The Legal News.

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Lord Bramwell, in England, like Archbishop Lynch, of Toronto, does not believe that people can be kept sober by Act of Parliament. His Lordship has published a little pamphlet on "Drink," in which he gives a negative reply to the question, "Can nothing be done by law to diminish the mischief caused by drink?" The *Law Journal*, noticing the treatise, says: "A judge of his experience of course fully appreciates the mischief of drunkenness; but weighing the pleasures of drink against the dangers of its excessive use, he finds the balance on the side of drink. The pamphlet is an outspoken expression of the opinion held by most people of sense. The sale of drink may fairly be regulated for the prevention of nuisances and the maintenance of order; but to prohibit it is a sumptuary law, and contrary to all principle in legislation."

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Minnesota is another State which has been disappointed at the result of ceasing to hang murderers, and it has therefore recently restored the death penalty. One of the advantages expected from the abolition of capital punishment was that juries would be more ready to convict, if their verdict did not involve the death of the criminal. But this expectation has not been fulfilled, and if any one supposed that juries would convict where a reasonable doubt existed, it is quite proper that the expectation should be disappointed, however light the punishment. The *Boston Advertiser* remarks that the same result is seen in every jurisdiction which has abolished the death penalty. "The jury, which before faltered in its duty of imposing the extreme penalty, falters still. Justice continues feeble, criminals find themselves but half punished, either through short sentences or early pardons, and society, seeing the results, applauds lynching, and calls for a restoration of the gallows."

In our provincial court of appeal the proportion of reversals is about one in four. In England it is rather more. For example during the late sittings there have been 58 reversals to 130 confirmations. The proportion varies considerably for the several judges. Baron Huddleston has made the best score, being affirmed nine times and only once over-ruled. On the other hand one of the Queen's Bench judges has been over-ruled four times and only twice sustained. One of the Chancery judges has been sustained fourteen times and over-ruled only three times, while another who has been sustained in an equal number of decisions has been over-ruled eight times.

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## *LORD CAIRNS.*

The death of Lord Cairns, who was the greatest of living English lawyers, at an early age compared with the average years of successful public men, is the last evidence of the physical weakness with which his career was weighted throughout. If he had lived, he would probably never again have taken his seat on the woolsack. Deafness, arising from "ivory in the ear," had of late years been added to the infirmity of the chest from which he suffered all his life. Upon the last occasion on which he sat in the House of Lords for the purpose of taking part in the rehearing of an appeal which, on the original hearing, had equally divided the law lords, he found it necessary to sit close to the bar of the House, and even in that position was obliged to ask the counsel being heard to raise his voice. At one period of his life Lord Cairns was practically kept alive by breathing inhalations prescribed for him by a well-known specialist in asthmatic disorders. His health, therefore, was a sufficient explanation of the intervals between his public appearances, and of the comparative rarity with which his name appears in the "Reports" for the nineteen years during which he was in a judicial capacity. It was only with great care that he was fit for his duties at all, although he was at no time at all like an invalid either in appearance or in habits. During a large part of his practice at the bar he invariably refused briefs for Saturday, and on that day gave himself a

holiday, which he usually spent in the hunting-field. The long vacation generally found him on the moors of Scotland. After his elevation to the bench it was again in the interest of his health that he took up his residence at Bournemouth, and it is well known that the same consideration made it necessary for him to resign the Conservative leadership in the House of Lords. As a compensation for this lifelong drawback his powers matured quickly and his opportunities came early. He was a Queen's Counsel at the age of thirty-seven, and Her Majesty's Solicitor-General before he was forty.

The place which history will assign to Lord Cairns will probably be that of the greatest lawyer on the English bench of his generation. The late Mr. Benjamin, whose capacity for passing a judgment and impartiality in the matter will not be questioned, pronounced Lord Cairns the greatest lawyer before whom he had ever argued a case, and Lord Bramwell is known to have a very high estimate of his powers. The attribute in which Lord Cairns excelled was lucidity. The most complex legal problem presented no difficulty to him, and it passed out of his hands placed by his mere statement in so simple and clear a light that the wonder was why there could ever have been any difficulty about it. Readers of his judgments are like those who look for the first time on a simple mechanical contrivance producing great results :—

> The invention all admire, and each, how he
> To be the inventor missed ; so easy it seemed
> Once found, which yet unfound most would have thought
> Impossible.

Lord Cairns made no display of a depth of reading like that of a Willes or a Blackburn, although he was far from deficient in learning. Case-law a man of his powers could afford to despise, and even when at the bar he was in the habit of citing no cases until he had exhausted the principles of the argument, when he would mention the names of the authorities illustrating his proposition. Much of the logical precision which distinguished him in the statement of legal propositions was due to the fact that, in the chambers of the late Mr. Thomas Chitty, at 1 King's Bench Walk, he was well grounded in the practice of common law pleading, a training of which students at the present day are unfortunately deprived. Lord Cairns on the bench was not like the late Sir George Jessel, fond of bringing his own individuality to the front, or of exposing in his judgments the processes by which he arrived at them. In delivering judgment, he was like an embodiment of the voice of the law, cold and impersonal, and suggested an intellectual machine upon which no sophism could make any impression, and which stamped the seal of the law upon what was obviously reasonable and just. Perhaps Lord Westbury was his equal in penetration and in clearness of expression; but either from his matter or his manner he did not carry the same inexorable conviction. An example of the high estimate he had of the dignity of judicial proceedings was supplied at the time of the addition of the lords of appeal to the House of Lords. One of the new lords of appeal had acquired in a Court, in which speed was considered rather than orderliness, the habit of interrupting the arguments by questions in the nature of "posers." On his reverting to this habit in the House of Lords, Lord Cairns interposed from the woolsack before the question could be answered, with the words: "I think the House is desirous of hearing the argument of counsel and not of putting questions to him." The interposition was made by Lord Cairns in a voice not musical, like that of the late Chief Justice Cockburn, but possessing with his the quality that it could not be gainsaid. Lord Cairns is said to have had no humour, but it was rather that he did not show it on the bench, where he considered it out of place. On occasion he could use all the weapons of rhetoric in Parliament, and when anything occurred to melt his cold, impassive exterior, he showed that the true fire of the orator was within him, but usually repressed. It is remarkable, but not unprecedented, that a man who succeeded so admirably as a speaker should have begun with a constitutional diffidence. So impressed was he with his deficiency in nerve, that at the beginning of his career at Lincoln's Inn he considered himself fit only for chamber practice, and actually for some

time confined himself to conveyancing. The late Vice-Chancellor Malins, in whose chambers he read, and who is said never to have quite forgiven his pupil for not making him a Lord Justice, probably disabused him of this want of confidence so far as to induce him to try his fortune at the bar. Certain it is that when he once had briefs he was never without them; for, as he himself described his early beginniugs, he came from Trinity College to London without a friend. Mr. Gregory, of Bedford Row, gave him his first brief, and never afterwards deserted him. Lord Cairns was one of the few judges not being Chief Justices who have taken a peerage while on the bench; but even his success at the bar did not leave him rich enough to accept it, and he would have rejected it but for the fact that a rich relative came forward and endowed his peerage for him.

Lord Cairns cannot be said to have been a popular Lord Chancellor. His manner was not sympathetic, and he was a sincere professor of a gloomy religion which he introduced even into his social entertainments. Like Lord Hatherley and his political rival, Lord Selborne, he taught in the Sunday school. He interested himself in benevolent projects, and sometimes took the chair at Exeter Hall. Perhaps his good nature in these matters was unduly trespassed upon on one occasion when an enterprising promoter of a charity distributed circulars—particularly in the neighbourhood of Lincoln's Inn, the Temple and Bedford Row—with the Lord Chancellor's autograph on the corner of the envelope and his crest on the seal. The only weakness of which Lord Cairns has been accused was that he was "justly vain" of the spotlessness of his tie and bands in Court, and of the "nice conduct" of the flower in his button-hole, when in the attire, to use the words of his political chief, "which denotes festivity." During his first brief tenure of the woolsack in 1868 he appointed Vice-Chancellor Giffard, Mr. Justice Hayes, Mr. Justice Brett (now the Master of the Rolls), and Baron Cleasby as judges, the three last being created under a new Act, with a view to election petitions; and from 1874 to 1880 he appointed Mr. Justice Archibald, Mr. Justice Field, Mr. Justice (now Lord Justice) Lindley, Baron Huddleston, Mr. Justice Manisty, Mr. Justice Hawkins, Mr. Justice Lopes, Mr. Justice (now Lord Justice) Fry, Mr. Justice Stephen, and Mr. Justice (now Lord Justice) Bowen. He also advised the Prime Minister in the appointment of Lords Justices Baggallay, Cotton, and Thesiger. In taking part in the appointment of the brilliant son of Lord Chelmsford, whose services were too soon lost to the bench, Lord Cairns was able to some extent to heal the resentment caused by his having supplanted Lord Chelmsford in 1868, when Disraeli succeeded Lord Derby as Prime Minister. Lord Chelmsford was then supposed to have said that he was dismissed in a manner in which a gentleman would not discharge his butler. *Punch* at the time endeavoured to soften the blow with the joke that Disraeli had erected Cairns over Lord Chelmsford in honour of the ex-Chancellor. The sacrifice made to obtain Lord Cairns' services shows how highly they were esteemed by Mr. Disraeli. In one important branch of the duties of a chancellor—namely, the choice of County Court judges—Lord Cairns hardly showed the same happy inspiration as his party leader in the choice of his subordinates. Some of these appointments were much criticised. Of those which were criticised it may be said of some at least that the result has not justified the criticism. In another important branch of the duties of a Chancellor Lord Cairns left his mark permanently on the legislation of the country. The only Act to which his name became actually attached was an Act allowing Chancery judges to give damages in lieu of an injunction or specific performance, which has met the fate of repeal by a Statute Law Revision Act. On a small scale it anticipated the Judicature Acts, a series of statutes in which Lord Cairns had a very great share, having been chairman of the Judicature Commission, which reported in 1869, and Chancellor when the Acts first came into operation. The chief point in the Judicature Acts in which his influence was felt was the restoration of the House of Lords as the final Court of Appeal, from which position it had been displaced by Lord Selborne's Judicature Act of 1873. In making this alteration Lord Cairns forgot to alter Lord

Selborne's nomenclature, so that we have a Supreme Court of Judicature which is not supreme, and a Court of Appeal which has another Appeal Court over it. Towards the close of his career Lord Cairns returned to his first love, conveyancing, and passed through the House of Lords the Conveyancing Acts of 1881 and 1882, and the Settled Land Act of 1882, measures which in part he attempted to introduce in the House of Commons as early as 1858. When Lord Cairns first became Chancellor in 1868, there were no less than five ex-Chancellors—namely, Lord Brougham, Lord St. Leonards, Lord Cranworth, Lord Westbury, and Lord Chelmsford, although Lord Brougham and Lord Cranworth died in that year. It happens by his death there is not now one ex-Chancellor, so that the necessity for the re-arrangement of the House of Lords as an appellate Court by the creation of lords of appeal which he carried out is now fully apparent and will be fully tested. Probably Lord Cairns will be missed in public life more by Lord Selborne than by anyone else. Frequently opposed at the bar, and in Parliament, associated together on the Judicature Commission and in other consultations for the reform of the law, and both men of earnest purpose, each had that perfect confidence in the other which is desirable between political opponents in the public interest. The public loss is very great, because at the moment, among the lawyers of his party it is not easy to point out a worthy successor.—*Law Journal* (London).

## *CUSHING & DUPUY.*

*Cushing & Dupuy* has become a leading case on the important question of transfer of moveable property by way of security, without delivery or displacement, and is frequently cited. In the report of the judgment of the Court of Queen's Bench, Montreal, 22 L.C.J., pp. 201-210, the opinion of Mr. Justice Cross, concurring in the judgment, is omitted. In view of the importance of the case we think this opinion should be preserved, and we extract it from the record containing the certified copy transmitted to the Privy Council. The decision of the Judicial Committee, confirming the judgment of the majority of the Queen's Bench, will be found in 3 Legal News, p. 171, and 24 L. C. J. 151.

Cross, J. By Notarial Deed, dated 14th March, 1877, McLeod, McNaughton & Léveillé, brewers, at Montreal, sold to the Respondent, Cushing, who is a notary of the same place, the brewery utensils contained within their manufactory, of which utensils a description is given in the Deed: some of them are valued to the amount of $4,890, others are described without being valued.

The instrument declares the sale to have been made for the consideration of $1, and for other good and valuable considerations acknowledged to have been received; and further, on condition that Cushing would endorse bills for the sellers to the extent of $2,000, including those already endorsed.

By another notarial *acte*, executed on the same day, Cushing leased the same effects to the sellers, for a period of three years, at a rental of $100 per annum. There was no delivery or displacement of the effects; the vendors remained in possession until the 19th of July following, when the Appellant possessed himself thereof, as official assignee, in virtue of a writ of attachment sued out against McLeod, Léveillé & McNaughton, under the Insolvent Act of 1875.

Cushing, the Respondent, claimed the effects in question from the Appellant, the Assignee, and to this end presented a Petition to a Judge of the Superior Court, acting for Insolvent cases, basing his claim upon the Deed entitled "Deed of Sale," above mentioned.

The Appellant, in his quality of Assignee, contested this claim on various grounds, in substance as follows:—

1st. Because the *acte* of the 14th March, 1877, although entitled a Deed of Sale, was not in fact a sale, but, on the contrary, was in the nature of a giving in pledge of the effects in question, and was inoperative as a pledge, for want of possession in the pledgee.

2nd. There had been no displacement or delivery of the effects.

3rd. McLeod, McNaughton & Léveillé were insolvent at the time the Deed was executed.

and the conveyance was made by them in fraud of their creditors.

The Judge of the Court below, maintained the Petition, and awarded the utensils to the Petitioner, now Respondent, and from this judgment the present appeal has been taken by Dupuy, the Assignee.

I am disposed to take a different view of the case, from that of the learned Judge of the Court below.

Under the law and practice of our courts, as it prevailed before the Civil Code was enacted, it will be conceded that no such title as that relied on by the Respondent would have prevailed against a seizure of the utensils in question, in the possession of McLeod, McNaughton & Léveillé; I do not see that the Code has so changed the law as to render such a title now efficacious.

On the first objection to the title submitted by the Appellant; that the contract was one of pledge, and as such inefficacious for want of possession in the pledgee; take the definitions given in the Code, respectively of the Contract of sale, and the Contract of pledge:

By art. 1472, a sale is defined to be a contract by which one party gives a thing to the other for *a price in money*, which the latter obliges himself to pay for it. Of the three essentials; 1st, the thing; 2nd, the price; and 3rd, the consent; there is in this case wanting, the second, viz. the price. The only substantial consideration here enunciated, was that the transferee was to endorse the paper of the transferor to the extent of $2,000, for which he was to have put in his control utensils, part of which only were valued at $4,890. The absence of a price divests the document of the character of a sale; and the endorsements to have been given as considerarion, go to shew that the object of the conveyance was to secure Cushing against his endorsements; and if McLeod, McNaughton & Léveillé took up their paper, the effects conveyed would, as a consequence, revert to them. It would therefore seem that the contract was not one of sale but of pledge.

Art. 1966, of the Civil Code, defines a pledge to be a contract by which a thing is placed in the hands of a creditor, or, being already in his possession, is retained by him, with the owner's consent, in security for his his debt. The contract in question in this case, is evidently one of this description. It is a transfer of moveables, without a fixed price, but with the obligation on the part of the transferee, to endorse notes for the pretended vendors, against which the effects transferred would stand as a security.

By Art. 1970, the privilege subsists only while the thing pawned, remains in the hands of the creditor, or of the person appointed by the parties to hold it.

This is not new law, but on the contrary in accordance with the rules and principles of common application before the Code came into force. No maxim was more universally received, nor better understood, than that moveable or personal property could not be affected by hypotheque—*le meuble n'a pas de suite par hypothèque.* There were, of course, exceptions of privilege, but these were special, and latterly a statutory exception in the case of warehouse receipts; the general principle was always recognized, and still remains the rule, notwithstanding any change of the law effected by the Code, so that to make a pledge effective, there has to be possession in the pledgee or his agent.

For want of possession in the pledgee, in the present case, the pledge was inefficacious.

It has been shown that the contract in question was not one of sale. But admit it to be so, for the sake of argument. Is the title of the Respondent good as a purchaser? The law formerly required a delivery, to vest the vendor's title in the purchaser: this is no more the case. Art. 1472 of the Civil Code declares a sale to be perfected by the consent alone of the parties, although the thing sold be not then delivered. By art. 1025—A contract for the alienation of a thing certain and determinate, makes the purchaser owner of the thing by the consent alone of the parties, although no delivery be made. Again, by art. 1027, the rule laid down by art. 1025, is made to apply as well to third parties as to the contracting parties, with the qualification that if a party obliges himself consecutively to two persons, to deliver to each of them a thing which is purely moveable property, that one of the

two who has been put in actual possession is preferred and remains owner of the thing although his title be posterior in date; provided, however, that his possession be in good faith.

The three articles last cited from the Code, have made a change in the law. Is the present case affected by that change?

Consent, without delivery, now passes title to moveables, even as regards third parties, with the qualification contained in art. 1027, that the posterior title with possession has priority over the earlier title. In the present case, the attachment under the Insolvent Act took the utensils in question in the hands and possession of the Insolvents McLeod, McNaughton & Léveillé, and transferred their title and possession to Dupuy the Assignee; the title was posterior in date to that of Cushing, but the possession with the title, vested the property in him, no previous delivery having taken place to Cushing. A leading maxim, always heretofore recognized in such cases, was that possession of moveables was a presumption of ownership. Bourjon and other authors treating of the subject say, that *en matière de meubles possession vaut titre de propriété.* This rule has not been reversed by the Code. It may be slightly modified, so as not to permit of a naked possession being allowed to prevail against a prior title in good faith. The possessor in such case may require to shew some title, although a posterior and, perhaps, sometimes even a weaker title may suffice.

Before the Civil Code came into force, it would not have been seriously contended that a title such as produced by the respondent, would have been maintained against an execution creditor of the vendors, or against an assignee to their insolvency. There is no sufficient reason why it should do so now.

Lastly—Was the respondent's title one in good faith? When the title is in good form, and unaccompanied by indications of fraud, publicity is the usual test of good faith in the purchaser, and the ordinary way in which it is proclaimed, is by open and public possession. There are indications in this case, from which legal fraud might be inferred. The effects conveyed were the implements, without which the business of McLeod, McNaughton & Léveillé could not be carried on; the purchaser was not a trader or dealer in such articles, but on the contrary was a professional man, who as a mere money lender, would be unlikely without motive to lend himself to such a transaction, and accept what, to all appearance, was a very equivocal security, considering that the actual possession remained as before; publicity is also wanting. These are sufficient grounds from which to draw the inference of legal fraud. See Bourjon edn. of 1770, vol. 1, p. 145, tit. 1, *Des biens considérés en général*, Cap. 6, Sec. 1, No. 1. "En matière de meubles la possession vaut titre de propriété, la sûreté du commerce l'exige ainsi: la base de cette maxime est qu'on ne possède ordinairement que les meubles dont on est propriétaire, ainsi la possession doit donc quant à ceci, décider; c'est le meilleur guide, et quel autre pourrait-on prendre sans tomber dans la confusion." I understand that the rule now recognized by the Code, to the effect that the property passes by the consent of the parties in a transaction, in its nature translative of property, although no actual delivery has taken place, is in accordance with the law of England, yet there, I feel confident, that such a transaction as the one now in question, would not be sustained against an Assignee in bankruptcy, or an execution creditor. See the remarks in Benjamin on Sales, pages from 390 to 397; and in our law it would not admit of a doubt, unless the Civil Code has changed it much more than I apprehend it has. See the 2nd volume of Bourjon of the edition already cited, p. 692, tit. 8, *Des Exécutions*, cap. 3, sec. 1; No. 1. "Après avoir expliqué les priviléges sur les meubles, voyons les revendications autorisées d'iceux. Le principe fondamental de cette matière est, que par rapport aux meubles, la possession d'iceux vaut titre de propriété; ainsi le déplacement y est bien important. De là il s'ensuit que chacun est présumé propriétaire des meubles qu'il possède, et que, par conséquent, ils peuvent être valablement saisis et exécutés sur celui qui les possède; première

conséquence qui résulte du principe général qu'on vient de poser.

No. 2. Du même principe, il s'ensuit qu'un contrat de vente, quoiqu'authentique, mais sans déplacement des meubles, est insuffisant pour fonder en faveur de l'acheteur une demande en revendication, et que la saisie sur le vendeur de tels meubles, quoique vendus par le possesseur, mais sans déplacement, est bonne, encore que le contrat de vente soit antérieur à icelle; seconde conséquence qui naît du même principe. En effet, cessant cette juste rigueur, les débiteurs mal intentionnés seraient maîtres de mettre leurs meubles à couvert de la poursuite de leurs créanciers. Il faut donc conclure, de là, qu'on ne peut avoir égard à une vente de meubles, quoique justifiée par un titre, lorsque cette vente n'a pas été consommée par le déplacement et l'enlèvement d'iceux."

The decisions of our Courts have hitherto been in accordance with these principles, and I find no sufficient reason for concluding that the Code has made any such change as would render them inapplicable in the present case.

The presumption of ownership by possession under the old law could rarely be rebutted by any title whatsoever. If the Code has operated any change in this respect, it is only to the extent of requiring the possessor to oppose some kind of title not in its nature vicious, as, for instance, a posterior title combined with his possession, against the previous title unaccompanied by possession. In this case the Assignee has a sufficient title by the attachment in insolvency.

Were the law to be construed otherwise, facilities to fraud would be enormous. Traders, who, to all appearance, were sufficiently well stocked, to afford a guarantee to confiding creditors, would suddenly be found to possess nothing of their own, when their estates came to be realized in the hands of official assignees, to whom they had passed in consequence of financial embarrasments. Their property would be found to have been all alienated by previous secret transactions, whereof their furnishers would have had no notice. The apparent wealth of such traders would have operated as a delusion and a snare to defraud confiding parties. For these reasons, I am of opinion that the judgment of the Court below should be reversed and the respondent's petition dismissed with costs.

## COUR DE CIRCUIT.

MONTRÉAL, 30 avril 1884.

*Coram* LORANGER, J.

HENRI JULIEN v. PREVOST & ST. JULIEN.

*Avocats pratiquant ensemble — Solidarité — Argent collecté ès-qualité — Mandat.*

JUGÉ:—*Que deux avocats qui pratiquent leur profession en société sont conjointement et solidairement responsables vis-à-vis un client qu'ils ont représenté* ad litem, *et pour le compte duquel un des associés a collecté de l'argent, quand même cet argent aurait été reçu après la reddition du jugement dans la cause où ils occupaient.*

PER CURIAM. Les défendeurs pratiquent la profession d'avocat en société. Ils furent employés par le demandeur dans une action de la Cour de Circuit sur billet et obtinrent pour lui un jugement de cette cour. Par une exécution *de bonis* et une vente judiciaire, ils perçurent pour le compte du demandeur une certaine somme d'argent. Le bref d'exécution avait été émané sur un *fiat* signé de "*Prevost et St. Julien, avocats du demandeur.*"

Le demandeur les poursuit maintenant tous deux conjointement et solidairement pour recouvrer l'argent ainsi collecté qu'il prétend ne pas lui avoir été remis.

Les défendeurs plaident séparément. Maître St. Julien, qui a reçu l'argent et donné un reçu au nom de la société, répond qu'il a remis au demandeur tout l'argent qu'il avait collecté pour lui et qu'il ne lui doit plus rien; Maître Prévost plaide qu'il n'a eu aucune connaissance des faits et qu'il n'est pas responsable; qu'il n'était que procureur *ad litem* du demandeur et que son mandat avait cessé au jugement; que la société qui existait entre lui et St. Julien n'avait pour objet que la pratique de sa profession, n'était pas commerciale et n'engageait pas sa responsabilité; que son dit associé n'avait pas d'autorité pour recevoir le montant en question et donner un reçu au nom de la société.

Il est admis que les associés sont respon-

sables solidairement pour l'argent reçu par la société. La question a été le sujet d'une longue controverse, mais la Cour d'Appel l'a décidée dans la cause de *Bergevin* v. *Ouimet*, (22 L. C. J. 265) et cette décision est devenue la jurisprudence. On a prétendu que cette cause ne s'appliquait pas. J'ai lu les factums, et je trouve que le principe décidé dans la cause de Bergevin s'applique à la présente cause. Le vice-chancelier Wood, dans la cause de *Plumer* v. *Gregory*, rapportée à la page 631 du 18e volume des "*Law Reports, Equity cases*," dit clairement: "*Each partner is the "agent of the other and bound by his acts and "representations.*" L'article 712 du Code Civil dit: "Lorsqu'il y a plusieurs mandataires "établis ensemble pour la même affaire, ils "sont responsables solidairement des actes "d'administration les uns des autres, à "moins d'une stipulation contraire."

L'exécution en cette cause a été émanée sur le *fiat* des défendeurs et c'est en vertu de cette exécution que la vente judiciaire a eu lieu et que les défendeurs ont reçu l'argent pour le bénéfice du demandeur; par conséquent, ils ne sont pas fondés de prétendre que leur mandat a cessé lors du jugement.

Je suis d'opinion qu'il y a solidarité entre les défendeurs et qu'ils sont ainsi tenu de remettre au demandeur ce qu'ils ont collecté pour lui. Le défendeur St. Julien a prouvé son plaidoyer jusqu'au montant de $18, ce qui réduit d'autant le montant que les défendeurs sont condamnés de payer au demandeur."

Jugement contre les défendeurs conjointement et solidairement pour $19 avec dépens.

*M. J. C. Larivière*, avocat du demandeur.

*Prévost & Turgeon*, avocats du défendeur Prévost.

*Champagne & St. Julien*, avocats du défendeur St. Julien.

(J. J. B.)

## *RECENT ONTARIO DECISIONS.*

*Criminal law—Conspiracy to bribe Members of Parliament—Pleading.*—On demurrer to an indictment for conspiracy to bring about a change in the Government of the Province of Ontario, by bribing members of the legislature to vote against the Government. *Held*, 1. That an indictable offence was disclosed; that a conspiracy to bribe members of parliament is a misdemeanour at common law, and as such indictable. 2. That the jurisdiction given to the legislature by R. S. O., ch. 12, secs. 45, 46, 47, 48, to punish as for a contempt, does not oust the jurisdiction of the Courts, where the offence is of a criminal character, but that the same act may be in one aspect a contempt of the legislature, and in another aspect a misdemeanour. 3. That the Legislative Assembly has no criminal jurisdiction, and hence no jurisdiction over the matter considered as a criminal offence. 4. That the indictment, considered as a pleading, sufficiently stated the offence intended to be charged.

*Per* O'Connor, J. (diss.). 1. That the bribery of a member of parliament, in a matter concerning parliament or parliamentary business, is not an indictable offence at common law, and has not been made so by any statute. 2. That in all matters and offences done in contravention of the law and constitution of parliament, with the exception of treason, felony and breaches of the peace, parliament alone has jurisdiction, and the ordinary courts, civil and criminal, have no jurisdiction. 3. That the *lex et consuetudo parliamenti* reserves to the high court of parliament exclusive jurisdiction to deal with all matters relating to its own dignity, or concerning its powers, its members and its business, with the above three exceptions. *Regina* v. *Bunting et al.*, Queen's Bench Division.—21 C. L. J.

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In the United States Circuit Court yesterday afternoon, Stephen G. Russell was convicted of counterfeiting in gilding English silver coins. This case is of interest to silversmiths and gilders, it being the first time that a criminal prosecution has been made for gilding. The defendant claimed that he gilded the shillings with no criminal intent and not with the purpose to defraud any one, but did it for his customers in the prosecution of his business. Judge Webb, in his instructions to the jury, said that the intent with which the defendant gilded these coins was immaterial to make it a crime; that Congress had passed a law making counterfeiting a crime, and if the jury found the defendant had gilded these coins, then the government had made out a case; that the act itself was a crime without any reference to the purpose for which it was done. The jury recommended the defendant to the mercy of the Court and no sentence will probably ever be imposed, as the government wished to make it a test case and serve as a warning to other gilders.—*Boston Law Record.*