation of the laws of France or of Lower Canada; and that in the present instance the Crown had no special privilege to be paid by preference. As to the claim of the Merchants Bank on the unredeemed bills, that was allowed by the court of first instance and no appeal had been made by the Crown on that point. On the main question, it was urged by the respondents that the Crown was entitled under the articles of the code to rank before all contract creditors; and even if this was not so, the Crown by virtue of its prerogative was entitled to be paid in preference and priority to all debts, according to the law of England. Finally, if the English law did not apply, the respondents contended that they had a privilege by the law of France. The contention of the appellants was this: They said that the rights of the Crown were divided, and according to the construction of the code (by which it was submitted the Crown rights were governed) the Crown was entitled to privilege only for debts due from its "comptable." This word "comptable" had a strict technical meaning in the French law, and covered only persons who had received money as agents on behalf of the Crown, and did not include ordinary debts of the Crown upon loan or simple contract, and the technical meaning must, he contended, be assumed to be the meaning in which it was used in the code. On the second point raised by the respondents—the prerogative under English law—the appellants submitted that the rights of the Crown were distinctly defined by the code, and were bound thereby like the rights of any individual. But further than this they urged that quite apart from the code, the Crown had no such right in

Lower Canada as they claimed for. Except as otherwise provided the civil rights of the people of Canada were secured to them as when they became subjects of Great Britain, and the privilege of the Crown over other creditors was one of the minor and not one of the major prerogatives of the Crown, that was to say it was a prerogative to be determined by the law of the place in which the claim was made or in which the debt had arisen. Lastly, he said that by the French Law, which, apart from the code, regulated the rights of the Canadian subjects of Her Majesty, the Crown had no privilege except for debts due from its "comptables." These were the points to which the attention of the Court would be directed. Article 1994 of the Civil Code defined the claims which carried privilege in moveable property, and the only privilege there provided for the Crown was against its comptables, and he submitted that the Crown, being bound by this code, their rights were fully defined by this article and their only privilege was in the case of comptables, which came in the tenth rank after the enumeration of other claims. A considerable part of the Crown claim, as far as that claim was based on the code, rested on Article 611 of the Code of Civil Procedure, which provided that "In the absence of any special privilege, the Crown has a preference over chirographic creditors for sums due to it by the defendant," and on this vague and general statement all claims of the Crown, whatever their nature or origin, were privileged and should be paid in preference to all other creditors. The judges of the Court below were all in his favor upon the question whether antecedent to the code the Crown had such a right as was claimed, they were all agreed that it had not, but a majority of the judges of the Court of Queen's Bench differed from the Chief Justice and Mr. Justice Mathieu in the Court below, and were of opinion that a new substantive right was given to the Crown under Article 611 of the Civil Code. "In the absence of a special privilege the Crown has a preference for sums due to it," was then construed by the Crown and by a majority of the Court of Appeal to mean that under Article 611 the Crown had acquired a new right which it never had before—a new substantive right of privilege over all unsecured creditors for debts due to it by the defendants, whatever the origin or nature of the debt. On the other hand, the Chief Justice and Mr. Justice Mathieu adopted the contention of the present appellants: that this Article 611 was a mere article in the Procedure Code,—and looking to the scope of that code, it could not be assumed that it was thereby intended to give an entirely new right, inconsistent with and going beyond rights which were given by the Civil Code; and this article must be interpreted as giving effect to rights defined in the Civil Code, and not as giving a new right. The Procedure Code provided a mode of giving effect to the right, while the Civil Code gave the right, and the right must be found within the four corners of the code. With regard to the principles by which the Court were to be guided in the construction of this ambiguous Article 611, he asked their lordships to look at the general scope of the whole legislation, and not to read it in its literal meaning, isolated from the position in which it was found, but to read it as part of a consistent and entire code of law which must take its place in that law—to read it as part of an entire code defining civil rights and the mode of enforcing them, and to read it in connection with the place in which it was found and in connection with the previous provisions of the Civil Code. Reading Article 611 of the Procedure Code with Article 1,994 of the Civil Code, and reading the former in its largest and merely literal sense, they had, first, a particular provision as to the claims of the Crown which carried privilege, and side by side with that they had a provision which overrode altogether Article 1,994, and in a more general way gave the Crown a privilege not only against comptables, but against every other person. He ventured to think that the Court would not adopt that construction unless there was no other open, and if there were some other construction which would make the two articles stand together, and which would give full effect to Article 611 in the place in which it was found in this code, the Court would prefer such a construction. He submitted that such a consistent construction was to be found in regarding Article 611 as

giving directions to a sheriff's officer as to the distribution of the proceeds of property sold under execution, in a case where the debtor had become a defendant and judgment had been rendered against him. Article 611 must be read *secundum subjectam materiam* with reference to the place in which it was found in the code, and it must not be assumed that in a code of civil procedure and in a matter relating to the execution of judgments the Legislature intended, by a side wind, to nullify and make nugatory the careful specific provisions contained in Article 1,994 of the Civil Code. But a question was raised by his opponents whether the Crown had not this right paramount, as he understood, to the code, should the code be against them. On this, his first contention was that this privilege of the Crown was determined by the law of France and not by the law of England. It was not one of those major prerogatives which the Crown had in all its dominions, but was one of those minor incident prerogatives of the Crown of which the existence must be determined by the law regulating the civil rights of Her Majesty's subjects in the particular part of her dominions in which it was sought to enforce it. Of course, in cases where there was no peculiar law in question, as in Australia, the rights of the Crown would be determined by the common law of England; but in Canada, where there was a pre-existing law, his submission was that the civil rights of the inhabitants of that country were to be regulated by the law in existence at the date of the passing of the Act of 14 George III.; and therefore it was material to enquire what were the rights of the French Crown, and what preference the French Crown had for debts due to it at the passing of that statute. Now, the difference between the parties, as to the scope of the rights enjoyed by the French Crown, turned principally on the meaning of the word "comptable." The decisions of the courts in France and Canada were all in favor of his view that "comptable" applied only to persons accountable for the revenues of the Crown as agents of the Crown, and were against the view that it included ordinary debtors of the Crown upon loan and simple contract.

Mr. *Macmaster, Q.C.*, followed on the same side.

Sir *Farrer Herschell, Q.C.*, on behalf of the Crown, said he should submit to the Court that, despite recent decisions in the Canadian courts, the Crown had the same prerogatives in Canada as in other parts of its dominions; that if the case was to be governed by the law of France, the rights of the French Crown were not limited in the manner suggested by his opponents, and that "comptables" bore a more extended meaning than that attributed to it by his friends, this bearing to some extent on Article 1,995; and lastly, he would come to Article 611. He thought it right to bring before the notice of the Court a consideration which had recently been raised in the case of the Oriental Bank. The claim here was a claim under a winding up in the insolvency in this bank, and therefore, no doubt, the winding up creditors generally were prevented, by reason of the winding up, from asserting their claims against the property of the bank. But the winding up acts did not mention the Crown, did not affect the Crown, and there was nothing to prevent the Crown from enforcing its full claim against the bank by execution, and that being so the proper course was to pay the claim of the Crown in full under the liquidation. He submitted also that where a portion of the dominions of the Crown had become such by cession after conquest, unless there was anything in the terms of the cession to limit or affect the rights which the Crown would otherwise possess, that possession, as soon as it became part of the dominions of the Crown, became subject to all the prerogatives of the Crown, and the distinction between major and minor prerogatives only existed where the cession had been conditional upon the continuation of certain existing laws which would be inconsistent with those minor prerogatives. With regard to the recital that, except as otherwise provided the civil rights of the inhabitants of Canada were to be governed by the law of France, he submitted that only rights of subjects *inter se* were meant, and that rights between the Crown and subjects were to be governed by the prerogatives of the British and not of the French Crown. His first proposition, there-

fore, was that in the Province of Lower Canada, quite apart from the code and its provisions, the prerogatives of the Crown there existed and had not been taken away. The learned counsel then discussed the next question, whether under the French law the privilege of the Crown applied only to comptables, in the sense of the officers of the Crown, and cited authorities to show that it did not.

The Court adjourned till Saturday.

On Saturday the hearing of the appeal was resumed, and Mr. *Church, Q.C.*, addressed their lordships in support of the claim of the Crown. He pointed out that by the treaty of Paris, by which Canada was ceded to Great Britain, an express renunciation of all his prerogative rights was made by the King of France. This fact, he submitted, put an end to the question whether the law of France would apply, and therefore it remained to be seen whether by the Civil Code of Canada the prerogative of the Crown was affected. Now the object of the code was to conciliate the new subjects of the Crown, and this being so it must have been only for the purpose of enabling them to use among themselves, and for the ordinary affairs of life, the rights so introduced. It did not, as he submitted, affect the relations between the Crown and the subject, but only between subject and subject. In the last contingency—the applicability of the French law—he contended that the prerogative of the French Crown was so extended as to give a right of preference over all debts.

Mr. *Horace Davey, Q.C.*, in reply on behalf of the appellants, said that if their lordships decided that the prerogatives of the Crown were in Lower Canada the same as in all other parts of the British dominions, they would be overruling a long and unbroken course of judicial decisions in Canada, which decisions had now become settled law in that country, and he submitted that their lordships would not do this without the very strongest reasons, which reasons, he ventured to say, had not been shown in the present case. The learned counsel having referred in detail to the arguments put forward on behalf of the Crown and replied upon them at length,

Their lordships reserved judgment.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Jan. 2.

Judicial Abandonments.

Joseph Bergeron, merchant, Saint Hyacinthe, Dec. 26.

Pierre Déry, hotel-keeper, parish of Saint Roch de Québec, Dec. 3.

W. & A. Couture, fishmongers, La Grande Rivière, Gaspé, Dec. 14.

Curators Appointed.

D. H. Rochon, West Farnham,—Kent & Turcotte, Montreal, joint curator, Dec. 23.

Luke J. Erly, hatter & furrier, Montreal.—Chas. H. Walters, Montreal, curator, Dec. 19.

Zephyre E. Martin, trader, Montreal.—F. P. Benjamin, Montreal, curator, Dec. 24.

Pierre Déry, hotel-keeper, parish of Saint Roch de Québec,—Ed. Begin, Quebec, curator, Dec. 26.

Marcel Richard, district of Joliette.—C. Desmarteau, Montreal, curator.

Cadastre deposited.

Parish Saint Guillaume d'Upton, county of Yamaska. Hypothecs to be renewed within two years from Jan. 25, 1886.

Actions en séparation de biens.

Elise Hesse, wife of Joseph Bachand, saddler, Montreal.

Jeanne Mélanie Raynal, wife of Jean Bertrand Sagazan, Montreal.

GENERAL NOTES.

The decision of Mr. Commissioner Kerr that when a creditor asks his debtor to pay him by postal order, and the order is sent but goes astray in the post, there has been a good payment, seems in accordance with the cases. In *Warwick* v. *Noakes*, Peake, 67, it was held that if a debtor is directed by his creditor to remit money by the post, and it is lost, the creditor must bear the loss. To ask a debtor to send a postal order is, of course, to ask him to send the postal order by post. There must, on the other hand, be no negligence in the debtor carrying out the request. The letter must be plainly directed and to the right address.—*Law Journal* (London).

When the *Serapis* last left Bombay the Duchess of Connaught intrusted a favorite cat to a sergeant of the Royal Artillery for conveyance to England. The cat appears to have been in a delicate state of health, whence, I suppose the solicitude of Her Royal Highness on the animal's behalf, and before arrival in England a litter of kittens was born. On reaching Portsmouth the sergeant was allowed to take away the cat, but the authorities of the ship declined to part with the kittens, for which the ship's company had a superstitious regard. Only one cat, they contended, had been embarked, and they had no power to discharge any more. It is stated that a bulky correspondence has already taken place on the subject, and that the difficulty is as far as ever from being settled. In the event of a child being born on board the ship, would the authorities have insisted upon their right to retain it?"—*London Truth.*