The Legal News.

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FEDERAL AND LOCAL JURISDICTION.

A bill to incorporate the Canada Provident Association having been referred to the Supreme Court to report thereon, Justices Strong, Henry, Taschereau and Gwynne concur in the following report:—

"We are of opinion that the Bill intituled: 'An Act to incorporate *The Canada Provident Association*,' referred by the Honorable the Senate for the opinion of the Supreme Court, is not a measure which falls within the class of subjects allotted to Provincial Legislatures, under Section 92 of the British North America Act, 1867."

Chief Justice Ritchie and Mr. Justice Fournier report as follows:—

"We think the Bill intituled: 'An Act to incorporate *The Canada Provident Association*,' having for its objects the carrying on of business and operating throughout the Dominion of Canada, is a measure which does not fall within the class of subjects allotted to the Provincial Legislatures, under Section 92 of the British North America Act, 1867.

"But we are not, in the very short time allowed us for consideration, prepared to say that so much of Section 1 as enables this Company to hold and deal in real estate beyond what may be required for their own use and accommodation, or so much of Section 2 as enacts that, 'such fund or funds shall be exempt from execution for the debt of any member of the Association, and shall not be liable to be seized, taken or appropriated by any legal or equitable process to pay any debt or liability of any member of the Association,' are *intra vires* the Parliament of Canada.

"We think, before a positive opinion is expressed on these clauses, the matter should be argued before the Court."

COUNSEL FEES.

The judgment of the Exchequer Court in *Doutre* v. *Reg.*, was on the 14th instant confirmed by the Supreme Court, the Chief Justice and Mr. Justice Gwynne dissenting. This was a case in which Mr. Doutre, Q. C., sued to recover fees for professional services as counsel before the Fisheries Commission. The Exchequer Court fixed the remuneration at $50 per day for services, besides $20 per day for expenses, making $70 per day, for 240 days over which the engagement extended. See 3 Legal News, p. 297, 4 Legal News, pp. 18, 34.

APPEAL FROM SUPREME COURT.

The Judicial Committee of the Privy Council have granted leave to appeal from the judgment of the Supreme Court in the case of *Dupuy & Ducondu*, which has occasioned so much discussion. Leave to appeal, is granted, of course, on special application, as in the case of *Cushing & Dupuy* (3 L. N., p. 171.)

THE SUPREME COURT BILL.

The bill which proposed to take judges from the lower Courts to sit as judges-in-aid at Ottawa, has been abandoned. The scheme, apparently, did not meet the views of any section of the bar, and would, in fact, only increase the difficulties which it was designed to overcome.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, April 29, 1882.

Before JOHNSON, J.

GEDDES v. DOUDIET, and ROBERTS, *T. S.*

Saisie Arrêt—Seizure of Wages.

Where an employer has contracted with his workman to pay him his wages in advance, a seizure made at 2 p.m. on the day on which the wages are payable under the agreement is inoperative.

PER CURIAM. The plaintiff contests the declaration of the garnishee in this case—who declared that he owed the defendant (plaintiff's debtor) nothing. It appears that the defendant was his servant, and by their agreement, he was to work for his employer only on getting paid in advance. The payment became due the day of the seizure which took place (it is said) at 2 p. m., and the wages were paid at 4 p. m., under a pre-existing agreement to prepay fortnightly. There is no evidence adduced,

and the naked question of law comes up, whether these wages could be seized under the circumstances. By article 558 wages not yet due are not seizable. What is "due"? The meaning of the word is cited from a law dictionary by the contesting party to be that it is due if the day on which it is payable has arrived. But at what time of the day? Could the defendant here have maintained on *that day* an action for his wages? Evidently not. The garnishee had the whole day to pay them. Then it was contended that the exigency of the writ went to oblige the garnishee to declare what he owed, and also what he might owe. The garnishee has declared that fully. He says he owes nothing. He can't get the services of his workman unless he pays him in advance. His agreement with his master was: if you pay me in advance, I will go on working for the next fortnight, but not otherwise. So that the master had no hold on him whatever, and if this seizure were maintained, would be obliged to pay, and could get no service.

Art. 613 merely orders him not to dispossess himself until it is declared whether there is a valid seizure or not. He may or may not have done so. That is his affair; but there is no legal seizure.

Contestation dismissed.

Hatton & Nicolls, for plaintiff contesting.
Trenholme & Taylor, for garnishee.

SUPERIOR COURT.

MONTREAL, May 9, 1882.

Before TORRANCE, J.

THE CORPORATION OF THE VILLAGE OF HOCHELAGA, v. HOGAN et al.

Municipal Taxes—Prescription—Interruption.

The demand was for assessments due on real estate for the year 1875, amounting to $780.

The defendants pleaded prescription of three years under the Municipal Code, art. 950.

The evidence showed that a triennial evaluation roll was made in 1875, in virtue of which the land of defendants, situate within the municipality, was taxed to the amount of $780.15. On the 1st October, 1875, the taxes were payable and were not paid. There were new taxes for 1876, and 1877, which were not paid, and in January, 1878, in order to avoid the prescription which would be acquired for the taxes of 1875, the land was seized and offered for sale under the provisions of the Municipal Code. The arrears of taxes then claimed from the defendants amounted to the sum of $5,205.51, and this was the amount of the seizure. The seizure and sale were stopped by a writ of prohibition taken out by the defendants and others. The petition for the prohibition complained of the roll of evaluation for the year 1876 as illegal. The first judgment rendered in the Superior Court on the 9th July, 1879, was against the petitioners. They appealed to the Court of Queen's Bench, and were successful there by judgment of date 22nd June, 1880, and this judgment was confirmed by the Supreme Court on the 10th June, 1881. By this judgment, the roll made in 1876, on which the assessments of 1876 and 1877 were based, was declared null, inasmuch as a triennial roll had been made in 1875, and the seizure effected in order to collect these assessments was prohibited.

PER CURIAM. The pretension of the plaintiffs is that the seizure of January, 1878, which comprehended the taxes of 1875, interrupted the prescription for these taxes. On the other hand, the defendants do not say that the seizure was only for the taxes of 1876 and 1877. But it is plain that the prohibition only affected the roll of 1876, and not the roll of 1875, which was the basis of the assessment of 1875, now in question. There was nothing to prevent the seizure and sale for the taxes of 1875. There was nothing in the writ of prohibition to prevent the legal proceedings for the recovery of the taxes of 1875. The prescription, therefore, ran against these taxes, the prohibition notwithstanding. Prescription maintained.

Action dismissed.

Mousseau, Archambault & Monk for plaintiff.
Church, Chapleau, Hall & Atwater for defendants.

SUPERIOR COURT.

MONTREAL, March 11 and April 15, 1882.

THE ONTARIO BANK v. MITCHELL, es qualité.

Evidence—Witness—Executor.

Held (by RAINVILLE, J.) *that in an action against executors of a will, one of the executors who is a legatee under such will, and also individually sued, is a party to the suit, and cannot be examined on behalf of the estate of which he is an executor in a separate defence by it.*

Held (by JETTE, J., and TORRANCE, J.,) *that such executor having renounced as such legatee, but being a defendant individually, and liable solidairement as having endorsed the note sued upon, is still incompetent as a witness for the estate, although he has pleaded separately.*

The Bank instituted an action against Robert Mitchell and two others in their quality of executors of the last will and testament of the late Dame Eliza L. Ross, in her lifetime the wife separated as to property of the said Robert Mitchell; and also against Robert Mitchell personally, to recover the amount of a promissory note signed by the late Mrs. Mitchell, and endorsed by said Robert Mitchell. The defendants pleaded separately.

The executors pleaded in effect (1) that Mrs. Mitchell made the note to the knowledge of the Bank for the securing of her husband's debts, and to obligate herself therefor, in violation of Art. 1301 C.C., and (2) that the note was given without consideration.

Robert Mitchell pleaded in effect (1) that no consideration was ever given him or his wife for the note, and (2) that long before the institution of the action he had satisfied all claims against him by the Bank, and that in fact the Bank was indebted to him.

At *enquête* the defendant's counsel produced Mr. Robert Mitchell as a witness on behalf of the defendants *es qualité*.

Mr. Mitchell being examined on the *voir dire*, admitted that he was a usufructuary legatee under his wife's will, a copy of which was filed, and that he was a defendant individually as endorser of the note sued on.

Tait, Q.C., for the Bank, objected to the examination of the witness upon the grounds (1) that the witness was a party to the suit, and personally interested as such legatee and as such endorser, and (2) that although Mrs. Mitchell was dead, yet the rule of law which would have rendered the witness incompetent as a witness for his wife had she been living, also rendered him incompetent as a witness on behalf of her estate concerning matters which occurred before her death. He cited *Fair & Cassils*, 2 Q. B. R. 3, and cases there mentioned.

Trenholme, for defendants *es qualité*, contended that after death of wife a husband could be examined respecting his wife's estate in such cases as the present, and that a person is a perfectly good witness for himself *es qualité*, and that Mitchell was not excluded on the ground of interest.

The Honorable Judge Rainville, who presided at *Enquête* sittings, maintained the objection upon the ground that, as legatee under his wife's will, Mr. Mitchell was a party to the suit as a defendant on the issue between plaintiffs and the executors, and that he was incompetent as a witness for the estate.

Mr. Mitchell thereupon renounced as legatee, and was brought up again as a witness. His examination was again objected to upon the ground that he must still be considered a party to the suit, being sued individually as endorser.

The plaintiff's counsel contended that the effect of Mitchell's evidence might be to destroy plaintiff's action against the defendants *es qualités*, and he would have the benefit of the judgment dismissing plaintiff's action against them, as it would be *chose jugée* in his favor.

The defendant's counsel argued that under our law a defendant could be a witness for his co-defendant if he pleaded separately, as in this case, and that Mr. Mitchell having now renounced as legatee, was a competent witness in the issue between plaintiffs and defendants *es qualités*, and that a judgment might be rendered dismissing the action against defendants *es qualités*, but condemning the witness, as for instance if witness should establish that the note was given by his wife for his debt, he would still be liable as endorser, though the action against other defendants would fail.

The Court (Jetté, J.) took the objection under advisement, and subsequently, on the 11th March, 1882, maintained it. The honorable Judge referred in his remarks to the case of *McLeod & The Eastern Townships Bank.* (Q. B.) 2 L. N. 239.

The following are the motives of the judgment:—

"Considérant en principe que toute personne qui pourrait invoquer le jugement rendu dans une cause comme chose jugée en sa faveur, doit y être considérée comme partie;

"Considérant en outre que dans l'espèce le témoin est nominalement partie dans la cause, et qu'une partie ne peut être examinée que par sa partie adverse et non par son co-défen-

deur, lorsque le témoin est tenu solidairement avec lui au paiement de la dette réclamée ;

"Considérant enfin que par la contestation soulevée par les défenses il est établi que le billet invoqué a été donné sans considération, et que le jugement rendu sur telle contestation, aurait pour effet d'opérer la libération complète du témoin, et pourrait être par lui invoqué comme chose jugée en sa faveur ;

"Maintient l'objection de la demanderesse."

On the 13th March last, the defendants *ès-qualités* moved the Superior Court to revise this judgment.

Trenholme cited in support of motion :—*David* v. *McDonald*, 11 L. C. R. 116 ; *Borthwick & Bryant*, 5 R. L. 449 ; *Close* v. *Dixon*, 4 R. L. 141 ; 3 & 4 Will. 4, c. 42. Best, p. 202, S. 145, pp. 204 & 205 ; 6 & 7 Vict., chap. 85. *Brodie* v. *Ætna Life Ins. Co.*, 20 L. C. J., 206-7 ; C. C., Arts. 2340, 2342 & 1231 ; C. S. L. C., ch. 82, sec. 15. 23 Vict., ch. 57, sec. 49.

Tait, Q. C., cited C. C., Art. 2341. *McLeod* v. *E. T. Bank*, 2 L.N., p. 239 ; 6 & 7 Vic. (Imperial), ch. 85. See Best on Evidence (6th edit.), pp. 206, 240.

On the 15th April, 1882, the Superior Court (Torrance, J.) rendered judgment dismissing the defendants' motion with costs.

Abbott, Tait & Abbotts for plaintiff.
Trenholme & Taylor for defendants.

CIRCUIT COURT.

SHERBROOKE, May 13, 1882.

Before DOHERTY, J.

LANGLOIS et al. *v.* ROCQUE.

Lease—Saisie-Gagerie for damages.

Held, that in an action of ejectment, under the Lessors and Lessees Act, the landlord claiming damages only for the non-delivery of the leased premises at the expiration of the lease, may join with his action a saisie-gagerie and seize the meubles meublants of the lessee to secure the payment of damages to be awarded; and that such damages result from the lease or from the relation of lessor and lessee.

Action by landlords for ejectment against the lessee, and for damages alleged to have been caused to them in consequence of the latter not having delivered the premises at the expiration of the lease. The lease expired, according to plaintiffs' pretensions, on the 30th of April. The action was instituted on the 4th of May by a writ of attachment under which the furniture of the defendant was seized. The plaintiffs did not claim any rent, but merely damages for non-delivery of the premises. The lease was a verbal one.

The defendant met the action by an exception *à la forme*, in which he took the ground that, as there was no rent claimed by the plaintiffs, his property could not be seized merely for prospective damages.

The plaintiffs demurred upon the ground that the exception failed to disclose any ground fatal to the action.

Belanger, for defendant, cited art. 1624 of the Civil Code, which gives the lessor the right of action in three different cases, the last being, "3. To recover damages for violation of the obligations arising from the lease or from the relation of lessor and lessee." By the last par. of this article, the lessor "has also a right to join with any action for the purposes specified, *a demand for rent*, with or without attachment." He argued that, by art. 1619, "the lessor has, for the *payment of his rent and other obligations of the lease*, a privileged right upon the moveable effects which are found upon the property leased," and that this privileged right only extends to the payment of the rent and to the fulfilment of the obligations of the lease. The lease having expired, the right of action does not arise from it, but simply from the fact that the lessee refuses to quit. This has nothing to do with the lease and is not one of the obligations of the lease. The obligations of the lessee are, under art. 1626, "1st. To use the thing leased as a prudent administrator, for the purposes only for which it is designed and according to the terms and intention of the lease ; 2. To pay the rent or hire of the thing leased." Here, the right of action is derived from par. 2, art. 1624, "To recover possession . . . where the lessee continues in possession, against the will of the lessor, more than three days after the expiration of the lease." The damages claimed do not result from the "violation of the obligations arising from the lease or from the relation of lessor and lessee," which have ceased to exist, but merely from illegal detention of the premises after the lease has expired.

Panneton, for plaintiffs, relied on article 1619 of the Code, giving the lessor a privileged right

upon his effects "for the payment of his rent and other obligations of the lease." He also cited art. 1623, which says that, "In the exercise of the privileged right the lessor may "seize the things which are subject to it, upon the premises, etc." He argued that the delivery of the premises leased is one of the "obligations arising from the lease, or from the relation of lessor and lessee."

The COURT admitted that the point was new and does not seem to have been raised before. The question is not without some difficulty, as a good deal may be said on both sides. His Honor had first strongly leaned in favor of defendant's pretensions, upon the ground that the *saisie-gagerie* could not apply in a case of this kind. But, taking arts. 1619 and 1623 together, it would seem that the landlord, in the exercise of his privileged right, may seize his tenant's effects even for damages arising from his holding more than three days after the expiration of the lease. This is a violation of one of the obligations arising from the lease, or from the relation of lessor and lessee.

Exception dismissed.

Hall, White & Panneton for plaintiffs.
Belanger & Vanasse for defendant.

THE EARLY JURIDICAL HISTORY OF FRANCE.

[Continued from p. 148.]

To the several Royal Courts, when established, the people were invited to have recourse for redress, by every means which policy could devise. The Monarchs named judges of abilities and legal acquirements—they added dignity to their character, and splendor to the administration of their office. To the Parliaments, which were the most respectable, and to the presidial Courts, which were established for their assistance, they granted the right of deciding, ultimately, in Appeal; and to the Baillis, whose judgments thus became liable to reversion, an original Jurisdiction which, before, they did not possess.(1) They appointed a number of Counsellors or Members in each Parliament to assist the President,(2) and, in imitation of the Seigneurial Courts and those of the Dukes and Counts, in which the suitors had been accustomed to the trial by peers, they required the Baillis to summon to their assistance, a certain number of discreet persons (*prodes homines,*) and to decide according to their counsel and advice.(1) The people also were permitted, in the dialect of the times, "*de veignir à la Cort du Roi, par ressort, par appel, ou par defaute de Droit, ou par faux jugement, ou par recréance nie, ou par Grief, ou par veer le droit de sa Cort,*"(2) and, under the sanction of this authority, the Royal Judges took advantage of every defect in the rights of the Seigneurs, and of every error in their proceedings, they brought before them, in their respective Jurisdictions, all causes which it was possible for them to remove, and held cognizance over all which it was possible for them to retain; at the same time, they laboured to render the practice of their Courts regular, and their judgments consistent, by which means they ultimately obtained the confidence of the people, and were generally respected. Suitors then began to abandon the Seigneurial Courts (in which the will of the feudal Lord was, but too frequently, the Law by which the case of his vassal was decided,) and took refuge in the more discerning and more equitable Tribunals of the Crown.(3) The King was again universally recognized to be the source of Justice, and the Seigneurs were deprived of every Jurisdiction to which they could not shew title, derived by grant from the Crown.(4)

The ecclesiastics who, in the reign of Charlemagne, were altogether subject to the temporal power,(5) had, in common with the Seigneurs, taken advantage of the disorders which prevailed, and of the superstition of the age, not only to enlarge their own peculiar Jurisdictions, but to shake off, entirely, their subjection to all authority, except that of the Church. They had, in fact, so multiplied their pretexts for extending the jurisdiction of the Spiritual Courts, that it was, ultimately, in their power to withdraw almost every person, and every cause, from the cognizance of the Civil Magistrate.(6) They claimed and exer-

(1) Dict. de Droit, verbo Baillis.
(2) Répert. verbo "Parlement," vol. 44, p. 294.

(1) Montesquieu, Lib. 27, cap. 42, vol. 2, p. 320.
(2) Etablissemens de St. Louis, cap. 15, lib. 2. Ordonnances des Rois de France, de l'Imprimerie Royale, Tom. 1, p. 107, Dict. de Jurisp. vol. 3. p. 21.
(3) Robertson's Charles V., vol. 1, p. 309.
(4) Bacquet's Droit de Justice, vol. 1, pp. 9, 10.
(5) Loyseau des Seigneuries, chap. 15, sec. 29 to 39.
(6) Robertson's Charles V. vol. 1, p. 112, Fleury's Instit. du Droit Canon, vol. 2, p. 8. Hericourt, part 1, p. 120.

cised as their exclusive privilege the right of deciding all civil causes, in which any of their body was a party, or was in any manner interested, and all criminal prosecutions, in which the defendant either was, or asserted himself to be, a clerk; in causes where none but laymen were concerned, they claimed and exercised a similar privilege for various extraordinary reasons—in matters of contract, because contracts were then usually enforced by the oath of the parties—in all testamentary cases, because the deceased having left his body to the Church for sepulture, the execution of his Will, by the Church, was a necessary consequence, inasmuch as it concerned the repose of his soul(1)—in all matrimonial cases, because marriage was a Sacrament—and in all cases in which a widow or an orphan was a party, because it was the duty of the Church to protect such characters. In other cases the same privilege was claimed for reasons which were not less extraordinary. If an individual resisted their authority he was excommunicated, and upon his submission a pecuniary fine was imposed for reconciliation with the Church, which the temporal Judge, in whose Jurisdiction he resided, was required to enforce by his authority, under pain of personal excommunication, and the interdiction of the whole District over which he presided, in case of disobedience.(2)

The first attempt, by the King's Courts, to reduce the exorbitant pretensions of the Clergy, was the appeal "*de Deni de Justice*,"(3) which was similar to the appeal "*de Défaut de Droit.*" This was daily extended, by construction, to a great variety of cases, and was followed by the "*Appel comme d'abus*," which, in the nature of a prohibition, suspended all proceedings, and was allowed, at any stage of a cause (4), to all who complained that the Judge of the Spiritual Court had exceeded his authority by any proceedings, contrary to the canons of the Church, *recognized in France*, or to the law of the land in any respect (5). This remedy was in practice long before the year 1539, but in that year it was formally declared to be the law of France, by an ordinance of Francis the First, "*pour la réformation et abréviation des procès*" (1). By this ordinance the Ecclesiastical Judges were also forbid to cite before them any of the King's lay subjects, in any matter whatever, except those that were strictly spiritual, and the King's lay subjects were forbid to institute any suit of a temporal nature before any Court of ecclesiastical jurisdiction (2).

Thus the Crown of France, by persevering in one great plan, with indefatigable exertion and continued prudence, suspending its attempt when the conduct of the clergy or any formidable conspiracy of the greater seigneurs required it, and resuming them when they were feeble or remiss, became once more the Fountain of Justice. That part of its original jurisdiction, over causes and persons, which the clergy and the seigneurs had usurped, was regained, and the entire proceedings of the Seigneurial and Ecclesiastical Judges, in all causes, civil and criminal, spiritual and temporal, which were legally subject to their inquiry, were brought before the review and control of the Sovereign, through the medium of his Courts.

Upon the re-establishment of the royal authority, the local customs of France were so numerous and so various that there were not two seigneuries throughout the whole kingdom entirely governed by the same law (3). Some of the causes of this amazing diversity have been traced in the different usages of the Barbarians, which were introduced by the original conquest of Gaul—in that peculiar principle of their jurisprudence, which permitted each individual to make choice of the law by which he thought proper to be governed, and the consequent existence, not only of the customs of each particular tribe, but of the Theodosian Code especially among the clergy—in the introduction of the feudal system, and the distinctions which it created between feudal and allodial property—in judicial combats, which were necessarily introductive of new usages created by their several and various issues—in the usurpations of the Seigneurs, the means which they severally adopted to support them, and the independent administration of justice within

(1) Loyseau, des Seigneuries.
(2) Fleury's Instit. du Droit Canon, vol. 2, pp. 9 & 10.
(3) Dict. de Jurisprudence, vol. 1, p. 292.
(4) L. C. Denizart's Preliminary Discourse to Vol. 1, p. 73.
(5) Fleury's Instit. du Droit Canon, Vol. 2, p. 12.

(1) Dict. de Jurisp., Vol. 1, p. 279; Traité de l'Abus, vol. 1, cap. 2, p. 11, Ed. of 1778.
(2) Ordonnances de Neron, Vol. 1 p. 162, Loyseau des Seigneuries, cap. 15, sec. 75, 76 and 77.
(3) Montesquieu, Lib. 28, cap. 45.

the limits of their respective jurisdictions—in the ordinances enacted by the Sovereign for the government of the royal domaine; in the establishment of communes and their by-laws; —and in the compilation of the Canon law, and its general application to all questions decided by ecclesiastics. But to these causes must be added the discovery of the Justinian Code, which was brought from Italy into France about the middle of the twelfth century (1), and soon affected her jurisprudence in various gradations. In some of the provinces it was entirely adopted and confirmed, and declared, by the royal authority, to be exclusively their common or municipal law. In others it was received as subsidiary to their own local customs as a rule of decision in cases for which they had not provided; but in the greater number it mingled imperceptibly with their usages, and had a powerful though less sensible influence.

To the revival of the Roman law must also be attributed the decline of the trial by Peers and by the *prodes homines*. The duties of both were originally similar, and required neither capacity nor study. They decided upon the usage and custom of the people and place to which they belonged, and a knowledge of these was all which it was necessary for them to possess. But when the Institutes and Digest of Justinian were translated and publicly taught, the proceedings in the different tribunals were materially changed. Learning among the laity was totally unknown, but the clergy having some information, and being in possession of all the offices in the different Courts, eagerly adopted the practice of the Roman law. A new form of trial was thus introduced, which was no longer an exhibition of state, graceful to the Seigneur and interesting to a warlike people, but a dry course of pleading which they neither understood nor cared to learn, and upon which the Judge was soon left to give judgment alone, for the Peers and the "*prodes homines*," being no longer capable of deciding, withdrew by degrees, and were succeeded by lawyers, who were appointed to assist the Judges with their advice, under the title of *assessors* (2).

(1) Montesquieu, Lib. 28, cap. 42; Robertson's Charles V., vol. 1, p. 316.
(2) Montesquieu, Book 28, cap. 42, Vol. 2, p. 319 and 320.

The Royal Judges, upon their re-establishment, were greatly embarrassed by the different local customs to which, in the administration of justice, they were compelled to have recourse, and upon which, by the secession of the Peers and *prodes homines*, they found themselves obliged to decide in person. It was impossible for them to have a knowledge of the usages in each particular Seigneurie, and, therefore, in all cases in which any question arose respecting the existence of a custom, or of the practice which had obtained under a particular custom, there was an absolute necessity for a recourse to parole testimony, by which means all questions of law became mere questions of fact, in which he who held the affirmative was required to prove what he asserted, by the production of ten witnesses at least (1).

In such an inquiry, which was called an *enquête per turbes*, so much depended upon the influence and industry of the suitors, and upon the experience and integrity of the witnesses, that it was at all times difficult to come to the truth, especially when evidence was adduced by both parties; in such cases equal proof was sometimes made of two customs, in direct opposition to each other, in the same place, and upon the same fact (2).

The reduction of the whole to writing was pointed out, in reference to the Roman law, as an effectual remedy for these evils, and was adopted. At first the usages of certain Bailiwicks were collected by individuals. Pierre Desfontaines (the earliest writer on the law of France) published his "*Conseil*," which contains an account of the customs of the country of Vermandois and Beaumanoir, the "*Coustumes de Beauvoisis*," during the reign of St. Louis, which began in the year 1226 (3). These works were followed by others of the same description (4), and by one of a public nature, "*Les Etablissemens de St. Louis*," which contained a large collection of the law and customs which prevailed within the Royal Domaines, and was published by the authority of that monarch (5).

The compilations of individuals could have

(1) Fleury's Hist. du Droit Francais, p. 85; Ferriere's Gd. Com., Vol. 1, p. 5, sec. 2, art. 1.
(2) Fleury's Hist. du Droit Francais, p. 85.
(3) Robertson's Charles V., vol. 1, p. 317.
(4) Montesquien, Lib. 28, ch. 45, vol. 2, p. 324.
(5) Dict. de Jurisp., vol. 3.

no weight in the King's Courts, except what they derived from the truth and notoriety of the subjects upon which they wrote; yet it cannot be doubted that they contributed greatly to those redactions of the customs which were afterwards made under the sanction of the Sovereign. In 1302, Phillip IV. directed the most intelligent inhabitants of each bailiwick to be assembled for the purpose of informing his Courts of the customs which had been observed in their respective jurisdictions, and required his Judges to register and observe those which should be worthy of approbation, and to reject all which should be found unreasonable, and this command was carried into execution in several parts of the kingdom (1).

[To be continued.]

RECENT DECISIONS AT QUEBEC.

Security for Costs—Opposant.—Jugé:—1. Que l'opposant résidant hors de la province, qui demande la distraction de la chose saisie, doit le cautionnement *judicatum solvi*; 2. Que ceux résidant hors de la province de plusieurs opposants à la saisie d'une chose leur appartenant en commun sont seuls tenus de fournir ce cautionnement; 3. Qu'un délai de huit jours pour fournir le cautionnement est insuffisant pour l'opposant qui n'a qu'un court espace de temps pour produire son opposition; 4. Que le défaut de donner caution, par ceux des opposants qui y ont été condamnés, ne permet pas le renvoi de l'opposition quant aux autres.—*Miller et al* v. *Déchène*, (C. R.) 8 Q. L. R. 18.

Bail.—The Court will refuse to bail a person charged with a serious crime, such as stealing a money letter from the Post Office, when the evidence in support of the charge is positive and direct.—*Ex parte Huot*, 8 Q. L. R. 28.

Intervention—Contestation.—Nonobstant l'article 158 du C.P.C., une partie peut contester une intervention après les huit jours qui suivent sa signification, s'il ne lui a pas été fait de demande de plaidoyer, et si aucun acte de forclusion n'a été accordé par le protonotaire.—*Derome dit Decarreau* v. *Robitaille et al.*, (Q.B.) 8 Q.L.R. 60.

Telegraph Company—Condition.—The condition on the form of a telegraph company, declaring that the company is not liable for mistakes in the transmission, and even for non-delivery of a message, if not repeated, is a reasonable one, and having been signed by the sender of the message, he is bound by the conditions therein stipulated. Telegraph companies are not subject to the same rules as common carriers, and C.C. 1676 does not apply.—*Clarence Gold Mining Co.* v. *Montreal Telegraph Co.*, C. C. (Caron, J.) 8 Q.L.R. 94.

(1) Denizart, Vol. 1, p. 575, 9th edit.

GENERAL NOTES.

The difficulties which obstruct the administration of justice in Ireland are painfully illustrated by the statement that during the first quarter of the year there were six murders in that country, and not a single conviction; 1,417 outrages were committed, for which only 51 persons were apprehended and only 21 convicted.

A singular feature of sentences of imprisonment in Austria is the introduction of a fast day once a month. Director Jauner, convicted of negligence in connection with the Ring Theatre fire, is to observe a fast day once in each of the four months of imprisonment, and two other persons, sentenced to four and eight months respectively, are to be subjected to the like treatment.

The London *Law Times*, in commenting upon the influence of the English Bar, says: A contemporary notices the fact that the voice of the Bar has not been heard respecting the pending rules which threaten, among other things, practically to abolish trial by jury in civil cases. It is remarked that the Bar has no organization to protect its interests. We should have thought it was recognized by this time that the Bar has no interests worth protecting; and if it had, no organization could have any effect when a revolutionary Parliament is backed up by a unanimous judicature.

On the 15th instant, in the House of Commons, the bill to amend "The Seamen's Act, 1873," was read a third time. Hon. Mr. Blake moved an amendment "that the said bill be recommitted to a Committee of the Whole, with instructions that they have power to amend the same so as to provide for a trial by jury of any person liable to be sentenced under the said bill to from two to five years' imprisonment in the Penitentiary." This amendment was intended to meet, in part, the objections to the Act stated by Chief-Justice Dorion and Mr. Justice Ramsay in their dissent in the case of *Clarke & Chauveau* (*ante*, pp. 71, 85). The amendment was negatived, however, by 87 to 28.

Gibson, C. J., says, in Pennock's Appeal, 14 Penn. State, 450 (A. D. 1850):—"It is wonderful how slowly the most obvious truths are perceived and admitted The plain and simple morality of the gospel required a revelation. Even in my day at the bar, it was the constant practice of the Orphan's Courts to allow a charge, in administration accounts, for the price of strong drink furnished avowedly to stimulate the bidders at the sale of the decedent's effects".