The Legal News.

VOL. VI. APRIL 28, 1883. No. 17.

STAMPS ON PROMISSORY NOTES.

In December last (5 L. N. 425), we noticed a decision *Bradley* v. *Bradley* by a County Court Judge in Ontario, which held, in effect, that the right which could be exercised formerly in certain cases, of double stamping a promissory note and thereby rendering it valid, had been taken away by the Act abolishing stamp duties (45 Vict., cap. 1). This decision, if it were well founded, appeared to disclose a very unfortunate oversight on the part of the Legislature. We are glad, however, to find that the law is not viewed in this light by a Judge of a Superior Court. In *Dickison* v. *Normandeau*, which is noted in the present issue, Mr. Justice Taschereau decides that the right to affix the required stamps is not interfered with by 45 Vict., cap. 1. His Honor remarked that even if there had been no reserve in the Act of existing rights, the general principles of our jurisprudence would have guided the Court to the same conclusion; but in the Act in question there is a special reserve of acquired rights in these words: "Provided always, that all Acts or enactments "repealed by the said Act shall remain repealed, "and that all things lawfully done, *and all "rights acquired under the said Act or any Act "repealed by it, shall remain valid*," etc. It is satisfactory to find the judgment of a Superior Court of law coinciding with the equity of the case, and carrying out the obvious intention of the legislature.

THE LATE SIR GEORGE JESSEL.

The late Master of the Rolls has received unusual attention from the press, and the notices of his career have been more than commonly enthusiastic. The reflection suggests itself: if the first judicial appointment from among the Jews has been such an extraordinary success, what may not the country have lost by the omission to make such appointments in the past? The Attorney General declared in the House of Commons: "I believe no Judge ever sat upon the Bench who combined great knowledge, ability, mental power, and an earnest desire to administer justice to every suitor to a greater extent than the late Master of the Rolls. Of late years he has been the very centre of the judicial Bench. The public always sought his judgments and were content with them; and although the word irreparable in connection with the loss of any man ought not to be lightly used, yet I am sure this loss to the public service cannot be over-estimated or easily repaired."

The professional journals have been even more eulogistic. The London *Law Journal* says:—

"The performance by Sir George Jessel of his daily work in the now deserted Rolls Court was an exhibition of power seldom witnessed. The lawyer hardly knew which most to admire—his minute knowledge of case-law, the breadth of his acquaintance with legal principles, or the amazing rapidity with which he took in the facts of his cases. Sir George Jessel seemed to devour an affidavit as soon as it was put into his hand. There was a superstition that nature had physically endowed him above other men with the capacity of acquiring knowledge, and that he could read one line with one eye, and the next line with the other. It is certain that hardly any subject came to the surface in his court without his displaying a knowledge of it which astonished experts. Large drafts were made on these gifts in patent cases, and the Master of the Rolls was equally at home in mechanical complications and in chemical mysteries. Something has necessarily been said of his fault of manner on the bench; but it lay merely in the manner. His mind was eminently judicial, and the most skillful advocate that practised before him probably never discovered that he had any prejudices. Least of all had he any favor for those of his own race, although he was the first of his blood who attained the English bench. * * * There was no section of the community which did not look to him for the most uncompromising justice. This was due to the belief, not only that he had a practical knowledge of most of the affairs of life, and was a learned lawyer, but that his mind was absolutely free from cant. His rapidity was so great, and his reputation so high, that the Rolls Court became during his reign the most important

court in the country. When the Judicature Acts came into operation, the universality of Sir George Jessel's legal knowledge stood him in good stead. Here, at least, was one judge who could decide off-hand upon the limitations of a crabbed settlement at one moment, and at another expound the obscurities of a bill of lading. * * * Sir George Jessel was not free from the faults to which great minds like his are liable. He was so quick that occasionally he was hasty, but the mistakes he made were not half so many as those of other judges who got through about a tenth of his work. He was also apt to be intellectually overbearing. He was fond of exposing the errors of others, but he never admitted a doubt of the correctness of his own opinion. His phrase, 'Of course all judges believe that they are right,' has passed into a byword; and Sir George Jessel was the mental antipodes of Lord Eldon, great lawyers as both were, and in some respects not unlike one another. History does not record that Sir George Jessel ever admitted he was wrong. When his attention was called to the fact that the Court of Appeal had overruled his decision, he said: 'That is strange; when I sit with them, they always agree with me.' This was generally true, as there were few judges whom the Master of the Rolls could not carry with him. Whoever sat with him the court was generally considered to consist of the Master of the Rolls."

The *Solicitor's Journal* says: "If uniformity can make a characteristic, the universality of regret which is called forth by the news of Sir George Jessel's death will characterize his life and fame. Nor did the scope, variety, and strength of his gifts fall short of the grief which attends their loss. As a judge he was at once so swift and so sure that the surprise which each quality called forth became nothing less than astonishment at the union of the two. When he reasoned, it seemed as though he could dispense with authority; when he quoted, his learning and research admitted of no comparison. No branch of law seemed unfamiliar to him. Whether he was construing, with vast knowledge guided by lucid common sense, the terms of an intricate will, or laying down the principles of patent law, or expounding mercantile usage, or settling the limits of public authority, or regulating the procedure of the courts, he was alike clear, practical and profound. Such achievements could only have been possible to a man gifted with the swiftest apprehension and the most ample and tenacious memory. And in truth he seemed only to need to reach his hand in any direction to lay hold upon the keystone which at once fitted and completed the arch of legal reasoning upon any matter which was before him. It was precisely these faculties which enabled him to deal with such extraordinary sagacity with facts however numerous and complicated, and to deliver occasionally those judgments which have been sometimes said to show the highest kind of excellence—judgments in which the statement of the facts gives at once the reasoning and the conclusion."

Equally eulogistic are the writers for the non-professional journals. The *Spectator* says: "Sir George was by common consent the ablest judge on the bench, and the ablest probably in the annals of English history, if, at least, the rapid despatch of business be taken into account, as well as the soundness of the judgments and the breadth of the legal principles embodied in them. * * * A more extraordinary intellectual engine than his brain has not been seen at work in our generation. Great as he was as a pure lawyer, he was still greater in the despatch of business; for the speed, and the marvellous accuracy on the whole with which he worked at so great a speed were certainly neither rivaled nor approached by any contemporary of his own. * * * He had usually mastered the drift of an argument before it was half out of the counsel's mouth, and had taken in the exact drift of a deed before any other man would have got at its general scope and tendency. * * * His appetite for work was something vast. Nothing pleased him better when he came to the end of one heavy task, than at once to undertake another which he might easily have declined. The spectacle of his last struggle with a mortal disease was something more than impressive. For many weeks he discharged every duty, not only in his court, but in relation to volunteer offices, for omitting which he could well have pleaded illness, and this when he was so dangerously ill that to take a step upstairs without assistance was impossible, and when at times it was an effort to him to speak at all."

The *Spectator*, however, does not omit to mention some defects of this highly gifted judge: "Sir George Jessel had not, like the great Jewish contemporary who achieved a still higher fame in politics, any unique insight into other men. He was not skillful in the use of social weapons. He had no great stores of banter or wit at his command. His speeches in Parliament were not of the first order. even for the speeches of a solicitor-general. He was not as persuasive as Sir Henry James, nor anything like as lucid in the exposition of political issues as Sir Farrer Herschel. Marvellous as his powers were, they were probably never shown to less advantage than during his short Parliamentary career. For in the forms of things he was not a master. He was deficient in tact, in the art of literary and popular exposition; and appeals to feelings he either despised or could not understand."

THE AFFIRMATION BILL.

On the 6th April, an influential deputation waited upon the Archbishop of Canterbury, on the subject of the Affirmation Bill. A memorial has been signed by 13,650 of the clergy, setting forth that the deliberate removal of the name of the Almighty from the oath, as proposed by the Parliamentary Oaths Act, 1866, Amendment Bill, was dishonoring to the Almighty, and utterly opposed to the spirit of the Constitution and of the law of England. The deputation represented that the *onus probandi* for any change in the oath lay with those who introduced this Bill. Unless some very much stronger grounds were shown, they thought there was no sufficient reason for any alteration of the Parliamentary Oath in the direction which the Bill proposed. They could not but feel that the recognition of the Supreme Being pervaded the whole of our constitution and laws—in the coronation of our Sovereign, in the public action of the judges of the land, as well as in the forms of prayer which in both Houses of the Legislature were offered up to the Supreme Being at the commencement of heir proceedings. Although it was said that this change was to remove the last religious disability on the entrance of any member into the House of Commons, yet all previous legislation on this subject had been to relieve the conscientious religious scruples, whether of Quakers, Moravians, or Jews. But in this case the removal of the disability was to meet the case of one who had publicly admitted that he had no such conscientious religious scruples. The Archbishop, in replying, expressed sympathy with the views of the deputation, but remarked that the absence of the formula would not necessarily imply unbelief. Declarations had already in several instances been substituted for oaths. It was by a declaration that a clergyman repudiated the crime of simony, and by a declaration that he declared his assent to the Thirty-nine Articles and to the Book of Common Prayer.

NEW BOOKS.

A History of the Criminal Law of England, by Sir James Fitzjames Stephen, K.C.S.I., D.C.L., a Judge of the High Court of Justice, Queen's Bench Division. (New York, Macmillan & Co.; Montreal, W. Drysdale & Co.)

Last year we reproduced an article from *Nineteenth Century*, written by Sir James F. Stephen, giving a brief sketch of the history of English Criminal Law. (See 5 L. N., 209, 219, 225.) The learned Judge wrote that paper as an outline of an important work which he was about to produce on the history of the criminal law. That work is now before us, in the form of three considerable volumes. We need not say anything as to the peculiar merits of Mr. Justice Stephen as a legal writer; he is well known to the profession by his Digest of Criminal Law, and as one of the principal commissioners appointed to prepare a draft Criminal Code. Of the present work he says:—

"It is longer and more elaborate than I originally meant it to be, but, until I set myself to study the subject as a whole, and from the historical point of view, I had no idea of the way in which it connected itself with all the most interesting parts of our history, and it has been matter of unceasing interest to see how the crude, imperfect definitions of the thirteenth century were gradually moulded into the most complete and comprehensive body of criminal law in the world, and how the clumsy institutions of the thirteenth century gradually grew into a body of courts and a course of procedure which, in an age when everything is changed, have remained substantially unaltered,

and are not alleged to require alteration in their main features. Much has been said and written of late years on the historical method of treating legal and political matters, and it has no doubt thrown great light on the laws and institutions of remote antiquity. Less has been done in investigating comparatively modern laws and institutions. The history of one part of our institutions has, under the name of constitutional history or law, been investigated with admirable skill and profound learning. Comparatively little has been done towards writing the history of other branches of our law which are perhaps more intimately connected with the current business of life. Of these the criminal law is one of the most important and characteristic."

We have already given Mr. Justice Stephen's views on the death penalty (*ante*, p. 104), and we may hereafter, if space permits, print extracts from some other portions of this brilliant work. In the meantime, in order to give a correct idea of the plan of the book, we append the contents:—

I. Statement of the subject of the work.
II. Roman Criminal Law.
III. Early English Criminal Law.
IV. The ordinary Criminal Courts—Queen's Bench Division of the High Court, the Courts of Assize, the Courts of Quarter Sessions, Courts of Summary Jurisdiction, Franchise Courts, Welsh Courts.
V. The Criminal Jurisdiction of Parliament and the Court of the Lord High Steward.
VI. The Criminal Jurisdiction of the Privy Council.
VII. History of the Law of Criminal Procedure.—Procedure down to committal for trial or bail.
VIII. History of the Law of Criminal Procedure continued—Forms of Accusation and Trial—Appeals—Ordeals—Trial by Jury.
IX. History of the Law of Criminal Procedure continued—Legal Incidents of a criminal trial—Indictment and Information—Arraignment, Trial, and Verdict.
X. History of the Law of Criminal Procedure continued—Proceedings by way of Appeal.
XI. History of Criminal Trials in England from 1554-1760.
XII. Description of Modern Criminal Trials.
XIII. History of Legal Punishments.
XIV. Management of Prosecutions.
XV. General and Comparative View of English and French Criminal Procedure.
XVI. Limits of Criminal Jurisdiction in regard to time, person, and place—Acts of State—Extradition.
XVII. Of crimes in general and of punishments.
XVIII. Criminal responsibility.
XIX. Relation of madness to crime.
XX. Constitutional elements of the substantive Criminal law, Common law and Statute law; Treason, Felony and Misdemeanour.
XXI. Leading points in the history of the substantive Criminal law.
XXII. Of parties to the commission of crimes, and of incitements, attempts, and conspiracies to commit crimes.
XXIII. Offences against the State—High Treason.
XXIV. Seditious offences—Seditious words—Libels—Conspiracies.
XXV. Offences against religion.
XXVI. History of the law relating to murder and manslaughter.
XXVII. Offences against the person other than homicide.
XXVIII. History of the law relating to theft and similar offences.
XXIX. Coinage offences—Forgery—Malicious Injuries to property.
XXX. Offences relating to trade and labor.
XXXI. Miscellaneous offences.
XXXII. Police offences punishable on summary conviction.
XXXIII. Indian Criminal law.
XXXIV. The codification of the criminal law.

The work concludes with accounts of several trials, viz, The case of John Donellan—William Palmer—William Dove—Thomas Smethurst—The Monk Léotade—The affair of St. Cyr—The case of François Lesnier. We have no doubt that this important and interesting contribution to legal history will be widely read and appreciated.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, February 24, 1883.

Before MATHIEU, J.

LE PRINCIPAL DE L'ECOLE NORMALE JACQUES-CARTIER v. POISSANT.

Normal School — Pupil — Penalty for refusal to teach.

The father of a pupil of the Jacques-Cartier Normal School will not be liable to repay the amount of a bursary granted to his son, unless it be shown that the son was put in default and refused to teach.

The plaintiff by his declaration represented that the Jacques-Cartier Normal School was established in 1856 by Act of Parliament, and a certain number of bursaries were provided for poor pupils who intended to become teachers; that these bursaries consisted in the sum of $32 a year, which was deducted from the cost of board; that in 1876 the defendant placed his son Célibert in the school; that this pupil re-

ceived board and education at the school, and on his leaving did not devote himself to teaching. The conclusions were for $64, for two years' bursary, and $40, penalty for failure to teach during three years, &c.

The defendant pleaded as to the $40 penalty and the $64 for bursaries, that he was not responsible for his son, and that the penalty of $40 was for *refusal* to teach, which his son had never refused to do; that he was never put in default to teach, and there was no vacant place.

The COURT held that the refusal of the pupil to teach must be established, and the action was dismissed, save as to a small sum which the defendant had tendered.

M. Ethier, for the plaintiff.

Mousseau & Co., for the defendant.

SUPERIOR COURT.

MONTREAL, April 21, 1883.

Before TASCHEREAU, J.

LE PRINCIPAL DE L'ECOLE NORMALE JACQUES-CARTIER v. PELLAND.

Normal School—Pupil— Refusal to teach.

In order to recover the penalty provided by law, for the refusal of a pupil of the Normal School to teach, his default to teach must be established.

The judgment explains the case :—

"La Cour, etc....

"Considérant que le demandeur réclame du défendeur la somme de $116.40, comme suit, savoir: 1o. $18.40 pour balance due sur la pension du fils du défendeur à l'Ecole Normale Jacques-Cartier à Montréal, de 1876 à 1878; 2o. $56 étant pour un an et trois-quarts de bourse à $32 par année, que le défendeur serait appelé à rembourser au demandeur, vû que le dit fils du défendeur qui était élève boursier de l'institution n'a pas enseigné à sa sortie d'icelle; 3o. $40, montant de la pénalité imposée aux élèves sortis de l'institution et n'enseignant pas durant une période d'au moins trois ans; et 4o. $2 pour location de livres et fournitures faites au dit fils du défendeur pendant sa dite pension;

"Considérant que le défendeur a par ses défenses plaidé prescription de deux ans pour les items mentionnés en premier et quatrième lieu, et que quant aux *items* mentionnés en deuxième et troisième lieu, il a allégué n'en être responsable en loi, ne s'étant jamais engagé à les payer, et ces causes de dette étant étrangères à sa volonté; que d'ailleurs son fils n'avait jamais été requis au désir de la loi d'enseigner après sa sortie de l'école;

"Considérant que la prescription invoquée par le défendeur à l'encontre des dits premier et quatrième *items* est celle qui résulte de l'article 2261 du code civil; que c'est une courte prescription qui a absolument éteint la créance (art. 2267), et que par l'article 2263, elle s'applique tant en ce qui concerne les droits de sa Majesté que ceux de tous autres;

"Considérant que le quatrième *item* est en réalité pour simple *location* de livres et d'autres objets, n'est qu'un accessoire de la dette pour pension et enseignement, ainsi que constaté par la preuve, et doit suivre le sort de la réclamation principale, qui est prescrite;

"Considérant que le fils du défendeur n'a jamais refusé d'enseigner à sa sortie de l'école, et n'a jamais même été mis en demeure de le faire; que le refus d'enseigner, aux termes de la loi et des règlements invoqués par la demande pourrait seul justifier la réclamation faite pour remise de bourse et pour penalité (2ième et 3ième *items*), laquelle réclamation n'est conséquemment pas admissible dans l'espèce [12 Rév. Lég., p. 177, cause de *Le Principal de l'Ecole Normale Jacques-Cartier* v. *Laurent Poissant*];

"Considérant qu'en outre cette réclamation ne pourrait être faite contre le défendeur qu'en autant qu'il se serait lui-même engagé spécialement, ce qui n'a pas été prouvé, ou qu'il serait tenu par la loi même de l'acquitter, ce qu'il n'est pas possible de prétendre;

"Maintient la défense et renvoie l'action avec dépens, distraits," etc.

Action dismissed.

M. Ethier, for the plaintiff.

Mercier, Beausoleil & Martineau, for defendant.

SUPERIOR COURT.

MONTREAL, April 21, 1883.

Before TASCHEREAU, J.

FRANCIS v. CLEMENT es qual.

Alimentary allowance — Action by natural child against mother.

A person who has come of age, and who does not show that he is unable, by reason of infirmity or other sufficient cause, to earn his own subsistence,

has no right to an alimentary allowance from his parents, whatever the means of the latter may be.

The plaintiff, describing himself as the natural son of Dame Jane Power, *fille majeure*, an interdict, sued the curator of his mother for an alimentary allowance. He alleged that his mother had considerable means, about $40,000, with an income of $3,000 per annum.

The curator pleaded that the plaintiff was 25 years of age, and refused to work for his own support, although quite capable of providing for himself. The mother's fortune was much less than the sum stated, and the income was only $1,400 per annum. She had legitimate heirs—two sisters, and nephews and nieces.

The Court, by the following judgment, maintained the defence:—

"La Cour, etc.

"Considérant que l'obligation que la loi naturelle et la loi civile imposent aux pères et mères de fournir des aliments à leurs enfants majeurs n'existe que dans le cas où ces derniers sont incapables, pour raison d'infirmités ou par des circonstances indépendantes de leur fait et de leur volonté, de subvenir personnellement à leurs besoins; que quelque soit la position de fortune de ses ascendants, l'enfant majeur, capable d'exercer une profession, métier ou emploi utile quelconque, qui se refuse ou se soustrait au travail et ne justifie d'aucun effort sérieux par lui fait pour se procurer des moyens d'existence, n'est pas en droit d'exiger d'eux des secours alimentaires:—[Pothier, mariage, No. 385; 4 Demolombe, Nos. 46 et 48; Rousseau de Lacombe, vo. Aliments, section 1, et vo. Bâtard, section 3; Dalloz, Recueil périodique, 1862, 2e partie, p. 59; *Idem*, 1863, 1ère partie, page 400];

"Considérant qu'il ressort de la preuve et des documents de la cause que l'état de dénuement dans lequel le demandeur prétend se trouver, a pour cause principale son instabilité, ses habitudes de désordre et d'oisiveté, sa répugnance à s'employer utilement pour lui-même, et même ses refus réitérés de s'adonner au travail lorsqu'on a offert de lui en procurer; qu'il est en âge et en état de se suffire, qu'il possède l'instruction, l'intelligence et la santé requises pour pouvoir exercer un emploi rémunératif; et considérant que tant qu'il n'aura justifié de ses dispositions sincères pour le travail et des démarches qu'il aura faites pour s'y livrer, le tribunal ne pourra accueillir favorablement sa demande d'une pension alimentaire;

Maintient la défense et renvoie l'action avec dépens, distraits à messieurs Pagnuelo et St. Jean, avocats du défendeur, réservant au demandeur le droit de faire plus tard une nouvelle demande d'aliments, sous d'autres circonstances plus favorables que celles dans lesquelles la présente action a été portée."

Action dismissed.

Geoffrion, Rinfret & Dorion, for the plaintiff.

Pagnuelo & St. Jean, for the defendant.

SUPERIOR COURT.

MONTREAL, April 21, 1883.

Before TASCHEREAU, J.

CARTER v. MOLSON, deft. and oppt., and CARTER, contesting.

Seizure of Immoveables—Description.

The description of the immoveables seized given in the minutes of seizure and in the advertisements, should be precise in itself as to what is seized, and it is not sufficient to refer therein to a title deed, and to state that all the right and interest of the defendant in and upon the property under such deed is seized.

The defendant, by an opposition *à fin d'annuler*, opposed the seizure, on the ground that the description of the thing seized was insufficient. The written judgment of the Court fully explains the nature of the question:—

"La Cour ayant entendu les parties, savoir, le défendeur opposant et le demandeur contestant par leurs procureurs respectifs sur le mérite de l'opposition à fin d'annuler, faite par le dit opposant à la saisie immobilière opérée en cette cause, laquelle opposition est contestée par le demandeur; ayant de plus examiné la procédure et toutes les pièces du dossier, et sur le tout délibéré;

"Considérant que le demandeur a fait saisir sur le défendeur des droits immobiliers d'une nature indéfinie, et que cette saisie est constatée par le procès verbal et les annonces du shérif comme étant de tous les droits et intérêts du défendeur dans et sur la propriété décrite en le dit procès-verbal et en les dites annonces par et en vertu d'un certain acte de vente y mentionné;

"Considérant qu'une saisie immobilière ne

peut être faite que de la propriété même des immeubles ou des droits incorporels auxquels ils sont affectés; que si la saisie porte sur la propriété même, les droits de propriété du saisi, soit au total, soit à une partie divise ou indivise de l'immeuble, doivent être clairement énoncés dans le procès-verbal et les annonces, et si elle porte sur des droits incorporels, la nature précise de ces droits doit y être indiquée; que faute de ces énonciations essentielles, la désignation des biens saisis est insuffisante, prête à l'incertitude et à la confusion, et est de nature à écarter les adjudicataires et à leur faire craindre des procès futurs;

"Considérant que la désignation insuffisante des droits saisis en cette cause ne peut être complétée par la référence qui y est faite à l'acte de vente dont il y est fait mention, attendu qu'une désignation faite dans un procès-verbal de saisie doit être précise par elle-même quant à ce qui fait réellement l'objet de la saisie, et que dans la désignation en question il est impossible de voir s'il s'agit de la propriété de tout l'immeuble ou d'une partie de l'immeuble, ou d'un démembrement de la propriété ou bien de droits incorporels seulement, et de quels droits incorporels;

"Considérant que pour ces motifs la saisie opérée en cette cause et tous les procédés subséquents à icelle sont en violation des articles 632, 637, 638 et 648 du Code de Procédure, et que l'opposant a intérêt d'invoquer leur nullité;

"Rejette la contestation du demandeur, maintient l'opposition à fin d'annuler du défendeur opposant, déclare la saisie et les annonces faites en cette cause nulles et de nul effet, et donne main-levée de la dite saisie à l'opposant, le tout avec dépens contre le demandeur contestant."

Opposition maintained.

Barnard, Beauchamp & Creighton, for opposant.
Abbott, Tait & Abbotts, for plaintiff contesting.

SUPERIOR COURT.

MONTREAL, April 26, 1882.

Before TASCHEREAU, J.

CORCORAN v. THE MONTREAL ABATTOIR COMPANY.

Obligation with a term—Insolvency—C.C. 1092.

Held, that a Company ceasing to meet its ordinary payments as they become due, though its nominal assets may be equal to its liabilities, will be deemed insolvent; and cannot claim the benefit of the term upon a promissory note not yet due.

This action was instituted on the 17th February, 1882, upon a promissory note dated 1st September, 1881, and payable at six months; due 4th March, 1882. The plaintiff alleged the insolvency of the defendants, and contended that in consequence they could not claim the benefit of the term.

The defendants pleaded, amongst other things, that they were not insolvent at the time of the institution of the suit, and that the action was premature.

It was proved that previous to the institution of the action the Company had failed to meet its payments then coming due; and had been sued by several creditors for large amounts; while others had accepted renewals. That a statement of the Company's affairs had been submitted to its creditors, showing assets to a nominal amount of $365,000, composed chiefly of real estate, plant and machinery; with liabilities to an amount of $210,000; in addition to which, however, there was capital stock to the extent of $150,000.

In the statement of assets were included some items of expenditure for insurance and wages, and also interest, which would go to reduce the amount. At the meeting of creditors when the statement was produced, an extension of time was asked for and granted by the majority. The Company was proved to have been working at a loss since the month of January. But the Secretary swore that the embarrassment was merely temporary, and that in his opinion the Company would in time pay its creditors in full, though the shareholders might lose their investment.

The COURT dismissed the plea, and maintained the action with costs, upon the grounds following:—

"Considerant que lorsque la présente action a été portée la Compagnie défenderesse était devenue insolvable ou en faillite, et avait cessé ses paiements, aux termes de l'article 1092 et de paragraphe 23 de l'article 17 du Code Civil, et ne pouvait plus réclamer le bénéfice du terme accordé pour le paiement du dit billet promissoire."

Judgment for plaintiff.

Abbott, Tait & Abbotts, for plaintiff.
Beïque, Choquet & McGoun, for defendants.

SUPERIOR COURT.

MONTREAL, April 21, 1883.

Before TASCHEREAU, J.

DICKISON v. NORMANDEAU.

Promissory Note—Insufficient Stamps—Effect of the Act repealing the Stamp Acts.

The right of the holder in good faith to apply to the Court for leave to affix the required amount of stamps to a note on which suit is pending, is not affected (as to a note made before the repeal of the duty) by the Act 45 Vict., c. 1, repealing the Stamp duties.

The only question of law was whether since the Act 45 Vict., cap. 1, the holder of a note insufficiently stamped, on which suit is pending, has the right (which existed before the repealing Act was passed) of affixing the required stamps, by permission of the Court.

The defendant cited *Bradley* v. *Bradley* (referred to in 5 Legal News, p. 425), decided by the Judge of the County Court of Victoria County.

The COURT did not consider that the decision cited was well founded, and the objection was overruled. The written judgment sufficiently explains the case :—

"La Cour, etc.

"Considérant que le défendeur n'a pas établi en preuve les allégations de sa défense en cette cause, à l'effet qu'il existait une convention entre les parties que le billet promissoire en question en cette cause devait être renouvelé, et que la dette constatée par le dit billet ne devait être réclamée qu'après qu'un certain brevet d'invention exploité par le défendeur serait devenu rémunératif;

"Considérant que le dit défendeur a aussi invoqué par ses défenses le fait que le dit billet promissoire n'était pas suffisamment revêtu de timbres, mais que par jugement interlocutoire de cette cour, il a été permis au demandeur d'apposer sur le dit billet des timbres supplémentaires au montant requis pour le valider, et que telle apposition a eu lieu depuis;

"Considérant que les parties ont depuis admis que le dit jugement interlocutoire n'avait pas été rendu du consentement des parties, ainsi qu'il apparaitrait avoir été rendu à sa face même; de sorte que le défendeur peut encore faire valoir les raisons qu'il peut invoquer à l'encontre du dit jugement interlocutoire et de la légalité de l'apposition de timbres supplémentaires;

"Considérant que le Statut 45 Victoria, chap. 1, tout en rappelant l'acte 42 Victoria, chap. 17, a fait la réserve expresse de tous les droits que le dit Acte ainsi rappelé donnait aux parties, et qu'au nombre des dits droits était celui que le dit acte rappelé accorde au porteur de bonne foi d'un billet promissoire d'y apposer des timbres supplémentaires, s'il en est besoin sur la permission du tribunal, dans une cause pendante au sujet de tel billet promissoire; laquelle réserve de droits est d'ailleurs conforme au droit commun et aux règles d'interprétation applicables à tous les Actes du Parlement;

"Considérant que le demandeur a prouvé qu'il était dans les conditions favorables exigées par l'Acte 42 Victoria, chap. 17, pour pouvoir être admis à faire l'apposition de timbres supplémentaires, et que le défendeur, faiseur du dit billet, en faisant valoir l'insuffisance des timbres par ses défenses, n'a fait qu'invoquer son propre défaut de se conformer à la loi lors de la confection du dit billet;

"Rejette les défenses, maintient le dit jugement interlocutoire, et condamne le défendeur à payer au demandeur la somme de $200, cour actuel, montant du billet promissoire," etc.

Judgment for the plaintiff.

Dunlop & Lyman, for the plaintiff.
W. S. Walker, for the defendant.

SUPERIOR COURT.

MONTREAL, March 31, 1883.

Before LORANGER, J.

THE CANADA INVESTMENT & AGENCY CO. v. MACPHERSON.

Procedure—Delay.

When the delay to file preliminary pleas, under Art. 107 C.C.P. expires upon a Sunday, Art. 24 C.C.P. is held to apply, and the defendant is allowed to file his preliminary plea on the next following day.

The defendant filed an *exception à la forme* upon a Monday, which was the fifth day from the return of the writ.

The plaintiffs presented a motion to dismiss the defendant's exception, on the gronud that the delay mentioned in Art. 107 C.C.P. was not liable to extension; the four days not being there designated as juridical days.

The Court dismissed the motion with costs.
Abbott, Tait & Abbotts, for plaintiffs.
Paradis & Chassé, for defendant.
(R.T.H.)