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TRAINING FOR THE BAR AND BENCH.

As a considerable number of candidates have lately been presenting themselves for admission to the study and the practice of the law, it may not be inopportune, in this vacation season, to give some extracts from a recent address on the subject by a Judge of lengthened experience. Mr. Justice Miller has occupied a position on the bench of the Supreme Court of the United States for seventeen years, and if length of service has produced a slight tendency to gossip about himself, the reminiscences and hints of the learned Judge are none the less interesting on that account. Mr. Justice Miller belonged to the bar of Iowa, and it is from an address delivered before the bar association of that State, on the 13th of May last, that we quote.

After a compliment to the bar of Iowa on their professional zeal and energy, Justice Miller proceeds:

"There is, however, a disadvantage under which you labour in this comparison, which has forced itself upon my observation, and of which, as you are possibly unconscious, I may be able to do you a service by faithfully disclosing it.

"It is difficult to find a single word to express what I mean, but, if I must select a word, I should say your Eastern brethren, taken as a whole, are your superiors in *training*.

"They do not know more than you do, but they use what they do know with more skill. Their materials are better arranged. Their forces are better marshalled. Their resources are better culled and sifted, and the results presented to the court in a more methodical order, and, therefore, better and more readily apprehended.

"This is the result of careful discipline, as much so as the most effective use of an army is based on the perfect discipline of the soldier. As the most brilliant military genius cannot handle with assured success a raw and undisciplined army, so the most learned lawyer will be unable to avail himself of his treasury of knowledge until he has trained himself to the skilful use of that knowledge in its practical application to the business of the courts.

"You will perhaps be surprised when I tell you that the ablest lawyer of this or any other bar, when he is for the first time appointed a judge, *has to learn his trade*, as much as the mechanic's apprentice. Of course I do not mean by this that he has to learn the law, for I am supposing him to be learned in the law. But what the apprenticed mechanic learns of his master is not the science of mechanical forces, at least not mainly that. What he does acquire in that apprenticeship is skill in the use of his tools. This is precisely what I am saying of a new judge. Let me illustrate this from my own experience, for it is closely related to training in a lawyer. It is in fact the same thing. I am very sure that it does not take me half the time now that it did at first to eliminate from a complex case presented to me for decision what is irrelevant or immaterial, and to ascertain the point of conflict necessary to be decided. And this is equally true whether the contest be one of law or of fact, or both. By practice and attention I can listen to a lawyer read a document offered in evidence, pass with him lightly over the formal parts of the instrument, and when he comes to the vital matter, the few words, perhaps, which alone touch the issue, I catch their precise meaning, and if I do not get that clearly I stop him there and if I do not get that clearly I need go over that until I do. It is rare that I have to read the instrument again. So I have acquired, I hardly know how, except by practice—by training—the faculty of taking an immense record of 500 or 1000 pages, and turning at once to the material parts, whether of pleading, of evidence, or whatever it may be, and in one-third the time it took me when I first went on the bench, I gather the materials for my judgment without digesting a mass of useless chaff.

"So of briefs of counsel. A judge who for the first time has presented to him in an important case one of those things called by way of joke, I suppose, a *brief*, of 100 or 200 pages, with citations of authorities under twenty heads, taken indiscriminately from a digest, is appalled. But the practiced judge soon gets the ear-mark by which he recognizes the cases which are in point, and those which are not, and gives his earnest attention to the former.

"In short he learns how to handle the tools by which his judgment is fashioned. If this be true of the labours of the judge, how much more is it so of the lawyer?

"The *practice* of the law is an *art*. There is no question that, like painting or sculpture, there is necessary to its perfect attainment a certain native genius for its pursuit. But this does not mean, as in those arts, imagination, taste, a delicate sense of beauty in form or color. In the law a much more useful, and a much more common quality, is the native foundation of success. It is a sound judgment, a clear head, a strong development of the reasoning faculty, a capacity to reduce all propositions to the test of sound logic, without regard to the syllogisms of Aristotle or Whately, and independent of rhetoric as a science or an embellishment.

"But this natural faculty, like all other gifts of nature, is susceptible of vast improvement in its use by cultivation, by polish, and, above all, by training.

"I confine myself, for the present, to the latter. And by this training I mean the exercise of the faculties in the best mode possible, of presenting your case to the tribunal which must decide it; I mean the restraint which use enables you to impose on an exuberant imagination, the caution which experience teaches, of careful statement and safe movements, the courage which familiarity inspires in battling for the right, and, above all, the skill which is acquired by constant observation, practice and correction in setting forth your case in the strongest light and the most inviting aspect.

"It is a very common error, when a lawyer has adroitly made an unwilling witness tell the truth; or more frequently, when he has made a telling argument to court or jury, delivered with a captivating ease and grace, for the ordinary listener to imagine that it cost no labour or trouble. I have heard men who had the sense and taste to admire such a speech, declare in the utmost good faith that they were themselves intended by nature for lawyers, because they caught with such readiness the force and beauty of the argument, and saw with clearness the proposition it sustained. But the experienced opponent, or the observing judge, could see without difficulty that the apparently artless impromptu address was the perfection of art itself, concealing the long and laborious study previously given to the case, the careful and systematic mode of presenting it, determined on before the orator had opened his mouth. All the important propositions maturely considered, and in the critical exigency of the argument, the very words selected in which it is to be expressed.

"All this is the result of training, of constant and thoughtful criticism on your own style, of careful preparation for every occasion; of a review, after the effort is over, of the manner in which it has been made, and a considerate resolution to profit in future by any failure or defects that may be discovered.

"Let me give you at once an illustration of what I mean, and an example for your guidance. It is a story told me of Mr. Webster by the late Benjamin R. Curtis, formerly a judge of the Supreme Court of the United States. He said that quite early in his professional life he had been employed as a junior counsel to Mr. Webster, in an important case. A consultation being necessary, Mr. Webster invited him to call at his office at as early an hour after daylight as he could find convenient. When he arrived he found Mr. Webster, with the papers on the table before him, a pen in hand, and several sheets of paper written over. 'I am very glad to see you,' said Mr. Webster: 'I have been taxing my brain for the last five minutes for the proper word in the sentence I am just writing, and can't call it up. Perhaps you can assist me.' After some suggestions the proper word was found, to Mr. Webster's delight, and the consultation proceeded.

"It is no wonder that Mr. Webster's addresses are the models commended to youthful orators to-day, or that when delivered with scarcely a gesture or a movement, beyond the expression of those deep-set eyes, and a face in which intellect seemed enthroned, they should have moved the hearts of his hearers and convinced their judgments as no other man of his day could do.

"In this familiar talk to the bar of my own State, I cannot pass the name of Judge Curtis, having once called it up, without an observation or two on that remarkable man, which will be found to illustrate the tenor of my address in the same manner that the anecdote of Webster does.

"In all ages and countries, since letters have enabled the race to preserve human tradition, men have been singled out as standing without rivals in their peculiar fields of exertion. Demosthenes and Cicero, as the orators of Greece and Rome, are of this class; Lord Mansfield, as a common-law judge, and Lord Hardwicke, as the master builder, if not the founder, of our system of equity jurisprudence, are, in my opinion, entitled to the same pre-eminence among Englishmen. Erskine, though a sad failure as Lord Chancellor, is, beyond all question, the first advocate that English or American history has to exhibit. I mean first, as standing on a pinnacle no other *advocate*, merely as such, has ever reached.

"In this sense I pronounce Benjamin R. Curtis the first *lawyer* of America, of the past or the present time. I do not speak of him as a jurist, nor as a judge. I do not speak of him as an advocate alone or specially, nor as a counsellor; I speak of him as a lawyer, in full practice in all the courts of the country, State and National; as engaged in a practice which embraced a greater variety of questions of law, and of fact, than is often to be found in one man's experience."

After comparing Curtis with Pinckney and Webster, Justice Miller proceeds:—

"Now for the application of this episode to the general course of my remarks. Judge Curtis was not a man of brilliant talents, though possessed of a vigorous intellect. He was in no sense a striking speaker. Neither his figure nor his gesture was commanding. He has no celebrity as a sayer of witty things, as Choate has, nor any of those grand sentences conveying a profound thought in undying words, as Webster has.

"It is, therefore, clearly to be seen that his superiority as a lawyer was mainly due to the depth of his learning in the law, his capacity for discovering the principles involved in a case, and the training and discipline of his mind and habits. In the mere learning of the law he undoubtedly had his equals, possibly his superiors, among his contemporaries and rivals. But in careful, skilful, unceasing training, in mental, moral discipline, such as the athlete receives at the hands of his trainer, I doubt if any one approached him. There were no hasty preparations for trial, leading to surprises and discomfiture. There was no defective pleading discovered too late for profitable amendment. There were no slovenly briefs patched up at the last moment, nor unwise citations of authorities dangerous to his case, because carelessly read or not read at all.

"If an oral argument was made, it was the perfection of system and classification. Every thing was considered and adjusted to its right place for delivery, and so presented as to leave no occasion for repetition. The substance of what should be said was thought over so often, and the force of the very words to be used in some places so well considered, that no gaps were left in the argument, through which his opponent could enter the wall of his defences with a troop of cavalry. It was as hard to follow him as it was dangerous to precede him. Of course, like all lawyers, he would lose a cause where law and right were against him. But I presume that in his later years, in fact, as soon as training and experience had developed the full measure of his ability, no man ever felt that his case was lost for want of the best possible presentation of its merits, when Curtis was his lawyer.

"Before I pass from the memory of this most eminent man of our profession, whose example, if I have succeeded in winning your earnest attention to it, is sufficient to redeem all the faults of this unpretending address, I cannot forbear one other remark worth your serious consideration. He rarely found it necessary, in an argument in the Supreme Court of the United States, to occupy over forty minutes, and I recollect only two cases in which he spoke beyond an hour. This was the result of the perfect use of language, and power of clear presentation of his case, arising from the training and discipline, which it is my desire to enforce upon your attention."

[To be concluded in next issue.]

WHAT IS IN A NAME?—In the Georgia divorce case of *Stanridge* v. DULCINEA *Stanridge*, 31 Ga. 223, the judge concludes his opinion thus: "Without intending to reflect upon the wife in this case, for I take it for granted that the libellant is to blame, still I warn all plain men against marrying women by the euphonious names of Dulcinea, Felixiana, etc. — these names will do for novels, melting, mellifluous names will do for novels, but not for every day life."

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 21, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LES CURÉ ET MARGUILLIERS DE L'ŒUVRE ET FABRIQUE DE LA PAROISSE DE ST. CLÉMENT DE BEAUHARNOIS (plffs. below), Appellants, and ROBILLARD (deft. below), Respondent.

Procedure—Judgment ordering account—Execution.

A question of procedure was raised by this appeal, the point being whether an execution could be issued *de plano* on a judgment in appeal ordering an account, where the account was not duly rendered within the 30 days allowed by the judgment to render the account.

The judgment in appeal, ordering the respondent to render an account, was as follows: "Condamne le dit défendeur, à rendre, sous un délai de trente jours, de la signification de la copie de ce jugement, un compte en bonne et due forme en la manière voulue par la loi, et dûment assermenté, de toute son administration comme Marguillier en charge comme susdit, de la dite Paroisse de St. Clément de Beauharnois, pour l'année mil huit cent soixante et treize, établissant toutes les sommes qu'il a reçues, celles qu'il a payées, et toutes les sommes dont il est redevable ou comptable envers les demandeurs, et résultant d'aucun acte ou omission de sa part dans sa gestion et administration des affaires de la Fabrique de la Paroisse de St. Clément de Beauharnois, en sa dite qualité de Marguillier en charge, et de produire avec tel compte tous reçus, documents et pièces justificatives s'y rapportant, sinon et faute par le dit défendeur de satisfaire à tout ce que dessus *dans le dit délai de trente jours*, il sera contraint de payer aux dits demandeurs une somme $1,333.30, et ce par toutes voies que de droit, pour leur tenir lieu de reliquat de compte, avec intérêt," etc. Judgment, 16 March, 1877.

On the 1st May, 1877, the respondent produced an account, which was rejected on motion (July 7, 1877) as irregular, (21 L. C. Jurist, 122). Before this judgment was rendered, the appellants had asked for provisional payment of the amount shown to be due by the account rendered.

On the 23rd July, 1877, the respondent filed a new account, which on the 21st of October, 1877, was also rejected on motion of appellants. On the 3rd Nov. 1877, the appellants took out an execution on the judgment in appeal, and respondent filed an opposition. On the 29th Nov. 1877, the respondent, with the permission of the Court below, produced a new account. On the 28th Dec. 1877, the Court below dismissed the opposition, and maintained the execution.

In Review, (Torrance, Dorion, Rainville, JJ.) this judgment was reversed and the opposition maintained, for the following reasons:

"Considérant qu'il y a erreur dans le dit jugement du 28 décembre, 1877, et notamment, considérant que lorsque l'Opposition du dit Opposant a été produite, le dit Opposant était en défaut de s'être conformé au jugement de la Cour du Banc de la Reine en date du 16 Mars, 1877, et de celui du 16 Novembre de la même année, accordant au dit Opposant un nouveau délai pour produire son compte, mais que depuis la production de la dite Opposition, et avant la contestation par les demandeurs, il a obtenu une extension de délai de cette Cour pour produire le dit compte, et qu'il a produit tel compte dans le délai ainsi étendu, lequel compte était débattu par les demandeurs, et que le litige sur la contestation liée entre les parties à ce sujet est encore pendant, et que par conséquent il n'y a pas lieu pour les demandeurs à contraindre le défendeur à payer cette somme de $1,333.30, courant, mentionnée au Bref d'exécution en cette cause, Casse et annule le jugement dont on demande la Révision, et procédant à rendre le jugement qu'aurait dû rendre la Cour Supérieure, maintient la dite Opposition, mais sans frais, et condamne les demandeurs aux dépens en Révision distraits, etc."

The appeal was from this judgment.

MONK and TESSIER, JJ., (*diss.*) were of opinion that the judgment should be reversed, on the ground that the judgment in appeal, not having been obeyed within the thirty days, became executory.

The majority of the Court held that the judgment in appeal could not be executed *de plano*, and confirmed the judgment, but the *considérants* were modified. The judgment reads as follows:

"Considérant que par le jugement rendu le 16 mars, 1877, cette Cour a condamné l'intimé à

rendre aux appelants sous un délai de 30 jours de la signification de ce jugement un compte de son administration comme marguillier en charge de la paroisse de St. Clément de Beauharnois, pour l'année 1873, et a ordonné que faute de le faire dans ce délai de 30 jours, le dit intimé fut contraint à payer aux appelants la somme de $1,333.33, et ce par toutes voies que de droit pour tenir lieu de reliquat de compte ;

" Et considérant que ce délai de 30 jours pour rendre compte n'était qu'un délai comminatoire qui pouvait être prorogé en vertu de l'article 522 C.P., not seulement par cette cour, mais encore par la cour supérieure, et que de fait ce délai a été prorogé par la cour supérieure, et que deux comptes ont été produits par l'intimé, sur le premier desquels les appelants ont obtenu contre l'intimé une condamnation par provision pour la somme de $383.41 par jugement du 18 Mai 1877 ;

" Et considérant que les appelants n'ont pas fait déchoir l'intimé des délais qui lui ont été accordés tant par cette cour que par la cour supérieure pour produire son compte, et qu'ils ne pouvaient prendre un exécutoire *de plano* pour le montant du jugement du 16 Mars 1877, surtout après avoir obtenu une condamnation provisoire par le jugement du 18 mai, 1877 ;

" Et considérant qu'il n'y a pas d'erreur dans le jugement rendu le 28 février, 1878, par trois juges de la cour supérieure siegeant, à Montréal, en révision ;

" Cette cour confirme, etc."

Duhamel, Pagnuelo & Rainville, for appellants.
Doutre, & Doutre for respondent.

PREVOST (plff. below), Appellant, and RODGERS et al. (opposants below), Respondents.

Procedure—Lien for wages on tools.

The main question raised in the cause in the lower Courts was whether the property of the respondents, used by the defendant in manufacturing stone in a quarry, under a contract with respondents, was affected by a lien, in favour of defendant's workmen, for the amount of their wages.

The judgment of the Superior Court held that the property was charged with a lien. But this judgment was reversed in review, (1 LEGAL NEWS, 232 ; 22 L. C. Jurist, 70), and it was held that the workmen had no privilege for their wages on the tools used in quarrying, especially as it appeared that the tools and the quarry were not the property of the person who employed the workmen.

The plaintiff, Prévost, having appealed, the judgment was reversed.

MONK, J., (*diss.*) agreed with the judgment in review, that there was no lien on the tools.

The majority of the Court, without pronouncing on the question of lien, held that the judgment in Review must be reversed, because the respondents, having given a bond to produce the articles seized, to satisfy the judgment to be rendered, could not, after the seizure had been declared good, set up any claim to defeat the judgment, without complying with the condition by producing the effects seized, or the value thereof. Two judgments in Louisiana were cited: — 16 An. Louis. 125 ; 17 *ib.* 314. The judgment was as follows :—

" Considérant que les intimés ont obtenu la possession des articles saisis en cette cause, savoir : ' One lot of cut stone measuring about ' 120 yards, one large lot of rough stone, one ' large derrick with ropes, pullies and all appa- ' ratus complete, and horse power, and one ' horse power incomplete', sur un ordre de l'un des juges de la Cour Supérieure donné, le 23 février 1877, sur leur requête et à la condition qu'ils donneraient des cautions jusqu' à concurrence du montant de l'action du demandeur, et considérant que le demandeur, ayant obtenu jugement contre le défendeur le 12 Sept. 1877, par lequel jugement la saisie-arrêt avant jugement faite à la poursuite du dit demandeur a été déclarée bonne et valable ;

" Et considérant que les dits intimés, qui ont contracté l'obligation de rapporter les effets ainsi saisis, ne peuvent, avant d'avoir rempli l'obligation qui leur a été imposée par ordre de la Cour Supérieure, contester la propriété des dits effets après que la saisie-arrêt a été déclarée bonne et valable, sans au préalable remplir la condition sous laquelle ils ont obtenu la possession des dits effets, en les rapportant devant la cour, ou en en rapportant la valeur jusqu'à concurrence de la créance du dit demandeur ;

" Et considérant que l'opposition des dits intimés, par laquelle ils réclament la propriété des dits effets, est mal fondée, et qu'il y a erreur

dans le jugement rendu par la Cour Supérieure siégeant en révision, à Montréal, le 30 jour de Mars, 1878;

"Cette cour casse et annule le dit jugement du 30 Mars, 1878, et procédant à rendre le jugement qu'aurait dû rendre la dite cour de révision, renvoie pour les raisons ci-dessus l'opposition des dits opposants, et condamne les dits opposants à payer à l'appelant les frais encourus tant en cour de première instance qu'en révision et sur le présent appel."

Coursol, Girouard, Wurtele & Sexton, for appellant.

Abbott, Tait, Wotherspoon & Abbott, for respondents.

NATIONAL INSURANCE Co. (plffs. below), Appellants, and HATTON, (deft. below), Respondent.

Company—Shareholder—Calls.

The action was against a shareholder for calls. In the Court below, the action was dismissed on a question of law, viz., because the subscriptions of stock of two shareholders had been reduced on the subscription book after the respondent subscribed his shares, and the calls being made against these shareholders on the reduced amount had not been equally made.

In appeal, the judgment was reversed, the Court not differing from the principle that the call must be equal, but holding, on the evidence, that "respondent hath failed to prove that the calls made by the company, appellants, were either illegal, partial or unjust."

Gilman & Holton for appellants; *S. Bethune, Q. C.*, counsel.

J. L. Morris for respondent; *T. W. Ritchie, Q.C.*, counsel.

ROBERT (deft. below), Appellant, and VAUTRIN (plff. below), Respondent.

Imputation of payments.

The only difficulty in the case was as to the imputation of certain payments on account. In 1842, Boston sold a property to appellant and brother for £125. Respondent became surety for the price, and in 1847, a judgment was obtained by Boston against appellant and respondent for £145, with interest on £125 from 17th April, 1846. In 1848, the respondent paid Boston and obtained a subrogation of his rights. Thereupon he caused a *saisie-arrêt* to be issued, attaching moneys in the hands of *tiers saisis*, and $38 costs were incurred.

In 1849, Vautrin received a payment on account of $333.33, and a year later, another sum of $150. The appellant's pretention was that the payments on account, as no imputation was made by the receipt, should be imputed on the interest-bearing debt of £125, which the debtor had the greatest interest in paying. (C.C. 1161).

The judgment in first instance having sustained this pretention, the case was taken to Review, and there the judgment was reformed, the payments on account being imputed on the whole amount paid by respondent to Boston, including interest and costs, and judgment going for the balance, with interest to 1st August, 1866, before the Code, and for five years after the Code.

The judgment in Review was affirmed.

Lacoste & Globensky for appellant.

Duhamel, Pagnuelo & Rainville, for respondent.

STANTON (plff. below), appellant, and THE HOME INSURANCE Co. (defts. below), respondents.

Insurance—Proof of loss.

In June, 1867, appellant made an advance of $2,150 to one Ruston on the collateral security of a warehouse receipt for 480 barrels of Atlantic brand coal oil, stored in Middleton shed No. 1. About the same time an insurance was effected on the oil with the respondents, who issued a receipt for the premium, but no policy. Across the receipt were written the words, "loss if any, payable to O. W. Stanton" (appellant), signed with the initials of the agent of the Insurance Company. A fire occurred August 17th following, and the action was by Stanton for the amount insured.

The only pleas which require to be noticed were, 1st. That Ruston, who was the person insured, never gave notice of loss, as required by the policies in use by the Company; 2d. That the warehouse receipt was fraudulent and fictitious, and that there was no oil in the shed to represent it.

In the Court below, the action was dismissed on the first ground, viz, that the notice of loss, which, it was proved, was given to the company

by Stanton, could not avail as a notice within the conditions of the policy, since Ruston was the person insured.

In appeal,

Monk and Tessier, JJ., (*diss.*) thought the judgment should be reversed. The Court here was unanimously of opinion that the ground assigned by the Court below for dismissing the action was not well founded. But the majority of the Court were of opinion that it was not made out that the oil was in the shed at the time of the fire; therefore the insured sustained no loss, and the judgment should be confirmed on this ground. The question arose, as to the party on whom the burden of proof lay. As a general rule it was the insured who had to prove the loss. But, under the circumstances, the judges in the minority were inclined to believe that it was the duty of the insurers to prove that the oil was not there. They appeared to have attempted to make such proof, and had failed.

Ramsay, J., for the majority of the Court, said the judgment could not be sustained on the ground that due notice had not been given. Though Ruston was the party insured in one sense, yet the acceptance of the transfer on the receipt was an acceptance of the new owner as the party really insured; and under the circumstances Stanton was in a position to give the notice required. But the action must fail upon another ground—that it was not proved that the oil existed. It was for the insured to show that the object insured really existed. This had not been done. On the contrary, it appeared from the evidence that oil of the brand in question was not in the shed. On this ground the judgment must be confirmed.

Abbott, Tait, Wotherspoon & Abbott, for appellant.

E. Carter, Q. C., for respondent.

Lewis McLeod (deft. below), Appellant, and The Eastern Townships Bank (plffs.. below), Respondents.

Evidence— Promissory Note — Interested Witness.

The action was against Lewis McLeod and Donald McLeod on a note made by Donald McLeod, endorsed by appellant, and then endorsed by one Buck (not sued).

Plea of appellant, supported by affidavit, that the signature "Lewis McLeod," on the back of the note was a forgery. This plea was maintained and the action dismissed. But in Review, the judgment was reversed, and the action maintained.

Sir A. A. Dorion, C. J. The appellant raised pointedly the question that Buck was an incompetent witness because he was interested. Under 2340 C.C., in all matters relating to bills of exchange not provided for in the Code, recourse must be had to the laws of England in force on the 30th May, 1849. The law of England, as it existed at that time, had therefore to be consulted. Before 1843, the law of England rendered incompetent as witnesses all persons who were interested in the suit. But in 1843 an Act was passed which rendered interested persons competent, with a few exceptions, one of which was: "any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part." The action here was not brought in the immediate behalf of Buck, within the meaning of this exception. He was in no other position than a *garant*, and was a good witness. Of course, his evidence was open to suspicion, because he was interested, and the evidence of another disinterested witness would be taken in preference to his. But here the evidence of Buck was corroborated, and the judgment being correct, should be confirmed.

Ramsay, J., concurring, would not be inclined to say that Buck was disqualified as a witness unless the Bank had taken the action with his guarantee for the whole affair. The test was whether Buck had to pay for this suit. This not proved. Therefore the Bank had a right to Buck's evidence.

Monk, J. All that the Court holds is this: that in an action against the maker, the endorser may be a witness.

J. Calder for the appellant.

Brooks, Capirand & Hurd for the respondents.

Chevalier (plff. below), Appellant, and Cuvillier et al. (defts. below), Respondents.

Succession—Dower.

This action was brought in the court below by the appellant as universal legatee of his wife, by the appellant as universal legatee of his wife, Marguerite Françoise Cuvillier, the daughter of

Austin Cuvillier, junior, by his first marriage with Sarah Hay, and the conclusions prayed for an account to be rendered by the respondents, together with the Marquise of Bassano, of their administration personally or by delegation, of the property of the said Marguerite Françoise Cuvillier from the date of the closing of the community of property between the said Austin Cuvillier and Sarah Hay (24th November, 1871), up to the bringing of the action (1st December, 1876), and that in default of rendering such account, the defendants be condemned to pay the plaintiff the sum of $185,659.38. Moreover, that certain immoveable property described in the declaration be divided or sold, so that plaintiff may obtain his share as representing, as to one-half, Sarah Hay's right of succession and dower in the said immovable property, together with the *fruits et revenus* from the opening of the said succession and dower.

The rights of succession and dower referred to are the rights of the children of Sarah Hay in the property left by their grandfather and grandmother, the late Honorable Austin Cuvillier, and his wife, Dame Marie Claire Perrault, which vested in them as representing their mother's share in the community of property with her husband, and as her heirs generally. The children of Sarah Hay made no claim as heirs of their father, but on the contrary alleged that they had renounced his succession.

The respondents demurred to that part of the action which relates to all the immovable property in question, with the exception of two lots.

In the first place they said that as to the immovable property claimed by way of dower, the children of Sarah Hay had no dower therein, because the property in question was inherited by Austin Cuvillier, junior, from his father and mother, after the death of Sarah Hay.

In the second place, that as to certain immovable property alleged to have been sold and accounted for by the respondents, and for which the said Marguerite Françoise Cuvillier was alleged to have given a notarial discharge on the 12th June, 1865, the appellant could have no claim therein so long as the said discharge, which had never been and was not now attacked, stands good.

In the third place, that as to the immovable property which was alleged to have belonged to various commercial partnerships, in which the late Honorable Austin Cuvillier had a share, the appellant could have no rights therein so long as the affairs of the said commercial firms had not been liquidated.

In the fourth place, that as to certain real estate alleged to have belonged to Austin Cuvillier, junior, and to have been sold by the Sheriff, at the suit of the respondents, and to have been bought in by themselves, the appellant could have no right therein so long as the said *décret* had not been attacked and set aside.

The respondents' demurrers, which moreover claimed that Mr. Delisle was not bound to render a *compte de tutelle* to the plaintiff, simply because he might have been the agent of Austin Cuvillier, junior, were maintained by the Court below, and this judgment was unanimously affirmed in appeal.

Doutre & Doutre for Appellant.

E. Barnard, Q. C., for Respondents.

NOTE.—The only remaining judgment of the June term was that confirming the judgment in *Ames et al., & Fuller*, but it does not require any notice here.

GENERAL NOTES.

ANCIENT LEGAL COSTUME. — In the thirty-second year of Henry VIII. an order was made in the Inner Temple, that the gentlemen of that company should reform themselves in their cut or disguised apparel, and not wear *long beards;* and that the Treasurer of that Court should confer with the other treasurers of court, for an uniform reformation, and to know the Justices' opinion therein. In Lincoln's Inn, by an order made the twenty-third of Henry VIII. none were to wear cut or pansied hosen or breeches, or pansied doublet, on pain of expulsion; and all persons were to be put out of Commons during the time they wore *beards.* In the reign of Philip and Mary the grievance of long beards was not removed. An order was made in the Inner Temple, that no fellow of that house should wear his beard above *three* weeks' growth, upon pain of forfeiting twenty shillings. In the Middle Temple an order was made in the fourth and fifth of Philip and Mary, that none of that society should wear great breeches in their hose, after the Dutch, Spanish, or Almain (German) fashion, or lawn upon their caps, or cut doublets, on pain of forfeiting three shillings and four pence; and for the second offence the offender to be expelled. In the first and second of Philip and Mary, a gentleman of Lincoln's Inn was fined five groats for going in his study-gown into Cheapside on a Sunday, about ten o'clock in the forenoon.—*Brayley's Londiniana.*