The Legal News.

Vol. IV. MARCH 5, 1881. No. 10.

OUR SUPREME COURT.

Judicial organization has always been a source of disquiet in Lower Canada. Two causes have contributed to this. In the first place the mixed population has given rise to different views on the subject. The French mind, more given to logical system, seeks to obtain the nearest possible approach to truth, by referring legal disputes to the arbitrament of a number of specially trained judges; while the English mind hopes to attain the same end by dividing the scientific from the unscientific part of the matter, leaving the former to be decided by one or three judges, and the latter by persons totally unskilled in legal technicalities. To a French jurist a court of five or six judges is scarcely imposing, to an Englishman a court of four judges is suggestive of a committee. There may be exaggeration in both views; but it is not the object here to consider their respective merits. The difference is only referred to as one of the causes of our extreme sensibility about judicial systems. The second cause is more substantial. Lower Canada has never had a satisfactory final appeal. This seems a very terrible thing to say, but it must be followed by what is still more terrible, and that is, that it never can have one that will be perfectly satisfactory. The Privy Council appeal was and is a political necessity; and, as such, its decisions have been received with a certain kind of deference, greater perhaps than their intrinsic merits deserved. It is, in form at least, the decision of the Sovereign, on the advice of the first lawyers in England, and people readily believed that, though lacking a technical knowledge of the civil law, as preserved in the French system, the Lyndhursts, St. Leonards and Wensleydales could hardly make any very serious mistake. The old judicial committee had then something more than *prestige* to make up for its very obvious defect. The alteration in its composition, by the appointment of paid councillors, has, at any rate, destroyed its *prestige*. It would be invidious to carry the comparison further. It would also be unnecessary, for the present composition of the judicial committee was devoted to destruction from its birth. As the paid councillors die off, or retire, their duties are to be performed by Lords of Appeal in Ordinary, so that, sooner or later, we shall have an appeal, not inferior in quality, whatever that may be, to that accorded to litigants in the British Isles. It would remove a grievance, perhaps more theoretical than real, if all the judicial functionaries in the colonies were not expressly declared to be ineligible as Lords Ordinary. Might not the accident of distance be considered protection sufficient against the inroad of a single barbarian? However, it is very hard for those, whose highest appreciations of legal literature are formed from reading Blackstone's commentaries, to believe we know any law at all: but then we are becoming a power in the state. It is only fair to the present judicial committee to add, that their diligence is indisputable, and that their opinions indicate care, and are readable, even when they are not sound.

Another great objection to the appeal to the Privy Council is its expense. Between the suitor and justice, lies open the insatiable maw of the English attorney, who bears very much the same proportion to the timid and conscientious gentleman who leads us through the labyrinths of legal proceedings here, as the man-eater of the jungle does to the domestic cat. To the objection of expense there is an answer of some practical weight: that costs discourage litigation, and that there is no other way of preventing the appeal courts from being clogged with cases than the wholesome terror of the taxing-master. This may be true, and applicable to some extent; but to a rich man or a powerful company, the fear of ruinous litigation frequently serves as a means of extorting from an indigent adversary a settlement which is not just, and, in any case, the costs of appeal to the Privy Council are so enormous as to be almost a denial of justice.

It was this question of expense that really created the Supreme Court. With all the constitutional difficulties before us, it seemed necessary to have an oracle nearer to us than Downing street, and one that would open its lips at a reasonable rate. Seeming necessities

are not always real ones, and the wise housekeeper only increases her establishment, as the judges decide, "after mature deliberation." We did not act as prudent house-keepers, when we saddled our establishment with the cost of the Supreme Court. To the Province of Quebec it is open to the same sort of objection as the Privy Council. Two-thirds of its members are as laymen when dealing with our civil law. A recent case in Ontario shows that the minority is not a protection for the special law of its Province. In *McKay* v. *Crysler*, 3 Supreme Court Rep. 436, six judges of the Ontario courts, and the two representatives of the Ontario legal world in the Supreme Court, opined in vain against the votes of two judges from Quebec and of one from New Brunswick. This decision, it is true, marks the courage and honesty of the three; but the honesty partakes a little of the sort the cynic has styled in his own disagreeable way. Taken in the lump it is hardly less satisfactory than the concurrence under the deprecatory formulary of: "I understand that by the law of the Province of ——."

The dissatisfaction of Ontario and Quebec has manifested itself with considerable violence, and some reason. There is probably also a little prejudice to dilute the reason. A new court has to make its reputation. Eager for distinction, and untrammelled by any jurisprudence of its own, its action is apt to be volcanic. Time cures the prejudice of the bar, and experience tames the enterprising spirit of the court. But while all these different causes of dissatisfaction are in full force, we must expect angry denunciation, and we must be prepared not to be swept away by it. Mr. Girouard's bill is a well-intentioned suggestion to do away with some of the objections to the Court. It has, however, a great fault. The line of demarcation he proposes for the jurisdiction of the Court is extremely uncertain. Again, it deprives the country of the whole value of a general Court of Appeal, save for criminal cases, constitutional questions, and the decision of contested Dominion elections, and it maintains all the expense of the Court. Surely, if we want a central court for no other purpose than to give uniformity of decision to such a trifling number of cases, some other expedient could be devised for their adjudication, than having six judges at seven thousand dollars a year.

The establishment of the Court was premature, and the selection of its members by many is considered unfortunate; but it would scarcely be an exhibition of political wisdom to abolish the Court, or to destroy its jurisdiction over the civil law of the Province, until it is made perfectly clear that it fails to perform its functions. This can only be decided by a fair trial. That is to say, by the consideration of the arguments in support of its judgments during a considerable time. If they are manifestly better than those of the Courts from which the appeals lie, the count of noses, even judicial, does not signify much: if the arguments of the judges are not good, their higher salaries and scarlet robes will not give their dicta authority, or preserve the Court from destruction. It is too late for abstract reasoning as to whether such a court ought, or ought not to be. It exists, and the test must now be results. The judges have a right to be so judged, but they must make up their minds to be ready for this issue. There is one way members of Parliament can help the Court, and it is by showing the government that the nominations to so high an office are not to be used to get out of a political difficulty, or to serve party and family jobs.

R.

AMALGAMATION OF FRENCH AND ENGLISH SYSTEMS OF LEGAL PROCEDURE.

In the Province of Quebec there has been, especially since confederation, a growing sense of *desideratum* of something of the kind; but, from causes incidental to her position as one of isolation in the matter of internal law, viz., civil law, and legal procedure, and from the rather pronounced—*exempli gratiâ*, Mr. Blake's speech in the House the other day, on the relative merits of the English and French systems of law in general—rather pronounced, we say, contempt of Quebec law, its judges, bar, and every branch of its administration, the initiative in that direction has yet to be taken. Each bar is, of course, naturally wedded to its system; but, at the same time, it is conceded on all hands, that there are faults and defects in all

the systems of legal procedure throughout our Dominion, somewhat varied in this regard. We do not propose, at present, to discuss the question, for the subject is large, and the points multitudinous, but our attention has just been called to it by the following official report of such a work having just been done by a fellow Canadian, a member of the Quebec Bar, Chief Justice Armstrong, who holds the singular honor of two Chief Justiceships, viz., of St. Lucia, and of Tobago, Islands in the West Indies, under two different systems of law, viz., the former under old French law, as at date of surrender (1803), and the latter under the law of England, each as amended and supplemented by special imperial legislation. His Honor had, as ancillary to his Civil Code, which is based principally on that of Quebec, and embodies as fully as possible the commercial law of England, undertaken to frame a Code of Civil Procedure for the Island. Having an essentially English Bar to contend with in the work, and a markedly insular Attorney General to battle with, the task has been evidently one of special difficulty, requiring an eliminating alembic faculty of the judicial mind, which does honor to the school (*French* Canada) where trained. The report runs thus, as we find it in the Colonial Blue Book for 1878-9, but really also for 1880, (C. 2730.)

The Governor of St. Lucia reports: "The "Code of Civil Procedure referred to in the last "named Ordinance has been prepared by Chief "Justice Armstrong, and is a work of much "labor and thought. It is the sister Code to "the 'Civil Code of St. Lucia,' which came "into force on 20th October, 1879, and will, "when it comes into operation, make that "measure complete. This valuable Civil Code "has placed the law of the Colony in civil "matters on a true and solid foundation, and "has for ever set at rest the conflict of French "and English law. It is a clear, concise and "comprehensive work, and has received the "unqualified approval of Her Majesty's Govern-"ment." Sir Michael Hicks-Beach (then Secretary of State for the Colonies,) in conveying Her Majesty's gracious approval of the Code, added: "And I have to express my congratu-"lation to the Colony of St. Lucia upon the "achievement of so important a work."

We have seen the Civil Code in question, and have read it sufficiently to seize its chief modifications. They are numerous, and would on some points be an improvement even to ours. The other work, technical, and involving difficulties, problems hitherto unsolved, we have had some inkling of, and it, certainly, is the more difficult of the two. Not having seen it since its completion we cannot, of course, pass on it, but shall do so as soon as we can.

M. M.

SLANDER.

In Vol. 3 of this journal, p. 67, reference was made to the case of *Simmons & Mitchell*, which had excited much interest in the West India Islands, and in which judgment had been rendered by the highest Court of the Windward Islands. That case was taken to the Privy Council, and on the 26th of November last, judgment was rendered dismissing the appeal. The Judicial Committee thereby affirmed the propositions of law stated by Chief Justice Armstrong (formerly of the bar of Quebec.) The principal question was whether the expressions used by Mitchell, being words of mere suspicion, were actionable *per se*. Chief Justice Armstrong held, first, that the words were not actionable *per se*; and, secondly, that a witness could not be heard to attach a meaning to words which were not ambiguous, unless a foundation were laid to show the animus of the speaker. The judgment of the Privy Council sustained this view, in opposition to the opinions of the Chief Justice of Barbadoes and the Chief Justice of St. Vincent, formerly barristers of the Middle Temple, and this, too, on a question more especially governed by the law of England.

THE LATE MR. L. CUSHING.

Among the younger members of the profession in Montreal, death could hardly have selected one who will be more keenly regretted that Mr. Lemuel Cushing, LL.D., who passed away on the 1st instant, at the early age of 39. Mr. Cushing was admitted to practice at the bar in 1865. For some time he represented Argenteuil in the House of Commons, but, with others, lost his seat by the operation of a new and stringent law on the subject of elections.

The deceased was a young man of liberal culture and considerable abilities, and had attained a respectable position at the bar. Personally, he was a gentleman of high and estimable character, and enjoyed the warm regard and affection of a large circle of friends. We mourn with them the premature interruption of a career of activity and usefulness.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 2, 1881.

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

EVANS et al. (plffs. below), Appellants, and McLEA et al. (dfts. below), Respondents.

Principal and Agent—Commission Agents whose principals resided abroad held personally liable on contract signed by them in their own name, though the contract showed their quality of Commission Agents, and it was known to the other party that they were selling goods to arrive from foreign principals.

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., Oct. 31, 1879, dismissing the action of the appellants. (See 2 Legal News, p. 370).

The action was by coal merchants, claiming damages because coal which they had purchased from the respondents had not been delivered to them.

In July, 1878, the respondents, J. & R. McLea, offered a quantity of coal for sale to the appellants, and, after some negociation, a contract was entered into, dated Montreal, July 15, 1878, by which the respondents declared to have sold to Evans Brothers, the appellants, a cargo of Welsh anthracite coal, to consist of about 600 tons. It was proved that the appellants knew that the respondents were to get the coal from parties in Wales, and that it was to be shipped from there. Delivery was not made, and hence the action.

The defence to the suit was that the coal had been shipped, but the vessel had to put back, and it was impossible to deliver the coal as agreed. It was also pleaded that the respondents were commission agents, and were well known as such to the appellants; that they did not transact with appellants on their own account, but as agents for Richards & Co., of Swansea, Wales, and that they were not at the time of the contract in possession of the goods sold.

The following is a copy of the contract :—

"Cable Address, McLea.
John B. McLea. Robert P. McLea.
"J. & R. McLea,
"Commission Merchants and Ship Agents.
"Montreal, 15 July 1878.

"We have this day sold to Messrs. Evans Bros. of Montreal, a cargo of Welsh Anthracite Coals to consist of about 600 tons and to be shipped by sailing vessel, quality to be equal to their former purchases from us. Terms of sale, net cash on delivery. If purchasers wish to give a note at 3 or 4 mos. in payment of said cargo, we agree to take same providing interest be added at 7 o/o per annum. Price of Coals to be four dollars per ton of 2,240 lbs.

"J. & R. McLEA."

Judgment was given in favor of the respondents in the Court below, the grounds being as follows :—

"Considering that it is pleaded by the defendants in substance that the said contract was not one that could bind the defendants personally, nor therefore render them personally liable to damages for not performing it, but that the real parties to the said contract were the plaintiffs on one side, and Richards & Company, of Swansea in Wales, on the other, who were perfectly well known to plaintiffs as the parties they contracted with as principals, the defendants being their mere agents and *mandataires*, and disclosing the name of their principals;

"Considering that the evidence in this case establishes in every respect the pretensions of the defendants, and that in the contract in question they were mere *mandataires* and not factors, not having possession of the thing sold, and that the case is to be governed by Article 1715, and not by article 1738 of the Civil Code, doth dismiss plaintiffs' action with costs."

DORION, C.J., with reference to the case of *Crane & Nolan* (19 L.C.J. 309), which had been cited in support of the judgment of the Court below, said the two cases were quite different. In the latter case the name of the principal was declared in the contract, and the agents signed as "commission agents" to show that they did not intend to bind themselves personally. In the present case the contract was signed in the name of J. & R. McLea, without disclosing any principal at all. The respondents must be held

personally, and the damages were proved. The judgment would be reversed, and the action maintained for $600 damages.

The judgment is recorded as follows:

"Considering that on the 15th of July, 1878, the respondents sold to the appellants a cargo of Welsh Anthracite coal, to consist of about 600 tons, to be shipped by sailing vessel, at the price of $4 per ton of 2,240 lbs;

"And considering that, according to the understanding between the parties, the said coal was to be delivered on or about the 1st day of September, 1878;

"And considering that the said respondents have failed to deliver the said coal as per agreement, although requested so to do, and that the appellants have thereby suffered damages to the extent of at least $1 per ton;

"And considering that there is error in the judgment rendered by the Superior Court at Montreal on the 31st of October, 1879;

"This Court doth reverse the said judgment of the 31st of October, 1879, and proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the respondents to pay to the appellants the sum of $600 of damages, with interest from this date, and the costs," &c.

Judgment reversed.

J. A. A. Belle for Appellants.

L. N. Benjamin for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 17, 1880.

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

PROVOST es qual. (oppt. below), Appellant, & BOURDON, (contestant below), Respondent.

Correction of error in judgment—Costs.

By an opposition two of the three horses seized were claimed by appellant. Bourdon, the respondent, contested the opposition as to one of the animals claimed by the opposition. The judgment of the Superior Court, by error, dismissed the opposition altogether. The opposant appealed, contending that the opposition should have been maintained altogether, but in any case the clerical error in the judgment should be corrected.

In appeal the error was corrected, and each party was condemned to pay his own costs on the appeal, the respondent not having desisted promptly from the part of the judgment which was in excess of his claim.

Judgment reformed.

Lacoste & Globensky for Appellant.

Prévost & Préfontaine for Respondent.

COURT OF REVIEW.

MONTREAL, Feb. 28, 1881.

TORRANCE, RAINVILLE, JETTÉ, JJ.

CARTER v. FORD et al.

Sureties in appeal—Tender—Costs.

Appeal from judgment (reported in 3 Legal News, p. 412), rendered by the Superior Court, Montreal, Johnson, J , Dec. 15, 1880.

TORRANCE, J. The question here is one of costs only. The defendants being sureties in appeal, and liable for costs under their bond, on the 30th August, 1880, made a tender "on "condition that if the judgment rendered in "the said matter be reversed, the money will "be returned to them who now pay as Molson's "sureties." An action was immediately taken out and the defendants pleaded an unconditional tender, and made an unconditional consignation of the money with their plea. The Court has condemned them to pay the costs of the action, and of this they complain. They had no right to attach a condition to the tender. 1 Pigeau, p. 434, and J. Palais, A. D. 1880, p. 725. Moreover this condemnation to costs was in the discretion of the Court, and we should not, in the present case, interfere with this discretion. Judgment confirmed.

S. Bethune, Q.C., for plaintiff.

E. Barnard, for defendants.

SUPERIOR COURT.

MONTREAL, Feb. 24, 1881.

Before TORRANCE, J.

ARMSTRONG v. THE NORTHERN INSURANCE CO.

Fire Insurance—Claim not made within delay stipulated by the policy.

The demand was to recover, under a fire policy, for loss by fire.

The defendant pleaded a number of pleas. 1. That the plaintiff who claimed for her absentee husband, the owner of the property, had

no quality to claim. 2. That E. H. Bell, the party insured, had no insurable interest. 3. That it was a condition of the policy that unless the claim were made within three months after the fire, all benefit under the policy should be forfeited; that no claim was made within three months. 4. That an irregular, illegal claim made by plaintiff within twenty days after the fire was immediately rejected, and no action was taken within twelve months, and it was a condition that unless an action was taken within three months after rejection the claim should be forfeited. 5. That the claim was fraudulent.

Torrance, J. The court overrules the first and second and fifth pleas, but finds the third and fourth sustained by the evidence. The eleventh condition of the policy has not been complied with, and no waiver by the Company has been proved.

Action dismissed.

S. Pagnuelo, Q.C., for plaintiff.

Trenholme & Taylor for defendant.

SUPERIOR COURT.

Montreal, Feb. 24, 1881.

Before Torrance, J.

Court es qual. v. Waddell.

Calls on shares—Director—Informality—Waiver.

The plaintiff sought to recover from Mr. Waddell the sum of $7,500, being the balance due on his subscription of 50 preferential shares in the Mechanics' Bank, including double liability. Since the action the defendant had paid $2,500, reducing the claim to $5,000.

Mr. Waddell pleaded that by 39 V., c. 42, s. 2, a by-law had to be passed authorizing the issue of the preferential stock, and that no such by-law was passed; and the Act could only have effect on acceptance by shareholders by resolution passed at a special general meeting of shareholders called for the purpose, and concurred in by at least two-thirds of the holders of paid-up stock present, and no such meeting was called or held. That no by-law by a qualified board of directors was ever passed authorizing the issue of the said stock; that at the date of said pretended issue, Charles J. Brydges, Walter Shanly, John Atkinson, Charles Garth and John Macdonald were Directors, and Brydges, Shanly and Macdonald were not qualified, and any act by them was illegal. Moreover, that defendant was not liable for the additional calls pretended to be due under the double liability clauses of the Banking Act.

The plaintiff answered the pleas by alleging that Mr. Waddell had waived any irregularities which might have existed in the issue of the stock by paying the balance of original subscription since the institution of the action, and by acting as Director on such stock and holding himself out to the public as such Director.

Torrance, J. The facts of this case are simple. Mr. Waddell subscribed for 50 shares of the preferential stock of this institution and has paid it all. He has acted as director thereof for years. He drew a dividend on the stock. The ingenuity of his counsel has suggested the absence of a by-law by the shareholders, and the invalidity of the proceedings of the directors, owing to two of them not being properly qualified. The objection does not come with a good grace from one of the directors. The question here is his double liability as a shareholder. If he is not a shareholder of this preferential stock, he is an ordinary partner liable to the extent of his estate. This would be a much more serious alternative. The pleas are overruled, and judgment will be entered up for the balance unpaid.

Maclaren & Leet for plaintiff.

L. N. Benjamin for defendant.

SUPERIOR COURT.

Montreal, Feb. 24, 1881.

Before Torrance, J.

McNichols es qual. v. Canada Guarantee Co.

Official assignee—Surety—Liability of surety for default of official assignee acting under appointment of creditors.

The demand was against the defendant as surety for the late Alphonse Doutre for the due performance, fulfilment, and discharge of the duties appertaining to the office on employment of an official assignee for the electoral district of Montreal.

The declaration alleged the insolvency of one George L. Perry, and the appointment of Doutre as official assignee to the estate, and Doutre took possession on the 11th April, 1876, and

died on the 15th May, 1879; that plaintiff was then appointed assignee, and the sum of $364.42 was found to be due to the estate of Hughes by Doutre.

The defendant pleaded that at the time when Doutre became indebted in the sum claimed from the surety, he was not acting in the character of an official assignee, or as an employee of the Crown or public officer, in which capacity only the defendants by their bond became responsible for his acts. That on the 9th of May, 1876, Doutre was appointed assignee for the creditors, and thereby ceased to act as an official assignee, and from that date the surety became freed from any liability for the future as to any acts or defaults of Doutre subsequent to that date.

Torrance, J. It is admitted that the indebtedness of Doutre arose after the 9th May, 1876, that is, after his appointment as creditors' assignee. In *Delisle et al.* v. *Letourneux*, Mr. Justice Johnson has already held (3 Legal News, pp. 207-8,) that the bond covered the defaults of the official assignee when acting as assignee of the creditors. On the other hand it has been held by Chief Justice Hagarty that the bond did not cover defaults of the creditors' assignee. The ordinary rule is that the obligation of the surety is *strictissimi juris, et non extenditur de persona ad personam.* If the case came up for the first time, the Court might possibly apply these rules in the present case, but the only reported judgment is that of Mr. Justice Johnson in this Court, and I deem it right to follow the case of *Delisle et al.* v. *Letourneux* until reversed by a higher court.

Judgment for plaintiff.

R. & L. Laflamme for plaintiff.

J. C. Hatton for defendants.

SUPERIOR COURT.

Montreal, Feb. 24, 1881.

Before Torrance, J.

Trenholm v. Mills.

Damages—Dogs killed while trespassing.

Torrance, J. This was an action of damages by a farmer against his neighbor: 1st, for having shot a dog of his in August, 1879; 2nd, for having shot another dog of his in June, 1880; and 3rd, for having fired shots into his building. The defendant pleads justification in part, tenders $5 as the value of one dog, and denies the rest of the claim, which is for $20.

The question is one purely of evidence. The Court is of opinion that Mills killed both dogs, and though the dogs were trespassers, he was wrong in taking the law into his own hands. The tender is insufficient. The Court assesses the damages as to the first dog at $20; as to the second dog at $30; and other damages, namely firing shots into the building at $10, making $60 in all.

Maclaren & Leet for plaintiff.

St. Pierre & Scanlan for defendant.

CIRCUIT COURT.

Montreal, Feb. 7, 1881.

Before Caron, J.

O'Dowd v. Brunelle.

Exemptions from seizure—Ball-dress.

Held, A lady's dress, described in the *procès-verbal* of seizure as a ball-dress, and admitted to be such, is exempt from seizure under art. 556, C. C. P. "The debtor may select and keep from seizure: (2) The ordinary and necessary wearing apparel of himself and his family."

Opposition maintained.

RECENT ONTARIO DECISIONS.

Fire Insurance—Misrepresentation—Incendiarism.—Action on a fire policy dated May 21, 1879, on ordinary contents of a barn, which was at the time of the insurance empty, and on other articles of personal property. In the application for the insurance, dated May 13, 1879, plaintiff answered "No" to the question, "Is there reason to fear incendiarism, or has any threat been made?" At the trial it appeared that one M had threatened to beat the plaintiff, and the latter, being alarmed, had sent for the defendant's agent and had the premises insured, that he would not have insured but for his fear of M., and that he had sat up and watched for a week, and that he believed the premises had been set on fire, and that he had admitted this to an officer of the defendant's after the fire, which occurred Oct. 28, 1869. At the time of

the fire the barn contained some grain and hay, and a threshing machine, for the loss of which an action was brought. One of the conditions of the policy was, that if the assured "misrepresent or omit to communicate any circumstance, which is material to be made known to the company in order to enable them to judge of the risk," the policy would be avoided. *Held*, that the plaintiff could not recover, because, the insurance having been effected solely on account of his fear of M., the answer to the above question was untrue.—*Campbell* v. *Victoria Mutual Ins. Co.*, (Q.B.)

Breach of Promise of Marriage.—In an action for breach of promise of marriage, the evidence showed that the plaintiff who had been seduced by the defendant, had told her father that she was going to get married to the defendant; and that plaintiff's father had said to defendant "and you promised to marry her," to which the defendant replied, "I will marry her if it is mine." The jury found a verdict for plaintiff, with $200 damages. *Held*, that the admission of the defendant, and the statement of the plaintiff to her father, her apparent acquiescence, coupled with her probable desire under the circumstances to bring about a marriage, were sufficient evidence to go to the jury, of a mutual agreement to marry, though there was no actual promise proved on plaintiff's part.—*Fisher* v. *Graham*, (C.P.)

Accident Policy—Death from voluntary exposure to unnecessary danger.—N., being insured with defendants against death by accident, was killed by a railway train in the yard of the Northern Railway Company at Toronto,—a place which it was unlawful for him, not being an employee of the Company, to enter, and into which he had unaccountably driven. He was last seen by a witness who watched him, driving over and among a network of tracks, and who, while he was entangled in a switch gate, warned him not to go farther or he would be killed, to which deceased made no answer. By certain of the conditions of the policy it was stipulated that it should not "extend to any bodily injury when the death or injury may have happened in consequence of voluntary exposure to unnecessary danger, hazard or perilous adventure, or of violating the rules of any company, etc., or while engaged in, or in consequence of, any unlawful act." *Held*, that the plaintiff could not recover.—*Neill* v. *The Travellers Insurance Co.*, (C.P.)

GENERAL NOTES.

Mr. T. Bouthillier, formerly Sheriff of Montreal, died Feb. 28, aged 85.

The oldest notary of the Province of Quebec, Edouard Glackmeyer, is dead. Mr. Glackmeyer was admitted as a notary in 1815. He is said to have been also the oldest justice of the Peace in the District of Quebec.

The Canada *Law Journal* says: "The S S. collar, lately worn by Lord Coleridge as Chief Justice of the Common Pleas, is said to be the same worn by Lord Coke. It may not be amiss here to mention, for the benefit of the unlearned in such matters, that the S S. chain, or collar, worn as a distinctive badge of honor by the Chiefs of the English courts, is said, according to some old traditions, to be named from Sanctus Simplicius, a Christian judge and martyr of the time of Diocletian. It is usually passed down from retiring or deceased chief justices to their successors. Lord Coleridge, we presume, takes his Common Pleas S S. with him to the Queen's Bench."

An interesting record of the Dartmouth College *alumni* shows that since the institution was chartered in 1769, diplomas have been issued to 4,275 young men. Out of the number there has been 1 chief justice of the United States Supreme Court, 2 members of the same court, 6 cabinet officers, 6 ambassadors of foreign courts, 16 senators in Congress, 65 representatives, 20 chief justices of courts, 163 judges, 23 governors, 18 presidents of State senates, 31 speakers of houses, 27 United States district attorneys, 4 attorney-generals of States, 5 judges of the United States Circuit and District Courts, 49 presidents of colleges, 3 United States consuls-general, 1 comptroller and 1 register of the treasury, 950 ordained ministers of the gospel, 1,196 lawyers, 332 physicians, 1 major general, 13 brigadier generals, 13 colonels, 13 lieutenant colonels, 12 majors, 2 adjutants, 33 chaplains, 33 captains. It appears from the above that more than one fourth of the total number of graduates became lawyers.

BRITISH COLUMBIA.

LAW SOCIETY.—The following resolution was unanimously passed at a large meeting of the Incorporated Law Society, held on the 5th inst. at the Secretary's office:—*Resolved*, That the Incorporated Law Society of British Columbia desire to express their thanks to the Hon. Mr. Walkem for the very able and satisfactory manner in which he has accomplished the difficult undertaking of compiling a new code of Supreme Court Procedure, and their appreciation of the immense amount of labor which, in spite of the grave and arduous duties of the Attorney-General, has been bestowed upon the Code—a work which will form the basis of all future civil practice in the Province.—*Victoria Standard, Feb. 8th.*