The Legal News.

Vol. V. OCTOBER 14, 1882. No. 41.

TRUST FUNDS.

The sad case of the poor ladies reduced to want by the Hunter defalcations has led to the suggestion of various expedients for protecting investors. We do not think any scheme of report or inspection will meet the case. Unfaithful trustees, for the credit of human nature be it said, are rare when the number of trusts is considered, and no scheme which would not be too offensive in ordinary cases would afford adequate protection against the artifices of a smiling, plausible villain, of fair standing in the church, masked by a saintly atmosphere, or protected from suspicion by an unimpeachable record. But there is a way of safety which might be opened, and which would be of infinite advantage to the most helpless class of investors,—we refer to the establishment of a scheme of government annuities. The great prosperity of the postal savings banks indicates the annuity system as the next step needed, and one which would be eminently successful. The annuity system has uses beyond safe investment. There are very many cases in which women who are the possessors of moderate sums of money, have no occasion or wish to transmit the principal; yet without converting it into an annuity, they cannot venture to encroach on the capital sum, for no one can tell to what extent life may be prolonged. The annuity system would increase their annual income and guard them against dishonesty at a period of life when they are least able to protect themselves There are many other cases in which persons would be glad to exchange a capital sum for an annuity. Even those of ample means might not be reluctant to place a certain proportion out of the reach of business vicissitudes. Congregations desiring to ensure a moderate subsistence to a pastor incapacitated for work, would find it easier to raise a sum once for all, while the feeling of gratitude for past service is warm, than to continue to meet an annual charge; and the sense of security on the pensioner's side when a government annuity had been obtained for him, would be infinitely greater. Masters desiring to reward a faithful servant or employers an old clerk, would find in the purchase of an annuity the easiest method of accomplishing their wishes. All persons without heirs, possessed of moderate savings, would ensure a safe and comfortable provision for their declining years, by the conversion of their little store into a fixed annuity. And many others would be glad to use a portion of their means for the purpose of increasing their income when debarred from active employment. The system should, of course, be made self-sustaining, with a fair margin for expenses. That it would be a great boon to the country we entertain not the slightest doubt.

JUDICIAL STATISTICS.

A Bedford correspondent calls attention to an error which occurs in the official returns on on which Mr. Justice McCord's tables were based. Other errors may be remarked in the statistics. These returns are, in fact, exceedingly defective, and steps should be taken to insure more correct as well as more complete reports. All inferences are more or less liable to be affected by the errors and omissions of the present system of returns. At the same time we believe that Mr. Justice McCord's conclusions are substantially correct.

THE MANITOBA BENCH.

Changes have occurred with unusual celerity in the Superior Court of Manitoba. The three judges occupying the bench in 1879 are all dead. Mr. Justice McKeagney has been succeeded by Mr. Miller, Mr. Justice Bétournay by Mr. Dubuc, and now the survivor, Chief Justice Wood, has died very suddenly. The Chief Justice was not celebrated as a lawyer. His conduct on the bench excited persistent efforts for his impeachment, and the matter was before Parliament during the two sessions preceding his decease. Now that Manitoba has become a considerable Province, the local bar will no doubt claim the privilege of supplying the bench from their own body, and be able to furnish judicial officers with the needful qualifications.

LES REFORMES JUDICIAIRES.

On parle de comités ou de commissions à former, pour examiner les différents systèmes suggérés, pour l'amélioration de nos institutions judiciaires. Ceux qui veulent arriver à quelque chose d'utile feraient mieux de moins embrasser et d'étreindre quelque chose. Insistons pour les deux nécessités qui s'imposent :

1o. La refonte des statuts ;

2o. Le dégagen ent de la cour d'appel.

Le reste viendra en son temps.

On objecte au plan que j'ai proposé, sur le second point, que si l'on convoque à Montréal les juges des autres districts, les affaires locales en souffriront. Cette objection n'est pas fondée. Les juges auxquels serait dévolu le devoir de convoquer les juges extérieurs, s'enquérraient des circonstances de chaque juge et appelleraient, en temps opportun, ceux qui pourraient laisser leur district respectif, sans faire souffrir les justiciables. Un juge qui avait lu la suggestion contenue dans un article précédent, m'a fait observer qu'au lieu de trois chambres, comme je suggérais, la cour d'appel pourrait siéger en permanence, dans une seule chambre, en renouvelant le personel des juges, de manière à ne pas fatiguer les juges outre mesure, et à ne pas exposer les avocats à courir d'une chambre à l'autre. Ceci est beaucoup plus pratique que ce que je suggérais, et ce système devrait fixer de suite les opinions. Voilà un point que l'on devrait considérer comme arrêté. Seulement, on ne peut le réaliser sans législation.

On a objecté au premier point, (la refonte des statuts,) que cela entraine la révision du Code Civil. Pas le moins du monde.

Bornons-nous à constater le fait accompli, les statuts en général, d'où l'on exclura toutes les modifications faites au Code Civil et au Code de Procédure.

Les publications de MM. McCord et De Bellefeuille pour le Code Civil, et de MM. Wotherspoon et Foran, pour le Code de Procédure, suffisent pour tenir au courant.

Les journaux valent mieux que les commissions et comités pour condenser les vapeurs, et nous conduire à un résultat. Ils ont cet avantage que le procédé d'épuration des idées ne coûte rien à la caisse provinciale. Comme il est impossible de suivre, dans tous les journaux, ce qui se publie sur la matière, j'ose suggérer de faire du *Legal News* le centre de nos suggestions et de les condenser autant que possible.

D.

COMMUNICATIONS.

DISTRIBUTION OF JUDICIAL LABOR.

To the Editor of the Legal News:

SIR,—In the issue of your publication of the 23rd September last, are published certain tables in reference to the amount of work done by each Judge of the Superior Court in each district of this Province during the periods therein mentioned, and being based upon the judicial statistical returns contained in the Quebec Official Gazette.

Referring only to the district of Bedford, and writing merely in relation to the returns as to the cases therein during the year 1881, I except to the conclusions drawn from these returns in connection with that district.

As showing the fact that these returns do not expose the amount of work done, I would mention that the number of final judgments, in contested cases during 1881, in the Superior Court, was 31, and of interlocutory judgments 47, instead of 13 of the former, as contained in the Gazette. Then, in the Circuit Court (appealable) there were 11 final and 3 interlocutory, making in all 92 judgments. This defective mode of return has arisen, it is understood, from the fact that the officer whose duty it was to make it, considered that he should only include therein the cases instituted *during the year*, consequently leaving out of account the judgments in actions brought in the previous year or years, which in a country district always form a considerable portion of the cases disposed of.

Perhaps this indication of the nature of the return in question, in one district only, may make it doubtful whether "the comparative lists of the relative amount of work for each Judge," are absolutely correct.

B.

6th October, 1882.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 7, 1882.

DORION, C.J., MONK, RAMSAY, TESSIER, & BABY, JJ.

THE CORPORATION OF THREE RIVERS, Appellant, & SULTE, Respondent.

Powers of Federal and Local Legislatures—Regulation of the sale of liquor—"Municipal Institution."

Held, 1. *That a local Statute empowering a municipality to make by-laws prohibiting the sale of liquor, or allowing its sale under certain conditions, is not justified by sub-section* 9, *Section* 92, *B. N. A. Act of* 1867, *even though the municipality only exercises the power to the extent of fixing a tax by way of licence, and for the purposes of revenue.*

2. *That the state of things existing in the confederated Provinces at the time of Confederation, and more particularly that which was recognized by law in all or most of the Provinces, is a useful guide in the interpretation of the meaning attached by the Imperial Parliament to indefinite expressions employed in the B. N. A. Act of* 1867.

3. *That at the time of Confederation, the right to prohibit the sale of intoxicating drinks, existed as a municipal institution, in the then Province of Canada, and in Nova Scotia, and consequently that it is to be deemed a "municipal institution" within the meaning of sub-section* 8, *Section* 92, *B. N. A. Act of* 1867.

4. *That the power of the Dominion Parliament to pass a general prohibitory liquor law as incident to its rights to legislate as to public wrongs, is not incompatible with a right in the Provincial Legislatures to pass prohibitory liquor laws as incidental to municipal institutions.*

RAMSAY, J. The evidence in this case is formal and gives rise to no difficulty. Two questions come up on this appeal:

1st. Is the corporation, appellant, authorized to pass the By-Law of the 3rd April, 1877, under the local legislation, so far as that legislature can authorize?

2nd. Has the local legislature such right?

With regard to the first of these questions, it appears, that on the 3rd of April, 1877, an amendment was passed to a by-law made in 1871 regulating that a licence fee of $200 should be paid by any one authorized to retail liquors, before the certificate of the corporation to enable the party to obtain a licence was granted. The Statute under which this by-law is justified is the 38 Vict., c. 76, sec. 75, 2, by which it is provided that "the said council shall have power to make by-laws:

1. * * * * * *

2. For determining under what restrictions and conditions, and in what manner the Collector of inland revenue for the district of Three Rivers, shall grant licenses to merchants, traders, shop-keepers, tavern-keepers, and other persons to sell such liquors."

This seems clear enough, but it is said that the Licence Act of 1878 limited the powers of the corporation. By section 36 of that Act (41 Vic. c. 3, Q.) it is enacted that "on each confirmation of a certificate, for the purpose of obtaining a license for the cities of Quebec and Montreal, the sum of $8 is paid to the corporation of each of those cities; and to other corporations for the same object, within the limits of their jurisdiction, a sum *not* exceeding $20 may be demanded and received."

"Section 37: The preceding provision does not deprive cities and incorporated towns of the rights which they have by their charters OR BY-LAWS."

It is probable that the legislature intended to say that, "the preceding provision does not deprive incorporated cities and towns of the rights which they may have under any by-law made in conformity with their respective charters." It may be further said in support of this reading of the Statute, that the general principle is that special laws are not presumed to be repealed by general ones unless they are incompatible or expressly repealed.

In so far, then, as incorporated towns, other than Quebec and Montreal, are concerned, it seems to leave in force any by-law then existing, made in conformity with a special charter. Therefore, as the by-law was made in 1871 and amended in 1877, a year before the 41 Vic., the proviso of Sec. 37 excepts these by-laws from the provision of Sec. 36. Whether a new by-law made subsequent to 1878 would be so covered, it is not now necessary to decide.

As to the 2nd question: Sub-section 9, of Sec. 92, of B.N.A. Act, gives the local legislatures the right to make laws IN RELATION TO "Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes." The Statute does not say that the local legislatures can only oblige shopkeepers &c. to take out a license, but that they may make laws "in relation to" such licenses. That is a distinction which seems to have escaped observation in the case of *Angers* v. *The Queen Ins. Co.*,* probably because the pretention

*1 Legal News, p. 410.

of the Quebec Government was that the impost was in the nature of a license, and being for the purpose of raising revenue for the Province it was thought to be within the powers of the local legislature. Here the question is simpler. The local legislature has the power *exclusively* to legislate in relation to shop, saloon, tavern, auctioneer and other licenses, provided it be for the purpose of raising a revenue for provincial, local or municipal purposes. It has no authority *under this sub-section* to go further.

The Statute cited in the case under our consideration is not an authorization to the municipal council to tax by way of license, but an act allowing the municipality to put restrictions generally on the sale of liquors. It is true the by-law has given to this prohibition the effect of raising revenue for municipal purposes; but this will not cure the want of jurisdiction of the Statute, for a statute *ultra vires* does not remain in force for a part, because some fractional part is within the powers of the legislature, unless it appears that the subject beyond the powers of the legislature is perfectly distinct from that within, and that each is a separate declaration of the legislative will. This is not the case here. We think, therefore, so far as sub-sect. 9, S. 92, B. N. A. Act, is concerned, it does not justify the Statute in question. As the case was referred to at the argument it may be well to remark that the decision of the Supreme Court in *Severn & The Queen*, 2 S. C. R., p. 70, is not in point in this case. We are not therefore called upon to discuss the ingenious application of the doctrine of *ejusdem generis* to the classes of matters which the local legislatures may license, nor to decide what the *genus* is which includes an "Intelligence office" and excludes a "brewer."

But we have still to determine another question, whether sub-sect. 8 does not cover the exercise of the power assumed by the legislature of Quebec.

It may be at once conceded that the power to pass prohibitory liquor laws is not essential to the existence of municipal institutions, and that consequently in a very restricted reading of sub-sect. 8, it would not justify the local legislature in passing a prohibitory liquor law. But, it may fairly be asked, whether it was the intention of the Imperial Parliament in an enumeration of this sort to confine "municipal institutions" to those matters only which are of the essence of municipal institutions? If such was the intention of Parliament, a wide field for speculation was left open, or it was contemplated to restrict municipal institutions within very narrow limits. It would seem, however, we have not to determine what institutions are essential to municipal existence in the abstract, but the meaning of the term at the time of confederation. In so far as the Province of Quebec is concerned, municipal institutions were the creation of special statutes. The general act was passed no longer back than 1855. It was introduced under the title of "the Municipal and Road Act." Roads and their maintenance, bridges, ferries, fords, prevention of abuses prejudicial to agriculture, police regulations, and many other matters were subjected to municipal control. Among other things County councils were given the power to make by-laws "for prohibiting and preventing the sale of all spirituous, vinous, alcoholic and intoxicating liquors, or to permit such sale subject to such limitations as they shall consider expedient;" "For determining under what restrictions and conditions, and in what manner the revenue inspector of the district shall grant licenses to shop-keepers, tavern-keepers, or others, to sell such liquors." (See C. S. L. C., cap. 24, sect. 26, s.s. 11 & 12.) In 1857 the City of Three Rivers was incorporated, and as the Municipal and Road Act was repealed as far as it affected or might affect Three Rivers, the two sub-sections 11 and 12, above quoted, were re-enacted in precisely the same words for the new incorporation. (See 20 Vic., cap. 129, sect. 37, foot of p. 493 & p. 494.) These statutes were in force at the time of confederation.

In 1858 an Act was passed, styled "An Act respecting the MUNICIPAL INSTITUTIONS of Upper Canada"; and in that Act powers similar to those just enumerated as being accorded to municipalities in Lower Canada and to Three Rivers particularly, were given to municipalities in Upper Canada. (See C. S. U. C., cap. 54, sect. 246.) And this legislation was also in force up to the time of confederation.

By the municipal system in force in Nova Scotia, prohibitory powers were possessed by the municipal authorities. (See Rev. St. N. S., cap. 133, vi.)

As to New Brunswick, we have not found

any Statute conferring such powers; but at any rate we have the two great Provinces of Confederation, and one of the smaller ones, persistently including amongst municipal institutions the right to prohibit the sale of strong drink. We cannot help thinking that this was sufficient to bring prohibitory liquor laws within the powers of local legislation as forming part of "municipal institutions" within the meaning of the B. N. A. Act. With Chief Justice Richards, we think that we ought to look "at the state of things existing in the Provinces at the time of passing the B. N. A. Act, and the legislation then in force in the different Provinces on the subject, and the general scope of Confederation then about to take place," when determining the value of indefinite terms in the Act. But in the case of "*The City of Fredericton* v. *The Queen*," it was decided by the Supreme Court that the Dominion Parliament has *alone* the power to pass a prohibitory liquor law. (3 S. C. R, p. 505.) It is true this decision goes somewhat beyond the real issue, which is as to the right of the Dominion Parliament to pass a prohibitory liquor law, which is quite a different thing. Still, we presume the point was fully argued before the Court.

It may be well to mention for the sake of precision, which, in quoting judgments, is of more importance than the multiplicity of references, that the question in *Cooey* v. *Brome*,* was not whether the local legislatures could pass a prohibitory liquor law, but whether the prohibitory law of the old Province of Canada was still in force. We were all of opinion that it was. This decision, then, was so far exactly similar to the decision in *Sauvé and The Corporation of Argenteuil*,† and in the cases of *Hart* v. *Missisquoi*,‡ and *Poitras* v. *The City of Quebec*,§ except that in the two last cases the Judge expressed the opinion that if the Temperance Act of 1864 had been repealed by the local legislature, he would have held that the local legislature could not have re-enacted it. Incidentally, in *Cooey and Brome*, Chief Justice Dorion expressed a different opinion; and as a general proposition, I may say, parenthetically, I do not see how a legislature has power to repeal what it cannot re-enact. Of course, it may sometimes indirectly do so, or do what will have a similar effect. The reversal of *Cooey and Brome** in this Court was not, however, on this question at all, but on the question of whether the by-law had been lawfully voted; so it appears that the consent reversal arrangement in the Supreme Court, of which we have heard something, signifies even less than was at first supposed. By not taking the state of things existing in at least three of the Provinces at the time of passing the B. N. A. Act and the legislation then in force, we arrive at the inconvenient conclusion that the municipal institutions, as they existed prior to Confederation, cannot be maintained by local legislation; and that, as in the present case, a municipality would be shorn of most useful powers, by the simple operation of a surrender of its charter, in order that the legislation may, for convenience sake, be amended, or consolidated. It is maintained that to renew these powers there must be joint legislation, if that be lawful, which is open to some doubt.

The consequences of arriving at such a conclusion compel us to look for some other mode of dealing with the Statute. Since this case was argued, we have seen a decision of Ch. J. Meredith, in the case of *Blouin and the Corporation of Quebec*,† in which the case of *The City of Fredericton and The Queen* is reviewed. The case of *Blouin* does not involve the question now before this Court, but the Chief Justice drew attention to a distinction between the case before him and that before the Supreme Court, which has been frequently recognized, and which it is important to keep in view; namely, that where a power is specially granted to one or other legislature, that power will not be nullified by the fact that, *indirectly*, it affects a special power granted to the other legislature. This is incontestible as to the power granted to Parliament (Sect. 91 last *alinea*, B. N. A. Act), and probably it is equally so as to the power granted to the local legislature. In other words, it is only in the case of absolute incompatibility that the special power granted to the local legislature gives way.

As an example of the application of this principle, and also as an authority bearing on the

*21 L. C. J., 182; 1 Legal News, 519.
†21 L. C. J., 119.
‡3 Q. L. R., 170.
§9 R. L., 531.

*1 Legal News, 519.
†7 Q. L. R. 18.

present case, we may refer to the case of *Poulin & The Corporation of Quebec*,* where Ch. Justice Meredith held that "the Provincial Legislatures, under the power given to them, may, for the preservation of good order in the municipalities which they are empowered to establish and which are under their control, make reasonable police regulations, although such regulations may to some extent interfere with the sale of spirituous liquors." And so he held that the provisions of a Statute "ordering houses in which spirituous liquors, &c., are sold, to be closed on Sundays, and every day between eleven o'clock of the night until five of the morning, are police regulations within the power of the Legislature of the Province of Quebec." That case came up to this Court and the judgment was confirmed. It supports the theory that a prohibitory liquor law may be within the powers of a local legislature, and it limits the generality of the doctrine of *The City of Fredericton & The Queen*, that Parliament can *alone* pass a prohibitory liquor law. It may be useful, and it is certainly fair to remark, that Ch. Justice Meredith argues that his decision in the Poulin case is not absolutely incompatible with the decision in the case of the City of Fredericton. Be this as it may, the case of Poulin does not decide that there may not be a prohibitory liquor law of such a character as to be really an interference with trade and commerce rather than a police regulation. Neither have we to decide that here, for we can see no distinction in principle between this case and that. Poulin's case limits the time during which spirituous liquors may be sold in Quebec, the By-Law under the Statute controls the class of persons who shall be allowed to sell them by the far from novel device of a tax. This tax is in the sense of sub-section 9, which therefore, to some extent, justifies the action of the Corporation, although sub-section 9 cannot be said to be the basis of the law, as was shown at the beginning of this note.

We hold, then, that under a proper interpretation of sub-section 8, the right to pass a prohibitory liquor law for the purposes of municipal institutions, has been reserved to the local legislatures by the B. N. A. Act.

We have suspended our judgment in this case for an unusual length of time, awaiting the decision of the Privy Council in the case of *Russell & The Queen*,* in the hope that we might find some rule authoritatively laid down which might help us in adjudicating on this case and in that of *Hamilton & The Township of Kingsey*. In this we have been, to some extent, disappointed. Their Lordships have remained strictly within the issues submitted to them, and have held that the Canada Temperance Act of 1878 does not interfere with Sub-Sections 9, 13, and 16 of Section 92 B. N. A. Act; but that it is an Act dealing with public wrongs rather than with civil rights, that it is a matter of general and not merely of a local or a private nature in the province, and that if it affects the revenues of a Province it is only incidentally. We need hardly say that this is only a very brief summary of their Lordships' argument, but their reasoning will command general assent, not only owing to the source from which it comes, but also from its cogency. The Judicial Committee then lays down that the Dominion can pass a general prohibitory liquor law; it has specially declined to lay down any rule as to the other Sub-Sections than those submitted and the one alluded to by Ch. Justice Ritchie; and therefore it has not either expressly or by implication maintained that the Dominion Parliament can alone pass a prohibitory liquor law, or rather a liquor law which is prohibitory except under certain conditions, as, for instance, subject to a license for the purposes of the revenue.

It may perhaps be said that, allowing the local legislatures to interfere in the prohibition of the sale of liquor, Parliament having generally dealt with the subject, might be inconvenient. In the particular case, we think no inconvenience is to be apprehended; but, even if it were otherwise, we should not be disposed to think an argument based on such an objection conclusive. The true check for the abuse of powers, as distinguished from an unlawful exercise of them, is the power of the central government to disallow laws open to the former reproach. Probably to a certain class of mind this interference appears "harsh" and provocative of "grave complications," as has been said; but this is hardly an argument in favour of the Courts

*7 Q. L. R. 337.

*5 Legal News, 234.

extending their jurisdiction to relieve the Central Government of its responsibility. It seems to be fairer to leave the rule of expediency to be applied by a body responsible to the people at large, rather than to a comparatively irresponsible body like a Court. We are therefore to reverse the judgment in this case, with costs.

Judgment reversed.*

COURT OF QUEEN'S BENCH.

QUEBEC, October 5, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS & BABY, J J.

McKENZIE, Appellant, & TURGEON, Respondent.

Election Act of 1874—*Intimidation.*

RAMSAY, J. This is an action under the Parliamentary Election Act of 1874, for the penalty of $200 for intimidation. Of all the electoral manœuvres this Act is intended to repress, there is none so odious as those which come within the class of intimidation, and this is equally true of the intimidation employed by a creditor to force the conscience of his debtor, as of actual violence. This Court, then, cannot have any sympathy for those who are guilty of such an offence; but we must not permit the natural indignation it creates to mislead us in the matter, so as to give more importance to trumpery accusations than they deserve. The action in the present case is nominally brought by one Turgeon; but the real accuser must be Frs. Roy, the person said to have been intimidated. The threat employed seems to have been conveyed in these words: "France, cette année il faut que tu votes pour M. Amyot; si tu ne votes pas pour M. Amyot, je le sçaurai, et après l'élection tu auras affaire à moi," or "qu'ils joueraient ensemble." The only witnesses were Roy, his wife, and his sister-in-law. In this family party we may suppose that the utmost significance was given to what passed, and yet this is all they can swear to. But, in addition to this, it is proved that these alarming words were pronounced by a man in a considerably advanced state of drunkenness, and that they were treated as nothing by the person intimidated, both at the time and in speaking of them later. It was contended that the menace had some gravity from the fact that Roy was the debtor of McKenzie; but the debt had been transferred, and Roy knew of the transfer. We must not forget the general principles of law in interpreting a statute of this sort, and we must remember that to constitute intimidation the menace must be something that is real and substantial. Including the words "undue influence" adds nothing to the case before us, because it is manifest that the undue influence intended to be proved here was a threat.

We are therefore of opinion that the judgment must be reversed with costs.

Judgment reversed.

* In the case of *Hamilton & The Corporation of the Township of Kingsey*, the same point was also decided at Quebec, 7th Oct., 1882.

SUPERIOR COURT.

MONTREAL, October 5, 1882.

Before RAINVILLE, J.

LEBOURVEAU v. BEARD, & THE BANK OF MONTREAL *et al.*, T. S.

Petition to obtain main-levée of Saisie-Arrêt upon depositing moneys in Court to abide decision in Review.

On the 14th of September, 1881, the plaintiff had obtained a judgment against the defendant for $316.58, and on the 29th of October following, the defendant's petition in revocation of that judgment was dismissed; whereupon the plaintiff immediately issued a *Saisie-Arrêt* after judgment, to attach the moneys of the defendant in the hands of all the Banks in the City of Montreal.

Shortly after the service of this seizure, the defendant inscribed in Review from the judgment of 29th October, which dismissed his *Requête Civile*, and on the 4th November, 1881, presented a petition praying that he might be permitted to deposit in Court the amount of the original judgment in principal, interest and costs, together with a further sum for costs of the seizure, the whole to abide the decision in Review; and that upon so doing *main-levée* of said seizure be granted him.

By the judgment of the Court, the Petition was granted; deposit to be made to abide

the result of the case, and to be considered as replacing the moneys or effects seized in and by virtue of the *saisie-arrêt après jugement.*

Wotherspoon, Lafleur & Heneker, for Petitioner.

S. A. Lebourveau, for Plaintiff contesting.

Cf. *Desjardins v. Ouimet, & Perrault*, T. S., 2 L. N. 194.

COUR SUPÉRIEURE.

MONTRÉAL, 15 Mai, 1882.

Présent : RAINVILLE, J.

MARCOTTE v. DESCOTEAU.

Jugé : *Qu'une motion pour cautionnement pour frais peut être présentée après le quatrième jour suivant le rapport ; qu'il suffit que la motion soit signifiée dans les quatre jours.*

Dans cette cause le Bref était rapportable le 9 Mai, la motion pour cautionnement a été signifiée le 12, et produite et présentée le 15 du même mois.

Motion accordée.

Mercier & Cie., pour le Demandeur.

A. Mathieu, pour le Défendeur.

(P. G. M.)

COUR SUPÉRIEURE.

MONTRÉAL, 4 Octobre, 1882.

Présent : RAINVILLE, J.

GILES v. O'HARA.

Jugé : *Qu'une motion pour cautionnement pour frais ne peut pas être présentée après le quatrième jour suivant le rapport, et que la jurisprudence est universelle dans ce sens, qu'il ne suffit pas que la motion soit signifiée dans les quatre jours, mais qu'elle doit aussi être présentée dans cet intervalle.*

Dans cette cause le Bref était rapportable le 22 Septembre, la motion pour cautionnement a été signifiée le 25 du même mois. Et la Cour ne siégeant pas du 25 Septembre au 2 Octobre, la motion fut présentée le 2 Octobre, premier jour du terme.

Motion renvoyée.

Préfontaine & Cie., pour le Demandeur.

Lacoste & Cie., pour le Défendeur.

(E. N. ST. J.)

(As the above reports, transmitted to us with a request for publication, appear to be contradictory, we have, in accordance with our rule in such cases, required that they should be authenticated by the initials of counsel engaged in them. The practice, we may remark, seems to be now settled in accordance with the later decision. See *Fisher* vs. *Moss*, Wotherspoon, p. 21 ; *Canadian Bank of Commerce* v. *McGauvran*, 5 Legal News, p. 128.—ED.)

RECENT DECISIONS—PROVINCE OF QUEBEC.

Mutual Fire Insurance Co.—Rights of creditor of company.—In the absence of fraud, negligence or mal-administration, it is not competent to a judgment creditor of a Mutual Fire Insurance Company of the Province of Quebec to attach monies payable to the company by way of assessments under the provisions of the liquidation Statute 28 Vic, ch. 13.—*Savoie* v. *La Compagnie d'Assurance Mutuelle contre le feu d'Hochelaya, & Allard, T. S.* (Superior Court, Montreal), 26 L. C. J. 166.

Community—Inventory. 1. In consequence of the failure of the mother of the plaintiffs to make an inventory of the community of property which had existed between her and their father, who died on the 14th of June, 1832, intestate, leaving the plaintiffs, then minors, as his heirs at law, and her remarriage with defendant, without a contract of marriage, on the 19th of March, 1840, a tripartite community of property was formed between defendant, the mother and the plaintiffs.—*Almour et al.* v. *Ramsay*, (Superior Court, Montreal), 26 L. C. J., p. 167.

2. The inventory made by defendant after the death of his wife, on the 10th May and 31st July, 1860, although made ostensibly of the community between him and his wife, was a good and legal inventory of the tripartite community.—*Ib.*

3. That said inventory had been acquiesced in and was binding on plaintiffs.—*Ib.*

4. That the fact that there was not really any property belonging to the first community was immaterial.—*Ib.*

5. That the fact that the plaintiffs had not, up to and at the time of the making of the inventory, made any demand of continuation of community, did not prevent their making such demand by the present action.—*Ib.*