The Legal News.

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BREACH OF PROMISE.

The £10,000 sterling allowed to the plaintiff in the action against Lord Garmoyle (*Finney* v. *Cairns*, otherwise *Garmoyle*) is said to be probably the largest amount of damages ever recorded in England in an action for breach of promise of marriage. The *Law Journal* says:—"The nearest approach to it is £3,500, given in 1835 to a solicitor's daughter for the loss of the alliance of a solicitor who had inherited a considerable fortune from his father (*Wood* v. *Hurd*, 2 Bing. N. C. 166). In 1866 the sum of £2,500 was awarded to a milliner's daughter as compensation for losing a husband in the shape of a young gentleman with £700 a year (*Berry* v. *Da Costa*, 35 Law J. Rep. C. P. 191), but there were circumstances in the case tending to make the damages exemplary. In former times apparently it was more common for disappointed husbands to bring actions than now, and in the reign of William and Mary £400 was awarded for the loss of a lady worth £6,000 (*Harrison* v. *Cage*, Carth. 467)—the largest sum, we believe, awarded by unsympathetic jurymen to a male plaintiff. No doubt as large, and perhaps larger, sums than the present have been paid out of court, but we now have an assessment, agreed upon by all concerned and sanctioned by a jury, of a countess's coronet at £10,000."

PRIVILEGE OF THE CROWN.

In *Exchange Bank* and *The Queen*, claimant, Mr. Justice Mathieu has held that the Crown has no preference for its deposits or advances over other depositors in the distribution of the assets of a bank in liquidation. The claim of the Crown appeared to be supported by Art. 611 of the Code of Procedure, which states that "in the absence of any special privilege, "the Crown has a preference over chirogra- "phic creditors, for sums due to it by the de- "fendant." The learned judge inclines to the opinion, however, that this article, which was inserted in the code at the last moment, does not affect the old law, which restricted the privilege of the Crown to claims against *comptables*, or persons accountable for Crown dues. See also *Campbell* v. *Judah*, 7 L. N. 147. A correspondent has favored us with a reference to an English case not yet reported in any of the law journals, but mentioned in the *Illustrated London News*, of November 15, 1884. In this case it was held in Chancery, in the liquidation of the Oriental Bank, that the colonies of Mauritius, Victoria, &c., possessed the Crown privilege, so that their monies in the bank when it suspended must be paid to them, by the liquidators, out of the assets, by privilege.

MISCONDUCT OF JURY.

A case decided recently by the Supreme Court of California (*People* v. *Lyle*, 4 West Coast Reporter, 348), shows that trifling irregularities will not be permitted to affect a verdict. The Court held that jurors are presumed to do their duty in accordance with the oath they have taken, and that presumption is not overcome by proof of the mere fact that, during a trial which lasted over thirty days, two or three of the jurors, after the adjournment of the court for the day, drank a few glasses of liquor at the expense of the district attorney; that one of them partook of a dinner at the house of the same officer, under circumstances which rendered the act of invitation necessary, and of a supper at the hotel of his associate counsel under like circumstances. Such acts, it was remarked, however improper or indiscreet, could not, in themselves, have affected the impartiality of any one of the jurors, or disqualified him from exercising his powers of reason and judgment; and they will not warrant a court in setting aside a verdict of conviction. To warrant setting aside a verdict, and granting a new trial for irregularities and misconduct of a jury, it must be either shown as a fact, or presumed as a conclusion of law, that injury resulted from such misconduct. When it is clear that the party against whom the verdict has been found was not injured by the misconduct, the verdict will not be disturbed.

THE LAW REPORTS FOR JANUARY.

The first instalments of the new system of reports in connection with the *Legal News* are now issued, and comprise 96 pages, viz., 48 of the Queen's Bench series, and 48 of the Superior Court series. The number of pages contained in the monthly parts, it may be observed, will probably be somewhat above the average during the winter months, and under the average during the long vacation, when the difficulties of securing revision of proofs by the judges are greater. The January issues being sent by the publishers to all the present subscribers of the *Legal News*, it is unnecessary to refer specially to the contents. The February issues are in an advanced stage of preparation, and it is the intention of the publishers to place the monthly parts in the hands of subscribers promptly and regularly.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1884.

Before DORION, C.J., MONK, RAMSAY, TESSIER and CROSS, JJ.

SIPLING (plff. below), Appellant, and THE SPARHAM FIREPROOF ROOFING CO. (deft. below), Respondent.*

Qui tam action—27 & 28 Vict., cap. 43—Affidavit.

Held, that in the affidavit required by 27 & 28 Vict., cap. 43, the cause of action must be indicated sufficiently to identify the action sworn to with that actually prosecuted as specified in the declaration.

Judgment confirmed.

Archibald & McCormick for Appellant.

Robertson, Ritchie & Fleet for Respondent.

J. R. Gibb, counsel.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1884.

Before DORION, C.J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

REED (plff. below), Appellant, and THE SPARHAM FIREPROOF ROOFING CO. (deft. below), Respondent.*

Qui tam action—27 & 28 Vict., cap. 43—Affidavit.

Held, that a reference in the affidavit required by 27 & 28 Vict., cap. 43, to the action mentioned in the præcipe "herewith filed," is not a sufficient identification of the action sworn to with that actually prosecuted as specified in the declaration.

Judgment confirmed.

Archibald & McCormick for Appellant.

Robertson, Ritchie & Fleet for Respondent.

J. R. Gibb, counsel.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 24, 1884.

Before DORION, C.J., MONK, RAMSAY, TESSIER and BABY, JJ.

LA CORPORATION DU VILLAGE DU BASSIN DE CHAMBLY (deft. below), Appellant, and SCHEFFER (plff. below), Respondent.*

Municipal Law—Collection Roll—M. C. 955.

Held, 1. That the formalities prescribed by the Municipal Code with reference to a collection roll must be strictly followed, as in the case of an *acte de répartition* annexed to a *procès-verbal*, and where such formalities have not been observed the taxes thereby imposed are not exigible, and a sale of land for arrears of such pretended taxes will be annulled.

2. Where the taxes are illegal, in consequence of there being no valid assessment roll in existence, acquiescence will not give validity to such assessment.

Judgment confirmed.

Lacoste, Globensky, Bisaillon & Brosseau for Appellant.

Prefontaine & Lafontaine for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, March 27, 1884.

Before DORION, C.J., MONK, RAMSAY, CROSS and BABY, JJ.

THE EXCHANGE BANK OF CANADA v. CRAIG et ux.*

Procedure—Inscription for Enquête.

Held, that it is not competent to any party in a cause to inscribe for the adduction of

* To appear in the Montreal Law Reports, 1 Q. B.

* To appear in the Montreal Law Reports, 1 Q.B.

evidence at length, without the consent of all the parties.

Semble, that any party may insist upon proceeding at *enquête* and merits at the same time.

Macmaster, Hutchinson & Weir for plaintiff.
L. H. Davidson for defendant.

COUR SUPÉRIEURE.

ST. JEAN (Dist. d'Iberville), 19 nov. 1884.

Coram CHAGNON, J.

BOURGEOIS v. PIÉDALUE, et BOUCHER et al., opposants, et THE GRAND TRUNK RAILWAY COMPANY et al., créanciers colloqués, et BOUCHER et al., contestants.

Cession de biens—C.P.C. 799.

JUGÉ : 1o. *Que la cession de biens, autorisée par l'article* 799 *du Code de Procédure, peut être faite à des tiers non-intéressés, pour le bénéfice et dans l'intérêt commun des créanciers.*

2o. *Que les devoirs des fidéi-commissaires en rapport avec telle cession, consistaient à conserver et administrer les biens cédés, dans l'intérêt général des créanciers.*

3o. *Que, comme partie de ces devoirs relatifs à la conservation et administration des biens cédés, les fidéi-commissaires ainsi nommés pouvaient et devaient faire connaître aux créanciers de l'insolvable, le fait de l'existence de la dite cession, inventorier les biens ainsi cédés, appeler les créanciers à se faire connaître eux-mêmes, en produisant entre leurs mains leurs réclamations, aux fins de constater les forces de la succession, et convoquer les créanciers en assemblée dans la vue de leur soumettre l'état des affaires de l'insolvable, et de se faire aviser par eux et à propos de telle administration.*

4o. *Que l'exercice de ces devoirs de la part des dits fidéi-commissaires, constituait une sage administration des biens cédés, dans l'intérêt commun des créanciers.*

5o. *Que, quoique les dits fidéi-commissaires n'aient pas pu dans l'espèce, liquider eux-mêmes les biens cédés, tant à raison du défaut d'un concours unanime des créanciers pour cette fin, que de l'état actuel de la législation concernant la liquidation des biens des débiteurs insolvables, ils n'en avaient pas moins, en vertu des principes généraux de droit, un privilége sur le produit de la vente faite par autorité de justice, des biens cédés, et ce par préférence aux créanciers tout au moins chirographaires de l'insolvable, pour les avances et déboursés par eux faits dans l'exercice de leur fidéi-commis, et aussi pour leur indemnité personnelle attachée à la conservation, administration et gérance qu'ils ont eues des biens cédés dans l'intérêt commun des créanciers.*

6o. *Que le mérite de l'opposition des opposants et de la créance par eux réclamée dans et par leur opposition, n'ayant été contestée par aucun créancier, le protonotaire était tenu de mettre à l'ordre la créance réclamée par les opposants en la traitant comme une créance privilégiée ; sauf le droit des créanciers, après que telle créance aurait été ainsi mise à l'ordre, d'en contester la légitimité et le mérite, de la manière pourvue par la loi.*

The question was whether the assignees of the estate—Messrs. O. N. E. Boucher and O. Hébert—should be paid for their services as such in preference to all other creditors.

CHAGNON, J., was of opinion that the assignees worked for the benefit of the creditors in general, having given notice of their quality, received the accounts of said creditors, made a detailed inventory and statement of the estate, submitted their inventory to the creditors in assembly, who had discussed the same, and who finally had appointed a committee to look further into matters. The creditors had thus benefitted by the work of the assignees, and had virtually accepted them as their mandataries.

Voluntary assignment, as the one made by Piédalue & Bourdeau to the assignees, was recognized by law under Art. 799 of the Code of Civil Procedure, and is a mandate which the insolvents were forced to give if they wished to avoid the issuing against them of a writ of *Capias*.

The assignees had not, perhaps, been able to liquidate the estate, but this was owing to the want of legislation on the point, and what they did was nevertheless within the limits of the functions conferred upon them by law. The lack of success of the assignees was not their fault, but the creditors' who had not *all* joined in to liquidate the estate out of court.

The object which the assignees had in view was to liquidate the estate without going to law, and their lack of success cannot be ascribed to their bad management, success or lack of success of an undertaking by a mandatary or assignee depending more upon the wisdom there is in contracting such undertaking than on the final result of the same, or the profits derived therefrom by the mandator. If the assignees had not succeeded through their own fault or their bad management, then they could not recover for their services in such undertaking.

The assignees in this case had acted prudently and wisely, and their services which partake of expenses made for the benefit of the mass of the creditors, must be paid. The assignees had a privilege for their fees, as well under Art. 1723, Civil Code, as under Art. 1994, of same code, and therefore they must be collocated as such for their services.

Authorities cited: Art. 799, C.P.C.; Ravaut, Procédure Civile du Palais, pp. 738, 740; Pothier, Ed. Bugnet, vol. 10, pp. 334, 335, 337, 339, 293, 294; Guyot, Vo. abandonnement; Pardessus, Droit commercial, vol. 4, pp. 633, 636; Marcadé, vol. 8, pp. 492, 493, 622, 633, 635; Troplong, Traité du mandat, pp. 247, 589; Dalloz, Vo. mandat, No. 149; Dalloz, Vo. privilége, Nos. 34 et suivants; Art. 1994, C.C.; Marcadé, vol. 10, p. 49; Tansey & Bethune, Cour d'appel, Legal News, vol. 7, p. 134; Ravaut, Pro. C. du Palais, p. 278; Pigeau, vol. 1, pp. 681, 809; Troplong, Traité des priviléges et hypothèques, pp. 58, 59, No. 58; pp. 168, 169, No. 122; pp. 170, 171, 182, No. 131; pp. 183, 268; Art. 1722, C.C.; art. 1723, C.C.; art. 1713, C.C.

A. D. Girard, for Assignees, Contestants.
E. Z. Paradis and *J. P. Carreau* for Creditors.
(O.N.E.B.)

SUPREME COURT OF CANADA.

June, 1884.

BADENACH v. SLATER.

Trust deed for benefit of creditors—Power to sell on credit not a fraudulent preference.

In a deed of assignment for the benefit of creditors the following clause was inserted: "And it is hereby declared and agreed that the party of the third party, his heirs, etc., shall, as soon as conveniently may, collect and get in all outstanding credits, etc., and sell the said real and personal property hereby assigned, by auction or private contract, as a whole or in portions, for cash or on credit, and generally on such terms and in such manner as he shall deem best or suitable, having regard to the object of these presents." B., an execution creditor of the assignors, attacked the validity of the assignment.

Held, affirming the judgment of the Court below, that the fact of the deed authorizing a sale upon credit did not, *per se*, invalidate it, and the deed could not on that account be impeached as a fraudulent preference of creditors within the Act R. S. O., cap. 118.*

STRONG, J. At the argument I had some doubt upon the point raised by this appeal, which subsequent consideration has, however, entirely removed. *Pickstock* v. *Lyster*, 3 M. & S. 371, having shown that an assignment for the benefit of creditors generally was not avoided by the 13 Elizabeth, but was good against a particular execution creditor of the assignor, I think it must necessarily follow that every power or trust conferred upon the trustee for creditors which is for their benefit must also be valid. I cannot agree that a clause which invests such a trustee with a discretionary power which so far from being necessarily prejudicial to the general body of creditors, is actually essential to their protection, renders the assignment invalid merely because it "hinders and delays" them. It is to be presumed that the trustee will do his duty; in other words that he will execute the trust in the interest of the creditors exclusively, and that he will not sell on credit unless it is for their benefit that he should do so. If he fails in his duty or proposes to act in contravention, his conduct can be controlled by a Court of Equity, who can also supersede him in the office of trustee. Supposing there are but a small body of creditors, and that the assignment is made to them directly without the intervention of any trustee, the

* The observations of the judges in this appeal from Ontario, being of considerable interest at the present time, we take the annexed report from the *Law Journal* (Toronto).

property being admittedly less in value than the debts there should be no reservation of an ulterior trust for the assignor, could it be said that such a clause as this conferring on them a power to do what they like with their own was void? Then what difference does it make that a trustee is interposed, and a resulting trust declared for the debtor? To the amount of the debts the goods are still the property of the creditors who, through their trustees, have the control and management of them for their own behoof. Then to say that the trustee may or may not in his discretion sell on credit, is but to say that he shall dispose of the property in the way most advantageous for the whole body of creditors.

The truth is that every argument adduced in support of the contention that such a clause as this necessarily makes an assignment fraudulent, strikes at the doctrine of *Pickstock* v. *Lyster*, for so soon as it is once admitted that a particular creditor may lawfully be hindered or delayed by an assignment for the whole body of creditors, it necessarily follows that every reasonable and useful power for the protection of the whole body of creditors must also be valid. Whilst I thus hold as to the effect of such a clause as this in the abstract, I do not of course mean to say that a clause authorising a sale on credit may not, coupled with other circumstances, lead to an inference of fraud which would invalidate the deed of assignment. All I mean to determine is that by itself such a provision is not illegal. I am of opinion that this is the law under 13 Elizabeth, and that we need not seek the aid of the Provincial statute to enable us to reach such a decision. I am of opinion that the appeal must be dismissed with costs.

FOURNIER, J., concurred.

HENRY, J., stated that as no case of fraud or collusion had been made out, he was of opinion that the appeal should be dismissed with costs.

GWYNNE, J.—I concur in the opinion that this appeal should be dismissed. The clause at the end of the second sec. of chap. 118 of the Revised Statutes of Ontario appears to me to have the effect of giving statutory recognition to a doctrine already well established by the decisions of the courts, viz., that a deed of assignment made by a debtor for the purpose of paying and satisfying rateably and proportionably, and without preference or priority, all the creditors of such debtor their just debts, shall not be construed to be a deed made either to defeat or delay the creditors of such debtor, or to give one of such creditors a preference over another, unless then there be something on the face of the deed which is assailed here as being void against creditors which, *ex necessitate rei*, has the effect of raising a presumption *juris et de jure* that the intention of the debtors in executing the deed was to defeat or delay their creditors in the sense in which such an act is prohibited by the statute, for there is no suggestion that the deed gives to any creditor a preference over another. The question of intent was one of pure fact to be passed upon by the jury who tried the issue, and the proper way of submitting that question to them would be to say that if they should find the intent of the debtors in executing the deed was for the purpose of paying and satisfying rateably and proportionably and without preference or priority all the creditors of the defendants their just debts, they should find that it was not made with the fraudulent intent which is prohibited, and that they should render their verdict for the plaintiff. The words of the deed as affects the selling on credit, in short substance, are that the trustee shall, as soon as conveniently may be, collect and get in all sums of money due to the debtors, and sell the real and personal property assigned by auction or private contract, as a whole or in portions, for cash or on credit, and generally on such terms and in such manner as he shall deem best or suitable, having regard to the object of these presents, such object, as expressed in another part of the deed, being to pay and divide the proceeds among all the creditors of the grantors rateably and proportionably according to the amount of their respective claims. This language, as it appears to me, merely expresses an intention that the trustee may, at his discretion, sell for cash or on credit, accordingly as he shall deem best calculated in the interest of the creditors to realise the largest amount for

general distribution among them rateably and proportionably according to the amount of their respective claims.

To hold that this clause in the deed operates so as to compel the court to hold, as an incontrovertible conclusion of law, that the deed was not made and executed as in its terms it professed to be, for the purpose of paying and satisfying rateably and proportionably all the creditors of the debtors their just debts, but was made and executed with intent to defeat and delay such creditors, appears to me to involve a manifest perversion of the plain language of the deed, and such a construction of the clause in question is not warranted by any decision in the English courts or in those of the Province of Ontario, from which this appeal comes, and there is in my judgment nothing in it which so recommends it as to justify us in making a precedent by its adoption. If it be said that the clause in question, although not operating as such a conclusion of law, at least affords evidence of the deed having been executed with an intent to defeat and delay creditors, and not for the purpose of paying and satisfying the creditors their just debts rateably and proportionably, and for that reason was proper to have been submitted to the jury to be taken into consideration by them, the answer is that such a point should have been made at the trial, and not for the first time, as it was here, in the Court of Appeal for Ontario in the argument of the counsel for the appellant in his reply. And as the jury have rendered a verdict for the plaintiff, they must on this appeal be taken to have found, as matter of fact, that the deed was not executed with intent to defeat and delay creditors, but was executed for the purpose of paying and satisfying them their just debts rateably and proportionably.

Unless there be something on the face of the deed which in law nullifies and avoids it, the verdict of the jury in maintaining its validity must be upheld. Upon this appeal nothing, as it appears to me, is open to the appellant to contend, but the points contained in his motion in the Common Pleas Division of the High Court of Justice for Ontario for a rule for a non-suit or judgment to be entered for the defendant. The judgment of this court refusing such rule, sustained by the Court of Appeal for Ontario, is what is before us, and I am of opinion that the verdict of the jury should be upheld, and that the rule moved for was properly refused.

I have, however, carefully perused the judgments in the case of *Nicholson* v. *Leavitt*, so much relied upon by the counsel for the appellant, as it was decided by the Court of Appeals for the State of New York, as reported in 6 N. Y. R. 10, and also the same case as decided in the Superior Court of the State, and reported in 4 Sandf. 254. The Court of Appeals, when reversing the judgment of the Superior Court, seem to me to rest their judgment in a great degree upon a proposition which they lay down, to the effect that a debtor might with equal justice prescribe any period of credit which to him should seem fit, as that which the trustee should give upon sales of property assigned to him, as assume to vest in him a discretion to sell upon credit if such a mode of selling should seem reasonable and proper and in the best interests of the creditors.

With the utmost respect for the high authority of the Court of Appeals for the State of New York, this seems to me to be equivalent to saying that to express an intent of vesting in the trustee authority and permission to exercise his best judgment by selling on credit, if such mode of disposing of the property should seem to be in the interest of the creditors whose trustee he is made, and to express an intent of divesting such trustee of all such authority, and to prescribe to him a rigid, unalterable course which, in the discharge of his trust, he must pursue against the dictates of his own judgment, and against the will of the creditors whose trustee he is made, are one and the same thing. There are other parts of the reasoning upon which this judgment is rested which seem to me to lead to the conclusion, that delaying a creditor in obtaining satisfaction of his debt by the particular process of execution in a suit at law is equally a defeating and delaying of him within the prohibition of the statute as the vesting the trustee with authority in his discretion to sell upon credit, if such would be a reasonable and proper course to pursue in the interest of the creditors, and

that the former is not within the prohibition of the statute is established in our courts beyond all controversy.

Upon the whole, therefore, after a careful perusal of both judgments, I must say that that of the Superior Court is, in my opinion, based upon much sounder reasoning, and is more reconcilable with the English authorities than is that of the Court of Appeals, and I think it a sound rule to lay down as governing all cases like the present that an assignment of property by an insolvent debtor can never be declared void under the statute in question here, if in the opinion of the tribunal for determining matters of fact in each case, the actual intent of the debtor, as a matter of fact, in executing the deed was, as the jury must be taken to have found that fact in this case, to provide for the payment and satisfaction of the creditors of the debtor rateably and proportionably without preference or priority according to the amount of their respective claims; and, in my opinion, the mere fact that the deed contains a clause authorising the trustee in his discretion to sell the property assigned or any part of it, on credit, if such a mode of selling it should seem reasonable or proper and in the interest of the creditors, does not justify as a conclusion of law an adjudication that the grantor's intent in executing the deed was not to provide for such payment, but on the contrary, in violation of the provisions of the statute in that behalf, was to defeat and delay his creditors.

THE CASE OF MR. BUNTIN.

On p. 228 we gave the observations of Mr. Dugas, Police Magistrate, when committing Mr. Buntin for trial. The Grand Jury having found a true bill, the trial took place during the November Term of the Court of Queen's Bench, and the defendant was convicted. There being no Case Reserved, and the motion in arrest of judgment being overruled, Mr. Justice Monk (Dec. 2) passed sentence as follows:—

Mr. Buntin,—It is useless for me to attempt, nor do I wish, to disguise from you my regret that it now becomes my duty to pronounce upon you the sentence of the law in pursuance of the verdict finding you guilty of the charge brought against you. The accusation was that you, in concurrence with Mr. Craig, president of the Exchange bank, yourself being then a director of the bank, secured and received an undue preference over other creditors to the extent of $8,000. You were a large creditor of the bank, and the amount thus withdrawn was only a part of the deposit then standing at your credit. At this time the bank had suspended payment and was in a state of insolvency. In thus acting you become involved in the commission of an illegal act. Upon this point the statute is clear and precise, and the facts proved were undeniable and in truth could not be denied. You were ably defended and you had a fair trial. The verdict of the jury was sustained in law by the rulings of the court, and the result was and is that you stand convicted of having violated the law, and thereby you have subjected yourself to the penalties of a misdemeanour. For this offence the statute inflicts a sentence of imprisonment in jail for any period less than two years, at the discretion of the court. It may be proper to remark that you, being a man of wealth, returned the money with interest so soon as you became convinced that you had committed an illegal act. The creditors of the bank did not lose one dollar by this undue preference. But in the opinion of the jury the law had been transgressed; no compromise was proved, and, in law, was not possible. There are, however, many circumstances attending your case which incline the court to exercise the utmost leniency compatible with a reasonable application and a rather mild vindication of the law. Had it been in my power to impose only a fine possibly I might have considered myself justified in doing so. It may perhaps be thought that your case is one of considerable hardship, but even so the sentence of the law is inevitable; and, on the other hand, it will probably occur to you that you acted with great rashness and want of reflection in doing what you did. I do not deem it necessary to add another word except to say that after a careful consideration of all the incidents of your particular case as disclosed by the evidence, the court would rather err on the side of clemency than on that of harsh-

ness. Your sentence is that you be imprisoned in the common jail of this district for a period of ten days.

W. H. Kerr, Q.C., and *Hon. A. Lacoste, Q.C.*, for the prosecution.

J. J. Curran, Q.C., and *C. A. Geoffrion* for the defence.

S. Bethune, Q.C., counsel.

THE CASE OF MR. JUDAH.

In this case (see p. 371) a true bill was found, and the defendant was tried before the Court of Queen's Bench, Monk, J., presiding. On Dec. 2 the jury being still unable to agree after being locked up the previous night, were discharged.

C. P. Davidson, Q.C., and *J. A. Ouimet, Q.C.*, for the Crown.

Joseph Doutre, Q.C., and *D. Macmaster, Q.C.*, for the defence.

GENERAL NOTES.

APPROPRIATION OF MONEY FOUND.—Ellen Moody, a hawker, was charged on demand at the Thames Police Court on Tuesday, with stealing a purse containing about $2. It was alleged that the woman found the purse; but the evidence was not satisfactory, and the magistrate discharged the prisoner. In doing so, he observed that there was a good deal of misapprehension respecting the finding of property. "If," he said, "a person found anything and appropriated it to his or her own use, knowing who the owner was, that person would be guilty of theft; but if a person found, say a purse, in which there was nothing to show to whom it belonged, there was no obligation to find out the owner; and no theft would be committed if the finder appropriated the money.—*Washington Law Reporter.*

An English lawyer's right to his fee seems to rest on a very intangible basis. A case is reported in which a barrister gave up all his regular practice to devote himself to a particular case, and after years of devoted labour succeeded in winning it. His client, being a woman, utterly ignored him as soon as she had the estate in enjoyment. He thereupon brought suit (see *Kennedy* v. *Brown*, 32 L J.C.P., 137), for his fee, amounting to $100,000. But the judges would not allow him any standing in court. They enlarged on the value of an advocate's services to his client; but held that his remuneration must be a gratuity—an *honorarium*, for which no suit could in any case be brought. The plaintiff was utterly ruined, having abandoned all his other practice with the particular case, and died shortly afterwards broken-hearted.—*Ky. L. Rep.*

CONTRIBUTORY NEGLIGENCE.—In the recent case of the "Vera Cruz," in the English Admiralty Court (41 L. T. Rep. N. S 26), which was an action to recover damages for personal injuries, the plaintiff contended that contributory negligence on his part did not prevent him from recovering, provided he could show that the defendant, by the exercise of due care, might have prevented the accident, notwithstanding his negligence. This position the court refused to sustain. After citing several cases mentioned by the plaintiff, the court said: "What those cases really decide is that, although there may have been negligence on the part of the plaintiff, yet unless he, the plaintiff, might by the exercise of ordinary care have avoided the consequences of the defendant's negligence, he is entitled to recover. If by ordinary care he might have avoided them, he is the author of his wrong (cf. the judgment of Parke, B., in Davis v. Mann). This doctrine, it will be seen, is a different thing from that for which the plaintiff is here contending."—*Daily Law Record (Boston).*

MEASURE OF DAMAGES.—In the case of *King* v. *Watson*, the Texas Court of Appeals decided that, where a contract is broken, the measure of damages in respect of such breach is the amount which would arise under circumstances that may reasonably be held to have been in the contemplation of both parties at the time of making the contract. In the case in question, A made a contract to thresh B's grain, and told him he would thresh it on July 4th. B prepared his grain, A failed to thresh it, and the grain remained exposed until September. The Court held that B could not recover the amount of the deterioration of the grain from exposure, as neither party at the time of contract could reasonably be supposed to have contemplated such exposure. It was further decided in the same case that, where the plaintiff's petition shows a case entitling him to nominal damages, but joins a claim for substantial damages, which is not tenable, it is not error to sustain a demurrer to the whole petition.—*Law Record (Boston).*

THE CASE OF MR. JUDAH.—A correspondent of the *Gazette*, referring to the observations of Mr. Desnoyers (*ante*, p. 371), says:—"The cases cited by him to justify the hanging up of this case until the civil action is concluded, are hardly in point. They are cases where there was no doubt about the offence charged being a crime, one of them, if I mistake not, being a charge of perjury In this case, according to all the authorities, there was no crime. The English case cited by Mr. Macmaster in his argument was very clear upon that point, and no attempt was made to meet it. But there is another case nearer home. Some years ago the firm of Owen McGarvey & Co. purchased some property to which the vendor, it turned out, had no proper title. A criminal action was taken for false pretences, and the matter came before the Court of Queen's Bench, Mr. Justice Ramsay, whose ability as a criminal lawyer everybody admits, presiding. The moment the facts of the case were stated by the learned Queen's counsel who had charge of it for the prosecutors, the judge at once, on the ground that a breach of contract or covenant, arising out of a defect in title to land, could not be made a crime, ordered a verdict of acquittal, which the jury rendered without leaving the box, and the accused was at once dismissed. The deed in that case was made by Trefle Brien dit Deroche to the firm of Owen McGarvey & Co., passed by Alphonse Clovis Decary, notary."