The Legal News.

VOL. XII. SEPTEMBER 14, 1889. No. 37.

VEXATIOUS LITIGATION.

Whilst *bonâ fide* suitors are discouraged by the delay and expense of proceedings in the courts, the same causes are a powerful weapon in the hands of certain litigious persons, who endeavor by persistency to drive their opponents into giving that which the law refuses, or to satisfy their own ambition or personal spite against innocent people. Attempts have lately been made to check such proceedings, and in one case, at least, the attempt has proved successful. The powers of the Court to deal with these cases are not very extensive, and it is important to know exactly what they are.

1. By Order XXV. R. 4, R.S.C.: "In case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just." This rule has two defects: (1) It only applies when the pleadings themselves show that the proceedings are vexatious, and a party can generally so frame his pleadings as to avoid the operation of the rule. (2) An order made under the rule is itself subject to appeal, and there is nothing to prevent a defendant who seeks to get a frivolous action dismissed from being taken up to the House of Lords before he can finally get rid of his adversary.

2. But the Court has also an inherent power to prevent abuse of its process by staying vexatious actions, though not shown on the pleadings to be so. This power has been exercised in a variety of cases—for instance, where an action was brought against a clerk of the Petty Bag Office for not sealing a writ which he was not bound to seal: *Costro* v. *Murray*, 32 L. T. Rep. N. S. 675; L. Rep. 4 Ex. 213. One of the first cases of the kind arose out of an action brought for false imprisonment against Mr. Justice Mellor by a prisoner whom he had tried and sentenced. The action failed, and the plaintiff then brought an action for libel against Mr. Justice Mellor's solicitor in respect of the pleadings in the former action. The action was stayed on the ground that it was a gross abuse of the process of the court: *Jacobs* v. *Raven*, 30 L. T. 366. The leading case on the subject is the *Metropolitan Bank* v. *Pooley*, 53 L. T. Rep. N. S. 163; 10 App. Cas. 210. That was an action brought by a bankrupt, whose adjudication in bankruptcy had not been set aside, against the defendant for maliciously procuring the bankruptcy. The House of Lords ordered the action to be dismissed as frivolous and vexatious, and Lord Selborne says that, "Before the rules were made under the Judicature Act, the practice had been established to stay a manifestly vexatious suit which was plainly an abuse of the authority of the Court although, as far as I know, there was not at that time either any statute or rule expressly authorizing the Court to do it. The power seemed to be inherent in the jurisdiction of every court of justice to protect itself from the abuse of its own procedure." Perhaps the case that carries this principle furthest is *Ex parte Griffin*, 41 L. T. Rep. N. S. 415; 12 Ch. Div. 480, where the Court refused to make an adjudication in bankruptcy, although there was a good petitioning creditor's debt, and an act of bankruptcy had been committed, upon its being shown that the bankruptcy petition was presented, not with the *bona fide* view of obtaining an adjudication, but as a means of extorting money. And the Court will exercise this power, even where the facts are in dispute, if the Court is satisfied that allegations are made on altogether insufficient ground: *Lawrence* v. *Lord Norreys*, 59 L. T. Rep. N. S. 703.

But the most important application of this principle is that of restraining a party from taking any further proceedings except upon certain terms. This was first done in the cases of *Grepe* v. *Loam*, and *Bulteel* v. *Grepe*, 58 L. T. Rep. N. S. 100; 37 Ch. Div. 168. In these actions, numerous applications were made by some of the parties for the purpose of setting aside or varying the judgments previously obtained in the actions. Upon

one such application the Court of Appeal made an order "that the said applicants, or any of them, be not allowed to make any further applications in these actions, or either of them, to this Court, or to the Court below, without the leave of this Court being first obtained, and if notice of any such application shall be given without such leave being obtained, the respondent shall not be required to appear upon such application, and it shall be dismissed without being heard." This was followed by the case of Mrs. Davies, 21 Q. B. Div. 236, against whom a somewhat stronger order was made, viz., "That the said Maria Anne Davies be not allowed to issue any writ of summons, or make any application against any person or persons without the leave of a judge at chambers being first obtained. And if any notice of any application or motion be given without such leave being first obtained. . . . the respondent shall not be required to appear unless the Court shall otherwise order." This order has been acted on several times, and the Court have refused to hear applications made by Mrs. Davies without leave having been first obtained. The weakness of such orders is that they are themselves subject to appeal, and they cannot be made to bind any higher court than that in which they are made. An unfortunate defendant may still be dragged from court to court by a determined plaintiff, and he would be bound to appear in any court above that in which the order was made. It would be very desirable to give a judge at chambers a general power to make orders restraining all further proceedings by a party without leave, and relieving any other parties from the necessity of appearing upon appeals from such orders.

3. We must also notice that the Court will grant an injunction restraining a party from taking proceedings of a particular kind in violation of an enforceable agreement not to take such proceedings: *Besant* v. *Wood*, 40 L. T. Rep. N. S. 445; 12 Ch. Div. 605, 630, or other entirely unjustifiable proceedings, *Cercle Restaurant* v. *Lavery*, 18 Ch. Div. 555.

4. When a frivolous or vexatious appeal is made to the Court of Appeal the appellant may be ordered to give security for costs: *Usill* v. *Hales*, 47 L. J. C. P. 380, and a party is generally required to do so before appealing to the House of Lords.

5. In the cases of persons suing *in forma pauperis* the court has power to dispauper a party who conducts vexatious proceedings, and he may then be put upon terms as to costs, or compelled to give security, just as other persons may be: *Hawes* v. *Johnson*, 1 Y. & J. 10.

6. A defendant, against whom proceedings are taken maliciously, and without probable cause, has also remedy by action if he can show special damage: *Quartz Hill Company* v. *Eyre*, 49 L. T. Rep. N. S. 249, 50 Ib. 27; 11 Q. B. Div. 674. But, as may well be supposed, this remedy is not often resorted to.—*Law Times*, (London.)

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, July 25, 1889.

Present:—LORD WATSON, LORD BRAMWELL, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR RICHARD COUCH.

THE CORPORATION OF THE TOWN OF ST. JOHN'S, APPELLANT, AND THE CENTRAL VERMONT RAILWAY CO., RESPONDENTS.

Railway bridge and railway track—Assessment of—40 *Vict.* (Q.) *ch.* 29, *secs.* 326 *&* 327—*Injunction—Extension of town limits to middle of navigable river—Intra vires of local legislature*—43-44 *Vict.* (Q.) *ch.* 62.

HELD:—(*Affirming the judgment of the Supreme Court of Canada*, 14 *Can. S.C. R.* 288), *that the portion of the railway bridge built over the Richelieu river, and the railway track belonging to the company, appellants, within the limits of the town of St. John's, are exempt from taxation under secs.* 326-327 *of* 40 *Vict.* (Q.) *ch.* 29, *although no return had been made to the council by the company, of the actual value of their real estate in the municipality.*

2. *That a writ of injunction was the proper remedy to enjoin the corporation to desist from all proceedings to collect assessments illegally imposed.*

3. *That the clause in the Act of Incorporation of the town of St. John's, P.Q., extending the*

limits of the town to the middle of the Richelieu river, a navigable river, is intra vires of the legislature of the Province of Quebec.

The judgment of their lordships was pronounced by

LORD WATSON:—

By the Quebec Act, 44 Vict., cap. 62, which amends and consolidates previous statutes relating to the incorporation of the town of St. John's, the appellant corporation is (Sect. 86) authorized to levy annually on all lands, town lots, and parts of town lots within the municipality, with the buildings and erections thereon, a sum not exceeding one half cent in the dollar on their whole real value as entered on the assessment roll of the town. Section 98 of the Act incorporates certain sections of "The Town Corporation "General Clauses Act, 1876" (Statutes of Quebec, 40 Vict., cap. 60), including the three following clauses, upon the construction of which this appeal mainly depends:—

"323. It shall be the duty of the valuators in office to make annually, at the time and in the manner ordered by the Council, the valuation of the taxable property of the municipality, according to the real value."

"326. Every iron Railway Company or wooden Railway Company, other than those mentioned in the preceding section, and possessing real estate in the municipality, shall transmit to the office of the Council, in the month of May in each year, a return showing the actual value of their real estate in the municipality other than the road, and also the actual value of the land occupied by the road, estimated according to the average value of land in the locality.

"Such return must be communicated to the valuators by the Secretary-Treasurer in due time."

"327. The valuators, in making the valuation of the taxable property in the municipality, shall value the real estate of such Company according to the value specified in the return given by the Company.

"If such return has not been transmitted in the time prescribed, the valuation of all the immovable property belonging to the Company shall be made in the same manner as that of any other ratepayer."

The Central Vermont Railway Company, the respondent in this appeal, is the owner of a line of iron railway, part of which is within the municipal limits of the town of St. John's. The municipal boundary extends to the *medium filum* of the Richelieu, a navigable river, over which the respondent's railway is carried by a wooden bridge, some of its piers having their foundations in the *solum* of the river, which, in so far as the interests of navigation are concerned, is subject to the legislative authority of the Dominion. The respondent Company did not, in any of the years from 1880 to 1884, both inclusive, make the return to the Council which is prescribed by Section 326 of the General Act; and, in each of these years, its real estate within the municipality was valued for the purposes of the assessment roll, by the official valuators of the town, in terms of Section 327.

For the year 1884 the entry made in the roll was in these terms:—

La Compagnie de Chemin de Fer de Central Vermont, étant pour la partie de son pont en bois dans les limites de la ville - - - - $12,000

In each of the four years following, the valuation of the respondent's real estate within the boundaries of the town, as entered in the roll, included these two items:—

Railway tracks from East Longueuil Street to bridge - - - $10,000

Part of railway bridge within limits of town of St. John's - - - $10,000

The appellant Corporation annually imposed municipal assessments upon the basis of these valuations, no part of which has been paid by the respondent. In consequence of such default, a distress warrant was issued by the Corporation empowering a baliff to distrain for the amount of the assessments in arrear, with interest.

The respondent Company, on the 18th December, 1884, made application to the Superior Court of the Province of Quebec for a writ of injunction ordering the Corporation to stay proceedings upon the warrant until further orders of the Court; and on the 19th December a writ of injunction was issued by Chagnon, J., upon the applicant's giving security in terms of the Quebec Act in that behalf of 1878. On the 10th January, 1885, the Cor-

poration filed a petition to quash the injunction, and after a variety of procedure, which it is unnecessary to detail, Chagnon, J., on the 10th March, 1885, gave judgment annulling the writ of injunction, with costs. On an appeal by the present respondent, the decision of the Superior Court was unanimously affirmed by the Court of Queen's Bench for the Province, consisting of Dorion, C. J., with Monk, Ramsay, Cross, and Baby, JJ.

The case was then carried by appeal to the Supreme Court of Canada, who, on the 20th June, 1887, reversed, by a majority of four against two, the judgments of both Courts below, found that the warrant and all proceedings following thereon were illegal and null, and ordered that the same should be set aside, and that a writ of injunction do issue out of the Superior Court for Lower Canada, enjoining the Corporation to desist from all proceedings to enforce the warrant.

Chief Justice Ritchie, with whose opinion Strong, Henry, and Gwynne, JJ., substantially agreed, stated the real controversy between the parties to be "whether or not "anything more of the land on which the "superstructure of the railroad is placed can "be assessed in addition to the land itself;" and on the construction of the clauses of the General Act already quoted, the learned Chief Justice was of opinion that "the Legis- "lature has carefully protected railways from "any local assessment beyond the mere "value of the land, apart from, and indepen- "dent of, the roadway with its superstruc- "ture."

The two Judges of the minority were Fournier and Taschereau, JJ. Fournier, J., does not, in his elaborate opinion, deal with the point which was said by the Chief Justice to constitute the real matter of controversy. Taschereau, J., on the contrary, states that the respondent attacked the warrant of distress on two grounds, the one affecting the whole assessments, and the other confined to the assessment for the year 1880. The learned Judge said, "The first, which applies to all "the taxes claimed on the part of the appel- "lants' road on *terra firma*, is that the land only "occupied by the road is taxable, and not "the road itself." His reasons for coming to a different conclusion from that of the majority are thus expressed:—"We have been "referred to the case of the *Great Western* v. "*Rouse* (15 U. C., Q. B., 168), in which it was "held that only the land occupied by the rail- "way and not the superstructure is taxable. "But this case has no application here, be- "cause the Statute of 1853, Upper Canada "Assessment Act, 16 Vict., cap. 182, sect. 21, "does not provide, as the Quebec Statute I "have cited does, that if the Company fails "to make a return to the Council the valua- "tion of all its immovable property shall be "made as that of any other ratepayer."

Her Majesty, in accordance with the advice of this Board, was pleased, by Order-in-Council dated the 17th December, 1887, to allow the present appellants to enter and prosecute an appeal against the judgment of the Supreme Court. In the petition for special leave, which is recited in the Order, the appellants set forth correctly the grounds upon which the learned Chief Justice, and the Judges who concurred with him, decided in favour of the present respondent, and then submitted, "that if the judgment of the Su- "preme Court, contrary to the view of both "Courts in the Province and to that of the "two French Judges in the Supreme Court, "is correct, the power of taxation of the mu- "nicipalities in the Province of Quebec is "greatly limited, and that whether it is "by law so limited is a question of great "and general importance."

Their Lordships would not have made any reference to these initial proceedings, had it not been that, at the hearing of the appeal, their time was chiefly occupied by an endeavour on the part of the appellant Corporation to argue that, as matter of fact, they had not, in any of the yearly rolls upon which these assessments were made, valued aught beyond the land occupied by the railway, and that they did not desire to include, and had not included, the bridge or other superstructures in the estimate. Their Lordships purposely abstain from laying down any rule as to the points which an appellant may competently raise under an appeal by leave from the Supreme Court of Canada. That must depend upon the special circumstances of each case. But it must be understood that parties who get such leave, upon the dis-

tinct representation that they desire to raise a particular question of law of great and general importance, cannot be permitted, at the hearing of the appeal, to change front and say that no such question arises, and to argue that the case turns upon a question of fact which the Supreme Court has wrongly assumed or decided. If the appellant Corporation, in petitioning for the exercise of Her Majesty's prerogative, had stated the same case which they attempted to present in argument, it is almost matter of certainty that leave to appeal would have been refused.

Upon the construction of the Municipal Acts, their Lordships entirely concur in the view taken by Chief Justice Ritchie. Section 323 of the General Act imposes upon the valuators appointed by the Council the duty of making a valuation of the "taxable property of the municipality;" and by the terms of Section 326 no part of a railway is made taxable property, except the land, as land, occupied by the road. In their Lordships' opinion the enactment of Section 327, to the effect that, when the Company make no return, the valuation of all their immovable property shall be made in the same manner as that of any other ratepayer, refers to their immovable property already declared to be taxable, and simply amounts to a direction that the value of such taxable estate shall be estimated by the town's valuators instead of the Company itself.

The judgment of the Supreme Court ought, therefore, to be affirmed; and their Lordships will humbly advise Her Majesty to that effect. The appellants must pay the costs of this appeal.

Judgment affirmed.

Jeune, Q. C., and *Gore*, for the appellants.

J. S. Hall, Q. C., (of the Canadian bar), and *Macleod Fullarton*, for the respondents.

THE JESUITS' ESTATES ACT.

[Continued from page 288.]

There are other reasons, although perhaps of less importance, why in the opinion of the undersigned the petition cannot be favorably entertained. Without intimating, as has already been observed, that he has any interest beyond that of any other citizen and taxpayer, and without stating that he has even any doubts as to the validity of the legislation which he proposes should be tested, with the plain declaration of your Excellency's advisers that the Acts referred to are within the powers of the legislature, and with the declaration, which will be hereafter referred to more particularly, of the House of Commons of Canada, that interference with these Acts, on the part of your Excellency, was not to be advised; the petitioner, in making the present request, proposes a course which would result in the Government of the Province of Quebec, or the persons in whose favor these Acts were passed, being put to expense in defending the validity of these enactments in the Supreme Court of Canada and, perhaps, ultimately, on appeal before the Judicial Committee of the Privy Council, unless they would submit to the decision being *ex parte*, in which case it would have very little weight as a judicial determination.

The petitioner has not, in the matter of costs, subjected himself to the same obligations as an applicant would incur in the somewhat analogous case in which a private person seeks to use the name of the Crown, or of the Attorney-General, in a civil proceeding in a court of justice. He declares in his petition that he is willing to bear "the necessary costs of the Government" and "as an evidence of such willingness" he has deposited his certified cheque on the Bank of Montreal, payable to the order of the Deputy Minister of Finance for the sum of $5,000. This deposit is, therefore, made for the purpose of securing the "necessary costs of the Government" of Canada, should a reference be made. So far as now appears, the case would seem to be one in which the Government of Canada would not be justified in appearing as a party to the reference, or in incurring any costs in respect thereto, the Dominion Government not having any immediate or direct interest in the controversy. It is not the practice of Her Majesty's Government to interfere on a reference for advice, or to retain counsel to argue that the advice should be given one way or the other. Indeed, to do so would appear unseemly and inconsistent with the idea of seeking advice

and guidance, which is the theory on which such applications are made. The offer to pay the costs of the Government as distinguished from the costs of the only parties interested in the validity of the legislation in question, is not, therefore, a very enormous one, nor would it afford any security to those who might deem it their duty to support or to oppose the allegation that the Acts in question were within the competency of the Legislature of Quebec.

As Your Excellency's Government would be under no expense, even if the reference should be made, and would not in any event feel justified in availing itself of private generosity to enable it to carry on public affairs, the cheque enclosed by the petitioner may properly be returned to him.

The undersigned would remind Your Excellency that as regards the Act for the settlement of the Jesuits' Estates, a resolution in favor of disallowing the same was presented to the House of Commons of Canada during the last session of Parliament, and was, after thorough discussion, negatived by an overwhelming majority. The will of the House of Commons that the Act should be left to its operation in the usual way, as being probably within the powers of the Legislature which passed it, was thereby unequivocally expressed. The attempt to attack the Act in the courts, by the use of Your Excellency's power to seek advice from the Supreme Court of Canada, would not, in the opinion of the undersigned be consistent with the deference which should be shown to that branch of Parliament, and would not be justifiable on the ground that the doubts which had been asserted, continued to be expressed by some who do not acquiesce in the conclusion then arrived at.

The undersigned would, therefore, recommend that the petitioner be informed, when his cheque is returned to him, that his suggestion is not one that can properly be complied with.

(Signed) JNO. S. D. THOMPSON,
Minister of Justice.

July 10th, 1889.

PENSIONS.

The following despatch has been published in the *Canada Gazette*, with reference to pensions to officers transferred from the Imperial Civil Service:—

DOWNING STREET, 20th August, 1889.

MY LORD,—With reference to the Earl of Carnarvon's Circular despatch of the 3rd of September, 1875, I have the honour to acquaint you that it has been decided that the Superannuation Act, 1859, does not allow of a pension being granted thereunder in any circumstances whatever to an officer of the Civil Service retiring from public employment under the age of 60 years, except on the ground of ill-health or of abolition of office.

Officers who have been transferred from the Imperial Civil Service to the Civil Service of a Colony in which the pensionable age is less than 60 years, should therefore be given to understand that, on their retirement from Colonial service, the Lords Commissioners of the Treasury will not be able to award them pensions in respect of their Imperial service under the Act of 1859, if that retirement takes place under 60 years of age, unless it be for one of the two reasons above mentioned.

I have the honour to be, My Lord,
Your most obedient humble servant,
KNUTSFORD.

The Office Administering the
Government of Canada.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 31.

Judicial Abandonments.

Solomon Adam, merchant, Cap St. Ignace, Aug. 27.

Lactance Marquette, Lévis, Aug. 24.

Antoine Perrotcn, trader, Hull, Aug. 24.

Leonard Asa Stearns, doing business under the name of L. A. Stearns & Co., lumberman, township of Hatley, Aug. 20.

Eusèbe St. Pierre, butcher, Ste. Cunégonde, Aug. 22.

Abel Valin, contractor, Montreal, Aug. 17.

Curators appointed.

Re Mary Eliza Jaques (F. R. Richardson & Co.).—Auguste Singer, Montreal, curator, Aug. 22.

Re Norbert Lemaitre Duhaime, butter and cheese manufacturer, Montmagny.—P. A. Choquette, Montmagny, provisional guardian, Aug. 28.

Re Eusèbe St. Pierre.—C. Desmarteau, Montreal, curator, Aug. 28.

Re Abel Valin.—C. Desmarteau, Montreal, curator, Aug. 28.

Re Benjamin Vallée, doing business as Vallée Frères, hotel keeper, Vaudreuil. — A. McGregor, Montreal, curator, Aug. 21.

Dividends.

Re Jos. Bonenfant, St. Rémi.—Dividend, payable Sept. 18, Kent & Turcotte, Montreal, joint curator.

Re W. E. Brunet & Co., St. Sauveur.—First and final dividend, payable Sept. 14, D. Arcand, Quebec, curator.

Re Thomas J. Claxton & Co.—Composition of 45c., payable Aug. 29, P. S. Ross, Montreal, curator.

Re P. Coutu, St. Félix.—First dividend, payable Sept. 18, Kent & Turcotte, Montreal, joint curator.

Re J. F. C. Dupuy, St. John.—Dividend, payable Sept. 18, Kent & Turcotte, Montreal, joint curator.

Re Israël Goldenstein, St. Polycarpe.—First and final dividend of 24 p.c., payable Sept. 3, J. McD. Hains, Montreal, trustee.

Re J. N. Grenier. — Dividend, payable Sept. 18, Kent & Turcotte, Montreal, joint curator.

Re David Hambleton.—First and final dividend, payable Sept. 19, H. J. Simpson, Lachute, curator.

Re M. A. Ouimet.—First dividend, payable Sept. 18, C. Desmarteau, Montreal, curator.

Re F. X. Panneton.—First and final dividend, payable Sept. 16, T. E. Normand, Three Rivers, curator.

Re E. Patry, Montreal. — First dividend, payable Sept. 18, Kent & Turcotte, Montreal, joint curator.

Re P. Plautier.—First and final dividend, payable Sept 29, C. Desmarteau, Montreal, curator.

Re Avery R. Reed.—First and final dividend, payable Sept. 16, Henry Miles, Montreal, curator.

Re Ross Brothers, Shawville.—First and final dividend (5c.), payable Sept. 3, J. McD. Hains, Montreal, curator.

Re J. & H. Taylor.—First dividend, payable Sept. 17, W. A. Caldwell, Montreal, curator.

Separation as to property.

Camille Couture vs. Joseph Samson, farmer, parish of St. Charles, county of Bellechasse, June 6.

Nathalie Lalonde vs. Joseph Lamarche, contractor, Montreal, Aug. 28.

Alphonsine Maher vs. Wilfrid Tardy, butcher, parish of St. Enfant Jésus du Mile End, Aug. 28.

Quebec Official Gazette, Sept. 7.

Judicial Abandonments.

M. O. David, St. Hyacinthe, Sept. 4.

M. O. David, jr., St. Hyacinthe, Sept. 4.

Alexandre Houle, grocer, Montreal, Aug. 29.

André Laferrière, trader, parish of St. Barthélemi, district of Richelieu, Sept. 2.

Avila Palin, trader, Napierville, Aug. 10.

Victor Turcotte, tailor, Sherbrooke, Sept. 2.

Curators appointed.

J. B. de Vicq de Cumptich, tobacconist, Quebec.—H. A. Bedard, Quebec, curator, Aug. 30.

Re Julie Deschênes.—T. Gauthier, Montreal, curator, Aug. 31.

Re Leandre Lapointe.—C. Desmarteau, Montreal, curator, Sept. 4.

Re New Glasgow Lumber Co.—Frank Weir, Montreal, curator, Aug. 30.

Re Avila Palin, Napierville.—P. R. Mérizzi, Napierville, curator, Aug. 20.

Re Antoine Perroton, Hull.—J. McD. Hains, Montreal, curator, Sept. 4.

Re L. A. Stearns & Co. — C. Millier and J. J. Griffith, Sherbrooke, joint curator, Sept. 2.

Dividends.

Re James Johnstone. — First and final dividend, payable Sept. 24, W. A. Caldwell, Montreal, curator.

Re Raphael Maretski, Chambly Canton.—First and final dividend, payable Sept. 24, W. A. Caldwell, Montreal, curator.

Re P. Ouellette.—First and final dividend, payable Sept. 30, P. Deshaies, St. Angèle de Laval, curator.

Re P. Plautier.—Second and final dividend, payable Sept. 24, C. Desmarteau, Montreal, curator.

Re A. Renaud & Co.—First and final dividend, payable Sept. 14, Bilodeau & Renaud, Montreal, joint curator.

Separation as to property.

Régina Chaput vs. Amanda Vadnais, trader, Iberville, Aug. 22.

Elmire Dubois vs. Hormisdas Labelle, farmer, St. Jérôme, Aug. 21.

Marie Justine Dion vs. François Xavier Beaucher dit Morency, Quebec, Aug. 28.

Marie Hamel vs. Joseph Limoges, trader, St. Jérôme, Aug. 21.

Elise Vallée vs. Joseph Bouchard, deputy registrar, Ste. Martine, Aug. 27.

Separation from bed and board.

Georgine Gingras vs. Evangeliste Cirenne, township of Bulstrode, Aug. 30.

GENERAL NOTES.

THE WHIPPING POST.—The institution of the whipping post, which still survives in Delaware, did not go out of fashion in England until the close of the last century. On May 5, 1713, the corporation of Doncaster directed that a whipping post be set up for punishing vagrants and sturdy beggars. Three centuries ago this punishment was carried to a cruel extent. Owing to the dissolution of the monasteries by Henry VIII, a large number of persons who depended on the charity of the good monks were thrown upon the country, and Parliament hastened to check the increasing vagrancy by an Act passed in 1531, which declared that every vagrant should be carried to some market town or other place, and tied naked to the end of a cart and whipped through the streets till their whole body be bloody. Early in the last century the price paid for whipping was four pence, and the constables' accounts included such items as arresting a distracted woman, watching her, and the fee for having her whipped. Whipping at the cart's tail, as provided for by the statute of Henry VIII, went out of use in 1596, when the whipping post was substituted for the earlier method.—*Philadelphia Record.*

AN OPINION OF COUNSEL.—In the course of the argument in the House of Lords of *Lyell* v. *Kennedy*, a

case was mentioned which seemed to cause a gleam of intelligence to pass between Lord Selborne and Sir Horace Davey. It was a decision of Vice-Chancellor Malins in a case in which, when it came before him, he at once took a strong line against the plaintiff. Something was said of an opinion of counsel advising the action, whereupon the vice-chancellor looked up with a smile and said: "I am curious to know who that counsel could be." The plaintiff's counsel proffered the opinion, and the Vice-Chancellor took it, protesting that he "should not like to injure the reputation of the young man who wrote it, and he would carefully cover the signature with a piece of paper, so as not to see his name." Said the counsel: "There is no objection to your honor reading or giving the counsel's name." The Vice-Chancellor proceeded to read the opinion, exposing its fallacies one by one in his humorous conversational way, and at the end of it he found the name of "Roundell Palmer," then lord chancellor. It was the last opinion he wrote before he accepted the Great Seal.—*London Law Journal.*

PRISONERS AS WITNESSES.—Writing on the subject of "Prisoners as Witnesses" a few years ago, Mr. Justice Stephen remarked that "it may seem paradoxical to say so, but it is nevertheless true that the class of accused persons who will get least advantage from having their mouths opened are those who are entirely innocent of and unconnected with the crime of which they are charged—persons who have nothing to conceal and nothing to explain." It is rather remarkable that the learned judge should this week have presided at the trial of a case in which, not only did the prisoner get no advantage from, but it seems probable that conviction was due to, her mouth being opened. Down to the time of Mrs. Maybrick's statement, a verdict of "not guilty" did not seem improbable. It was not established beyond doubt that the deceased died of arsenical poisoning; the facts did not show beyond doubt that, even if he died from arsenic, Mrs. Maybrick administered it. There was no proof that she purchased arsenic, except in the fly-papers; there was the clearest evidence that the deceased had been in the habit of taking arsenic. There were doubtless many circumstances of the gravest suspicion, and there was the statement of the prisoner to her paramour that her husband was "sick unto death," made at a time when the doctors had not suggested that he was dangerously ill. But there was probably doubt enough to prevent a jury from convicting. When, however, the prisoner admitted in her statement that she had placed a white powder in the meat juice, the die was cast. All Sir Charles Russell could do was to urge that, while "at first sight," the statement was "a self-incriminating one," it was "a remarkable one, and made under remarkable circumstances, and the jury must make such allowances as they thought fit." It may be surmised that the effect on the jury of the observations made by the learned judge on this statement, toward the close of his summing-up, turned the scale and insured the conviction.—*Solicitors' Journal.*

THE PRESS AND ACTIONS OF LIBEL.—The *Law Journal* (London), says:—"In these days, when actions of libel are so frequently brought against newspapers, a proof-reader for libel would be a more useful member of the staff than the American fighting editor."

CONFUSED RELATIONSHIP.—Mr. Uttley in "Law and Professional Notes" writes:—"It is announced that a son has been born to Ex-King Amadeus and Princess Letitia, from which ensues a curious result in the matter of relationship. The parents are uncle and niece, and, therefore, the new-born babe is grand-nephew to its own father and first cousin to its own mother. What future complications may be expected from this strange pedigree?"

IGNORANCE OF LAW.—The same writer says:—"In connection with ignorance of law, a story is told of Servius Sulpicius (when he consulted the famous Mucius Scævola on a point of law) which may be worth reciting. 'Servius, cum in causis orandis primum locum, aut pro certo post M. Tullium obtineret, traditur ad consulendum Quintum Mucium de re amici sui pervenisse; cumque eum sibi respondisse de jure Servius parum intellexisset, iterum Quintum interrogasse; et a Quinto Mucio responsum esse, nec tamen percepisse; et ita objurgatum esse a Quinto Mucio: namque eum dixisse, Turpe esse patricio, et nobili, et causas oranti, jus, in quo versaretur, ignorare. Eâ velut contumeliâ Servius tractatus, operam dedit juri civili; et hujus volumina complura extant; reliquit autem prope centum et octoginta libros.'"

AN UNSULLIED RECORD.—During a recent trial of a case relating to a patent, the Attorney-General wished his junior to hand up to the judge a copy of some correspondence, when the junior said that his copy was marked. Another barrister declined to part with his transcript for the same reason, adding that it was marked in red. Then turning round to a well-known Q.C. engaged on the other side, the great man of law requested the loan of his copy, saying he knew it was neither marked nor read.—*City Press.*

TALES OF BYLES.—The assumed or real modesty of judges concerning their own merits has often given rise to amusing little episodes, one of the best remembered of which relates to 'Byles upon Bills.' A learned counsel was pleading before Sir John Byles, the author of the work, from which a quotation was made, and the book was held up. 'Does the learned author give any authority for that statement?' inquired the judge. Counsel (referring to the volume): 'No, my lord; I cannot find that he does.' 'Ah!' replied Sir John, 'then do not trust him. I know him well.' Sir John always rode a very sorry horse, which legal wags nicknamed 'Bills,' in order that they might say, 'There goes Byles on Bills;' concerning which we are told, in 'A Generation of Judges,' that in an argument upon a certain section of the Statute of Frauds, he put a case by way of illustration to the counsel arguing: 'Suppose, Mr. So-and-so, that I were to agree to sell you my horse; do you mean to say that I could not recover the price unless,' and so on. The illustration was so pointed that there was no way out of it but for the counsel to say that that section applied only to things of the value of ten pounds. The retort was well appreciated by those who had ever seen the horse.—*City Press.*