INDEX-DIGEST

TO THE

MONTREAL LAW REPORTS

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ARRANGED IN THE

ALPHABETICAL AND CHRONOLOGICAL ORDER

CONTAINING IN EACH DECISION THE NAME OF THE COURTS, THE JUDGES AND THE INTERESTED PARTIES, THE DATE OF JUDGMENT AND THE AUTHORITIES CITED; ALSO A TABLE OF CASES REPORTED. . . . . .

COMPILED BY

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ADVOCATE, ST. JOHNS, P. Q.

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INTRODUCTION

The Montreal Law Reports have been undoubtedly one of the best judicial reports ever published in this Province and often the judgments therein contained are cited before our Courts. But very hard it was for the practising advocate to find the decision needed in his case and the author of this book has thought that he would render a service to his *confreres* in preparing this index-digest.

It contains every decision therein reported in the alphabetical order, the name of the parties, the tribunal which has rendered judgment, the name of the sitting judges, the date of the judgment and also the citations made in each case.

As far as it could be done, the author has indicated whether the judgment has been appealed from, and the reports where the final decision can be found.

This index, we think, will be useful to all the members of the profession, even to those who do not possess, in their library, the Montreal Law Reports.

J. F. SAINT-CYR.

St. Johns, September, 1905.

INDEX-DIGEST

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MONTREAL LAW REPORTS.

A

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ACTION

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1. By transferee.—In an action instituted by the transferee of a debt without signification of the transfer, the service of the action is not equivalent to signification of the transfer where such transfer is not alleged in the declaration.—Papineau J., 20 December 1886, *McLachlan vs Baxter.*

II, S. C., **434.**

2. By receiver appointed to foreign corporation.—Que lorsque rien ne fait voir au dossier qu'une corporation étrangère n'a pas le libre exercice de ses droits dans la Province de Québec, cette corporation ne peut poursuivre devant nos tribunaux au nom d'un agent, ce dernier fut-il dûment nommé *receiver* de la dite corporation, et eut-il, d'après les lois de la Province d'Ontario, le droit de recouvrer en sa qualité, devant les Cours de Justice, les créances dues à la corporation.—Taschereau J., 17 janvier 1885, *Giles vs Jacques.* **I.** S. C., **166.**

(Reversing the judgment of Taschereau J. M. L. R. 1 S. C. 166.)—Where an action was brought in the Province of Quebec, by the plaintiff, as receiver to a corporation in liquidation domiciled in Ontario, and it was proved by the production of the Ontario Statute that the Plaintiff, as receiver, was duly authorized to represent the corporation in judicial proceedings, he may also appear in his quality of receiver in judicial proceedings before the courts of the Province of Quebec.—Dorion, Tessier, Cross, Baby JJ., 27 September 1887, *Giles & Jacques* **VII,** Q. B. **456.**

Citations.—*Thompson's Liability of Stockholders* § 80; *Laurent Droit International Privé*, 8e vol., *Nos* 22, 25. *Wharton, Private International Law, No* 427. 2 *Alauzet, p.* 514, *No* 585. 32 *Laurent, No* 470, *p.* 495—1843 *Sirey,*

1er p., p. 204. 1856, *Sirey*, 1er p., p. 514. *M. C. R.* p. 68. *Felix*, vol. 1er, p. 85. *Orgood & Steele*, 16 *L. C. J.* p. 141. 8 *L. N.* p. 51. *Aubry et Rhau*, 1er vol. par. 31, p. 97. *Giles vs Faneuf*, 1 *M. L. R.* 1 *S. C.* p. 322. *Giles vs Brock* 5 *L. N.* p. 369. *Dalloz vo action, Nos* 273 *et* 276. *Carré et Chauveau*, vol. 1er p. 128 *et* 129. *Boistard*, vol. 1er p. 114. *Aubry et Rhau*, 8e vol. p. 133. *Pigeau*, vol. 1er, p. 52. *Giles vs Givoux* 13 *R. L.* 652. *Giles vs Gariepy* 29 *J.* 207.

That a receiver duly appointed and authorized under the laws of Ontario to represent in judicial proceedings a corporation (in liquidation) domiciled in that province, may also appear in his quality of receiver in judicial proceedings before the courts of the province of Quebec.—TORRANCE J., 19 MAY 1885, *Giles vs Faneuf.* **I,** S. C., **322.**

3. In damages.—1. *By femme commune.*—Que dans une action en dommages pour torts personnels à une femme mariée sous le régime de la communauté, la femme et son mari peuvent tous deux être demandeurs dans la cause en leur qualité de communs en biens; et le fait que les conclusions demandent que la somme réclamée soit payée à la femme est indifférent.—JETTÉ, J., 30 AVRIL 1887, *Gagnon vs Corporation village St-Gabriel.* **III,** S. C., **97.**

2. *For unauthorized sale of shares.*—That an action of damages setting forth, in effect, that a bank, to which plaintiff had transferred certain shares as collateral security for an advance, had, without right, and against the will of plaintiff, sold the said shares at a third of their value, on purpose to injure the plaintiff is not demurrable because the plaintiff has not offered defendant the alternative to subtitute other shares.—DORION, RAMSAY, CROSS, BABY, JJ., 30 DECEMBER 1885, *Gilman vs Campbell.* **II,** Q. B., **291.**

CITATIONS.—*Sedgwick, Law of Damages*, p. 391. *Kerr, on actions at Law*, p. 45. *Story, on Bailments*, par. 322, 346 & 349.

4. In dénonciation de nouvel œuvre.—That the action en dénonciation de nouvel œuvre may be taken at any stage in the erection of the works complained of.—LORANGER J., 30 OCTOBER 1888, *Crawford vs Protestant Hospital for the Insane.* **IV,** S. C., **215.**

CITATIONS.—*Carter vs Breakey*, 3 *Q. L. R.* 113. *Bourdon vs Benard* 15 *J.* 60. *Kerr, on injunctions* (2nd'ed) p. 16'. *Bourgouin vs the Montreal Nor-*

thern Colonisation Railway Co. 19 *J.* 57. *Lang & Temporalities Board*, 8 *L. N.* 3. *Carter vs Breakey*, 2 *Q. L. R.* 232. *Black & Stoddart* 4 *L. N.* 282. *N. B. & M. F & L. Ins. Co. vs Lambe* 27 *L. C. J.* 222. *Merlin, Quest. de Droit vo.* " *Dénonciation de nouvel œuvre,*" *S. III, IV pp.* 165-7. *Pigeau vol. I. cap.* 3, *s.* 1. *Carou. Actions Possessoires, Nos* 39-59. *Dalloz. Rep. Gen. vo* " *Actions possessoires*" *Nos* 14, 25, 147, 70. *Aulanier. Actions possessoires, vo* " *Dénonc. de nouvel œuvre*" *Nos* 39, 59.

That where a corporate body has been expressly authorized by the legislature of the province to construct and maintain a hospital, and for this purpose to acquire and own real estate, without any restriction or condition as to the locality to be chosen for such establishment, the Court will not interfere to prohibit the work of construction or order the suppression of the establishment, the only recourse of a party injured thereby being an action of damages.—JETTÉ J., 3 APRIL 1887, *Crawford vs Protestant Hospital for the Insane.* **V.** S. C., **70.**

CITATIONS.—12 *Demolombe, No* 647. *C. C.* 414. *Carou. Actions possessoires No* 39. 6 *Laurent, no* 136, 137.

Where buildings are being erected for a legal and proper object, such as a hospital for the insane, and there is no proof that they are causing or likely to cause any injury to the properties of the neighbours or any diminution of their value, owing to causes for which the proprietors of the asylum would be liable, adjoining proprietors have no right to ask by injunction that the erection of the buildings be discontinued.—DORION, BABY, DOHERTY, CIMON, JJ., 21 MARCH 1891, *Crawford vs Protestant Hospital for the Insane.* **VII.** Q. B., **57.**

(*Same authorities as above.*)

5. In recovery of money not due.—That assessments voluntarily paid, in accordance with a duly homologated assessment roll, cannot be recovered from the corporation, without alleging specially that the payment was made through error of law or of fact.

The sending of a tax bill, accompanied by notice that if the same be not paid within fifteen days execution will issue, does not constitute compulsion.—LORANGER J., 31 JANUARY 1887, *Haight vs City of Montreal.* **III.** S. C., **65.**

CITATIONS.—*C. C.* 1047 *et* 1140.—*C. N.* 1235, 1376—4 *Aubry et Rhau*, 727.

Where, in ignorance of the exemption so created, money has been paid as taxes upon such property it may be recovered.

In such action, when it was alleged that such payment had been made under constraint, and it was proved to have been made voluntarily, but through error of law and of fact, an amendment to make the declaration conform with that proof was not an alteration sufficient to change the nature of the action, and should be allowed even after the case had been submitted.—TESSIER, CROSS, CHURCH, DOHERTY JJ., 27 NOVEMBER 1888, *Haight & City of Montreal.* **IV.** Q. B., **353.**

CITATIONS. — *Wylie vs Montreal*, 12 *Can. S. C. R.* 384. *C. C.* 1047 *et* 1140.

That where such fee had been paid to the city during three years in succession before contesting the validity of the exaction the same might be recovered by the person who has the fee. — DORION, MONK, CARON, BABY, JJ., 27 NOVEMBER 1885, *The City of Montreal & Walker.*

I. Q. B., **469.**

6. In warranty.—Que lorsque le défendeur en garantie refuse de prendre le fait et cause du demandeur en garantie il ne peut lui opposer que des moyens qui auraient pour effet de le décharger de la garantie et qu'une défense contenant des moyens qui tendraient à faire renvoyer l'action principale sera rejetée, quant à ces moyens, sur réponse en droit. —WURTELE, J., 16 SEPTEMBRE 1889, *Beaudreau vs Jarret.*

V. S. C., **200.**

CITATIONS.—*Pigeau. Procedure Civile*, 1er *vol. pp.* 168-9. *Lamarche vs Banque Ville-Marie, M. L. R. 1er S. C. pp.* 203-210.

7. Hypothecary.—Que le tiers détenteur poursuivi hypothécairement peut opposer à l'action tous les moyens que le débiteur personnel pourrait lui opposer lui-même.—TASCHEREAU, J., 13 MARS 1886, *La Cité de Montréal vs Murphy et la Société de Construction Métropolitaine.* **III.** S. C., **161.**

CITATIONS.—*C. C.* 2231—*C. N* 1206, 2249—*Troplong, Prescription, No* 659, 647—*to Hypoth'ques*, 512 — 2 *Aubry et Rau*, 358—32 *Laurent No* 143, 150 *et vol.* 31, *No* 389.

8. QUI TAM.—1. *Compensation and warranty.*—Que le créancier d'une obligation hypothécaire qui poursuit son débi-

teur personnellement ne peut subséquemment, dans une action en déclaration d'hypothèque contre un tiers détenteur, réclamer les frais qu'il a faits dans l'action personnelle si ces frais n'ont pas été enregistrés contre l'immeuble portant l'hypothèque. — LORANGER, J., 19 OCTOBRE 1888, *Sancer vs Thibeau.* **IV.** S. C., **473.**

2. *Connexity.*—Qu'une action pénale n'est ni divisible ni compensable ; qu'en conséquence un plaidoyer de compensation fait à une action de cette nature sera renvoyé sur réponse en droit.

Qu'en matière pénale il n'y a pas lieu à la garantie ; qu'il s'ensuit que dans une action *qui tam*, le défendeur ne peut, par demande incidente, appeler le demandeur en garantie. —MOUSSEAU, J., 20 OCTOBRE 1884, *Normandin vs Berthiaume.* **I.** S. C., **393.**

3. *Dominion election acts.* — Qu'il y a connexité entre plusieurs actions *qui tam*, prises pour des offenses différentes sous l'Acte Electoral, mais pendant la même élection, et que pour cette raison les actions peuvent être réunies par ordre de la Cour pour n'en former qu'une seule.—LORANGER, J., 5 DÉCEMBRE 1882, *Larivière vs Choquet.* **I.** S. C., **461.**

4. Que dans une action pénale intentée en vertu de l'Acte des élections fédérales le demandeur doit produire préalablement un affidavit comme dans une action *qui tam* indiquant clairement les causes de la demande et énonçant la pénalité réclamée.—JETTÉ, J., 22 SEPTEMBRE 1885, *Legris vs Cornellier.* **I.** S. C., **490.**

Que l'action pour recouvrer la pénalité imposée par l'acte des élections fédérales est une action *qui tam* qui doit être précédée d'un affidavit sous le Statut 27-28 Vict. ch. 43.

Que le dit acte des élections fédérales (37 Vict. c. 9.) n'a pas soustrait ces actions à la nécessité d'être précédées d'un affidavit.

Que cette absence d'affidavit est une fin de non recevoir qui peut être invoquée au mérite.—CIMON, J., 14 MARS 1885, *Rouleau vs Lalonde* **I.** S. C., **408.**

5. Que toute action *qui tam* intentée sous la sec. 92 de l'acte des Elections fédérales 1874, doit être accompagnée de l'affidavit mentionné à la sect. 1er chap. 43 du statut du Canada 27-28 Vict. 1864 ; et qu'une action pendante où cet affidavit n'aurait pas été produit ne peut être opposée comme fin de non recevoir à une action intentée par une autre partie pour la même offense.—MATHIEU, J., 8 AVRIL 1884, *Filiatrault vs Elie.* **I.** S. C., **127.**

6. *Marchande publique.* — Que dans une action *qui tam* l'allégation que le défendeur a fait commerce depuis le mois de juillet au 30 septembre 1877, est suffisante quant à la description du commerce fait et à la date où le commerce a été fait ; il n'est pas nécessaire d'indiquer des faits particuliers ;

Que l'art. 981 du C. P. C. s'applique aussi bien aux femmes contractuellement séparées de biens qu'à celles qui le sont judiciairement et qu'il n'a pas été abrogé par 48 Vict., ch. 29 ;

Que la déclaration exigée par cet article doit être faite sans délai.

Qu'une action *qui tam* intentée sous le Statut Refondu exigeant l'enregistrement de toute société commerciale est distincte d'une action *qui tam* intentée sous l'art 981 du C. P. C, et que les deux actions peuvent être intentées contre la même personne si elle ne s'est pas conformée à la loi ni dans l'un ni dans l'autre cas.—TASCHEREAU, J., 18 MAI 1889, *Devin vs Vaudrey.* **V.** S. C., **112.**

Affirming the judgment of Taschereau J. M. L. R. 5. S. C. 112.—In an action *qui tam* under art. 981 C. C. P. against a married woman separated as to property, for carrying on trade without registration as required by art. 981 C. C. P. a general averment that the defendant carried on trade from the month of July to 30th September, 1887, is a sufficient allegation of the act of trading, and of the date : a statement of particular acts of trading is not necessary.

Art. 981 C. C. P. applies to women separated as to property by marriage contract as well as to those who have been judicially separated.

Art. 981 C. C. P. has not been repealed by 48 Vict. (Q) ch. 29.

The declaration required by art. 981. C. C. P. must be delivered to the prothonotary of the district and the registrar of the county, at the time the wife begins to carry on trade.

The action *qui tam* for failure to comply with the requirements of art. 981 C. C. P. is dictint from action for failure to comply with the requirements of 48 Vict, (Q) ch. 29, s. 1 and the two actions may coexist against the same person. —JOHNSON, GILL, WURTELE, JJ., 30 NOVEMBER 1889, *Devin vs Vaudrey.* **VI.** S. C., **498.**

CITATIONS.—*Burton vs Young* 17, *L. C. J.* 379. *Langlois vs Valin*, 6. *Q. L. R.* 249. *Jelly vs. Dunscomb M. L. R.* 4 *S. C.* 404.

7. *Non registration.*—Qu'une personne qui fait un commerce en société et qui néglige de faire la déclaration requise par l'art. 981 C. P. C. ne peut se soustraire à l'action pénale en établissant que dès avant l'institution de l'action elle avait enregistré la dite déclaration. —MATHIEU, J., 25 JUIN 1885, *Jeannotte, vs Burns.* **I.** S. C., **354.**

8. *Sufficiency of affidavit.–Identification of action.*—Que lorsque, dans un action *qui tam* pour le recouvrement de la pénalité de $200 pour défaut d'enregistrement d'une raison sociale, l'affidavit requis par la loi se trouve au bas du fiat, il n'est pas nécessaire que le défendeur soit décrit dans l'affidavit par ses noms et prénoms. Il suffit de référer au "défendeur susnommé;"

Que l'action est suffisamment identifiée quand l'affidavit se trouve au bas du fiat et qu'on y déclare que le défendeur est poursuivi pour n'avoir pas fait enregistrer sa raison sociale.

Dans l'espèce le demandeur allègue que le défendeur a encouru la pénalité de $200 pour n'avoir pas fait les déclarations exigées par le Statut 48 Vict. ch. 29, concernant l'enregistrement des raisons sociales.

Que ce statut ayant été abrogé, avant les dates mentionnées à la déclaration, par la mise en vigueur des Statuts Refondus de la Province Québec, le défendeur n'a encouru

aucune pénalité, et l'action de demandeur doit être déboutée.—PAGNUELO, J., 25 NOVEMBRE 1889, *Barnes vs Cousineau.*
V. S. C. **327.**

9. Property registered in name of owner's agent.—That while a creditor has a right of action against the agent of his debtor, in whose name real estate of the debtor is registered, to have it declared that such property really belongs to the debtor, yet where it appears that the action is unnecessary, the judgment maintaining it will be confirmed without costs in either court. — MONK, RAMSAY, TESSIER, CROSS, & BABY, JJ., 30 JUNE 1886, *Schwob & Baker.*
III. Q B. **191.**

10. Transferor regaining rights.—Where an action brought by a transferee was dismissed on the ground that the consideration of the transfer was champertous, that the transferor regained his rights and might institute the action in his own name. — LORANGER, J., 19 JANUARY 1885, *Higgins, vs Power.*
I. S. C. **268.**

CITATIONS.—*Doran vs McNally, M. L. R.* 1. *S. C.* 21. *Bryce, Ultra Vires, p.* 382 *Houldsworth vs Evans.* 3 *Law Reports, English and Irish appeals. Robertson vs Banque d'Hochelaga,* 4 *L. N.*. 314, 6 *L. N.* 307.

See ALIMENTARY ALLOWANCE—BANK—BET—BOUNDARIES — CROWN — ELECTION ACT — FABRIQUE —INSOLVENCY — INSURANCE (LIFE) — LANE — LICENSE ACT — MARRIED WOMAN — NUISANCE —PARTIES TO ACTION — PRESCRIPTION — PROCEDURE—QUALITY TO SUE — RAILWAY — SALE — ST. JOHNS — STATUTORY PRIVILEGE — SALOON KEEPER — TRANSFER OF DEBTS.

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HELD that an advocate in a case who charges a witness under examination in the case with being a liar and a perjurer is not amenable to a civil suit in damages for making

such an accusation, when he does so without malice and under the instruction of his client.—JETTÉ, J., 31 JANUARY 1884, *Gauthier vs St. Pierre.* **I. S. C., 52.**

CITATIONS,— *Grellet-Dumazeau, No* 844. — *Dareau, ch.* 3, *sec.* 4, *No* 4.— *Denizart, coll. de Jurisp. vo Avocats, Nos* 22 *et* 23.— *Chassan, Délits et contraventions de la parole, No.* 136.

See LITIGIOUS RIGHTS.

AFFIDAVIT

See ACTION QUI TAM—CAPIAS—PENAL ACTION.

AGENCY

See PRINCIPAL AND AGENT.

AGENT

See INSURANCE—PRINCIPAL AND AGENT.

AGREEMENT

A vendor who sells a property during the proceedings of expropriation for a public improvement is not *garant* of the purchaser for the share of the cost of the improvement with which the property is charged by an assessment roll subsequent to the date of the sale. And this holds good even where the assessment roll referred to was prepared under the Authority of an Act of the Legislature to take the place of the original assessment roll for the same improvement, made previous to the sale, but which had been declared null by the Courts,—there being nothing in the Act to give a retroactive effect to the new assessment roll, or to reserve to the actual owner of a property any recourse against those from whom he had derived his title after the improvement had been made.

The vendors, by a clause of the deed of sale, relinquished and waived any right to exact interest on the unpaid balance until the net revenues of the company purchaser should be sufficient to pay the annual liabilities of the company for interest, insurance, etc , in connection with a certain loan, after which they would be entitled to receive interest to the extent of 7 p. c. out of the surplus of revenue, according to

its sufficiency : held that the true meaning of this stipulation was that the purchaser should pay no interest on the balance due during the extension of time granted for the payment of the balance, unless the net revenue of the property should be sufficient to pay the charges for interest, insurance, etc., and not merely that the claim for interest should be postponed. — DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 25 SEPTEMBER 1885. (Affirmed by Supreme Court, 12 S. C. R. 624.)—*Cross & the Windsor Hotel.* **II.** Q. B., **8.**

CITATIONS.—*Pothier, vente, No.* 86. *Troplong, vente, No.* 465-6 *et* 7.

ALDERMAN

See MONTREAL.

ALIEN

See TUTORSHIP.

ALIMENT—ALIMENTARY ALLOWANCE—ALIMENTARY PROVISION

1. Insaisisabilité.—That a sum of money awarded by the court as indemnity of personal injuries of a permanent nature partakes of the nature of alimentary provision and is insaisissable.—PAPINEAU, J., 31 MAY 1881, *Beauvais vs Leroux.* **II.** S. C. **491.**

2. Jurisdiction.—Que l'obligation alimentaire est purement personnelle, et que les dispositions de l'article 34 du C. P. C. n'y sont pas applicables ; de sorte qu'un fils naturel ne peut poursuivre l'administrateur de la succession de son père, nommé et domicilié dans la Province d'Ontario, en déclaration de paternité et pour pension alimentaire ; parce que son prétendu père avait, avant sa mort, son domicile dans le district de Montréal, où sa succession se serait ouverte ; la Cour Supérieure dans ce dernier district n'ayant pas juridiction. — OUIMET, J., 30 MAI 1890, *Dion vs Gervan.* **VI.** S. C., **329.**

CITATIONS.— *C. C. arts* 79, 80, 81. *Cresse vs Baby* 1 *L. C. J.* 313. *Demolombe, vol.* 1 *No* 345. *C. P. C.*, 39. *Story. Conflict of Laws, p.* 35 *et seq.*

3. Mother in law.—Qu'une belle mère doit une pension alimentaire à sa bru incapable de gagner sa vie et celle de son enfant, incluant une provision pour l'éducation de l'enfant.

Que lorsqu'il existe un désaccord et une incompatibilité de caractère entre la belle-mère et sa bru, l'offre de la belle-mère de recevoir chez elle sa bru ne sera pas acceptée et elle sera condamnée à payer une pension alimentaire.—WURTELE, J., 21 JANVIER 1890, *Mulligan vs Patterson.* **VI.** S. C., **29.**

4. Obligation arising from marriage.—That a person is bound to maintain his mother-in-law who is in want, she not being re-married, and the daughter through whom the affinity exists being still alive.

The son in law may be sued alone for the alimentary debt,without his wife being in cause. — DORION, TESSIER, BOSSÉ, DOHERTY, JJ., 27 NOVEMBER 1890, *Turnbull & Browne.* **VI.** Q. B., **435.**

CITATIONS.—*Mallette vs Latulippe* 12 *L. N.* 97.

5. Obligation to furnish.—Right of defendant to call in others responsible with him.—That although the obligation to furnish aliment is not indivisible or joint and several, in the ordinary meaning of the terms, yet the person from whom aliment is sought has a right to call into the cause all who may in law be responsible with him for the providing of such aliment. — CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 23 MAY 1889, *Mainville & Corbeil.* **V.** Q. B., **90.**

CITATIONS.—4 *Marcadé No* 628. 1 *Marcadé No* 716. 6 *Aubry et Rhau. p.* 105, *Note* 18, 4 *Demolombe*, 76—3 *Laurent No* 68 *p.* 96, 104 *et note* 18 *p.* 105 —3 *Zachariæ p.* 695. *Valette, tome* 1 *p.* 445. *Delvincourt, t.* 1, *p.* 87, *note* 5— *Toullier, tome* 2, *no* 613—*Prudhon, t.* 1 *p.* 449—*Demolombe, t.* 4. *no* 63—*Boileux t.* 1, *p.* 511—*Labelle vs Labelle* 15 *L. C. J. p.* 81—*Valiquette vs Valiquette, M. L. R.* 1 *S. C.* 129. *Pothier Contrat de mariage No* 391. *Nouveau Denisart, vo. aliments. Guizot. Vo. Aliments, vol.* 1 *p.* 319. *Lauzon vs Connaissant et vir.* 5 *L. C. J. p.* 99.

6. Seizure of judgment granting provisionalalimentary allowance to wife.—That a provisional alimentary allowance, granted by the Court to a wife during the pendency of her suit against her husband for separation de corps et de biens is an " alimentary debt " within the meaning of art. 558 C.

C. P. ; and an alimentary allowance payable to the husband under the will of his father may be seized therefor, though declared insaisissable by the will.—GILL, LORANGER & DAVIDSON, JJ., 30 DECEMBER 1880, *Perrault vs Masson.*

VII. S. C., 120.

CITATIONS.—*Dalloz. Vo. Aliments, No* 145. 2 *Boitard p.* 467, *No* 366 4. *Carré et Chauveau, p.* 671 *Macguire vs Huart* 5 *L. W.* 374.

7. Seizure for alimentary debt.—Que des biens légués comme aliments avec clause d'insaisissabilité peuvent être saisis par un créancier d'une dette alimentaire, v. g. pour effets d'épiceries vendus et livrés au légataire.—TASCHEREAU, J., 17 JANVIER 1885, *Prescott vs Thibeault.* **I. S. C., 187.**

8. Solidarity of obligation to provide.—Que l'obligation de fournir une pension alimentaire est indivisible, et que ceux qui y sont tenus, la doivent conjointement et solidairement ; que, par suite, l'un d'eux poursuivi seul, a droit d'action contre les autres pour leur faire payer leur quote part. Que cette solidarité ne cesse que lorsque ceux qui sont obligés de payer n'en ont pas les moyens, ce qui est une question de fait et ne peut être invoqué par défense en droit.—MOUSSEAU, J., 29 DÉCEMBRE 1884, *Valiquette vs Valiquette.*

I. S. C., 129.

CITATIONS.—*C. C. art.* 166. *L. C. J. vol* 5, *p.* 99. *C. N. art.* 205. *Guyot, vo aliment ; Pothier, No* 391 *Nouv. Deniz. vo. aliment. Demolombe. Mariage, vol.* 2 *no* 63 ; *Rodière, Traité de la solidarité et l'indivisibilité no* 158 ; 15 *L. C. J. p.* 81.

See FILIATION—PARENT AND CHILD—SEPARATION DE CORPS—SUBSTITUTION.

ALLOTMENT OF STOCK

See COMPANY.

ALTERNATIVE OBLIGATION

See RAILWAY BONDS.

ANIMAL

See RESPONSIBILITY.

APPEAL

I.—Conflicting evidence
II.—Damages.—Interference with award of court below
III.—Interlocutory judgment
IV.—On question of costs
V.—On questions of evidence

1. **Conflicting evidence.**—That where evidence is conflicting and evenly balanced (as in this case as to the existence of the disease at the time of the sale) the Court of Appeal will not disturb the decision of the Court below.—Dorion, Tessier, Baby, Church & Bossé, JJ., 22 January 1880, *Montreal Street Railway & Lyndsay.* **VI.** Q. B., **125.**

2. **Damages.—Interference with award of court below.**—Where the damages have been appraised by the Court of first instance, and the Court of Review has reduced the amount, the Court of Appeal will not interfere with the award of the intermediate Court, unless it appears that gross injustice has been done.—Dorion, Cross, Baby, Bossé JJ., 20 March 1890. *Pratt & Charbonneau.* **VII.** Q. B., **24.**

Citations.—*Levi vs Reed* 6 *Can. S. C. R.* 483. *Gingras & Desilets Dig. S. C. R.* p. 116-18. *Lamkin & The South Eastern Ry Co.* 5 *Appeal Cases* 352. *Ball & Ray* 30 *Law Times N. S.* p. 1 *St. Lawrence Steam Navigation Co. & Lemay M. L. R.* 3 *Q. B.* 214.

3. **Interlocutory judgment.**—An interlocutory judgment rejecting an exception to the form in such case is susceptible of appeal, being a matter which cannot be remedied by a final judgment.—Dorion, Baby, Bossé, Doherty, Cimon, JJ., 23 May 1891, *McGreevy & Beaucage.* **VII.** Q. B., **89.**

4. **On question of costs.**—An appeal, will not be entertained on a question of costs, when the decision involves no question of principle, but depends on the mere discretion of the Court in the matter of costs.—Dorion, Tessier, Cross, Baby, JJ., 22 February 1887, *Burroughs & Wells.* **III.** Q. B., **492.**

An appeal will be entertained on a question of costs where the Court below, in adjudicating on the costs, proceeded upon a wrong principle.—Dorion, Cross, Baby, Church, JJ., 25 February 1888, *McCartney & Linsley.* **V.** Q. B., **455.**

5. On questions of evidence.—That where it is no matter of contract, and no question of law or principle is involved, and the case resolves itself into a mere question of appreciation of evidence, e. g. as to the value of services, the Court of Appeal will not disturb the judgment of the Court below, unless a serious injustice has been done to the appellant.—DORION, MONK, RAMSAY, CROSS, JJ,. 25 NOVEMBER 1885, *The St. Lawrence Steam Navigation Co. & Lemay.*

III. Q. B. **214.**

Qu'une cour d'appel ne doit pas infirmer un jugement sur une demande en dommages pour diffamation, lorsqu'il ne s'agit que d'une simple appréciation de la preuve et que l'appelant n'aurait tout au plus droit qu'à des dommages nominaux —DORION, TESSIER,CROSS & CHURCH, JJ., 25 FÉVRIER 1888. *Donovan & The Herald Co. Ltd.* **IV.** Q. B. **41.**

See FABRIQUE—HABEAS CORPUS—ELECTION ACT PROCEDURE.

APPEAL TO SUPREME COURT

See PROCEDURE.

APPEAL BOND

(Reversing the decision of Jetté, J.) That a bond given as security for debt, interest and costs, on appeal by a defendant from the Superior Court to the Court of Queen's Bench, to the effect that the bondsmen will pay the condemnation money in case the judgment be confirmed, is binding, though the judgment of the Queen's Bench reversed the judgment of the Court below, if the original judgment of the Superior Court has been restored by the Judicial Committee of the Privy Council and the effect is the same as if the judgment of the Superior Court had been affirmed by the Court of Queen's Bench.—TESSIER, CROSS, BABY, CHURCH & DOHERTY, JJ., 22 DECEMBER 1887, *Lowrey & Routh.*

III. Q. B., **365.**

CITATIONS.—1 *Mareadé p.* 113 — 1124 *C. P. C.* — *Robertson v. Plympson* 25 *New York R.* 484.

See PROCE URE.

APPRENTICE

See MINOR.

AQUEDUCT

Where several persons, owners of lands in the vicinity of the River Richelieu associated themselves by deed before notary, for the purpose of providing a water supply for their respective dwellings, that an ordinary partnership was not thereby created, and that an action for dissolution of part nership, brought by one of the associates who had ceased to have property there and had left the neighborhood, would not be maintained.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Michon & Leduc.* **VI. Q. B., 337.**

CITATIONS.—*Dalloz, vo Société, Nos* 94, 95, 99, 125, 318 et 319.—*Ibidem. Nos* 110, 116, 118, 119, 124. *Pothier, Bugnet "Société" No* 54. *Troplong "Société" No* 13, 20 *et seq et No* 315. *Pont "Société" No* 84. *Merlin "Répertoire de jurisprudence" vo Société sec VII Duverger. Du contrat de Société, No* 40 *et seq.* "*Domat de la Société" sec V.*

Pour l'intimé. Aubry et Rhau vol II p. 413 § 221 *ter.—Demolombe vol. 11, Nos* 425, 444, *et seq. Dalloz, Dict. de jurisprudence. vo Servitude No* 8 *et vo partage No* 45. *Delvincourt vol* 2 *p.* 344. *Duranton vol V. No* 149—*R. de Villargues, Dict. de Droit Civil, Verbis Indivis et Indivision. Nos* 37 *à* 44—*Pardessus, Servitudes, vol. I, No* 190 *et seq.—Solon, Servitudes No* 593—*R. de Villargues. Rép. du Notariat vo, Propriété indivise, Nos* 39 *à* 43—*Merlin, Répertoire, vo Partage* § 10, *No* 2.

ARBITRATION

1. Expropriation railway.—The fact that a person who has acted as arbitrator in behalf of the land owner in an expropriation by a railway company, has been paid by the company the amount taxed for his services, does not preclude him from recovering from the party appointing him, the value of additional services rendered to such party in connection with the same arbitration, but outside of the ordinary duties of an arbitrator, such as interviews, consultations, etc.—TESSIER, CROSS, BABY, CHURCH, BOSSÉ, JJ., 20 NOVEMBER 1889, *Evans & Darling.* **VI. Q B., 73.**

2. Fees of counsel.—Taxation.—A Judge of the Superior Court may, in his discretion, allow fees to counsel on an arbitration to fix the indemnity to be paid for lands taken by a

railway company, conducted under the provisions of the Quebec Consolidated Railway Act, 43–44 Vict., c. 43. s. 9; and there is no power in the Court to revise such taxation. —DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 24 NOVEMBER 1884, *Cie. Chemin de fer M. et S. & Vincent.* **IV.** Q. B., **404.**

3. Irregularities.—Acquiescence. — Where the parties agreed to submit their differences to arbitrators and mediators and notwithstanding serious illegalities on the part of the mediators, proceeded with the arbitration, that it was too late to complain of the irregularities after the award was rendered. — DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MARCH 1886, *Rolland & Cassidy.* **II.** Q. B., **238.**

4. Stipulation for benefit of a third person. — By an arbitration bond, A agreed to pay the sub-contractors of P. who was the sub-contractor of A, for the construction of the Pontiac Pacific Junction Railway.

R, one of P's sub-contractors, brought action against P and A claiming the benefit of the stipulation made in and by the bond.

A pleaded inter alia, that the arbitration was not carried out, no award made, and that the submission became inoperative-art. 1348 C. C. P.

That the arbitration having fallen through, the submission became inoperative, and the stipulation in favor of R. the third party, was revoked.—JETTÉ, TASCHEREAU, LORANGER, JJ., 31 MARCH 1887, *Read vs Perrault.* **III.** S. C., **99.**

See PROCEDURE.—RAILWAY.

ARBITRATORS

See MANDAMUS.– PROCEDURE.

ARCHITECT

See CONTRACT.

ARREST WITHOUT WARRANT

See MUNICIPAL LAW.

ARTICULATION OF FACTS

See PROCEDURE.

ASSAULT

Qu'une personne assaillie qui a porté une plainte pour assaut devant le juge de paix, ne peut, lorsqu'il y a eu ainsi procès, poursuivre ensuite en dommage devant les cours civiles. — TELLIER, J., 12 NOVEMBRE 1889 *Langevin vs Bourbonnais.* **VI.** S. C., **317.**

See DAMAGES-POLICE.

ASSESSMENT ROLL

See MUNICIPAL LAW — MONTREAL.

ASSIGNEE

See INSOLVENCY.

ASSIGNMENT

1. Effect of voluntary assignment.—Bien que la cession volontaire de biens par un débiteur à ses créanciers ne dépouille pas le débiteur de la propriété de ses biens, elle constitue néanmoins en faveur des créanciers un mandat irrévocable qui a pour effet de priver le débiteur du droit de disposer autrement de ce qu'il a ainsi cédé.—JETTÉ, J., 17 SEPTEMBRE 1886, *Jacob vs Jacob.* **II.** S. C., **258.**

2. Power of assignee.—Que les cessions de biens faites à un syndic pour le bénéfice des créanciers ne donnent pas le droit au syndic cessionnaire d'intervenir dans une saisie des biens du débiteur insolvable par un créancier, pour réclamer, en sa dite qualité, la possession des effets saisis; cette cession n'a aucun effet vis à vis les tiers, et ne peut lui permettre d'ester en justice ni pour le cédant, ni pour les créanciers du cédant. — MOUSSEAU, J., 23 AVRIL 1885, *May vs Fournier* **I.** S. C., **389.**

See SALE.

ASSIGNMENT OF FACTS FOR JURY

See PROCEDURE.

ASSOCIATION

The majority of the members of a Friendly Association constituted under C. S. C., ch. 71, being expelled from the

association, met in another place, and organized themselves for objects similar to those of the original association but taking a different name. The trustees of monies belonging to the old association were among this number In an action in the name of the old association, calling on the trustees to account :

(Ramsay J. diss.)—That the members of the new association, although they had changed the name of the society, constituting as they did a majority, and the members claiming to be the old association being a minority, the latter were not entitled to demand the monies in the hands of the trustees. — DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 22 november 18 1, *Court Mount Royal No* 569 1, *Ancient order of Foresters Friendly society of Montreal & Boulton et al*

VI. Q. B. **231.**

ATACHMENT

See SAISIE ARRET - PROCEDURE.

ATTORNEY

I.—ACTION OF DISAVOWAL.—ONUS OF PROOF
II.—COSTS. — DISCONTINUACE OF ACTION WITHOUT CONSENT OF ATTORNY.—FRAUD
III.—DISTRACTION OF COSTS
IV.—EVIDENCE OF ATTORNEY OF RECORD
V.—PAYMENT TO
VI.—REDDITION DE COMPTE

1. **Action of disavowal.—Onus of proof.** — Where a party seeks to have his attorney judicially disavowed, the court will not presume, in the absence, of any evidence in either side, that the attorney was authorized.—DAVIDSON, J., 15 NOVEMBER 1890, *Lajeunesse vs Augé.* **VII.** S. C., **459.**

CITATION.— *Pothier obligation No* 848. *Pigeau p.* 351 *Moss vs Ross*, 9 *L. C. J.* 328.

2. **Costs. — Discontinuauce of action without consent of attorney.—Fraud.**—That a plaintiff is always, in his own interest, the master of his case, and has at all times, while acting in good faith, the right to effect a settlement on any terms which to him seem fit, and to discontinue his suit, without

the consent of his attorney ad litem, even when the latter has demanded distraction of costs.

But although an attorney ad litem can only look to his client for the payment of his costs so long as distraction thereof has not been granted to him and although he has no right in the ordinary course to continue a suit in his own interest and solely to obtain judgment for his costs against the adverse party with distraction in his favor, he may nevertheless obtain the permission of the Court to continue the action exclusively in his own interest for his costs, when a settlement has been effected and a discontinuance has been filed with the intention by both parties, or on the part of one with the connivance of the other, to defraud him of his rights. — WURTELE, J., 25 NOVEMBER 1889, *Farquhar vs Johnson.* **VI.** S. C., **25.**

3. Distraction of costs.—That an attorney, to whom distraction of costs has been awarded, is the personal creditor for such costs, and if his client pays them and obtains a transfer, the transfer must be served upon the debtor before action can be brought therefor.—DAVIDSON, J., 15 NOVEMBER 1887, *Bury vs Corriveau Silk Mills.* **III.** S. C., **218.**

4. Evidence of attorney of record.—That the attorney of record is only allowed to offer his testimony in favour of his client under exceptional circumstances ; and that the introduction of the evidence of the defendant's attorney as to a private conversation between himself and the plaintiff, was under the circumstances improper, and such testimony would be rejected by the Court. — DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 22 NOVEMBER 1890, *Benning vs Rielle.* **VI.** Q. B., **365.**

5. Payment to.—Que le procureur *ad litem* ne peut, comme tel, recevoir les sommes pour lesquelles sa partie a obtenu jugement et en donner valables quittances.

Qu'en supposant que d'après l'usage, l'avocat ayant un mandat *ad litem* aurait tacitement le pouvoir de retirer les sommes pour le recouvrement desquelles il est chargé d'instituer des poursuites ; cependant il appert, dans le cas actuel, que James M. Glass aurait retiré après jugement la somme

en question en cette cause, dans un temps où son mandat était terminé et éteint, et que l'usage susmentionné ne pourrait même pas trouver ici son application.—CIMON, J., 9 AVRIL 1885, *Cloran vs McClanaghan.* **I. S. C., 331.**

CITATIONS.—*Pothier, obligation. No* 513 *3e al.; Ancien Denisart, vo Payement p.* 364. *col 1ère, No* 25; 22 *Merlin. Répertoire petit format, vo payement p* 470, *col. 2e 1er alinéa, No* 3; 25 *Ibid. vo. Procureur ad litem p.* 330, *col. 2e et p.* 331, *col. 1ère—Ferrière, Dict. de droit. vo. Procureur ad lites p.* 436, *col 2e, no* 10—13 *Guyot, Rep. vo. Payement, p.* 16, *col. 2e, 6e al.*—13 *Ibid. vo Procuration, p.* 710, *col. 1ère 3e al.*—13 *Ibid. vo Procureur, p.* 715, *col. 2e, 4e al.* 4 *Demolombe Traité des contrats No* 47, *p* 133, 134; 12. *Duranton No* 44. *p.* 68; 3 *Larombière, No* 12, *p.* 93. 7 *Toullier No* 21, *p.* 23; *C. C. B. C.* 1144; *C. N.* 1239: *C. L,* 2136.

6. Reddition de compte.—Que l'avocat dans une demande en reddition de compte a mandat pour représenter l'ayant compte sur la contestation de ce compte lequel ne pourra être contesté par un autre avocat qu'après que ce dernier aura dûment été substitué au premier.—MATHIEU, J., 7 MARS 1885, *Poirier vs Laberge.* **I. S. C. 199.**

See EVIDENCE—ARBITRATION—PRIVILEGE—PROCEDURE—TARIFF OF FEES.

AUTHORISATION OF WIFE

See HUSBAND AND WIFE.

AVEU

See EVIDENCE-JUDICIAL ADMISSION.

AWARD

See RAILWAY.

BAILEE

See LARCENY AS A BAILEE.

BAILIFF

Que le défendeur, huissier du district de Montréal, doit se soumettre aux règlements de la demanderesse et tenir un registre des ventes par lui faites ;

Que la vente d'un objet par un huissier à son record à vil prix, et en l'absence d'enchérisseurs sera réputée faite à

l'huissier lui-même et que l'huissier pourra être condamné à remettre cet objet à la personne sur qui il l'a vendu.

Que l'huissier sera considéré favoriser ses parents ou employés dans la vente et l'adjudication des effets vendus par lui, s'il est dans l'habitude de leur adjuger aux ventes judiciaires faites par lui.—PAGNUELO, J., 19 NOV. 1889, *Corporation huissiers de Montréal vs Bourassa.* **V.** S. C. **409.**

Que l'huissier porteur d'un bref de saisie gagerie qui signifie d'abord une copie du bref au locataire et qui ne va ensuite saisir que plusieurs jours après est responsable en dommages au demandeur pour les effets que le locataire a, dans l'intervalle de la signification à la saisie, enlevés de sur les lieux loués et ainsi soustraits au privilège du demandeur ;—TORRANCE, PAPINEAU ET TASCHEREAU, J., 12 JUIN 1886, *Michon vs Venne.* **II.** S. C. **367.**

See RESPONSIBILITY.

BANKS AND BANKING

I.—ACCEPTANCE OF CHEQUE.
II.—ADVANCE MADE UPON SECURITY OF SHARES OF ANOTHER BANK.
III.—BANKING ACT 34 VICT.—DOUBLE LIABILITY.—RESPONSIBILITY OF PLEDGEES OF STOCK.—SAVINGS BANK.
IV.—CLEARING HOUSE RULES.
V.—ENDORSEMENT OF CHEQUE.
VI.—POWERS OF.—CONTRACT OF GUARANTEE.
VII.—SUSPENSION OF PAYMENTS.—RIGHT OF CREDITORS TO SUE.

See CHEQUE COMPANY COMPENSATION EXTRADITION IMPUTATION OF PAYMENTS INSOLVENCY PRIVILEGE PROMISSORY NOTE SURETYSHIP.

1. Acceptance of cheque.—Qu'en loi et suivant les usages du commerce, l'acceptation d'un chèque ou d'un autre effet de commerce par un gérant de banque, avec la condition d'en effectuer le paiement à une date subséquente, est légale et dans les limites des pouvoirs d'un tel gérant.—LORANGER, J., 31 MARS 1885. *Banque du Peuple vs Banque d'Echange.* **I.** S. C. **231.**

In 1881, G. having business transactions with the Exchange Bank, agreed with C. who was both President and

Cashier, that in lieu of further advances, the Bank would accept his cheque, but made payable at a future date. On the 19th October 1881, G. drew a cheque on the Exchange Bank, and after having got it accepted as follows: "Good on 19 February 1882. T. Craig, Pres." got the cheque discounted by the Banque du Peuple, and deposited the proceeds to his credit in the Exchange Bank. This cheque was renewed on the 23rd May, and it was presented at the Exchange Bank and paid. Subsequently, another cheque for the same amount was accepted in the same way and discounted by the Banque du Peuple, and renewals were made up to 23rd May, 1883. At the time of the suspension of payment by the Exchange Bank, the Banque du Peuple had in its possession four cheques also payable at future dates, signed by G. and accepted by T. Craig, president and manager of the Exchange Bank, which were subsequently presented for payment on the dates when they were payable, and duly protested. The total amount of these cheques was $66,020.74, and one of them, dated 7 September, 1883, for $31,000 was a renewal of the cheque, the proceeds of which had been paid to the credit of G. in the Exchange Bank.

To an action brought by the Banque du Peuple against the Exchange Bank, based on the four cheques in question, for the recovery of the sum of $66,020.74, the Exchange Bank pleaded inter alia that C. had not acted within the scope of his authority, and that the Exchange Bank had never authorized or ratified his acceptance of G's cheques.

That the Exchange Bank was liable for the acceptance by their president and cashier, of G's cheques, discounted by the Banque du Peuple in good faith and in the ordinary course of business.—DORION, RAMSAY, CROSS, BABY, JJ., 27 NOVEMBER 1886, *Exchange Bank & Banque du Peuple*:— (Confirmed by Supreme Court 10 L. N. 362). **III.** Q. B. **232.**

CITATIONS.—*Morse, on Banks and Banking, p.* 97, 11, 144, 152, 156, 157, 205 *Story, on Agency* § 116 *note—Daniel, on Negotiable Instruments 1er vol. No* 392, *p.* 368—*2e vol. No.* 1574, 1573, 1606*b*—*Addison, on contracts vol* I *p.* 120, *No* 69 *p.* 212 *No* 137—*Angell & Ames. On Corporations, Nos* 301, 302. 304–17 *L. C. J.* 197—*C. C, arts* 2293 & 2354.

That a Bank acting as agent for another Bank is not authorized, in the absence of express agreement, to cash a cheque drawn upon the principal Bank, but unaccepted by it.

That a telegram from the President of the principal Bank to a depositor therein, stating that certain funds are at his credit, is not an acceptance of a cheque drawn by the depositor upon the receipt of such telegram for the amount of the funds, such telegram adding nothing to the legal obligation of the principal Bank towards the depositor to pay the cheque, when duly presented for payment, if there were then funds at his credit to meet it and no legal hindrance to its payment existed.

That no compensation arises between the Principal Bank and its agent, entitling the latter to set off monies paid under an unaccepted cheque upon the principal Bank against monies held by the agent and due to the principal Bank.—TAIT, J., 30 NOVEMBER 1888, *Maritime Bank vs Union Bank*

IV. S. C. **244.**

CITATIONS.—*C. C.* 2351, 1571. *Marler & Molson Bank* 2 *L. N.* 166 *Exchange Bank & Hall M. L. R.* 2 *Q B.* 418—*Daniel, on Negotiable Instruments. vol. II* § 1601 *a* & 1628 — *Morse, on Banks* (2nd ed) p. 280—*Newmark, on Bank Deposits* p. 209—*Bolles, on Bank Deposits pp.*377 & 383—*Woodland vs Fear* 26 *L. J.* (*Q. B.*) 202—*ch.* 129 *R. S. C. secs.* 5, 7, 57 & 72 & 97 to 104—*Banque d'Echange du Canada vs St. Amour* 13 *R. L.* 443.

2 Advance made upon security of shares of another bank. —(Dorion C. J. and Church J. diss.) Where in order to evade the law prohibiting the acceptance by one Bank of the stock of another Bank as security for a loan (46 Vict. c. 45, s. 2) an advance was made by a Bank and stock of another Bank was transferred as security to the cashier of the lending Bank, and the transaction was duly noted in the books of the Bank, that the owner of the shares so transferred was entitled to reclaim them from the Bank, or to get their value, when the debt was paid for the security of which the shares were transferred as aforesaid. The prohibition of the law applies to the Bank and not to the borrower.—DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 23 MAY 1890. *Exchange Bank & Fletcher*:—(Confirmed by Supreme Court 19 S. C. R. 278. **7.** Q. B. **11.**

CITATIONS—4 *Pardessus, Dr. Comm. No.* 1014—*Brice, ultra vires,* 618—*Ferrie & Thompson,* 2 *R. de L.* 303—*Banque du Peuple & Banque d'Echange, M. L. R.* 1 *S. C.* 231—*Geddes vs La Banque du Peuple* 24 *L. C. J.* 135—*Bank of Montreal v. Geddes* 3 *L. N.* 146—*Ferrie & The Warden of the House of Trinity* 1 *R. de L.* 27.

3. Banking Act 34 Vict. Double liability. Responsibility of pledges of stock Savings Bank.—That a Savings Bank holding bank shares as pledgee is not the owner of such shares within the meaning of sect. 58 of the Banking Act, and therefore not subject to the double liability.

A Bank whose shares are transferred to a Savings Bank is presumed to know that they are held by latter as collateral security, inasmuch as under sect. 18 of the 34 Vict. c. 7 a Savings Bank cannot acquire bank shares or hold them except as pledgee.— JOHNSON, J., 21 DEC. 1885, *Exchange Bank vs Montreal Savings Bank.* **II.** S. C. **51.**

(Affirming the judgment of Johnson J. M. L. R. 2 S. C. 51.) That a Savings Bank, holding bank shares as pledgee, and appearing as owner on the books of the bank is not the owner of such shares within the meaning of sect. 58 of the Banking Act, 34 Vict. (D) ch. 5, and therefore is not subject to the double liability.

A bank, shares of which are transferred to a Savings bank, is presumed to know that the shares are held by the latter as collateral security, inasmuch as under sec. 18 of 34 Vict. (D.) ch. 7, a Savings bank cannot acquire bank shares or hold them except as pledgee.— DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 27 SEPT. 1887, *Exchange Bank vs Montreal Savings Bank.* **VI.** Q. B. **196.**

4. Clearing house rules.—That a custom of trade or banking in derogation of the common law, must be strictly proved. And where a bank sought to excuse itself from taking back an unaccepted cheque on another bank, which had been sent in to the clearing house in the morning, on the ground that by a rule of the association a cheque for which there were no funds should be returned to the presenting bank before noon of the day of presentation, whereas the cheque in question was not offered back until 3 30 p.m., and it appeared that the rule in question was of a temporary character only, and was not usually followed by the banks, which

belong to the clearing house association, it was held that such rule could not derogate from the originary rule of law, as to the return of cheques for which there are no funds.—DAVIDSON, J., 30 JUNE 1891, *Banque Nationale vs Merchants Bank.* **VII.** S. C. **336.**

CITATIONS.—1 *Morse, Banking* § 349 *et seq.*—1 *Morse, Banking*, 409—*Chitty, Bills*, 175.

5. Endorsement of cheque.—Where a cheque was payable to the order of "Wm. Almour" that the Bank on which it was drawn was not justified in paying the amount on the endorsement "Wm Almour by A. B. Almour" unless the authority of A. B. Almour to endorse for Wm. Almour was proved.—TORRANCE, DOHERTY, PAPINEAU, JJ., 31 OCT. 1884, *Almour vs La Banque Jacques Cartier.* **I.** S. C. **142.**

6. Powers of.—Contract of garantee.—That a bank cannot validly enter into a contract of suretyship, guaranteeing the payment by a customer of the hire of a steamship under a charter party; and where the bank has derived no benefit from such contract, a claim made thereon against the bank in liquidation will be dismissed.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 22 NOV. 1890, *Watts & Wells* **VII.** Q. B. **387.**

CITATIONS.—*Johansen & Chaplin M. L. R.* 6 *Q. B.* 111.

That a Bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party.—DORION, TESSIER, BABY, CHURCH and BOSSÉ, JJ., 20 NOV. 1889, *Johansen & Chaplin.* **VI.** Q. B. **111.**

7. Suspension of payments.—Right of creditors to sue.—Qu'un créancier d'une banque incorporée qui a suspendu ses paiements, peut, même avant l'expiration des quatre-vingt-dix jours à dater de la dite suspension, poursuivre la banque et obtenir un jugement pour le montant de sa créance.—RAINVILLE, J., 16 JANV. 1884, *Senécal vs Banque d'Echange* **II.** S. C. **107.**

BET

Que lorsque dans un pari la somme d'argent pariée a été placée entre les mains d'un tiers, celui qui a gagné a droit

d'action contre le tiers pour s'en faire remettre le montant, ce dépôt étant assimilé à un paiement.—RAINVILLE, J., 12 NOV. 1880, *Riendeau vs Blondin.* **I.** S. C. **406.**

BENEFIT SOCIETY

See ELECTION.

BILLS AND NOTES

1. That a non negotiable note endorsed by payee in full, and transferred to a third party, may be collected by the latter in his own name from the maker, if signification of the transfer is duly made upon him.

That such signification of transfer need not be in authentic form, but may be sous seing-privé. — JOHNSON, PAPINEAU & MATHIEU, JJ., 31 JAN. 1885, *McCorkill vs Barrabé.*
I. S. C. **319.**

2. Endorser.—Que l'endosseur d'un billet promissoire poursuivi conjointement et solidairement avec le faiseur, ne peut opposer à l'action une exception dilatatoire demandant qu'il ne soit tenu de plaider qu'après que le faiseur aura été par lui assigné en garantie et mis en demeure de plaider à l'action.—TASCHEREAU, J., 16 OCT. 1885, *Durocher vs Lapalme.*
I. S. C. **494.**

3. Prête-nom.—Que le preneur dans un billet promissoire quand même il ne serait qu'un prête-nom, a un intérêt suffisant pour poursuivre le recouvrement du billet en justice pourvu qu'il n'y ait pas de fraude et que le débiteur n'en subisse aucun préjudice.—SICOTTE, J., 12 MARS 1880, *Biron vs Brossard.* **II.** S. C. **105.**

4. Liability of acceptor.—J. a customer of the Exchange Bank, respondent, discounted with that Bank appellant's acceptance. When it fell due appellant failed to pay it, and the Bank charged it to J 's account, who at the time owed the Bank a small balance which balance was augmented by subsequent transactions, wherein nevertheless if the credits were imputed to the earliest indebtedness, the balance due when the acceptance matured would be more than covered. The Bank retained possession of the acceptance and brought

this suit against appellant, the acceptor, to recover its amounts. Appellant pleaded payment and compensation.

That the Bank was entitled to recover from appellant the amount of his acceptance and that appellant was not discharged by the credits in the Bank's account with J.—DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 17 SEPT. 1887, *Goodall & The Exchange Bank* **III.** Q. B **430.**

See BANKS AND BANKING—ELECTION LAW—INSOLVENCY — IMPUTATION OF PAYMENTS — JURISDICTION—PROMISSORY NOTE.

BILLS OF LADING

Reynolds Bros., shipped from Toledo, a port in the United States 16,500 bushels of wheat by schooner to Kingston, Ont., the cargo to be delivered as per address in the margin of the bill of lading, as follows :—"Order Reynolds Bros.; notify Crane & Baird, Montreal, P. Q. Care of St. Lawrence & Chicago Forwarding Co.," implying that, although the voyage of the schooner ended at Kingston, the cargo was to be out in charge of the Forwarding Company, destined for Montreal, Crane & Baird to be put upon their diligence by notice for any interest they might have in the cargo. The schooner having arrived at Kingston, the Forwarding Company, the ordinary carriers for Crane & Baird, received the cargo and paid the lake freight to the master of the schooner. No new bill of lading was issued, but the agent of the Forwarding Company at Kingston, signed a receipt for the cargo across the face of the duplicate of the bill of lading. The respondents made advances on the original bill of lading, endorsed by the shippers, but the wheat had been previously delivered by the Forwarding Company at Montreal to the order of Crane & Baird, without the surrender of the original bill of lading.

The question was whether the appellants, the Forwarding Company, were held to the same obligations as if they had been signers of the original bill of lading which the respondents contended had force and effect until the cargo reached its destination in Montreal, and whether the appel-

lants as forwarders were bound to have demanded and secured the surrender of the original bill of lading on delivery by them of the cargo to the consignees.

(Reversing the decision of the Superior Court 5 L. N. 6; 25 L. C. J. 324) that the bill of lading was fulfilled and became effete by the delivery of the wheat at Kingston, prior to the assignment of the bill of lading to the respondents.

The negotiability of a bill of lading cannot be put upon precisely the same footing as a bill of exchage. An advancer on a bill of lading should exercise reasonable diligence as regards the cargo it purports to represent.

The alleged usage of trade, imposing the obligations incurred under the first bill of lading upon the carrier who accepts a cargo carried to an intermediate port to forward to its final destination by an additional transit, so as to require such ultimate carrier to procure the surrender of the original bill of lading to free himself from responsibility, could not alter the established significance of the documents used, on the legal relations of the parties according to the facts of the case, or make liability depend upon obtaining the surrender of a document after it has exhausted its efficiency and ceased to have any operation.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 MAY 1884, *The St. Lawrence and Chicago Forwarding Co. & The Molson's Bank.*

I. Q. B. 75.

CITATIONS.—*Williamson & Rhind* 22 *L. C. J.* 166.

See CARRIER—PLEDGE—RAILWAY.

BON

See PRINCIPAL AND AGENT—PROMISSORY NOTE.

BONDS

See RAILWAY BONDS.

BOOK DEBTS

See INSOLVENCY—SALE.

BOOK KEEPER

See EVIDENCE.

BORNAGE

1. **Encroachment.**—Lorsque le demandeur se plaint d'un empiètement et que le défendeur est en possession du terrain en question depuis l'an et jour, la Cour ne peut décider s'il y a eu empiètement soit par le demandeur soit par le défendeur que par un bornage. — MATHIEU, WURTELE, PAGNUELO, JJ., 30 AVRIL 1891, *St. Stephens Church vs Evans.*

VII. S. C. **255.**

CITATIONS.—*Laprade & Gauthier* 1 *R.L.* 145. *Milliken & Bourget M L. R.* 5 *Q. B.* 300. *Gerbeau & Blais* 7 *Q. L. R.* 13. *Levesque & McCready* 21 *J.* 70. *The Harbor Commissioners of Montreal vs Hall* 5 *L.C.J.* 155 *Fournier & Lavoie* 15 *L.C.J.* 270. *Graham & Kemplay* 16 *L. C. J.* 56. *Fraser & Gagnon* 4 *Q. L. R.* 381.

2. **Property already bounded.** — Que lorsqu'une propriété a déjà été bornée, à frais commun, et du consentement des deux parties, lesquelles ont signé le procès verbal, l'une de ces parties ne pourra demander à son voisin un nouveau bornage sans alléguer des raisons sérieuses montrant l'insuffisance et l'irrégularité du premier. — JETTÉ, BUCHANAN, LORANGER, JJ,, 30 DÉC. 1881, *Nadeau vs St. Jacques.*

I. S. C. **302.**

CITATIONS.—*C. P. C.* 941—*Merlin, Rép. vs Conclure*—7 *L. N.* 114—45 *V. (Q) c.* 16, *s.* 57—1 *Lepage, Lois des Bâtiments*, 27, 29, 30—1 *Fournel, Du Voisinage* 233-7—*Solon. De Servitudes*, 320, 321, § 130—1 *Demolombe, Des Servitudes, No.* 281.

3. **Settling boundaries—Procedure—Costs.** — In an action en bornage, the Superior Court cannot order a surveyor to place landmarks to define and separate the respective properties of the parties without at the same time settling the boundary line between the properties and the points where the landmarks shall be placed. A surveyor appointed by the Court before the boundary line is settled is only an expert whose office is to report on the locality and indicate where, in his opinion, the boundary line should be drawn, for the guidance of the Court in settling the boundaries.

Under art. 504 C. C., not only the costs of settling the boundaries should be common to the parties, but also the costs of the suit when it is not contested. Only in case of contestation are the costs of the suit in the discretion of the Court. — DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 21 MAY 1890, *Desvoyeaux vs Tarte.* **VI.** Q B. **477.**

See EVIDENCE INJUNCTION.

BRIDGE

See MUNICIPAL LAW.

BREWER'S LICENSE

See CONSTITUTIONAL LAW.

BROKER

See GAMING CONTRACTS.

BUILDER

1. Acceptance of work. — Que lorsqu'un entrepreneur s'oblige de terminer et livrer une bâtisse au milieu de la saison d'été et que sans la faute du propriétaire, il ne la livre qu'au mois de novembre, le propriétaire, sur l'ordre de l'architecte qui déclare ne pouvoir recevoir cet ouvrage, vu la saison avancée, a droit de retenir entre ses mains, une somme suffisante, comme garantie jusqu'au printemps suivant, alors que l'architecte pourra recevoir l'ouvrage.

Que sous les circonstances ci-dessus relatées, si, au printemps l'ouvrage a besoin de réparations avant d'être accepté, le propriétaire, après avoir mis les entrepreneurs en demeure pourra faire faire ces réparations et les déduire du montant qu'il a gardé comme garantie.—JETTÉ, J., 30 JUIN 1888, *Boismenu vs Curé et Marguilliers Ste-Cunégonde.*

IV. S. C. **80.**

CITATIONS.—*Lepage, Lois des Bâtiments, vol. 2, p.* 35 § *III et note* 8, *fin du livre —Fremy-Ligneville, vol. I, p.* 128, *No.* 118.

2. Responsibility of — Repairs to old house—Evidence.— Where a builder makes repairs to an old house, in order to hold him responsible under C. C. 1688, it must be shown that the deterioration or loss complained of arose from a defect in the repairs, or the omission of something which the repairer was bound to do.—JOHNSON, J., 30 JUNE 1887, *Parent vs Durocher.*

III S. C. **352.**

CITATIONS.—*Wardle & Bethune,* 8 *L. C. J.* 289.

See PRIVILEGES AND HYPOTHECS.

BUILDING SOCIETIES

1. Confiscation of shares—How made.—The entry of the word "forfeited," by the secretary of a building society, opposite the names of certain members in the books of the society, is not sufficient evidence that such members received due notice that their shares would be forfeited if their arrears were not paid,—more especially where the entry was made long after the date of such alleged notice.

Under C. S. L. C. ch. 69, s. 15, confiscation of shares for non compliance with the rules of the building society, must be declared. Such declaration may be made by resolution of the board of the directors.

Where such confiscation has not been declared previous to the liquidation of the society, the liquidators have no authority to pronounce the confiscation.—LORANGER, J., 19 JANUARY 1885, *Higgins vs Power* **I.** S. C. **268.**

CITATIONS.—*Doran vs McNally M. L. R.* 1 *S. C.* 21—*Robertson vs La Banque d'Hochelaga* 4 *L. N.* 314 *et* 6 *L. N.* 307.

2. Liquidation—Resolution to wind up—Resolution cancelling resolution to wind up.—That were a Building Society has passed a resolution to wind up and liquidate the business of the Society under R. S. Q. 5455, and liquidators have been appointed to carry out and give effect to the resolution, and the liquidators have prepared a dividend sheet accordingly, the contract binding the members of the Society is by such entrance into liquidation dissolved, and cannot be resuscitated without the unanimous consent of its former members, and a resolution passed by a majority vote at a subsequent meeting, resolving that the Society shall continue its business, is null and of no effect.—DORION, TESSIER, CROSS, BABY, DOHERTY, JJ., 21 MAY 1890, *Larivée vs Société C. F de Construction de Montréal.* **VI,** Q. B. **464.**

A by-law of a building society required that a shareholder should have satisfied all his obligations to the society before he should be at liberty to transfer his shares. P. a director, in contravention of the by-law, induced the secretary of the society to countersign a transfer of his shares to

the Banque Ville Marie as collateral security for an amount he borrowed from the bank, and it was not until P.'s assignment in insolvency that the other directors of the society knew of the transfer to the bank. At the time of his assignment P. was indebted to the society in a sum of $3,744, for which amount, under the by-law, his shares were charged as between P. and the society. The society immediately paid the bank the amount due by P. and took an assignment of the shares. The shares being worth more than the amount due to the bank, the curator to the insolvent estate of P. brought suit claiming the shares as forming part of the insolvents' estate, and with the action tendered the amount due by P. to the bank. The society claimed that under the by-laws the shares were pledged to them for the whole amount of P.'s indebtedness to them. The Superior Court held that the payment by the society of the bank's claim annulled the transfer made by P. in fraud of the society's rights, and that the shares in question must be held as having always been charged under the by-law with the amount of P.'s indebtedness to the society, and that his creditors had only the same rights in respect of these shares as P. himself had when he made the abandonment of his property, viz., to get the shares upon payment of P.'s indebtedness to the society. On appeal to Queen's Bench ;

That the possession of the shares had passed from P. to the bank ; that the right to recover the shares from the bank on payment of its advances thereon, was vested in P. and passed to his creditors upon his insolvency ; and that after P.'s insolvency it was not competent for the society to acquire any privilege or pledge over the shares to the prejudice of P.'s creditors by paying the claim of the bank.—CROSS, BABY, BOSSÉ, DOHERTY, JJ., 26 JANUARY 1891, *Daveluy & Society C. F. de Construction de Montréal*. (Reversed by Supreme Court 15 L. N. 166.) **VII Q. B. 417.**

See COMPANY CONSTITUTIONALITY OF CHARTER CORPORATION.

BUTCHER'S PRIVATE STALL

See MONTREAL.

BY-LAW

See MUNICIPAL LAW.

CADASTRE

See SHERIFF'S SALE—SEIGNIORY.

CAHIER DES CHARGES

See PROCEDURE.

CALLS ON SHARES

See CORPORATION.

CAPIAS

I.—Action to account
II.—Affidavit
III.—Assignment by debtor in trust
IV.—Contestation of
V.—Damages.—Settlement of debt without reserve
VI.—Deposit in lieu of bail.—Agreement to give bail.—Conditional obligation.—Time of performance.—Default
VII.—Disposal of movables by debtor.—Contestation of debtor's bilan
VIII.—Illegal arrest
IX.—Intend to defraud
X.—Issued in case pending before the Circuit Court
XI.—Judicial abandonment.—Effect of.—Imprisonment
XII.—Liability of sureties
XIII.—Prescription of action of damages for illegal issue of capias
XIV.—Secreting
XV.—Security.—Condition
XVI.—Special bail under art. 824 C. P. C.—Statement and declaration under C. P. 766
XVII.—Ship captain leaving for Great Britain.—Fraudulent departure
XVIII.—Suspension of payments

See PROCEDURE—SURETY.

1. **Action to account.**—Qu'une personne qui a contre son agent une action en reddition de compte ne peut faire arrêter ce dernier sous capias, en se basant sur la créance qui doit résulter en sa faveur de la dite reddition de compte.—

DOHERTY, PAPINEAU, LORANGER, JJ., 31 MAI 1887, *Gay et al vs Denard* **III,** S. C. **125.**

2. Affidavit.—Que dans une requête en contestation d'un capias, le requérant ne peut invoquer que des moyens se rapportant à la fausseté ou à l'illégalité de l'affidavit mais non ceux qui ont rapport à l'irrégularité de l'émanation du bref.—TASCHEREAU, J., 13 MAI 189., *Chaput vs Porcheron* **VI,** S. C. **326.**

Que pour l'émanation d'un capias une déposition alléguant que le demandeur recelait ses biens et était sur le point de quitter la province de Québec est insuffisante et tel capias peut être cassé sur requête.—WURTELE, J., 10 JUIN 1890, *Blondin vs Desjardins* **VI,** S. C. **283.**

Que la Cour ne peut accorder au protonotaire ou à son député devant lequel un affidavit devant servir à l'émanation d'un capias ou d'une saisie-arrêt avant jugement est assermenté, et qui oublie de signer le jurat, la permission d'y apposer la signature après l'émanation et la signification du bref.—WURTELE, J., 9 JUIN 1890, *Dubois vs Persillier* **VI,** S. C. **269.**

Qu'il n'est pas nécessaire dans un affidavit pour capias, alléguant que le défendeur se cachait, recelait et avait recelé ses biens, dans le but de frauder ses créanciers, d'indiquer la manière dont le demandeur a été informé des faits de recel, ni de donner les noms des personnes qui auraient donné les informations, comme il est nécessaire au demandeur de le faire dans l'affidavit pour l'émanation d'un capias pour cause de départ frauduleux de la province du Canada. —TASCHEREAU, J., 19 MAI 1890, *Lachance vs Gauthier.* (Confirmed in Review, MATHIEU, DAVIDSON, PAGNUELO, JJ., 30 JUNE 1890). **VI,** S. C. **279.**

In an affidavit for capias, it is not necessary to allege specially that the debt was contracted within the province; but, in the present case, the receipt and fraudulent conversion of goods by the defendants, in Montreal, being alleged, a personal indebtedness here was sufficiently disclosed.

An appearance and fiat for the issue of a writ of capias are not essential where the issue of the writ is asked by the

affidavit.—JOHNSON, JETTÉ, DAVIDSON, JJ., 29 NOVEMB. 1890, *Hemken vs Layton.* **VII,** S. C. **418.**

CITATIONS.—*Doutre vs McGinnis* 5 *L. C. J.* 158.

3. **Assignment by debtor in trust.**—That where a creditor, by filing his claim with the trustee has acquiesced in a voluntary assignment in trust made by his debtor for the benefit of his creditors, such creditor is estopped from demanding that the debtor shall make a judicial abandonment; and therefore is not entitled to obtain the issue of a writ of capias on the pretext that his debtor has refused to make a judicial abandonment.—WURTELE, J., 23 JUNE 1890, *Boston Woven Hose vs Fenwick.* **VI,** S. C. **234.**

(Affirming the judgment of Wurtele J. M. L. R. 6 S. C. 234) That where a creditor, by filing his claim with the trustee and receiving dividend, has acquiesced in a voluntary assignment in trust made by his debtor for the benefit of his creditors, such creditor is estopped from demanding immediately after, that the debtor shall make a judicial abandonment; and therefore he is not entitled to obtain the issue of a writ of capias on the ground that his debtor has refused to make a judicial abandonment.

An attorney ad litem, even when he holds power of attorney "to take all such steps by legal proceedings or otherwise as he might think necessary" is not authorized, under art. 798 C. C. P. to make the affidavit for capias, the "legal attorney" referred to in the article being not the procurator ad litem, but the procurator ad hoc negotium.—JOHNSON, JETTÉ, TELLIER, JJ., 15 NOV. 1890, *Boston Woven Hose Co. vs Fenwick.* **VI,** S. C. **487.**

4. **Contestation of.**—Qu'un défendeur arrêté sous capias peut, après avoir contesté le capias par requête avec des moyens au fond, demander sa libération par une autre requête alléguant des moyens suffisants de forme.—MATHIEU, J, 7 MARS 1885, *Lefebvre vs Boudreau.* **II,** S. C. **9.**

5. **Damages.—Settlement of debt without reserve.**—Qu'un débiteur arrêté sous capias, qui règle avec son créancier pour le montant réclamé par l'action, sans se réserver spécialement son recours en dommage contre son créancier pour

fausse arrestation, ne peut plus subséquemment poursuivre son créancier pour dommage ; le reçu accepté par le demandeur constituant un règlement final entre les parties.—JETTÉ, J., 16 NOV. 1889, *Desautels vs Filiatrault.*

VI, S. C. **238.**

6. Deposit in lieu of bail.—**Agreement to give bail.**—**Conditional obligation.**—**Time of performance.**—**Default.**—T. being arrested upon a capias, gave the bail (Feb. 18 1888) required by art. 828 C. C. P. for his provisional discharge. The sureties, by consent, deposited $200 with the prothonotary in place of a bond, the terms of the written consent being : " Les parties consentent et acceptent le dépôt. . . pour payer le montant du jugement à intervenir sur la demande en capital, intérêt et frais, s'il ne donne pas cautions au désir de l'article 824 ou 825 C. P. C. le 1er mars 1888." The contestation of the capias was dismissed, Feb. 22 and on March 5, T. gave a notice that he would put in bail under art. 824 or 825, and bail was given under art. 825 C. C. P., by permission of the Court, the rights of the parties being reserved. The plaintiff then attached the deposit in the hands of the prothonotary, for the costs on the contestation of the capias. On an intervention by the sureties, each claiming half of the deposit :

(Tait J. diss.) That the date (1st March) mentioned in the consent, applied only to bail under art. 824 C. C. P. which must be given within eight days from the day fixed for the return of the writ ; and that T. having the right to put in bail under art. 825 C. C. P., at any time before judgment, the case did not come within art. 1068 C. C. ; nor under art. 1069 C. C., which applies to contracts of a commercial nature only. The intervention of the sureties was therefore maintained.—JOHNSON, GILL, TAIT, JJ., 31 DEC. 1889, *Bourassa vs Thibaudeau.* **V,** S. C. **439.**

CITATIONS.—25 *Demolombe, Nos.* 330, 332, 339, 340, 343—17 *Laurent Nos.* 68, 69.—*C. C. art.* 1082.—*MacMaster & Moffett M. L. R.* 1 *Q. B.* 387.

7. Disposal of movables by debtor.—**Contestation of debtor's bilan.**—Qu'il y a lieu à capias contre un débiteur qui dispose de ses meubles à vil prix, pour argent comptant, à la veille de faire cession de biens et qui ne rend pas compte du produit.

Que le droit qu'ont les créanciers de contester le bilan d'un failli, ne leur enlève pas celui d'avoir recours à la voie du capias s'il y a recel et dissipation frauduleuse de sa part. —TASCHEREAU, J., 4 DÉC. 1889, *Létang vs Renaud*
VI, S. C. **232.**

8. **Illegal arrest.**—Qu'un huissier porteur d'un bref qui ordonne d'arrêter le défendeur dans le district de Montréal, ne peut faire légalement l'arrestation dans un autre district. —MATTHIEU, J., 7 MARS 1885, *Lefebvre vs Bourdeau*
II, S. C. **9.**

9. **Intent to defraud.** - That when a debtor has judicially abandoned his property for the benefit of his creditors and after unsuccessfully endeavouring to secure employment and to earn a livelihood in this province, finally accepts a position abroad, intent to defraud is not to be presumed, from his intended departure and the capias under which he has been arrested should be quashed.—DELORIMIER, J., 28 OCT. 1890, *Shotton vs Lawson.* **VI,** S. C. **451.**

10. **Issued in case pending before the Circuit Court.**—Que lorsqu'un demandeur dans une cause pendante devant la Cour de Circuit fait émaner, en Cour Supérieure, un bref de capias dans la même cause, il ne lui suffit pas d'alléguer et de prouver qu'il a intenté une action contre le défendeur en Cour de Circuit et qu'elle y est pendante, mais il faut qu'il demande une condamnation contre ce même défendeur en Cour supérieure et qu'il prouve contre lui une créance suffisante pour justifier l'émission d'un bref de capias ad respondendum.—TASCHEREAU, J., 14 NOV. 1885, *Chevalier vs King.*
II, S. C. **185.**

11. **Judicial abandonment. — Effect of. — Imprisonment.** — That the effect of judicial abandonment made by a debtor imprisoned under a capias is to entitle the debtor to his liberation ; and where the abandonment on the contestation thereof by the plaintiff, is declared fraudulent and insufficient, the Court has no power under the existing law, after the debtor has undergone the term of imprisonment not exceeding one year, to which he may be condemned under art. 776 C. P. C. to sanction this further detention

under the capias until he discloses assets alleged to have been fraudulently secreted.—JOHNSON, GILL, WURTELE, JJ., 31 OCT. 1889, *Ogilvie vs Farnan.* **V, S. C. 380.**

12. Liability of sureties.—Que le fait d'un débiteur arrêté sous capias ad respondendum de ne pas produire son bilan dans les trente jours du jugement et de ne pas se remettre sous la garde du shérif, ne rend pas ses cautions responsables, à moins qu'il n'ait été requis de le faire par une ordonnance du tribunal ou qu'il ait été condamné à être emprisonné et ait fait défaut de se livrer.—CARON, J., 12 FÉVRIER 1886, *Leclerc vs Latour.* **II, S. C. 102.**

13. Prescription of action of damages for illegal issue of capias.—Que le fait reproché à un défendeur arrêté sur capias constitue un délit.

Que l'action par laquelle le demandeur réclame du défendeur des dommages intérêts pour arrestation illégale et emprisonnement en vertu d'un capias se prescrit par deux ans.

Cette prescription n'est pas interrompue seulement par l'émanation de l'action, mais par la signification effective de l'action avant l'expiration des deux ans qui suivent la date du jugement rejetant le capias.—JETTÉ, J., 18 OCTOBRE 1886, *Mansfield vs Dodd.* **II, S. C. 324.**

14. Secreting.—Que la vente et l'enlèvement de ses effets par le défendeur, le soir, à l'insu du demandeur et à son détriment, et son refus de payer le demandeur et de lui dire où il avait transporté ses dits effets constitue, à l'égard de ce dernier, un recel et une soustraction des biens du défendeur justifiant un recours par capias et saisie-arrêt quand même une partie du produit de la vente aurait été employée à payer une créance privilégiée.—JETTÉ, J., 12 JANV. 1885, *St-Michel vs Vidler.* **I, S. C. 163.**

Que pour qu'il y ait lieu à l'émanation d'un capias, il faut que le débiteur ait caché, cache ou soit sur le point de cacher ses propres biens ; qu'une personne arrêtée sur capias pour avoir caché des biens appartenant au créancier qui a fait émaner le capias, a droit, en vertu de ce principe, de se

faire libérer par une requête sommaire. — DOHERTY, PAPINEAU, LORANGER, JJ., 31 MAI 1897, *Gay vs Denard.*

III, S. C. **125.**

(Affirming the decision of Brooks J.) :—That a debtor, who in April 1889, prepared and furnished to his principal creditors a detailed statement of his affairs showing a surplus of upward of $15,000, and who subsequently, in October of the same year, made an abandonment of his property, with a statement showing a deficit of $20,500, and who failed, at a meeting of his creditors to give a satisfactory explanation as to the discrepancy, may be arrested on capias for secretion, and he is bound to give reasonable explanation as to the difference exhibited by the statement, failing which, his petition for discharge will be rejected. — GILL, WURTELE, TAIT, JJ., 11 DEC. 1889, *The Eastern Townships Bank vs Parent, Hart vs Parent.* **V,** S. C. **288.**

15. Security.—Condition.—Que lorsqu'une obligation est contractée sous la condition qu'un événement n'arrivera pas dans un temps, cette condition est accomplie, lorsque ce temps est expiré sans que cet événement soit arrivé.

Que l'obligation consentie avec condition résolutoire, dans un temps déterminé devient une obligation sans condition, lorsque le temps fixé est expiré sans l'avènement de cette condition ;

Que lorsqu'un cautionnement est fourni, sous l'art. 828 du C. C. et que le délai fixé pour le renouveler suivant les articles 824 et 825 du code est expiré sans que ce renouvellement soit fait, la Cour ne peut permettre que ce cautionnement soit donné ; le délai dans ce cas n'étant pas un délai de procédure, mais faisant partie d'une véritable convention, avec condition résolutoire et qui est devenue pure et simple. —MATHIEU, J., 21 MAI 1890, *Létang vs Renaud.*

VI, S. C. **193.**

CITATIONS.—6 *Toulier* 553.—*Rollan l de Villargues, vo conditions, Nos.* 321 *et* 322.—*Dupras vs. Sauvé,* 4 *L. N.* 164.—*Duquette vs Patenaude,* 4 *L. N.* 187.—*Bégin vs Bell,* 8 *L. C. R.* 138.—*Torrance vs Gilmour,* 2. *L. C. R.* 231.— *MacMaster & Moffatt, M. L. R.* 1 *Q. B.* 387.—*Lajoie vs Winning,* 9 *R. L. p.* 48.— *C. C.* 1083, 1085, 1087.

16. **Special bail under C. C. P. 824.—Statement and declaration under C. C. P. 766.**—(Approving Poulet v. Launière 6 Q. L. R. 314). That a defendant who has given special bail under C. C. P. 824, is not bound to file a statement and make the declaration mentioned in articles 764–766 C. C. P.

The defendant in this cause, not being bound by law to file such statement, could not be in contempt for failing to do so. — MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Vineberg & Ramson*. **II,** Q. B. **345.**

17. **Ship captain leaving for Great Britain.—Fraudulent departure.**—The simple fact that the defendant is leaving the country without paying a debt does not constitute by itself a fraud on the part of the debtor, and it is necessary to prove an intent to defraud in order to maintain a capias.—LORANGER, J., 27 JULY 1891, *Tremblay vs Graham*.

VII, S. C. **374.**

CITATIONS.—*Hurtubise & Bourret*, 23 *L. C. J.* 130.—*Caffrey & Lighthall*, 4 *L. N.* 282.—*Shaw & MacKenzie*, 6, *S. C. R.* 181.

18. **Suspension of payment.**—Que pour qu'un capias puisse émaner contre un commerçant, qui a cessé ses paiements, il faut une suspension générale de paiements, et non pas seulement le défaut de la part du commerçant de payer une certaine dette, surtout lorsque l'affidavit énonce que le défendeur a contesté devoir cette dette.—WURTELE, J., 16 JUIN 1890, *Herman et al. vs Lewis et al.* **VI,** S. C. **208.**

CARRIER

I.—BILL OF LADING.—PLACE OF DESTINATION OF GOODS BEYOND CARRIERS'S ROUTE.
II.—CONDITIONS OF BILL OF LADING.
III.—CUSTODY OF BAGGAGE AFTER ARRIVAL AT PLACE OF DESTINATION.—RESPONSIBILITY BURDEN OF PROOF.—EVIDENCE OF VALUE.
IV.—GOODS REFUSED BY CONSIGNEE.—SALE BY CARRIER.
V.—INJURY TO PASSENGER.
VI.—LIEN FOR FREIGHT.
VII.—LOSS OF GOODS.—RESPONSIBILITY.—EVIDENCE.
VIII.—NEGLIGENCE — PRESUMPTION —BILL OF LADING.—EXCEPTION —EVIDENCE.—ONUS PROBANDI.
IX.—RESPONSIBILITY FOR BAGGAGE.

See BILL OF LADING RAILWAY SHIPPING.

1. Bill of lading.—Place of destination of goods beyond carrier's route.—Where the place of destination of goods is beyond the carrier's route, and he receives the goods under a bill of lading to the terminus of his route, and carries them safely to that point, to which alone he received the freight the fact that at the request of the shipper he undertook to deliver the goods to another carrier to complete the transportation does not make the first carrier responsible for the delivery of the goods at the place of destination.—DORION, BABY, CROSS, DOHERTY, TAIT, JJ., 24 JANUARY 1891, *Jeffrey & The Canada Shipping*. **VII,** Q. B. **1.**

CITATIONS. — *Muschamp & Lancaster Ry.* 8 *M. & W.* 421. — *Mylton & Midland Ry.* 28, *L. J. Exch.* 385.—*Bristol Ry v. Collins*, 29 *L. J. Exch.* 41.—*Crouch vs London Ry.* 23 *J. C. P.* 73.— *Wilby v. Cornwall Ry.* 27 *L. J. Exch.* 181.—*Zinz vs S. E. Ry Co.*, 42 *Q. B.* 539.—*Kent vs M. Ry. Co. L. R.* 10 *Q. B.* 1.—*Hutchinson, on Carriers*, 115 § 145-152.

2. Condition of bill of lading.—The railway company, defendant, received a case of goods from the plaintiff's agent at Winnipeg, consigned to the plaintiff at Montreal, and issued a bill of lading, among the conditions of which were that the company would not be responsible for loss by fire, or while the goods were not on the defendant's railway. The plaintiff's agent at Winnipeg signed a shipping bill requesting the company to receive the goods on these conditions. The goods were destroyed by fire on a steamer running from Port Arthur through Lake Superior, a route connecting two portions of the defendant's railway, but the steamer was not under the defendant's control.

Held.—That the conditions were reasonable, and that the plaintiff had sufficient notice and was bound thereby, and the company were relieved from responsibility, in the absence of any averment or proof that the loss was caused by the fault of the carrier (defendant) or of those for whom he was responsible.—JOHNSON, J., 28 FEBUARY 1885, *Dionne et vir v. The Canadian Pacific Railway Co* **I,** S. C. **168.**

3. Custody of baggage after arrival at place of destination.—Responsibility.—Burden of proof.—Evidenceof value.—A carrier who retains the custody of the baggage after it has reached the place of destination, and deposits it in a room

assigned to unclaimed baggage, is responsible for the safe-keeping and is bound to deliver the thing or pay its value unless delivery has become impossible without his act or fault.

The burden of proving that the loss or destruction of the thing has occurred without his act or fault is on the carrier, the presumption being that he is in fault if he fails to deliver the thing. Hence if no explanation be given of the disaperance of baggage before delivery, the carrier is liable for the value.

Proof may be made by the plaintiff's oath of the value of the baggage lost or destroyed while in the custody of the carrier after arrival at place of destination.—PAGNUELO, J., 23 FEBRUARY 1891, *Pelland et vir vs The C P R.* (Confirmed in Appeal I R. O. Q. B. 311) **VII.** S. C. **131.**

CITATIONS.—*Pothier-Dépôt, Nos* 31, 75, 76, 77.—*Cadwallader v. G. T. R. Co.* 9 *L. C. R.* 169.—27 *Laurent, No.* 162.—*Merlin, Ques. de Droit vs Dépôt. nécessaire.*— *Davison v. Canada Shipping Co. M. L. R.* 6 *S. C.* 388.— *Provencher v. C. P. R. M. L. R.* 5 *S C.* 9.—*C. C.* 1064, 1802, 1071, 1200, 1675, 1815.

4. Goods refused by consignee-Sale by carrier.—Where the consignee refuses to accept goods from the carrier at the place of delivery, the carrier is not justified in selling the same by private sale without notice to the consignor or consignee; and a pretended authorization to sell by the consignee who has refused to accept the goods is without effect. The consignor in such case is entitled to recover the value of the goods, less freight and storage.—TAIT, J., 30 OCTOBER 1891, *Cottingham vs The G. T. R. Co.*

VII. S. C. **385.**

5. Injury to passenger.—That a company engaged in the conveyance of passengers is responsible for injuries sustained by a passenger while being carried in the company's vehicle, unless it be proved by the company that it was impossible for them to prevent the accident.—DORION, MONK, CROSS, BABY, JJ., 26 MAY 1886, *The Montreal City Passenger Ry. Co. & Irwin.* **II.** Q. B. **208.**

CITATIONS.—*Pothier, Louage, No* 193—*Nouv. Denizart, vo Délit, p.* 151 *No* 2.

6. Lien for freight.—Qu'un voiturier qui transporte du bois dans son chaland, a droit de rétention tant qu'il n'a

pas été payé de son prix de transport, et il conserve ce privilège même après qu'il a déchargé le bois et l'a mis sur les quais.—MATHIEU, J., 18 MARS 1889, *Varieur vs Rascony.*
V. S. C. **123.**

7. Loss of goods—Responsibility—Evidence.—Qu'un voiturier est responsable des avaries et dommages que souffrent les marchandises confiées à ses soins, lorsqu'il ne peut prouver qu'ils sont imputables à force majeure.

Que la preuve de la force majeure et celle du vice de la chose même, si le voiturier l'invoque, incombe à ce dernier.

Qu'un voiturier qui fait un contrat pour transporter des marchandises à un endroit éloigné et qui en reçoit le prix, est responsable de ces marchandises jusqu'au lieu de leur destination, nonobstant qu'à moitié chemin, il aurait délivré ces effets à un autre voiturier pour les rendre au lieu convenu, du consentement du propriétaire.—TESSIER, CROSS, CHURCH, DOHERTY, JJ., 19 JANVIER 1889, *Ouimet & The Canadian Express Co.* **V.** Q. B. **292.**

CITATIONS.—*Allen v. Woodward* 1 *L. N.* 458.— *Hutchinson on Carriers p.* 111 § 145, 146, *p.* 187, § 235, 236 ;—*Gould v. Hill* § 237—*Angell, on Carriers, ch.* 6, *p.* 267, § 281 ; § 240, *p.* 198.—*Marcadé sous l'art.* 1786, *II.*—*Grand Trunk vs Atwater* 18 *L. C. J.* 53.—*Montpellier, Cass* 18 *juin* 1833, *S. V.* 33-1-705—*S. V.* 29-1-163 ; *Paris,* 15 *juillet* 1834—*S. V.* 55-2-61.

8. Negligence—Presumption—Bill of lading—Exception—Evidence—Onus probandi.—It is sufficient for the shipper to prove the reception of the goods by the carrier, and that they have not been delivered to the consignee, to place upon the carrier the burden of proving that the loss was caused by a fortuitous event or irresistible force, or has arisen from a defect in the goods or thing itself.

The fact that the bill of lading contained a clause exempting the carrier from responsiblity for "the acts of God, the Queen's enemies, fire, and all and every the dangers of the seas, rivers and navigation of whatsoever nature and kind," does not necessarily cast the burden of proof on the plaintiff, —so far at least, as to oblige him to make proof of the carrier's negligence by his evidence in chief.

The exception "dangers and accidents of the seas, rivers and navigation of whatsoever nature and kind," covers

only such losses as are of an extraordinary nature, or arise from some irresistible force which cannot be guarded against by the ordinary exertion of human skill and prudence.

The sinking of a steamer at the entrance to a canal, on a calm clear night, was not such an accident.—DORION, TESSIER, CROSS, BABY, BOSSÉ, JJ., 23 SEPTEMBER 1889, *Cie de Navigation R. & O. & Fortier.* **V,** Q. B. **224.**

CITATIONS.—*Angell, on Carriers, Nos.* 268, 473, 276, 54, 202 *note (a)* 569, 166, 168, 180.—*Troplong, Louage, No.* 942—*Sirey C. du com. art.* 103—*Dionne vs C. P. R. M. L. R.* 1 *S. C. p.* 168—*Dobson & G. T. R.* 3 *R. L.* 508.—*Angell on Carriers, 5e edit. p.* 419—*Story on Bailments, 9e edit. p.* 502 *et* 529—2 *Greenleaf, on Evidence, p.* 192, 193.—25 *Laurent,* 582 *et* 523—*Hutchinson on Carriers,* 140—*Angell* 156 *et* 160.

9. Responsibility for baggage.—Qu'une compagnie voiturière est responsable de la perte de la valise de l'un de ses passagers, laissée sous sa garde, dans un de ses hangars à bagage, pour être examinée par les officiers de la douane.

Que, dans ce cas, la valeur du contenu de la valise peut être établie par le serment du demandeur, qui peut y inclure les effets appartenant à sa femme. — PAGNUELO, J., 30 MAI 1890, *Davidson vs The Canada Shipping Co.* (Confirmed in appeal 1 R. O. Q. B. 298.) **VI,** S. C. **388.**

CARTER

See MASTER AND SERVANT.

CASHIER

See BANK PRINCIPAL AND AGENT

CATTLE GUARDS

See RAIWAY.

CAUSE OF ACTION

Le défendeur fit, du district de Kamouraska, application à une compagnie incorporée, à Montréal, pour des parts qui lui furent accordées par les directeurs, à cette dernière place. Plus tard, il fut poursuivi pour des versements sur ces parts. L'action fut intentée à Montréal et signifiée au défendeur dans le district d'Ottawa où il était domicilié.

Que toute la cause d'action n'ayant pas originé dans le district de Montréal, le consentement du défendeur à prendre les dites parts ayant été donné dans un autre district, la Cour, siégeant à Montréal, n'avait pas de juridiction.—SICOTTE, JETTÉ, MATHIEU, JJ., 31 MAI 1885, *Ross vs Rouleau* **I, S. C. 424.**

CITATIONS.—*National Ins. Co. vs Paige*, 2 *L. N.* 93—*Archambault vs Bolduc*. 2 *Q. B. D.* 110—*Sénécal v. Chenevert*, 12 *L. C. R.* 145, *Gault vs Bertrand*, 24 *L. C. J.* 9—*Warren vs Kay*, 6 *L. C. R.* 492—*Jackson vs Coxworthy* 12 *L. C. R.* 416—*Gault vs Wright*, 13 *L. C. J.* 60—*Connolly vs Brassney*, 1 *Rap. J. de Québec* 240.

See JURISDICTION PROCEDURE.

CERTIORARI

1. Qu'un jugement rendu par la Cour du Recorder, renvoyant une défense en droit, n'est pas susceptible d'appel par certiorari.—LORANGER, J., 28 NOV. 1884, *Beaudry vs Cité de Montréal*. **I, S. C. 237.**

2. Que l'opposant à une saisie n'est pas tenu de procéder le jour du rapport de l'opposition à la Cour des Commissaires et que le renvoi de l'opposition, le jour qu'elle est rapportée, faute par l'opposant de procéder, constitue un excès de pouvoir et donne lieu à l'émanation du certiorari.—PAGNUELO, J., 14 NOV. 1889, *Ex parte Senécal & Commissaires, etc.* **V, S. C. 412.**

3. Qu'il n'y a lieu à l'émanation d'un bref de certiorari que lorsqu'il y a excès, ou défaut de juridiction, ou lorsque la procédure contient de graves informalités et qu'il y a lieu de croire que justice n'a pas été rendue; mais ce bref ne peut être maintenu lorsque l'on se plaint que du mal jugé du juge.—MATHIEU, J., 18 JUIN 1889, *Valois vs Muir*. **VI, S. C. 212.**

See PROCEDURE.

CESSION DE BIENS

See RAILWAY.

CHARITABLE INSTITUTION

See TAXATION.

CHARTER PARTY

ee SHIPPING.

CHEMIST

See RESPONSIBILITY.

CHEQUE

1. **Action on cheque.—Consideration — Burden of proof.**— That a cheque which does not show consideration on its face is not conclusive evidence of a debt due from the drawer to the payee, but the plaintiff must make proof of the consideration for which it was given. In the present case, such proof was found in the allegations of the plea, and the promises of defendant to pay.—JOHNSON, J., 15 DEC. 1888, *Dufresne vs St-Louis.* **IV,** S. C. **310.**

2. **Cheque payable to bearer.—Endorsement for deposit.— Negociability—Payment by one bank of cheque drawn on another bank.—Good faith.**—The liquidation of the Exchange Bank handed to V., their accountant and confidential clerk, a cheque drawn by one of their debtors, on the People's Bank, payable to " Archibald Campbell, Frederick B. Mathews and Isaac H. Stearns, liquidators, or bearer " and endorsed by the three liquidators " For deposit to credit of the liquidators Exchange Bank of Canada " The Quebec Bank at the time received deposits from the liquidators in a regular deposit account, and also assisted them in the redemption of circulation of the insolvent bank by purchasing the bills of the latter, which were afterwards redeemed by liquidators.

V. instead of making the deposit as instructed, presented the cheque to the paying teller of the Quebec Bank, who had shortly before requested V. to redeem some of their circulation and received the amount in Exchange Bank bills which he appropriated to his own use. The teller of the Quebec Bank did not notice the restrictive endorsement and paid the cheque in good faith to V.

That a cheque payable to certain person or bearer is equivalent to a cheque payable simply to bearer.

That the negociability of such a cheque cannot be restricted by endorsement and the bearer thereof has a sufficient title to demand and receive payment thereof.

That even if the payment by one bank of a cheque drawn on another bank may at first sight seem irregular, still under the circumstances of this case, as the cheque had been paid in good faith, in ignorance of the endorsement to the trusted employee of the liquidators of the plaintiff bank, and for the purpose of redeeming its circulation, the payment made to V. discharged the defendant bank.—JETTÉ, J., 12 FEB. 1890, *The Exchange Bank vs the Quebec Bank.* **VI,** S. C. **10.**

See BANK.

CHILD

See SUCCESSION.

CHOSE JUGÉE

1. That where an action between the same parties and for the same object was dismissed "sauf recours" and this judgment was acquiesced in by the defendant, the latter could not plead chose jugée to an action subsequently instituted by the same plaintiff for the same claim.—JETTÉ, J., 17 NOV. 1887, *Wallbridge vs Farwell.* (Vide 6 M. L. R. Q. B. 77.) **III,** S. C. **238.**

2. That an interlocutory judgment declaring a saisie arrêt tenante until final judgment has not the force of chose jugée between the parties as to the validity of the saise-arrêt.—PAPINEAU, J., 31 MAY 1881, *Beauvais et al vs Leroux & la Compagnie des Moulins à Coton de V. Hudon.* **II,** S. C. **491.**

3. A judgment obtained against a tenant by default in a case of saisie gagerie declaring the seizure good is not chose jugée against him as to the ownership of the effects seized, in a capias case in which he is accused of fraudulently secreting such effects; and it is competent for him to prove that they are the property of his wife. — JETTÉ, WURTELE, TAIT, JJ., 31 MARCH 1887, *Morris vs Wilson.* **III,** S. C. **470.**

4. The exception of chose jugée cannot be pleaded where the conclusions of the second action are materially different

from those of the first. And so, where by the first action the plaintiff sought to exercise a right of redemption without complying with the conditions agreed on, it was held that the dismissal of such action was not chose jugée as regards an action brought subsequently, offering to comply with the conditions.—DORION, TESSIER, CROSS, BABY, JJ., 31 DEC. 1886, *Léger & Fournier.* (Affirmed by Supreme Court 14 S. C. R. 314.) **III, Q. B. 124.**

CHURCH

See EXEMPTION FROM TAXES.

CHURCHWARDEN

See FABRIQUE.

CIRCUIT COURT

See PROHIBITION.

CIRCUS

Qu'un cirque "dans le sens de la loi" consiste en spectacles équestres donné dans des enceintes circulaires ; et qu'une représentation d'exercices accrobatiques de danses et exercices corporels sans écuyers ou chevaux n'est pas un cirque. —LORANGER, J., 4 SEPT. 1886, *Sparrow & Desnoyers.* **II, S. C. 273.**

CITY OF MONTREAL

See MONTREAL.

CLERK AUTHORITY OF

Que le commis n'est pas un serviteur dans le sens du règlement de la cité de Montréal concernant les maîtres et les apprentis et serviteurs. — DOHERTY, J., 12 MARS 1884, *Martin vs Demontigny* **I, S. C. 260.**

COLLATERAL SECURITY

See BANKS AND BANKING.—INSOLVENCY.—SALE.

COLLECTION ROLL

See MUNICIPAL LAW.

COLLOCATION

See INSOLVENCY.

COMMENCEMENT OF PROOF

See EVIDENCE.—JUDICIAL ADMISSION.

COMMERCIAL CORPORATIONS TAX ON

That the Act 45 Vict. (Q.) c. 22, applies only to commercial corporations; and that persons associated as underwriters, but not incorporated, are not subject to the taxes imposed by the Statute in question.—JOHNSON, J , 30 NOVEMBER 18-8, *Lambe vs Allan.* **IV.** S. C. **394.**

Affirming the judgment of Johnson, J. M. L. R. 4 S. C. 394. That the Act 45 Vict. (Q.) c 22, applies only to commercial corporations; and that persons associated as underwriters, but not incorporated, are not subject to the taxes imposed by the Act in question.—DORION, TESSIER, BOSSÉ, DOHERTY, JJ., *Lambe vs Allan.* 22 NOV. 1890. **VI.** Q. B. **263.**

COMMERCIAL MATTER

See PARTNERSHIP.

COMMERCIAL TRAVELLER

See PRIVILEGES AND HYPOTHECS SALE.

COMMISSIONNER'S COURT

1. Que pour enlever à une cour sa juridiction, il faut une loi expresse et formelle.

Qu'une cour des Commisaires créée pour une paroisse conserve sa juridiction, lorsque subséquemment le territoire de la paroisse est érigé en municipalité de village ou de ville; et que les personnes assignées devant cette Cour peuvent être décrites, comme étant du dit village ou de la dite ville.—MATHIEU, J., 9 JUIN 1885, *ex Parte Lemaine vs Doré* **II,** S. C. **446.**

CITATIONS.—*Sirois vs Guimond,* 11 *R. L.* 230—*Bergevin vs Rouleau,* 23 *L. C. J.* 179—*Simond vs Corp. Comté Montmorency,* 8 *R. L.* 546—1 *Dillon, on Corporation,* § 52—*Grant, on Corporation, p.* 24—*Arnold's, Laws of Municipal Corporation,* 9.

2. Que lorsqu'une partie du territoire d'une paroisse, où est établie une Cour des Commissaires, est érigée en ville, le fait de cette incorporation en ville n'enlève pas à la Cour sa juridiction ni sur la paroisse ni sur la ville.—JETTÉ, J., 22 SEPTEMBRE 1885. *Lemieux & la Cour des Commissaires de la paroisse de Longueuil & Viger & la Compagnie d'Assurance des Citoyens & Létourneau.* **I,** S. C. **497.**

COMMITMENT

See EXTRADITION.

COMMON CARRIER

See RAILWAY.

COMMUNITY

See DONATION HUSBAND AND WIFE.

1. Concealing property of.—Que la pénalité que la loi impose contre celui qui a diverti ou recelé quelques effets de la communauté conjugale, ne s'applique qu'aux meubles, et non aux immeubles de la communauté—WURTELE, J., 23 MARS 1888, *Gaudry vs Gaudry.* **IV,** S. C. **47.**

2. Continuation of—Demand for—Prescription—Improvements.—Where a community existed between husband and wife, and there was one child, issue of the marriage, and the wife dying intestate, the surviving consort failed to have an inventory made of the common property, and (the child being then a minor) married a second time without marriage contract—that in the absence of any demand on the part of the minor for a continued community, a tripartite community did not exist between the surviving consort, his second wife, and the child of the first marriage.—CROSS, BABY, CHURCH, DOHERTY, 22 DECEMBER 1887, *Beckett & The Merchants Bank of Canada.* **III,** Q. B. **381.**

CITATIONS.—*Bourassa vs Lacerte*, 10 *Q. L. R.* 118—*Mourlon, Code Nap. art.* 1442, *Lamoignon, Arrêts, Tit.* 33 *art.* 1—*Maleville sur.* 1442, *C. N. vol.* 3 *p.* 215 —2 *Prevost de la Jannès, No.* 373—*Merlin, Rep. de Jurisp. vol.* 6 *p.* 177—*de Ferriere, vol.* 3 *p.* 539, *No.* 7; *P.* 543, *Nos.* 21, 23, 24, 25 *et* 26, *p.* 146, *Nos.* 32 *et* 35—*Chabot, Questions Transitoires sur Code Civil vol. I p.* 119—*Renusson, Communauté, p.* 530, *Nos.* 9 *et* 10 *et* 526, *No.* 1—*Merlin, Quest. de Droit, vol. IV pp.* 207 *et* 208 *Rep. de Jurisp. vol. VI p.* 171 § 1.

(Following Beckett & Molson's Bank of Canada M. L. R. 3 Q. B. 381). Where a community existed between husband and wife, and there was one child, issue of the marriage, and the husband dying, the surviving consort failed to have an inventory made of the common property, and (the child being dead a minor)—the surviving consort married a second time without marriage contract, that in the absence of any demand, on the part of the minor, for a continued community, a tripartite community did not exist between the surviving consort, her second husband, and the child of the first marriage; and an action made by the child 45 years after the dissolution of the first community has no effect.

The claim of revenues of an immovable illegally possessed by the child is prescribed by five years.

The possessor has no claim for a bulding erected by him which was not a necessary improvement, and which no longer exists, having been burned and the amount insured thereon paid to him.—JOHNSON, WURTELE, OUIMET, JJ., 30 DECEMBER 1890, *Spooner vs Pierson.* **VII, S. C. 315.**

CITATIONS.—*Merlin Rép. de Jurisp. vol.* 6, *p.* 177—*De Ferrière, Coutume de Paris, vol.* 3, *p.* 546, *Nos.* 35 *et* 36—*Renusson, Commnnauté, p.* 530, *Nos* 9, 10 *et* 526, *Guyot, vol* 4, *p.* 585—*Bourassa & Lacerte, vol* 10 *Q. L. R. p.* 118—*Becket & Banque des Marchands, M. L. R.* 3 *Q. B.* 381.—*Pothier, Communauté, No* 800.

3. Voluntary Licitation.—Que dans le cas où un père possède par indivis avec ses enfants des immeubles dont il est propriétaire pour moitié, et les enfants pour l'autre moitié, comme représentant leur mère, la licitation volontaire, autorisée par justice en ce qui regarde les mineurs, est un véritable partage et en a tous les effets.

Que sous ces circonstances si le père achète directement ou par personne interposée, il sera censé avoir toujours été propriétaire des immeubles, et, par suite, ces biens ne seront

pas tombés dans la communauté de biens qu il aura créée en se remariant en secondes noces, mais lui seront restés propres.—MATHIEU, J., 8 OCTOBRE 1887, *Dufort vs Chicoine* **III,** 8, C. **211.**

COMPANY

I.—ACTION AGAINST DIRECTORS DIVIDENDS
II.—AUTHORITY OF MANAGING DIRECTOR
III.—BUILDING SOCIETY—INTEREST
IV.—DIRECTORS—LIABILITY OF—MANDATE—BANK—ACTION OF SHAREHOLDERS AGAINST DIRECTORS—PRESCRIPTION—LITIGIOUS RIGHTS—RESPONSIBILITY FOR ACTS OF EMPLOYEES
V.—EN DÉCONFITURE—RIGHT TO SUE
VI.—LAND AND LOAN COMPANY—PURCHASE OF SPECULATIVE CLAIM
VII.—QUORUM OF DIRECTORS
VIII.—PROCEEDINGS AGAINST AFTER ORDER OF LIQUIDATION
IX.—REDUCTION OF CAPITAL STOCK
X.—RIGHTS OF CREDITORS
XI.—SHAREHOLDER

See CORPORATION—INSOLVENCY—PRINCIPAL AND AGENT—RAILWAY.

1. Action against directors.—Qu'une corporation ne peut, pour déclarer un dividende, prendre en considération, la plus value, ou accroissement en valeur de ses immeubles et de son matériel durant l'année, car, ce serait le mettre en danger, en l'escomptant, mais elle peut justifier un dividende sur un fonds dit "de reconstruction" fait et accumulé à même les profits annuels, quoique ce fonds soit destiné au renouvellement du matériel.

Que quoique les créanciers d'une compagnie incorporée et les tiers soient recevables à se plaindre que les directeurs aient payé des dividendes fictifs en augmentant la valeur réelle des biens de la compagnie, les actionnaires qui ont assisté aux assemblées annuelles et autorisé ces dividendes après avoir pris communication des états et inventaires soumis par les directeurs, sont non recevables à prétendre que le paiement de ces dividendes les a trompés sur l'état de la compagnie; que les actionnaires qui n'ont pas assisté à ces assemblés ne sont non plus recevables, parce qu'ils pouvaient

y assister et se renseigner comme les autres, et qu'ils doivent s'imputer leur négligence.

Que l'action qu'ont les actionnaires d'une compagnie incorporée contre les directeurs pour mauvaise administration des affaires de la corporation est une action commune résultant des rapports de mandant à mandataires; et que cette action est anéantie par la sanction de l'administration des directeurs donnée par les actionnaires.—PAGNUELO, J., 24 FÉVRIER 1890, *Banque d'Epargnes vs Geddes.* **VI,** S. C. **243.**

2. Authority of managing director.—Unlawful acts of the managing director of a company, designed to bring about the ruin of a copartnership firm, do not bind the company or make it responsible for damages, unless approved or ratified by the company.—DAVIDSON, J., 15 NOVEMBER 1887, *Bury vs Corriveau Silk Mills.* **III,** S. C. **218.**

3. Building Society—Interest.—Que le statut qui régit les compagnies de société de construction ne permet pas d'exiger l'intérêt sur les parts non payées.—TASCHEREAU, J., 9 MARS 1889, *Hughes vs Cie. des Villas du Cap Gibraltar.* **V,** S. C. **129.**

4. Directors — Liability of Mandate — Bank — Action of shareholders against directors—Prescription—Litigious rights —Responsibility for acts of employees.—The action of a shareholder of a Bank against the directors to recover the loss occasionned by their gross negligence and mismanagement, being the action of mandate, is prescribed only by thirty years.

The action against the directors for maladministration appertains to the corporation, but in default of suit by the corporation it is competent to a shareholder to institute it.

Where several shareholders assign their claims to one of their number, not selling them to him, but constituting him procurator in rem suam, the defence of litigious rights cannot be pleaded, this form of association ad litem, i. e. the joinder of several creditors to bring a joint action against the same defendant, being recognized by the civil law.

Directors of a corporation are bound to exercise the care of a prudent administrator in the management of its business.

Such acts as allowing overdrafts by insolvent persons without proper security, the impairment of the capital of a bank by the payment of the unearned dividends, the furnishing of false and deceptive statements to the Government, the expenditure of the funds of the Bank in illegal purchasing of its own shares, are acts of gross mismanagement amounting to dol, and render the directors personnally liable, jointly and severally, for losses sustained by the shareholders by reason thereof.

Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the corporation, they are nevertheless responsible for the fault and misconduct of the employees appointed by them, unless the injurious acts complained of be such as could not have been prevented by the exercise of reasonable diligence on their part.—PAGNUELO, J., 13 DECEMBER 1890, *McDonald vs Rankin* **VII. S. C. 44.**

CITATIONS.—*Sourdat, Responsabilité. V.* 2 § 1227, 376, 1295, 1297, 1193 à 1201. —*C. C.* 1710, 1053.—*Vavasseur, Sociétés Commerciales, V* 1 *No.* 742—*Troplong, Mandat, Nos.* 37. 737 *et* 738—*Smith, Law of Negligence, No.* 160—*Wharton, on Negligence, livre II, No.* 510.—*Morse, on Banking, 2nd edit. p.* 134.

5. En déconfiture—Right to sue.—Qu'une compagnie incorporée ne peut poursuivre un de ses actionnaires pour le montant ou partie du montant qu'il a souscrit dans le fonds capital, sans avoir été dûment et préalablement autorisée à le faire.

Que quoi qu'une compagnie incorporée tombée dans un état complet de désorganisation et de déconfiture conserve toujours, tant que la corporation n'est pas éteinte, son existence légale, néanmoins elle ne peut poursuivre comme susdit sans être dûment et régulièrement autorisée.—TASCHEREAU, J., 9 MARS 1889, *Cie du Cap Gibraltar vs Lalonde.* **V. S. C. 127.**

6. Land and loan company—Purchase af speculative claim.—That a company incorporated as a land and loan company cannot lawfully purchase or deal claims of the above nature. — DAVIDSON, J., 19 DEC. 1889, *Land & Loan Co. vs Fraser.* **V. S. C. 392.**

7. Quorum of directors.—Where the quorum of directors of a railway company was fixed at three, by special statutory provision and the company was subsequently amalgamated with another company, and it was provided by the Act of amalgamation that the board of directors of the amalgamated company, should not be less than five, nor more than seven directors (without expressly changing or regulating the quorum), that the original revision making three directors a quorum continued in force. — DORION, TESSIER, CROSS, BABY, JJ., *Fairbanks & O'Halloran.*

IV. Q. B. 163.

8. Proceedings against after order of liquidation.—Under section 20 of said Act, when a winding up order has been made, no proceeding can be taken against the company without the permission of the Court, and therefore in the present case the immovables of the company could not be sold in ordinary course for school taxes without such permission.— DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Commissaires Ecoles Hochelaga & Montreal Abbattoirs.*

III. Q. B. 116.

9. Reduction of capital stock.—Where the Act incorporating a company provided that the capital stock should be $600,000, and that the company might commence business when that amount should have been subscribed and one-third of it paid in : that a resolution whereby the directors pretended to reduce the capital stock to a less amount than $600,000 was ultra vires and null and void.—PAGNUELO, J., 3 FEB. 1890, *Molson s Bank vs Stoddart.* **VI, S. C. 18.**

CITATIONS.—*Hudon Cotton Co. vs Canada Shipping Co.* 13 S. C. R. 409,

10. Rights of creditors. –Que quelque soit l'état de désorganisation dans lequel une compagnie incorporée est tombée, les créanciers de cette compagnie peuvent toujours exercer leurs droits contre elle et ses actionnaires ;

Que les actionnaires ne sont pas par le seul fait de la désorganisation et de la déconfiture de la compagnie déchargés de leurs obligations de payer le montant ou la balance de leurs actions dans le fonds capital —TASCHEREAU, J., 9 MARS 1889, *Hughes vs Cie des Villas du Cap Gibraltar.*

V, S. C. 129.

11. Shareholder.—A shareholder of a company is not entitled to exercise the rights of the company in his own name and cannot oppose the sale of an immovable belonging to the company.

A promise of retrocession by the majority of the shareholders of a company is null, the company alone having the power to make such an agreement.—LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 27 NOV. 1891, *McNaughton & Exchange Bank.* **VII, Q. B. 180.**

COMPENSATION

I.—CLAIM FOR BOARD.
II.—DAMAGES.
III.—DEBT NOT CLAIRE ET LIQUIDE.
IV.—INSOLVENCY.
V.—WHERE NOTES WAS TO BE GIVEN FOR CONTRA ACCOUNT.

See ACTION QUI TAM—INSOLVENCY—LIBEL AND SLANDER.

1. Claim for board.—Qu'une dette non liquide peut quelquefois être opposée en compensation quand elle est facilement liquidable, comme le prix d'une pension et entretien, et lorsqu'elle est liée à la créance réclamée par le demandeur, laquelle est elle-même contestée.—PAGNUELO, J., 29 NOV. 1889, *Decary vs Pominville.* **V, S. C. 366.**

CITATIONS.—*Pothier, Obligations, No.* 628—*Demolombe, Contrats, vol.* 5, *No* 511, *p.* 378 *et No* 525, 527, 528—*Desjardins & Massé* 2 *L. C. L. J.* 88.

2. Damages.—Qu'une créance résultant de dommages, ni clairs ni liquides ne peut être offerte, par exception péremptoire, en compensation à une action d'un vendeur réclamant la balance d'un prix de vente d'un immeuble par acte authentique, alors même que ces dommages résultent de la violation par le vendeur des conditions du dit acte de vente. —MATHIEU, J., 13 MAI 1885, *Gagnon vs Gaudry.*

I, S. C. 348.

Qu'une personne dont les biens sont saisis arrêtés avant jugement par un créancier sans cause raisonnable ni probable, peut dans la même action réclamer des dommages par demande incidente et opposer à l'action un plaidoyer de

compensation basé sur les dommages par lui réclamés par sa demande incidente.

Que l'insolvabilité du défendeur lui fait perdre le bénéfice du terme convenu.—MATHIEU, J., 15 DÉC. 1886, *Furniss vs Dame Bleau et vir.* **II, S. C. 419.**

Where a lessee was entitled by a clause of the lease, to become proprietor of the premises leased on payment of a specific sum, that when sued in ejectment he could not plead that this sum had been compensated by damages suffered by him through the interruption of his business.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 JAN. 1886, *Bell & Court* **II, Q. B. 80.**

(Affirming the decision of Torrance J., M. L. R. 2 S. C. 410) That the amount of a judgment obtained as damages for libel is not exempt from seizure by garnishment.

Quære—as to the right to oppose other claims in compensation of the damages a party has been condemned to pay for a délit ou quasi délit, or to seize in his own hands the sums so awarded to his debtor.—DORION, TESSIER, CROSS, BABY, JJ., 17 SEPT. 1887, *Archambault vs Lalonde.* **III, Q. B. 486.**

CITATIONS.—*Merlin, vol. IV, Réparation civile, no* 6.—*Nouveau Denizart, p.* 3, *no* 10, *vol. V; p.* 707, *vol VI.— Bourgeon, vol. II.—Ancien Denizart, Dommages-Intérêts, nos* 17 *et* 18, *vol. II et vol. IV, nos* 3 *à* 10.—*Guyot, vol.* 15 *p.* 211 *et* 212. —*Larocque & Burland,* 12 *L. C. J.* 292 —*Maurice vs DesRosiers,* 7 *L. N.* 361.— *Belisle vs Lyman,* 15 *L. C. J.* 305.—*Landa vs Pauleur,* 1 *L. N.* 614.—*Williams vs Rousseau* 12 *Q. L. R.* 116.

That a claim for damages cannot be set up in compensation of an action in revendication.—TASCHEREAU, J., 7 APRIL 1886, *Lockie vs Mullin.* **II, S. C. 262.**

CITATIONS.—*C. C.* 1190.—4 *A & R.* 233.—*Pothier, Obligations, no* 628 —2 *Mourlon, no* 1445.

Pour défendeurs :—10 *Dalloz, p.* 625, *no* 15.—*Hall vs Beaudet,* 6 *L. C. R.* 75. *Lucke vs Wood,* 6 *L. N.* 98.

3. Debt not claire et liquide.—Que l'on ne peut opposer en compensation à une créance résultant d'un acte de donation entrevifs pure et simple, une autre créance provenant du fait que dans une communauté de biens qui aurait existé entre les parties et qui aurait été dissoute après inventaire,

le demandeur serait resté en possession des biens de la communauté, aurait même vendu à son profit des biens lui appartenant de manière qu'il se trouve débiteur envers le défendeur —MATHIEU, J., 30 JUIN 1886, *Foucault vs Foucault.* **II, S. C. 255.**

4. Insolvency.—Where one bank, creditor of another bank for the amount of a note discounted for it, received from the bank indebted to it (then solvent) sundry drafts for collection : that compensation took place in favor of the creditor from the moment of the delivery of the drafts, and therefore the latter was not bound to bring back to the estate what it received on account of the drafts after the insolvency of the debtor bank.

That compensation did not take place in favor of the creditor for the amount of a draft received from the debtor bank within thirty days before the commencement of the winding up order.—TORRANCE, J., 9 FEB. 1885, *The Exchange Bank vs Canadian Bank of Commerce.* **I, S. C. 225.**

CITATIONS.—*C. C.* 17 *s.* 23 *et* 1036.—4 *Massé, Droit Comm. no* 2316 *p.* 220, 205 —*Miner vs Shaw,* 22 *L. C. J.* 150. -*C. C.* 1188.

(Reversing the decision of Torrance, J., M L. R. 1 S. C. 225) Where drafts and notes are placed with a bank by a debtor of the bank, not as collateral security, but for collection; the compensation does not take place until the bank has received the amounts collected by them on such notes; and in the present case, the debtor having become insolvent before any amounts were received on such notes, compensation did not take place between the amount collected by the bank and the debt due to it.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MAY 1886, *Exchange Bank vs Canadian Bank of Commerce.* **II, Q. B. 476.**

(Same authorities as above).

5. Where note was to be given for contra account.—Qu'en matière commerciale, lorsque l'acheteur néglige de donner au vendeur un billet promissoire, tel qu'il aurait été convenu, ce dernier peut, alors et avant l'expiration du terme, poursuivre l'acheteur pour le montant de la vente.

Qu'il peut aussi, dans le cas précédent, offrir le montant de la vente en compensation à l'encontre d'un billet promissoire dont l'acheteur réclame le paiement contre lui.—TORRANCE, RAINVILLE, JETTÉ, JJ., 20 JUIN, *Quintal vs Aubin.* **I, S. C. 397.**

CITATIONS.—*Dalloz, Per.* 1835, 2, 132. *Young & Mullin*, 8 *L C. J.* 74.

COMPOSITION - COMPOSITION DEED - COMPOSITION AGREEMENT

See FRAUD—NOVATION—PRINCIPAL AND AGENT—PROMISSORY NOTE—SURETY.

COMPOUNDING FELONY

B. commis chez G. frères, détourna à ses patrons la somme de $275. Menacé de poursuites au criminel, il leur remit certains effets mobiliers, et G. Frères en considération de ce règlement, s'engagèrent de ne point faire arrêter leur commis infidèle.

Que malgré le règlement de la félonie commise par B., ce contrat était valide et a pour effet de conférer à G. frères la propriété de ces effets. — TASCHEREAU, MATHIEU, LORANGER, JJ., 30 JUIN 1888, *Paquette vs Bruneau.* **VI, S. C. 96.**

CITATIONS.—*Addison, on Contracts, 8e edit, p.* 1141, *Pollock, Law of Contracts, 4e édit. p.* 288.— *Demolombe, tome XXIV, No.* 378. *Couture vs Marois*, 5, *Q. L. R.* 96—*IV Aubry et Rau. pp.* 299 *et* 322.

CONDITIONAL OBLIGATION

See CAPIAS.

CONCORDAT

See NOVATION.

CONFESSION

See EXTRADITION.

CONFISCATION OF SHARES

See BUILDING SOCIETY CORPORATION.

CONSIGNOR AND CONSIGNEE

See PRINCIPAL AND AGENT.

CONSORT

See EVIDENCE.

CONSTITUTIONAL LAW

I.—Brewer's License.
II.—City of Montreal—Licensing of meat.
III.—Executive Power—Commission of inquiry.
IV.—Jury Law.
V.—License Act.
VI.—License for storage of gunpowder.
VII.—Matters affecting the public health.
VIII.—Navigable river out
IX.—Nuisance—Chimney sending smoke in hurtful quantity.
X.—Power of local legislature to authorize municipal corporation to take wholesale liquor dealers.
XI.—Sale of intoxicating liq ors—Municipal corporation
XII.—Taxation.

See MONTREAL.

1. Brewer's License.—(Confirming the judgment of Loranger J.) That the power of the Dominion Parliament to legislate as to the regulation of trade and commerce, does not prevent the local legislature from passing an act obliging a brewer to take out a local license, permitting him to sell beer or ale manufactured by him, whether he sell such beer at his brewery or elsewhere by a person paid by commission on the sales; and therefore the Quebec License Act 41 Vict. ch. 3 is constitutional.—Dorion, Monk, Ramsay, Tessier, Cross, JJ., 27 nov. 1886, *Molson & Lamb.*

II, Q. B. 381.

Citations.—*Severn vs The Queen* 2 *S.C. R.* 70.—*Hodge & La Reine*, 7 *L N* 18.—*Angers & The Queen Ins. Co.* 1 *L. N.* 410.—*Lambe & The Powder Co. M. L. R.* 1 *Q. B.* 460.—*Russell & The Queen* 5 *L. N.* 234. *Sulte & Three Rivers* 5 *L. N.* 330.—*Colonial Building and Investment Ass. & The Attorney General* 7 *L. N.* 10. —*Bennett & The Pharmaceutical Association of Province of Quebec*, 1 *Q. B. D.* 336.

2. City of Montreal.—Licensing sale of meat.—(Following Pigeon et la Cour du Recorder M. L. R. 6 Q. B. 60 affirmed by the Supreme Court 17 Can. S. C. R. 195) That subsections 27 and 31 of sec. 123 of 37 Vict. (Q) ch. 51, by which the council of the city of Montreal is authorized to regulate, license, or restrain the sale, in any private stall or shop in

the city outside of the public meat markets, of fresh meats, vegetables, fish or other articles usually sold on markets, is within the powers of the provincial legislature.

That the by-law passed by the city council of Montreal under the authority of the statute above cited, fixing the license to sell in a private stall at $200, is valid.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 24 SEPT. 1890, *Corbeil & Cour du Recorder*. **VI, Q. B. 271.**

3. Executive power—Commission of inquiry.—An inquiry into an alleged attempt to influence and corrupt members of the Provincial Legislature is not a "matter connected with the good government of the province" within the meaning of R. S. Q. 596.

A commission of inquiry issued by the Lieutenant Governor-in-Council under the said section is not a judicial tribunal, and does not possess any inherent power to commit for contempt.

The Provincial Legislature, for enforcing a law made by it, must enact a specific fine, penalty or imprisonment, and cannot confer the power upon any person or body of persons of determining what punishment shall be incurred by a violation of such law, and it has no power to confer the jurisdiction of a Superior Court, or the authority of a judge thereof, on any officier appointed by the Provincial Government; and therefore R. S. Q. 598 is unconstitutional.—WURTELE, J., 25 JULY 1890, *Tarte vs Beique*. **VI, S. C. 289.**

CITATIONS.— *Bishop, Commentaries on the Criminal Law, vol. 2, s. 243.—Todd, vol. 2, p. 349, 355.*

(Reversing the judgment of Wurtele, J., M. L. R. 6 S. C. 289). An inquiry into an alleged attempt to influence and corrupt members of the provincial legislature is matter connected with the good government of the province, and the conduct of the public business therein within the meaning of R. S. Q. 596.

A commission of inquiry issued by the Lieutenant Governor-in-Council under the said section, has the same power to enforce the attendance of witnesses and to compel them to give evidence before it, as is vested in any court of law in civil cases, and has therefore the power to punish by

some irregular or illegal questions to be put to a witness their improper ruling on the subject could not have authorized the issue of a writ of prohibition, which only applies to cases of want of jurisdiction, and not to cases of erroneous judgments, for which other remedies are provided. —DORION, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 26 MARCH 1891, *Turcotte & Beique.* **VII. Q. B. 263.**

4. Jury Law.—That the Parliament of Canada, in declaring by 32 and 33 Vict. c. 29, s. 44, that "every person qualified and summoned as a Grand Juror, or as a petty juror, in criminal cases, according to the laws which may be then in force in any Province of Canada, shall be and shall be held to be duly qualified to serve as such juror in that Province, etc., dit not legislate *ultra vires*, and therefore the Jury Act of the Province of Quebec, is constitutionnal.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 19 MARCH 1885, *Regina vs Provost.* **I. Q. B. 477.**

5. License Act.—That the Quebec License Act of 1878 (14 Vict. c. 3) is constitutionnal.—LORANGER, J., 14 MARCH 1885, *Molson & The Court of Special Sessions.* (Confirmed in Appeal II M. L. R. Q. B. 381). (Affirmed by Supreme Court 15 S. C. R. 253). **I. S. C. 264.**

6. License for storage of gunpowder.—(By the majority of the Court). That the Act above cited which imposes a penalty for failing to take out a license, is not ultra vires, being in the nature of a police regulation and as such, within the powers of the local legislature, even supposing the provisions of the Act requiring a fee of $50 to be paid for a license were ultra vires as a revenue tax.

(By Ramsay, J.) That the Act is valid not as a police regulation, but as a license act, the local legislatures having power, under the B. N. A. Act sec. 92 ss. 9 to pass an act for raising revenue by a license fee.—DORION, MONK, RAMSAY, CROSS, 23 NOV. 1885, *Hamilton Powder & Lambe.* **I. Q. B. 460.**

CITATIONS.—*Severn vs The Queen* 2 *S. C. R.* 70—*City of Montreal & Walker, M. L. R.*, 1 *Q. B.*—1 *L. N.* 410.

7. Matters affecting the public health. — The provincial legislatures have jurisdiction in all matters affecting the public health, the establishment of hospitals and the enforcement of such regulations as may become necessary by the presence of an epidemic, the subjects of quarantine and the establishment and maintenance of marine hospitals alone being assigned to the parliament of Canada —TORRANCE, MATHIEU, MOUSSEAU, JJ., 4 NOV. 1885, *St. Louis du Mile End & Cité de Montréal.* **II. S. C. 218.**

CITATIONS—*Dillon, Municipal Corporations, vol 1er, no.* 141.

8. Navigable River.—That the clause in the Act of incorporation of the town of St. Johns P. Q. extending the limits of the town to the middle of the Richelieu River which is a navigable rivier is intra vires of the Local Legislature. — DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MARCH 1886, *The C. V. R. Co & The Town of St. Johns.* (Reversed by Supreme Court 14 S. C. R. 288 and judgment of Supreme Court affirmed by Privy Council 12 L. N. 290). **IV. Q. B. 466.**

CITATIONS.—*Dillon, Municipal Corporations, vol. I, pp.* 89, 121—*La ville de Longueuil vs Cie de Navigation de Longueuil,* 6 *L. N.* 291.

9. Nuisance — Chimney sending out smoke in hurtful quantities.—That while the local legislatures have no jurisdiction to deal with an indictable misdemeanour, that being a matter of criminal law assigned exclusived to the Parliament of Canada, they have authority to legislate for the prohibition of things hurtful to public health, not matter for indictment at common law, such as factory chimneys "sending forth smoke in such quantity as to be a nuisance." The local legislatures possess this power as coming under "municipal institutions" under B. N. A. Act s. 92, no. 8; and the fact that a term of the criminal law "nuisance" is used in a local act to characterize an offence within the jurisdiction of the local legislature does not make the enactment ultra vires when the offence is not per se an indictable offence under the criminal law.—DORION, RAMSAY, BABY, JJ., 27 JUNE 1885, *Pillow & Recorder's Court.* **I. Q. B. 401.**

CITATIONS.—*Reg. vs Lawrence*, 43 *U. C. Q. B.* 164, 168—*Severn vs The Queen*; 2 *S. C. R.* 70—*Russell vs The Queen*, 7 *L. R. Ap. Cases*, 829—*City of Fredericton v. The Queen*, 3 *S. C. R.* 505—*Regina vs Taylor*, 1 *S. C. R.* 6 5—*Regina vs Kerr*, 3 *L. N.* 121—*Corporation of Three Rivers vs Sulte*, 5 *L. N.* 330—*Citizens Ins. Co. vs Parsons*, 7 *L. R. Ap. Case.* 96—*Hodge vs The Queen*, 7 *L. N.* 18—*Poulin vs Corporation Québec*, 6 *L. N.* 214— *Reg. vs Boardnan* 30, *U. C. Q. B.* 553.

10. Power of local legislature to authorize municipal corporation to tax wholesale liquor dealers.—An Act authorizing a municipal corporation to levy an annual tax for municipal purposes, on wholesale liquor dealers doing business within the municipality, is within the powers of the local legislature.

Where an Act of the local legislature authorizes a municipal council to tax certain trades and occupations specially enumerated in the statute, and generally all commerce, manufactures, etc., exercised in the city, a by-law made by the council under the authority of such Act, taxing certain trades and occupations, and omitting to tax other trades and occupations, is not illegal on the ground of discrimination.

Where the legislature authorizes the council of a municipality to levy taxes for municipal purposses, the trades or occupations subjected to taxation must be clearly designated in the statute. Hence a power to levy annual taxes on wholesale liquor dealers and "generally on all commerce, manufactures, callings etc.," does not sufficiently authorize the municipal council to impose a special and additional tax as compounders on persons who compound or botte spirituous liquors for the purposes of their business as wholesale liquor dealers.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, 21 MARCH 1890, *McManamy & Corporation of Sherbrooke*. **VI. Q. B. 409.**

CITATIONS.—*Acer vs City of Montreal*, *M. L. R.* 5 *S. C.* 117—*Sulte & Corp. of Three Rivers* 5 *L. N.* 330—*Hodge & The Queen*, 7 *L. N.* 18—*Molson & Lambe M. L. R.* 2 *Q. B.* 381, 11 *L. N.* 291—*West Chester Gas Co. vs Chester County* 30 *Penn. St.* 232—*Hirch vs Commonwealth*, 21 *pat.* 785.

11. Sale of intoxicating liquors—Municipal corporation.—That article 561 of the Municipal Code, as amended by 51, 52 Vict., ch. 29, s. 6 (R. S. Q. 6118) by which a municipality is authorized to prohibit the sale of intoxicating liquors

in quantities less than two gallons, within the limits of the municipality, is within the powers of the provincial legislature.—Dorion, Baby, Bossé, Doherty, Cimon, 21 March 1891, *Corporation of Huntingdon & Robidoux*

VII. Q. B. 281.

Citations—*Slavin vs The Corporation of Orilla, I Cartwright*, 688—*The Queen vs Hodge* 9 *App. Cases* 117—*Poulin vs Corporation of Quebec* 9 *S. C. R.* 165—*Poulin vs Corporation of Quebec* 7 *Q. L. R.* 18—*Denton vs Daly, Doutre's "Constitution of Canada" p.* 124—*Cassell's Supreme Court Digest, p.* 379.

12. Taxation.—By the act 45 Vict, (Q.) ch. 22 to provide for the exigencies of the public service of the Province of Quebec, a tax was imposed on every bank, insurance company, and other commercial corporations, doing business in the Province. The tax was imposed in proportion to the paid-up capital of the banks, together with a tax on each office, etc., Some of the corporations interested in the cases here determined have there principal office out of the Province and some were incorporated in England or in the United States. In some cases the stock is held chiefly by persons not resident in the Province of Quebec.

By the majority of the Court (Ramsay, Tessier and Baby, JJ.,) Confirming the judgment of the Superior Court M. L. R. 1 S. C. 32. That the taxes imposed on corporations by the act in question are personal and direct taxes within the Province, and such asare authorized by sct 92 subsec. 2 of the B. N. A. Act 1867. A corporation doing business in the Province is subject to taxation under sect. 92, subsec. 2 though all the shareholders are domiciled out of the Province.

That even assuming that the taxes in question should be considered as not falling within the denomination of direct taxes, the local legislature had power to impose the same, inasmuch as they were matters of a merely local or private nature in the Province, within the meaning of the B. N. A. Act, sec. 92, subsec. 16.

By Dorion C. J. and Cross J. That the taxes in question are indirect taxes, and are not authorized by subsec. 16, sec. 92 of the B. N. A. Act 1867.—Dorion, Ramsay,

TESSIER, CROSS, BABY, 23 JAN. 1885, *North British & M. Fire Co. & Lambe, Esq. al.* (Affirmed by Privy Council 10 L. N. 258). **I. Q. B. 122.**

CITATIONS.—*Veazie Bank vs Fenno* 8 *Wallace* 533—*Cooley, on Taxation, p.* 5 *note* 2—*Merlin, Repert, vo Contributions Publiques sec.* 1—*Say. Traité d'Economie Politique,* 521.—*Gerando, Droit Administratif, vol.* 4, *p.* 42, 129—*Leroy-Beaulieu, Traité de la Science et des Finances, vol.* 1, *p.* 214—*Passy, Dictionaire de l'Economie Politique vo Impots—Walker, Science of Wealth, p.* 338—*McCulloh, Principles of Taxation, p.* 1—*Stephen, Commentaires, vol.* 2 *p.* 567—*Springer v. The United States* (102 *United States Rep. p.* 597)—*Cooley, on Taxation, p.* 20, 21—*Childers v. People* 11 *Mich. p.* 43, 49—*Attorney General v. The Bay State Mining Co.* (99 *Mass.* 148)—*Oliver v. The London Fire Ins. Co.* 100 *Mass.* 538—*Commonwealth v. Hamilton Man. Co.,* 12 *Allen* 298—*Portland Bank v. Apthorp* 12 *Mass.* 252—*Severn vs The Queen,* 2 *S. C. R.* 79—*Attorney General v. Queen Ins. Co.* 3 *H. of L. & P. C.* 1090—*Blouin vs The Corporation of Quebec,* 7 *Q. L. R.* 337—*Poulin vs The Corporation of Quebec* 7 *Q. L. R.* 337—*River Wear v. Adamson L. R.* 2 *App. Cas.* 763.

Que quoique le commerce et la navigation soient du ressort du parlement fédéral, néanmoins la législature provinciale a le droit en vertu de la sect. 92 de " Acte de l'Amérique Britannique du Nord " d'autoriser une municipalité à imposer une taxe annuelle sur tout bateau traversier partant d'un endroit quelconque dans cette municipalité.

Que bien que le havre ne soit pas inclus dans les limites de la cité de Montréal, cette dernière a le droit par le chapitre 52 de la 39e Victoria, d'imposer une taxe de $200 sur tout bateau à vapeur traversier transportant dans la cité des voyageurs d'un endroit n'étant pas à une distance de neuf milles.—LORANGER, J., 20 NOV., 1885, *Cie de Navigation Longueuil et Montréal.* **II, S. C. 18.**

(Affirming the judgment of Loranger, J., M. L. R. 2 S. C. 18) The Acts 37 Victoria, (Q) ch. 51 and 39 Vict. (Q) ch. 52, in so far as they authorized the levying of a tax upon ferry boats, including steamboats, carrying passengers between Montreal and places distant no more than nine miles, are not ultra vires of the local legislature, ferries within a province being a subject of exclusive provincial legislation, and being also a matter pertaining to municipal institutions and of a local nature in the province, and, moreover, the power to tax ferry-boats being possessed by the City of Montreal before Confederation.— DORION, TESSIER, CROSS,

BABY, 26 MARCH 1881, *Cie Navigation Longueuil & Montreal.* (Reversed by Supreme Court 15 S. C. R. 566.)

III, Q. B. 172.

The Queen, as the sovereign authority of the empire, forms an essential part of the several legislatures created by the B. N. A. Act for the government of the provinces, and the lieutenant governors are only her representatives therein. Hence the Act 45 Vict. (Q) ch. 22 was validly passed in the name of Her Majesty.

The tax imposed on insurance corporations by the said act is a direct tax, and it was therefore competent for the legislature of Quebec to enact the said tax.

The tax is not a regulation of commerce within the meaning of the B. N. A. Act. Sect. 91—JETTÉ, J. 23 MAY, 1884, *Lambe vs North British & M. Fire Co.* (Confirmed in appeal 1 M. L. R. Q. B. 122.) (Affirmed by Privy Council 10 L. N. 258.) **I, S. C. 32.**

CITATIONS.—*Leroy Beaulieu, Traité de la Science des Finances, Tome 1er p. 214—Parsons vs The Citizens Ins. Co. 1 Cartwright, p. 277—Veazie Bank vs Fenno 8 Wallace 553—Colley, on Taxation p. 5, note 2—Mill, Principles of Political Economy, Livre 5, ch. 3 § 1—Walker, Science of Wealth,* 338.

CONSTITUTIONALITY OF CHARTER

Que la légalité de la constitution d'une société de construction ne peut être contestée incidemment par exception péremptoire, dans une action basée sur un acte d'obligation. WURTELE, J. 13 MAI 1889, *Société C F. de Construction Montréal vs Lapointe.* **V, S. C. 59.**

CONTAGIOUS DISEASE

See DAMAGES,

CONTEMPT OF COURT

While an action en revendication of some machinery was going on, the plaintiff obtained an order of a judge, giving him provisional possession of the machinery. Nevertheless by collusion between the defendants, the property was put into the possession of White, intervenant. The plaintiff

having taken a rule for contempt, the defendants and intervenant were ordered to give over the property within three days, which order was disobeyed.

Held (reforming the judgment of the Superior Court M. L. R., 1 S. C. 288) that White was guilty of contempt, and should be fined $100.00; but that it was no longer expedient to order him up the machinery, because in another action in which judgment was rendered at the same moment as that on the rule, White was declared to be the lawful proprietor of the machinery.—DORION, MONK, RAMSAY, CROSS, BABY, JJ.. 30 JUNE 1886, *Kieffer & Whitehead.*

IV, Q. B. 239.

Time of imprisonment. — A commitment for contempt until otherwise ordered by the court is irregular: it should be for a specified time or until the person conforms to the order which he disobeyed.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Vineberg & Ransom.* **II, Q. B. 345.**

CONTRACT

I.—ARCHITECT.—SUBMISSION OF PLANS-DAMAGES
II.—FOR PROLONGATION AND OPENING OF STREETS-MEASURE OF DAMAGES
III.—LEASE OF STEAME POWER
IV.—NO TERM FIXED-DEFAULT
V.—RESCISSION FOR FRAUD-RIGHTS OF INNOCENT THIRD PARTY
VI.—RIGHT OF PASSAGE-INTERRUPTION-WAIVER
VII.—STIPULATED DAMAGES
VIII. TERM FOR FULFILMENT
IX.—UNLAWFUL CONSIDERATION-BOOK-GOOD MORALS
X.—WARRANTY-LIEN DE DROIT

See COMPOUNDING FELONY — ERROR — BUILDING SOCIETY — LESSOR AND LESSEE — PROMISSORY NOTE—SALE—SHIPPING—TRUSTEES.

1. Architect-Subsmission of plans-Damages.—The plaintiff, an architect, in response to a public advertisement, offered plans in competition for a building about to be erected by the defendant, on being assured by the president of defendants' board that all the plans sent in would be submitted to disinterested experts before a choice was made.

The plans were not submitted to experts, and those finally adopted were submitted by an architect who was not a competitor within the term of the public advertisement.

That the plaintiff was not entitled to damages, it being evident that the defendant was not bound to adopt the plans which might be recommended by experts, and no partiality or bad faith in the selection being proved.—LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 26 NOV. 1891, *Walbank & Protestant Hospital.* **VII,** Q. B. **166.**

2. For prolongation and opening of streets – Measure of damages. The municipality of H. (whose obligations were subsequently assumed by defendants,) in consideration of the gratuitous cession of land by plaintiff, agreed to prolong a certain street through the plaintiff's lots, at a width of 100 feet and to open two other street through his property. The street first referred to was afterwards homologated at a width of 60 feet only, and the defendants delayed to complete the other two streets.

That the measure of damages in respect of the street homologated at a width of 60 feet, was the value of the 40 feet taken by defendants and not retroceded, and the depreciation in value of the rest of plaintiff's property in consequence of the loss of frontage on the street as prolonged. And as to the breach of contract respecting the other two streets, the measure of damages was the interest (computed from the time when the streets could resonably have been completed) on the capital represented by the increased value which the plaintiff could have got for his lots if the streets had been made as agreed.—JOHNSON, J., 29 MARCH 1889, *Aylwin vs Montreal.* **V.** S. C., **402.**

3. Lease of steame power.—That a contract of lease of steam power to extent of six-horse power, was not violated by sub-letting a portion of the motive power, there being no more power used than was mentioned in the lease, and there being no prohibition against subletting — MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 26 MAY 1885, *Sharpe & Cuthbert.* **I,** Q. B. **479.**

4. No term fixed–Default.—Where a contract of hire of grain bags, for a voyage, did not fix the time when the bags

should be returned, but stipulated only that bags not returned should be paid for at a fixed rate; that the lender was bound to put the party hiring the bags in default to return them, before he could sue for the price; and that a tender of the bags was a good defence to the action.—DAVIDSON, J., 30 OCT. 1889, *American Bag Loaning & Steidleman.* **V S. C., 398.**

5. Rescission for fraud–Rights of innocent third party.—That the rescission, on the ground of fraud, of a deed transferring real estate, will not affect the rights of a third party who in good faith has lent money on the property while in the possession of the purchaser, where the vendor, by his own act or fault, has to some extent, induced the third party to make the advance. So, where the plaintiff sold certain real estate to defendant (who then obtained an advance from C. on the security of the property), and in the deed from plaintiff to defendant, it was declared that the consideration was cash paid by the purchaser, whereas in fact the consideration was mining stock which turned out to be worthless, it was held that the plaintiff was in fault in permitting and requesting such misstatement as to the consideration to be inserted in the deed which misstatement might to some extent have induced C. to advance money on the property; and therefore the plaintiff was entitled to obtain the rescission of the deed for fraud only on condition of his reimbursing to C. the amount of his advance.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 22 SEPT. 1884, *Lighthall & Craig.* **I. Q. B., 275.**

6. Right of passage–Interruption–Waiver. — That where road trustees commuted for an annual payment the tolls payable by a street railway company for travelling on a certain road, and the company agreed that the trustees, or the municipalities within whose limits the road was situated, should have the right to take up the road for certain purposes without the company being entitled to any compensation or damages therefor, that the company was estopped not only from claiming damages, but also any diminution of the annual commutation payment for loss of use.—

TASCHEREAU, WURTELE, DAVIDSON, JJ., 29 DEC. 1888, *Trustees of Montreal Turnpike roads & M S. R. Co.* **V. S. C. 434.**

CITATIONS.—*Peck v. Harris*, 6 *L. C. J.* 206—*Motz v. Holliwell*, 1 *Q. L. R.* 64—*Pothier, Louage, Nos.* 140, 141, 144, 150—2 *Troplong Louage*, 286—*Duvergier, Louage, Nos.* 330, 337, 315—6 *Marcadé & Pont, art.* 1724, *p.* 4734.

7. Stipulated damages.—Where it is stipulated in a contract for work on buildings that a certain sum per day shall be paid for any delay in the completion of the work, caused by the negligence of the party undertaking it, the amount to be determined by the architect superintending the construction, that the creditor is entitled to the sum so determined.—LYNCH, J., 31 JAN. 891, *Kneen vs Mills.*
VII S. C, **352.**

8. Term of fulfilment.—M. against whom a capias had issued deposited a cheque in the hands of appelants, the agreement being that if he appeared with his bail at their office by eleven o'clock, on the following morning the cheque was to be returned; if he did not appear, the cheque was to be applied to the payment of debt and costs. There was a conflict of evidence, as to whether M. appeared at eleven or a few minutes after and (as the majority of the Court viewed the evidence) one of the bondsmen agreed upon was not present.

(By the whole Court) That a difference of few minutes in a contract of this nature was too slight to be material and would not have justified the application of the cheque to the payment of the debt and costs, if M. had appeared with his bail as agreed; but. held by the majority of the Court, the absence of one of the bondsmen was a noncompliance with the agreement, which justified the application of the cheque to the payment of the debt and costs — DORION, MONK, RAMSAY, CROSS, BABY, JJ., 26 MAY 1885, *MacMaster & Moffatt* **I,** Q. B., **387.**

9. Unlawful consideration–Book–Good morals.—That the works of an author are not contrary to good morals within the meaning of art. 990 C. C. unless they are so immoral as to be punishable under the criminal law. The mere fact that a book has been placed in the index librorum pro-

hibitorum by the Congregation of the index, will not affect the validity of a contract made by a bookseller with an agent, for procuring subscribers to such work.—DAVIDSON, J, 26 APRIL 1890, *Taché vs Derome.* (Reversed in appeal I. R. O. Q. B.) **VI, S. C., 178.**

10. Warranty-Lien de droit.—Que sous l'effet de l'article 1023 du Code Civil, un acheteur d'un immeuble ne peut poursuivre en dommages un second acheteur du même immeuble, parce que celui-ci aurait en achetant donné une contre lettre au vendeur s'engageant à respecter la première vente et garantissant le vendeur contre le recours de son premier acheteur; aucun lien de droit n'existant entre les deux acheteurs.—WURTELE, J., 26 MAI 1891, *Houle vs Melançon.* **VII, S. C. 275.**

CONTRAINTE PAR CORPS

See HABEAS CORPUS.

Que dans une action en dommages de cette nature, le défendeur ne peut demander la contrainte par corps contre le demandeur, pour le paiement de ses frais, dans le cas où l'action serait déboutée.—TORRANCE, J., 3 JUIN. 1885, *Bogue vs Brouillet.* **I. S. C. 470.**

CONVICTION

Qu'une conviction par laquelle un accusé est trouvé coupable et en même temps acquitté est contradictoire, illégale et peut être cassée sur certiorari. — TASCHEREAU, J., 12 MAI 1890, *Cardinal vs Montréal.* **VI, S. C. 210.**

CITATIONS —*Lanctot, Livre du Magistrat,* 370—*Paley, Summary convictions* 6e *éd. p* 263, 264—*Ex parte Lynott,* 7 *R. L.* 426—*Morrison v. de Lorimier,* 13 *L. C. J.* 295—*Lamer v. Loupret,* 6 *R. L.* 350—*Boucher v. Dessaules,* 6 *L. C. J.* 333—

CONVICTION UNDER INDIAN ACT

See INDIAN ACT.

CORPORATE OFFICE

See USURPATION OF CORPORATE OFFICE.

CORPORATION

I.—Action for calls
II.—Allotment
III.—Annual meeting
IV.—Calls
V.—Condemnation where directors neglect to perform duty
VI.—Company proposed to be incorporated
VII.—Disabilities of—Acquisition of immovable property
VIII.—Duty to call annual meeting
IX.—Evidence of conditional subscription
X.—Examination of proxies—Sale of forfeited shares
XI.—Fines
XII.—Forfeiture of shares—By whom declared—Sale of forfeited shares
XIII.—Right to expel members
XIV.—Shares held by minor
XV.—Subscriber before incorporation—Who are shareholders

See BUILDING SOCIETY COMPANY — INSOLVENT CORPORATION—MONTREAL—MUNICIPAL CORPORATIONS—PRINCIPAL AND AGENT.

1. Action for calls.—The fact that capital stock of a company has not been wholly subscribed is not a defence to an action by the company against a shareholder for calls on shares subscribed for by him.—Gill, Buchanan, Loranger, JJ., 30 April 1886, *Rascony Woolen & Cotton Mrg. Co. vs. Desmarais.* **II** S. C., **381.**

2. Allotment.—An allotment of stock is not necessary before instituting an action for calls against a shareholder who has subscribed for a specific number of shares.—*Rascony vs Desmarais.* **II** S. C. **381.**

Citations.—*Stephens, Joint Stock Companies, p.* 304 *no.* 4.

An action for calls may be maintained against a person who signed the subscription list, and appended the number of shares taken by him, although no allotment of stock was ever made by the directors. — Loranger, J., 26 June 1885, *Banque d'Hochelaga vs Garth.* **II,** S. C., **201.**

3. Annual meeting.—The annual meeting of the railway company defendant (a company subject to the provisions of

the Consolidated Railway Act, 42 Vict. [Can.] c. 9), did not take place on the day appointed therefor, in consequence of an injunction suspending the holding of such meeting. This injunction was subsequently dissolved at the instance of a shareholder (7 L. N. 85).

Held that service of notice upon the president and secretary that the injunction had been dissolved, together with a copy of the judgment dissolving the injunction, was sufficient to put the company en demeure to call the meeting, and a mandamus might issue in the name of a shareholder, under C. C. P. 1022 to compel the company to call the meeting. — LORANGER, J., 5 SEPT. 1884, *Hatton vs M. P. & B. Ry Co.* **I,** S. C. **69.**

4. Calls.— The enactment of a by-law to regulate the mode in which the calls shall be made is not imperative. Where no by-law exists, the call may be made as prescribed by the directors.—GILL, BUCHANAN, LORANGER, JJ., 30 AUG. 1886, *Rascony Woolen vs Desmarais.* **II,** S. C. **381.**

5. Condemnation where the directors neglect to perform duty.—Where the directors omit, neglect or refuse to perform their duty of calling such meeting, condemnation under C. C. P. 1025, for failure to comply, will be against the corporation and not against the directors personally.—LORANGER, J., 5 SEPT 1884, *Hatton vs M. P. & B. Ry Co.* **I,** S. C. **69.**

6. Company proposed to be incorporated.—The subscription of shares in a company proposed to be incorporated is a mere proposition to take stock therein and is not binding; but where the subscriber's name has been inserted in the letterspatent, even without his knowledge or consent, he is liable as regards third parties.—LORANGER, J., 26 JUNE 1885, *Banque d'Hochelaga vs Garth.* **II,** S. C., **201.**

CITATIONS.—*Rascony & La Compagnie Union*, 24 *L. C J.* 133—*Couillard & La Compagnie Union*, 21 *L. C. J.*—*The Belmont Mfg. Co. vs Fatt M. L. R.* 1 *Q. B.* 340.

7. Disabilities of—Acquisition of immovable property. — That the provisions of C C. 364, 366 are general and apply to all corporations without distinction; and therefore a

building society incorporated by the Dominion Parliament to carry on operations throughout Dominion is subject to the disabilities imposed by C. C. 366, and cannot acquire immovable property in the province without the permission of the Crown. — LORANGER, J., 31 DEC. 1885, *Cooper vs McIndoe.* **II,** S. C. **388.**

(Affirming the judgment of Loranger, J. M. L. R. 2 S. C. 388). That the provisions of arts 364, 366, are general, and apply to all corporations without distinction; and therefore a building society, incorporated by the Dominion Parliament to carry on operations in all the provinces throughout the Dominion, is subject to the disabilities imposed by art. 366 C. C., and cannot acquire immovable property in the province of Quebec, without the permission of the Crown or the authority of the local legislature. — DORION, TESSIER, CROSS, BABY, JJ., 22 MARCH 1887, *Cooper vs McIndoe.* **VII,** Q. B. **481.**

CITATIONS.—*Chaudière Gold Mining vs Desbarats* 17 *L. C. J.* 275 *et L. R.* 5 *P. C.* 277—*Edits et Ordonnances pp.* 596 & 781—*Pothier, Traité des Personnes, Tit.* 7, *Art.* 1—*C. C.* 366—*Colonial Building and Investment Association vs Attorney General,* 27 *L. C. J.* 308—*Citizens Ins. Co. vs Parsons* 7 *L. R. App. Cases* 96.

8. Duty to call annual meeting.—It was the duty of the board of directors, as soon as the injunction was dissolved, to proceed to call the said meeting, in order that the election of directors might be held, as provided by sect. 19 of the Consolidated Railway Act (42 Vict. cap. 9).—LORANGER, J., 5 SEPT. 1889, *Halton vs M. P. & B. Ry Co.* **I,** S. C. **69.**

9. Evidence of conditional subscription.—Verbal evidence is inadmissible to establish that a subscription to stock is absolute on its face, was made conditionally. — LORANGER, J., 26 JUNE 1885, *Banque d'Hochelaga vs Garth.* **II,** S. C. **201.**

AITATAIONS.—*Wilson & Société de Construction de Soulanges,* 3 *L. N.* 79—*Jones vs Montreal Cotton Co.* 24 *L. C. J.* 108.

10. Examination of proxies of forfeited shares.—The sale of the Kay stock referred to in the plaintiff's declaration was regular and legal and was made in good faith, and was also acquiesced in by plaintiffs.

The defendants Archer, Ostell, Hodgson and Moss had no need of reelection as directors on the 7th February 1884

and such reelection did not legally affect their then status of Directors until the annual meeting of the company in 1885.

The remaining Directors were all duly and legally elected at the meeting of the company held on the 7th february, 1884.—MOUSSEAU, J., 6 OCT. 1884, *Gilman vs Robertson.* **I,** S. C. **5.**

11. Fines.—That the fine which a corporation may be condemned to pay under art. 1025 C. P. C. should be ordered to be paid, one half to the Crown and one half to the petitioner. — DORION, RAMSAY, TESSIER, CROSS, BABY, 29 MARCH 1885, *The Montreal Portland & Boston Railway Co & Hatton.* **I,** Q. B. **351.**

12. Forfeitures of shares–By whom declared–Sale of forfeited shares.—The shares or stock in question in this cause were duly and legally forfeited.

The intention and purpose of the directors of the company defendant to sell the forfeited shares, as if all past due calls were paid up, and subject to payment only of all future calls, was and is regular and legal.

The charges of mal-administration and fraud alleged in the plaintiff's declaration were untrue. — LORANGER, J., 30 SEPT. 1889, *Gilman vs the Royal Canadian Ins. Co.* **I,** S. C. **1.**

13. Right to expel members.—Que d'après le droit commun les associations ont le droit d'expulsion contre leurs membres pour des causes légitimes.

Que le refus d'un membre de se soumettre au contrôle du président dans les assemblées, ainsi que le fait d'empêcher systématiquement la société de procéder à ses affaires régulières par des interruptions intempestives, des discussions mal à propos et interminables, l'emploi dans ces assemblées d'un langage irritant pour les sociétaires, sont des causes suffisantes pour justifier l'expulsion de ce membre de la société.—JETTÉ, J., 31 JANVIER 1888, *Lapointe vs Association Commerciale de Liqueurs.* **IV** S. C. **1.**

14. Shares held by minor.—Qu'un mineur peut posséder des parts dans le fonds social d une société de construction incorporée en vertu des dispositions du ch. 69 des S. R. B.

C.; que ces parts sont sujettes à confiscation dans le cas d'infraction aux règlements qui concernent le paiement des versements.

Que la confiscation des parts, dans les conditions autorisées par les règlements de la société, est un acte d'administration de la compétence du bureau de direction et qu'il n'est pas nécessaire qu'elle soit prononcée par la société elle-même.—LORANGER J., 9 SEPT. 1884, *Ex parte Doran & Bernard.* **I, S. C. 21.**

15. Subscriber before incorporation.—The appellant signed an undertaking to take stock in a company to be incorporated by letters patent, under Q. 31 Vict. ch. 25, but was not a petitioner for the letters patent, nor was his name included in the list of intending shareholders in the schedule sent to the Provincial Secretary with petition. The appellant's name was not mentioned in the letters patent, incorporating the company, nor did he become a shareholder at any time after his incorporation.

(Reversing the judgment of the S. C. Cross J. dissenting). That the appellant never became a shareholder of the company and could not be held for calls on stock.

The Union Navigation Co., and Couillard, and *Rasconi and the same Co.* followed and approved. *McDougall et al & the same Co.* distinguished.

Per Tessier J.) That a subscription to stock in a company to be incorporated is a mere proposition and not a binding promise to take and pay.

Per RAMSAY, J.) That under terms of the statute 31 Vict. (Q) ch. 25, the only persons who are shareholders in a company incorporated thereunder are those named in the letters patent as such, and those who become members after incorporation. — MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 MAY 1885, *Arless & the Belmont Mfg. Co.* **I, Q. B. 340.**

CITATIONS.—*Angell & Ames, on Corporations,§§ 523 and 524—Abbot's Digest of Corporation Cases, vo Subscription, p. 801, § VI, Nos. 152-159.*

CORRUPTION OF MEMBERS OF LEGISLATURE.

See CONSTITUTIONAL LAW

COSTS.

I.—Action of damages for personal wrongs
II.—Depositions
III.—Exhibits
IV.—Plaintiff succesful for part of demand—Discretion as to costs
V.—Privilege
VI.—Useless action

See ATTORNEY — BOUNDARIES—INTEREST—LESSOR AND LESSEE—PRIVILEGE FOR COSTS—PROCEDURE—SECURITY FOR COSTS—REVIEW.

1. **Action of damages for personal wrongs.**—That art. 478 C. C. P., which provides that in actions of damages for personal wrongs, if damages awarded do not exceed forty shillings sterling, no greater sum can be allowed for costs than the amount of such damages, deprives the court of power to allow the plaintiff the costs of the action where no damages whatever are awarded. And this restriction exists even where it appears that the plaintiff, by a statement in writing, waived his claim to any condemnation in his favor, except for the costs of the suit. — Johnson, Mathieu, Wurtele, JJ., 30 April 1891, *Browning vs Spackman.* **VII S. C. 369.**

2. **Depositions.**—Que lorsque les dépositions déjà prises dans une cause sont produites dans une autre cause et portent le titre de cette dernière cause comme si elles eussent été prises en icelle, le procureur de la partie adverse a droit aux honoraires pourvu par le tarif pour transquestionner plus de cinq témoins ; il en serait autrement, si les dépositions eussent été copiées dans la cause même ou elles avaient été prises et eussent été produites dans la dernière cause avec un consentement à ce qu'elles servent.

Qu'un conseil à l'enquête doit être accordé dans tous les cas où il y a eu enquête, quand bien même elle ne consiste-

rait qu'en consentement ou admission écrits.—GILL, J., 23 DÉC., 1890, *Banque d'Hochelaga vs Ewing* **VII, S. C. 40.**

3. Exhibits. - Que le coût des pièces n'entre en taxe contre la partie condamnée aux dépens, que lorsqu'elles étaient nécessaires à la cause, et, en outre, que lorsque la partie qui les a produites n'était pas présumée les avoir en sa possession.

Que pour en obtenir la taxation, il n'est pas nécessaire d'en avoir demandé le coût spécialement, la conclusion générale aux dépens étant suffisante.—JETTÉ, J., 3 JUIL. 1885, *Mainville vs Legault.* **I, S. C. 452.**

4. Plaintiff succesful for part of demand-Discretion as to costs.—A judgment will be revised and reformed by the Court of Review on a question of costs, where the Court below, in adjudicating on the costs, acted on a wrong principle.

(Reversing the judgment of Mathieu J.) Where the action is brought to recover claim not composed of distinct parts, or where the plaintiff cannot with some exactitude fix the amount for which judgment may be rendered (as in action of damages and cases of a like nature), and the plaintiff's demand is maintained in part, it is error for the court to condemn him to pay the defendant (who has made no tender or confession of judgment) the difference of costs of contestation between an action for the amount recovered and the action as brought. Such an award of costs is not within the discretion allowed the court by art. 478 C. C. P. and will be reversed on appeal to the Court of Review.—JOHNSON, GILL, DAVIDSON, JJ., 30 DEC. 1890, *Couture vs Canadian Pacific Ry Co.* **VII, S. C. 431.**

CITATIONS.—*Clermont vs McLeod M. L. R.* 6 *S. C.* 36—*Daoust vs Dumouchel, M. L. R.* 6 *S. C.* 40—*Leger & Leger* 3 *L. C. L. J.* 60—*Pigeau, vol.* 1, *p.* 418.

5. Privilege.—That where a defendant, in an action of damages, which has been dismissed with costs, causes an immovable belonging to the plaintiff to be seized and sold by the sheriff, he is entitled to be collocated by privilege for such costs on the proceeds of the sale.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 25 JAN., 1889, *Tansay vs Bethune.* **I, Q. B. 28.**

CITATIONS.—*The Eastern Townships Bank & Pacaud* 1 *L. C. R.* 126—1 *Pigeau* 43 *and* 45.

6. Useless action.—

See ACTION

COUNSEL FEE

A fee paid to counsel for advice will not be allowed as part of the damages for breach of contract.—DORION, RAMSAY, TESSIER, CROSS, 25 SEPT. 1886, *Cox & Turner et al.*

II, Q. B., 278.

COUNTY COUNCIL

See MUNICIPAL LAW.

COURT POWERS OF

See JUDGMENT.

COURT HOUSE

See MUNICIPAL LAW.

COURT OF INFERIOR JURISDICTION

See MAGISTRATE'S COURT.

COURT OF SPECIAL SESSIONS

The Court of Special Sessions of the Peace has jurisdiction over prosecutions instituted by officers of the Revenue.—LORANGER, J., 14 MARCH 1885, *Molson vs Lambe.*

I, S. C. 264.

CITATIONS.—*Hogan vs Cité de Montréal* 6 *L. N.* 317—*Dion vs Chauveau* 9 *Q. L. R.* 220.

CREDITOR UNPAID

See PROCEDURE.

CRIMINAL LAW

I.—CONJUGAL UNION-COHABITATION.
II.—CONVICTION BY RECORDER
III.—EMBEZZLEMENT-EVIDENCE

IV.—Evidence perjury.
V.—Forgery-Order for the payment of money.
VI.—Indictment for robbery.
VII.—Larceny-General deficiency.
VIII.—New Trial,
IX.—Obtaining a valuable security by false pretences-Concealment-Amendment of indictment.
X—Procedure in criminal cases-Reserved case-Amendment-Notice to prisoner to produce document-Verbal evidence.
XI.—Procedure in criminal cases-Writ of error.
XII.—Receipt-Valuable security.
XIII.—Refusal to provide for wife.
XIV.—Reserved case.
XV.—Vagrant Act-Conviction.
XVI.—Vagrant-Licensed carter soliciting fares near doors of hotel
XVII.—Writ of error-Plaintiff in contempt.

See EXTRADITION.

1. Conjugal union-Cohabitation.—The mere fact of cohabitation between two persons, each of whom is married to another person, will not sustain a conviction under R. S. C. ch. 161, as amended by 53 Vict. (D) ch. 37, s. 11.—Dorion, Cross, Baby, Bossé, Doherty, JJ., 18 march 1891, *Regina vs Labrie.* **VII, Q. B. 211.**

2. Conviction of Recorder.—Que lorsqu'une cause criminelle devant la Cour du Recorder a été ajournée à un certain jour et à une heure fixée de ce jour, un verdict et une sentence (conviction) prononcés contre le prisonnier avant l'heure fixée, et en l'absence des témoins et de l'avocat de la défense qui avait obtenu le dit ajournement, sont nuls et peuvent être cassés sur certiorari.—Doherty, J., 13 avril 1888, *Martin vs Demontigny.* **IV. S. C. 53.**

3. Embezzlement-Evidence.—On the trial of a secretary treasurer of a municipal coporation for embezzlement, evidence of a general deficiency having been given, accompanied by evidence of unlawful appropriation by the prisoner of moneys received by him by virtue of his employment, that the conviction was right, though it was not proved that a particular sum coming from a particular person on a particular occasion, was embezzlee by the prisoner.—Dorion,

TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 26 MARCH 1890, *Regina vs Slack.* **VII, Q. B. 408.**

CITATIONS.—*Regina vs Glass*, 1 *L. N.* 41.

4. Evidence–Perjury.—The non-production by the prosecution, on a trial for perjury, of the plea which was filed in the civil suit wherein the defendant is alleged to have given false testimony, is not material where the assignment of perjury has no reference to the pleadings; but the defendant, if he wishes, may, in the case the plea be not produced, prove its contents by secondary evidence.

It is not essential to prove that, the facts sworn to by the defendant, as alleged in the indictment, were material to the issue in the cause in which the defendant was examined.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 SEPT. 1889, *Regina vs Ross.* **I, Q.B. 227.**

5. Forgery–Order for the payment of money.—The prisoner was convicted of forging an order for the payment of money. It appeared that he had forged an order purporting to be signed by a foreman, addressed to his employers, requesting them to pay the person therein named or order, a specified sum. This was the mode adopted by the foreman of certifying to his employers that so much was due for wages to the persons named in the orders.

That the instrument in question was an order for payment of money, and that the conviction should be affirmed. —DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 26 MARCH 1887, *Regina vs Bowen.* **VII, Q. B. 468.**

6. Indictment for robbery.—The word "together" is not essential in an indictment against two persons for robbery, to show that the offence was a joint one. — DORION, MONK, TESSIER, CROSS, BABY, JJ., 19 MARCH 1885, *Regina vs Provost.* **I, Q. B. 477.**

7. Larceny–General deficiency.—That evidence of a general deficiency in the books of a clerk in a bank will not alone support an indictment for larceny. There must be some proof of a taking, that is, that certain money went into the hands of, and was taken by the prisoner.—DORION,

MONK, RAMSAY, SANBORN, TESSIER, JJ., 22 JUNE 1877, *Regina vs Glass.* **VII, Q. B. 405.**

8. New trial.—(Fol. Reg. v. Bain 23 L. C. J. 327) A new trial may be ordered on a Reserved case, in misdemeanours, where it appears to the Court on the evidence that an injustice may have been done to the defendant.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 SEPT. 1884, *The Queen vs Ross.* **I, Q. B, 227.**

9. Obtaining a valuable security by false pretences–Concealment–Amendment of indictment.—The prisoners obtained a subscription for a firemen's fund, concealing the fact that one-third only of the amount was to go to the fund. The subscriber deposed that he would not have subscribed if this fact had been disclosed to him.

That the concealment as to the application of the amount constituted a false pretence.

The amendment of the indictment, by substituting the name of a different person for the person named in the indictment to whom the false representations were made, is justifiable.

The cheque of a firm before it is endorsed by the payee, and while still in the hands of one of the members of the firm, is not a valuable security, within the terms of the Larceny Act. R. S. C. ch. 164. — DORION, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 26 JAN. 1891, *Regina vs Ford.* **VII, Q. B. 413.**

10. Procedures in criminal cases–Reserved cases–Amendment–Notice to prisoners to produce document–Verbal evidence.—That a Reserved case will not be sent back to be amended by the judge who reserved it, upon the mere allegation of the prisoner or his counsel that the facts are not accurately stated therein.

That a prisoner is not entitled to complain of short notice to produce a document at a trial, where it is shown that the document in question was in the possession of a person under the control of the prisoner and his counsel on the day of the trial.

That the prisoner having in the circumstances declined to produce the document, secondary evidence was admissible.

—LACOSTE, BOSSÉ, BLANCHET, WURTELE, TAIT, JJ., 27 NOV. 1891, *Regina vs Bourdeau.* **VII, Q. B. 176.**

CITATIONS.—*R. vs Holloway*, 1 *Denison's Crown Cases p.* 370—*R. vs Brummitt, Leigh & Cave's Crown cases, p.* 9—*Dwyer & Collins* 7 *Ex-chequer R. p.* 646.

11. Procedures in criminal cases–Writ of error.—That the issue of a writ of error will interrupt a sentence which has been partially undergone before the issue of the writ; and in such case, where the offence is a misdemeanor, the prisoner may be admitted to bail.—CROSS, J., 14 OCT. 1891, *Ex parte Woods.* **VII, Q. B. 163.**

CITATIONS.—*R. vs Spelman*, 14 *L. C. J.* 281—*Harris, 4th edit. p.* 500—*Dandurand et Lanctot*, 566—*Clarke's, Criminal Law of Canada, p.* 539, 555—*Ex parte Burns, Ramsay's Ap. Cases* 188—*Hurd, on Habeas Corpus, p.* 327 *et* 329.

12. Receipt–Valuable security.—(Cross J. diss.) That a receipt or discharge of a debt is not a valuable security under chap. 173 of the Revised Statutes of Canada, and that the obtaining of such a receipt or discharge by means of violence, or threats of violence, is not a felony coming within the terms of the 5th section of the Act.—DORION, TESSIER, CROSS, BABY, DOHERTY, JJ., 26 MARCH 1890, *Regina vs Doonan.* **VI, Q. B. 186.**

13. Refusal to provide for wife.—That on an indictment of a husband for refusal to provide for his wife, the jury should not consider evidence as to the manner of living between husband and wife previous to the time laid in the indictment, or promises made by the husband after his arrest.—WURTELE, J., DEC. 1891, *Regina vs Arent.* **VII, Q. B. 288.**

14. Reserved case.—A reserved case may be amended at the request of the defendant, during the argument thereon before the full Court, by adding the evidence taken at the trial.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 SEPT. 1884, *The Queen vs Ross.* **I, Q. B. 227.**

That where a Case Reserved for the consideration of the Court of Queen's Bench, pursuant to the Statute in that behalf, does not contain a question which, in the opinion of the full Court, it is essential to decide in connection with

such case, it may be sent back to the Court which reserved the same, for amendment.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 27 JAN. 1885, *Regina vs Provosts* **I,** Q. B. **473.**

CITATIONS.—*Regina vs O'Rourke*, 32 *U. C. Com. Pleas p.* 388 *and* 1 *Ont. Rep. Q. B.* 464.

15. **Vagrant Act–Conviction.**—Que les juges de paix n'ont pas juridiction pour entendre une plainte ou dénonciation accusant quelqu'un de s'être servi d'un langage insultant dans un bureau privé, quand même la plainte serait amendée avant la conviction, de façon à y ajouter que le langage insultant aurait été proféré sur la rue publique.—MATHIEU, J., 8 JUIL. 1884, *Mireault vs Brunet.* **I,** S. C. **123.**

16. **Vagrant–Licensed carter soliciting fares near door of hotel.**—HELD:—That a licensed carter who, contrary to a city ordinance, loitered near the entrance to a hotel in the city of Montreal, and solicited passengers for conveyance in his cab, is not a loose, idle, or disorderly person, or a vagrant, within the meaning of 2 R. S., ch. 157 s. 8–more especially where it is not proved that such loitering obstructed passers-by, or incommoded guests in the hotel.—CHURCH, J., 14 NOV. 1888, *Smith vs The Queen* **IV,** Q. B. **325.**

17. **Writ of error–Plaintiff in contempt.**—That where the plaintiff in error, who had been convicted of a misdemeanor, was liberated on bail to appear at the ensuing term of the Court of Queen's Bench sitting in appeal and error, and on his default to appear his bail was declared forfeited, he is not entitled to be heard by counsel on the merits of the case, in his absence.—LACOSTE, BOSSÉ, BLANCHET, WURTELE, TAIT, JJ., 21 NOV. 1891, *Woods vs Reginam.* **VII,** Q. B. **232.**

CROWN—CROWN LANDS.

That a location ticket issued under Sect. 13 of ch. 22, C. S. C. is, in effect, a promise of sale of the lands to which it applies, subject to the fulfilment on the part of the locatee of the conditions on which it is granted, and gives the locatee absolute possession of such lands, and all the rights of action against trespassers which he might exercise if he held such lands under a patent of the Crown.

That the holder of such location ticket was entitled to an injunction, to restrain lessees of Crown Timber Limits under a license from the Commissionner of Crown Lands for the Province, from cutting timber on the lands held under the location ticket, until the question of title should be determined by the Courts. — DORION, TESSIER, CROSS. BABY, CHURCH, JJ., 23 SEPT. 1887, *Gilmour & Paradis.* (Affirmed by Privy Council 12 L. N. 322. **III,** Q. B. **449.**

Que dans une action pétitoire intentée par la Couronne, le défendeur ne peut réclamer le droit de retenir la propriété jusqu'à ce que le gouvernement lui ait payé ses impenses et améliorations.—TAIT, J., 30 SEPT. 1890, *Thompson vs Desmarteau.* **VI,** S. C. **379.**

See LOCATION TICKET — PRIVILEGE — SURETYSHIP TURNPIKE TRUSTEES.

CURATOR

See INSOLVENCY.

CURE

Que la dîme établie par la loi, dans la Province de Québec, en faveur et pour le maintien des curés, couvre légalement tous les services qu'ils rendent à leurs paroissiens dans cette qualité.

Que les services rendus par les curés dans l'administration des sacrements sont essentiellement gratuits. — JETTÉ, J., 9 SEPT. 1885, *St Aubin vs Leclerc.* **II,** S. C. **4.**

CITATIONS.—*C. C.* 1041, 1057, 1705—*Pothier, Obl. Nos.* 113 *et* 114—*Marcadé, vol.* 5, *arts.* 1370, 1371—*Gaudry, Législation des Cultes, vol I, No.* 101—*Troplong, Mandat, No.* 220, *p.* 236—*Durand de Maillane, officialité et honoraire, Prédicateur,* 456—*Beaudry, Code des Curés, vol. I p.* 231—*Statut Imp.* 14 *George III, ch.* 83, *s.* 55—*Courtemanche vs Maillouz,* 10 *R. L.* 195—*Gousset, Théologie Morale, p.* 184, 186—*Henrys, Nos.* 98, 99, 100, 101—*Recueil d'autorités en matière de dîmes Gabriel p.* 234.

See TITHE.

CUZ

CUSTOM OF TRADE

See BANKING—BILL OF LADING.

CUSTOMS LAW

Que d'après les statuts qui régissent la perception des droits de douane sur les marchandises qui entrent dans notre pays, dans toute poursuite où doit se faire l'application de ces lois de douane, il incombe au propriétaire des marchandises de faire la preuve que tous les droits ont été régulièrement payés et que les prescriptions de la loi ont été remplies.—MATHIEU, J., 5 FÉV. 1887, *Lanctot vs Ryan* **III,** S. C. **468.**

Que la prescription de trois mois, établie par le statut 46 Vict. ch. 12 (1883) contenant la loi sur les douanes à l'encontre des actions intentées contre tout officier des douanes pour ce qu'ils auront fait dans l'exercice de leurs devoirs, ne s'applique qu'aux actions en dommages. — GILL, J., 31 MARS 1888, *Lanctot vs Ryan.* **IV,** S .C. **59.**

Where goods were retained by the collector of customs as forfeited under the Customs Act, 1883, and the importer seized them in the collector's hands by process of revendication, that the plaintiff was entitled to an order for the delivery thereof only on making deposit with the collector of a sum of money at least equal to the full value of the goods.

Quaere, whether pending a controversy between the importer and the Customs Department, an action of revendication will lie to revendicate goods retained by the collector as forfeited.

Semble (*per* Church, J.) that it is not competent for an importer to adopt this proceeding under the circumstances. —DORION, TESSIER, CROSS, BABY, CHURCH JJ., 20 SEPT. *Ryan vs Sanche.* **IV,** Q. B. **312.**

DAM.

See WATER COURSE.

DAMAGES.

I.—ABSENCE OF MALICE.
II.—ANGUISH OF MIND.
III.—ASSAULT.
IV.—BREACH OF CONTRACT.
V.—CORPORATION—NEGLIGENCE—SOLATIUM DOLORIS.

VI.—Default to issue debentures.
VII.—Direct damages.
VIII.—Direct and indirect.
IX.—Exposure to contagious disease.
X.—For loss of father.
XI.—Immediate cause.
XII.—Interruption of business.
XIII.—Loss of sessional allowance.
XIV.—Malicious proceedings—Injunction allowed after notice and subsequently dissolved—Prete nom—Malice—Reasonable and probable cause.
XV.—Measure of.
XVI.—Obligation—Damages for inexecution of—Default.
XVII.—Punishment for gross neglect.
XVIII.—Saisie gagerie.
XIX.—Unjustifiable seizure.
XX.—Verdict.
XXI.—Wrongful appropriation of property.

See ACTION—APPEAL—ALIMENTARY PROVISION—CONTRACT—CORPORATION—FALSE ARREST—LESSOR AND LESSEE—MASTER AND SERVANT JURY TRIAL—MONTREAL—MUNICIPAL CORPORATIONS — NOTARY — NUISANCE — NEGLIGENCE—PATENT— PERSONAL WRONGS—PROCEDURE—RAILWAY—RESPONSIBILITY—SALE SLANDER—SHERBROOKE.

1. Absence of malice.—Que dans le cas de dommages résultant de la négligence du défendeur quand il n'y a pas de malice de sa part, il n'est pas passible de dommages intérêts exemplaires mais seulement des dommages réels que sa négligence aurait causés. — Dorion, Cross, Baby, Church, JJ., 20 sept. 1887, *Stephens & Chaussé*. (Affirmed by Supreme Court 15 S. C. R. 379). **III, Q. B. 270.**

2. Anguish of mind.—(Following Ravary & G. T. R. 6 L. C. J. 49). A direction the jury that anguish of mind suffered for the loss of a husband may properly be taken into consideration by them in estimating the damages which should be allowed to the widow, is not erroneous—Dorion, Ramsay, Cross, Baby, JJ.,16 jan. 1886, *Robinson & C. P. R. Co.* (Reversed by Supreme Court 14 S. C. R. 105.)

II, Q. B. 25.

3. Assault.—Qu'en droit on peut actionner pour dommages intérêts résultant tant du tourment moral que des souffrances corporelles causées par des voies de fait sur la personne.—WURTELE, J., 11 MARS 1888, *Auclair vs Bastien.* **IV, S. C. 74.**

4. Breach of contract.—(Dorion, C. J., and Cross, J., dissenting) that under the law in force in the Province of Quebec, nominal damages, to the amount even of $100, may be awarded for breach of contract where there is no proof of actual damage.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 NOV. 1883, *Corporation Comté d'Ottawa & Cie Montréal Ottawa et Occidental.* (Affirmed by Supreme Court 14 S. C. R. 193). **I, Q. B. 46.**

5. Corporation — Negligence — Solatium.—(Affirming the judgment of Papineau, J. M. L. R. 2 S. C. 56). That the children of a person killed by an accident caused by the bad condition of a public street are entitled, without proof of special damage, to damages by way of solatium for the loss of a parent. Cross, J. dissenting.—DORION, TESSIER, CROSS, CHURCH, JJ., 24 SEPT. 1887, *Cité de Montréal vs Labelle.* (Reversed by Supreme Court 14 S. C. R. 741). **VII, Q. B. 468.**

6, Default to issue debentures.—That the obligation of a municipality to issue debentures in payment of a subscription of shares in a railway is not to be regarded as equivalent to a mere obligation to pay money, in which case under C. C. 1077, the damages resulting from delay would consist only of interest from the day of default.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 27 NOV. 1883, *Corporation Comté d'Ottawa & Cie Montréal O. & O.* (Affirmed by Supreme Court 14 S. C. R. 193). **I, Q. B. 46.**

CITATIONS.—*C. C.* 1077—*Larombière, Oblig. on Art* 1153 *C N., p.* 565, 566—*Pothier, Oblig., Nos* 144, 170 — 6 *Toullier, No.* 264 — 10 *Duranton, No.* 49 — 4 *Marcadé, Art.* 1153—24 *Demolombe, No.* 585.

7. Direct damages.—Qu'un entrepreneur est responsable du fait qu'une feuille de tôle mal placée sur une couverture, où ses ouvriers étaient à travailler, aurait été enlevée par le vent et serait venue frapper un passant dans la rue au-dessous.

Que, dans ce cas, néanmoins le maître n'est responsable que des dommages réels et directs.—TELLIER, J., 31 JAN. 1889, *Shackelt vs Drapeau.* **V, S. C. 81.**

8. Direct and indirect.—Que les dommages que l'on peut réclamer d'une personne coupable de dol ou de quasi-délit ne sont que ceux qui en résultent directement et en sont une suite immédiate, et non pas ceux dont la faute n'a été que l'occasion indirecte.—MATHIEU, J., 15 JUIN 1887, *Kimball vs cité de Montréal.* (Reversed in Review 18 R. L. 52). **III, S. C. 131.**

9. Exposure to contagious disease.—That a person who knowlingly permits the children of another to be exposed to infection from a contagious disease (small-pox) existing in her house, is responsible for the loss and damages thereby occasionned to the father of the child.—TORRANCE, J., 26 JUNE 1886, *Gelineau vs Brossard.* **II, S. C. 295.**

10. For loss of father.—Que lorsqu'une personne est morte par suite d'un accident causé par le mauvais état des rues, les enfants et héritiers de cette personne lors même qu'ils n'auraient prouvé aucun dommage, ont droit d'obtenir de la Cité de Montréal, une certaine somme d'argent par forme de consolation et de soulagement.—PAPINEAU, J., 14 OCT. 1885, *Labelle vs Cité de Montréal* (Confirmed in appeal VII M. L. R. Q. B. 468). (Reversed by Supreme Court 14 S C. R. 741). **II. S. C. 56.**

11. Immediate cause.—Croos J. diss.). Lorsque des dommages ont été causés par le quasi délit du défendeur et qu'il y a eu faute de part et d'autre, la Cour devra rechercher la cause principale et immédiate de l'accident et condamner son auteur à payer les dommages soufferts par l'autre partie. —DORION, TESSIER, CROSS, BABY, JJ., 24 SEPT. 1887, *C. P R. Co. & Cadieux.* **III. Q. B. 315.**

12. Interruption of business.—The loss caused by the interruption of the business of a person whose premises have been destroyed by the fall of his neighbour's wall, may be considered in the estimate of damages.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 26 FEB. 1889, *Evans vs Lemieux.* **V, Q. B. 112.**

13. Loss of sessional allowance.—That the loss by a member of the Senate of Canada of his sessional allowance during the time he is disabled by his injuries, should not be included in the estimate of damages; but the total amount of damages allowed in this case being moderate and reasonable, and not complained of, the judgment was not disturbed.—JOHNSON, JETTÉ, LORANGER, JJ., 30 NOV. 1888, *Thibaudeau vs Cie Chemin de Fer Urbain.* **IV, S. C. 400.**

14. Malicious proceedings—Injunction allowed after notice and subsequently dissolved—Prete nom—Malice—Reasonadle and probable cause.—(Cross, J. diss.). That no action lies for damages resulting from the issue of an injunction, unless such proceeding has been taken maliciously and without probable cause.

That the terms of the Statute, Q. 41 Vict., cap. 14 s. 4, providing that the writ of injunction shall not issue unless the person applying therefor first gives good and sufficient security "for the costs and damages which the defendant, or the person against whom the writ of injunction is directed, may suffer by reason of the issue thereof," are not to be construed as giving a right to damages pleno jure from the mere fact of the dissolution of the injunction, and without proof that the petitioner for injunction acted maliciously and without probable cause.

That when a temporary injunction is allowed to issue after due notice to the defendant, and when an opportunity is thus afforded him of rebutting the charges contained in the petition for injunction, such defendant cannot subsequently claim damages for the improvident issue of the writ, if he neglects to avail himself of the opportunity of denying these charges before the writ issues.

(Per totam curiam). That the fact of the petitioner for injunction being a *prête nom* for others who are not proved to represent an adverse interest or to have acted maliciously, cannot afford any presumption of malice or of want of probable cause against such petitioner.

That in the present case the published statements of the Company gave the respondent reasonable and probable cause for his proceedings.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY,

28 MAY 1889, *The M. S. R. Co vs Ritchie.* (Affirmed by Supreme Court 13 L. N. 34; 16 S. C. R. 622). **V,** Q. B. **77.**

CITATIONS.—*High, on Injonctions vol.* 2 *ch.* 32, §§ 1619-20—*Hilliard, on Injunctions, ch.* 2, §§ 1-4, 27, 32, 40 *and* 52—*Forrest & Manchester Ry.* 7 *jurist (N. S.)* 888-9—*Montreal Telegraph Co. vs Low* 27 *L. C. J.* 257—6 *Toullier, No.* 178—*R. de Villargues vo "Prête-nom"*—8 *Marcadé et Pont, sur art.* 1998, *No.* 1078, *p.* 615—4 *Aubry et Rau, pp.* 635-6 § 410—*Cox & Turner, M. L. R.* 2 *Q. B.* 278—*Mayne, on Damages,* 3*d. edit. p.* 399—*Quartz Hill Gold Mining Co. vs Cyre, L. R* 11 *Q. B. D* 682.

15. Measure of.—Where there is a right of action for a trifling assault, and where no material damage is done, and the plaintiff refuses all settlement, and begins and then abandons a prosecution before a magistrate, in order to bring an action of damages, the Court will reduce damages which have no reasonable measure, to such a sum as would be imposed as a fine by a magistrate.—MONK, RAMSAY, TESSIER, CROSS, BABY, 30 DEC. 1885, *Papineau & Taber.*

II, Q. B. **107.**

16. Obligation — Damages for inexecution of — Default.—Where the defendants, by the term of the deed of sale of a strip of land to them by the plaintiffs, undertook to construct two crossings with gates and fastenings, to enable the vendors to cross the railway, but no time was stipulated within which such crossings were to be constructed: that no damages could be claimed for inexecution of the obligation until the defendant had been put in default to make the crossings; and, in the present case, no damages after the defendants had been put in default having been proved, the action was dismissed.—JOHNSON, J., 31 OCT. 1888, *Crevier vs O. & Q Ry. Co.* **IV,** S. C. **428.**

17. Punishment for gross neglect.—The defendant, a mercantile agency, sent a circular to its subscribers with the words "call at office" in reference to the plaintiffs dry goods merchants at Montreal. Those who enquired at the office, including a newspaper correspondent who was not a subscriber, were informed that the plaintiffs had applied for an extension of time on a large indebtedness to their English creditors. This information was untrue and was based upon a rumour which the defendant had not verified. The report

injured the plaintiffs' credit, and embarrassed them in their business.

That the reports of a mercantile agency to its subscribers are not privileged communications, though made in good faith and from information upon which it relies; and such agency comes under the general rule which makes every person capable of discerning right from wrong responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

The defendant having been guilty of gross neglect in circulating a report of an injurious nature without verifying it, the damages, though no special amount was proved, were assessed at $2000.—LORANGER, J., 10 NOV. 1885, *Carsley vs Bradstreet Company.* **II S. C. 33.**

CITATIONS.—*Odgers, No.* 210, 211—*Henwood v. Harrison,* 7 *L. R. Com. Pleas—Sunderlin v. Bradstreet,* 7 *Com. L. R.* 722—*Taylor v Chuch,* 8 *N. Y.* 452—*Poitevin vs Morgan,* 10 *L. C. J.* 93—*Chassan, vol.* 1 *No.* 485—*Girard vs Lepage,* 4 *R. L.* 554—*Girard vs Bradstreet M. L. R.* 3 *Q. B.* 69.

The appellant, a mercantile agency, sent a circular to its subscribers, with the words "call at office" in reference to the respondent, a dry goods merchant of Montreal. Those who enquired at the appellant's office, including a newspaper correspondent who was not a subscriber, were informed by the appellant's employees that the respondent's firm had applied for an extension of time on a large indebtedness to their english creditors. This information was untrue, and was based upon a report which the appellant had not verified. The circulation of the report by the appellant injured the respondent's credit, and embarrassed him in the management of his business, several orders for goods being cancelled, or suspended until the report was shown to be unfounded.

(Affirming the decision of Loranger J. 2 M. L. R. 2 S. C. 33) that the manager of a mercantile agency comes under the general rule (C. C. 1053) which makes every person capable of discerning right from wrong responsible for the damage caused by his fault to another, whether by positive act of imprudence, neglect or want of skill and that the appellant was guilty of negligence in circulating through

his employees a report of an injurious nature without verifying it, and also in communicating it by circular and verbally to persons who had no interest in being informed of the standing of respondent.

It being proved that the circulation of the report was damaging to respondent, it was competent to the Court below to estimate the amount of damages, and the judgment should not be disturbed.—DORION, CROSS, BABY, CHURCH, JJ., 26 MAY, 1887, *Bradstreet & Carsley.*

III, Q. B. **83.**

CITATAONS.—*Dareau, Traité des Injures, p.* 126, (*and same authorities as above*).

18. Saisie gagerie.—Qu'il n'y a pas non plus d'action en dommages contre une personne qui fait saisir gager les biens meubles de son locataire lorsque cette action est rapportée en cour et n'est déboutée que parce que le saisissant n'a pu alors prouver qu'il avait, avant l'action, fait une demande de paiement, mais qu'en défense a l'action en dommages, il établit que telle demande avait réellement été faite.—GILL, J., 20 DEC. 1886, *Soultières vs de Repentigny.*

II, S. C. **414.**

19. Injustifiable seizure.—Qu'il y a un recours pour dommages réels et exemplaires en faveur d'une personne dont les biens meubles sont, sans droit, saisis et gagés contre celle qui a fait émaner cette saisie gagerie et qui ne l'a pas rapportée en cour.—PAPINEAU, J., 20 DEC. 1886, *Brouillet vs Clarke.* **II,** S. C. **417.**

20. (Davidson, J., diss.) Where on a former trial the jury awarded the plaintiff $3,000 damages, but the verdict was set aside by the Supreme Court on ground of misdirection, and on the second trial the jury allowed $6,500 damages; that the amount was not so excessive that the Court should set aside the verdict and order a new trial.—TASCHEREAU, WURTELE, DAVIDSON, JJ., 31 JAN. 1889, *Robinson vs C. P. R.*

V. S. C. **225.**

21. Wrongful appropriation of property.—Action by plaintiff alleging that defendants had unlawfully sold and converted to their own use certain effects which the plaintiff had caused to be seized in another case

under a saisie gagerie and which the guardian had placed temporary in the charge of the present defendants, and praying that they be condemned to pay the value of such effects to the extent of the balance due to plaintiff on the judgment maintaining the saisie gagerie. Held, not demurrable.—JOHNSON, PAPINEAU, JETTÉ, JJ., 30 NOV. 1866, *Morris vs Miller et al.* **II, S. C. 476.**

CITATIONS.—*Frechette v. St-Laurent*, 12 *L. C. R. p.* 20—*I. Pigeau*, 624 *Guyot, Rep. vo Huessier—C. C.* 1023—*Pothier, Depot* 49—*Berry vs Cauvan*, 11 *L. C. R.* 176—*Dansereau v. Girard*, 16 *L. C. R.* 380.—*Savage vs Singer Mfg. Co* 9 *L. N.* 290—*Leduc vs Girouard M. L. R.* 2 *S. C.* 470.

DEAD FREIGHT

See SHIPPING.

DEATH OF PLAINTIFF

See PROCEDURE.

DEBENTURE

See MUNICIPAL DEBENTURES—PLEDGE.

DEBT DIVISION OF

See MONTREAL.

DECEIT

See SALE.

DECLARATION OF PARTNERSHIP

See PENAL ACTION.

DECLINATORY EXCEPTION

See JURISDICTION.

DEED

That, where two clauses in a deed conflict, the one written and the other printed, the written clause should have effect, as more likely to contain the real intentions of the parties. —DORION, TESSIER, CROSS, CHURH, JJ., 7 APRIL 1886, *Desrosiers & Lamb.* **IV, Q. B. 45.**

DEFAULT

See BONDS CONTRACT.

DELAY

See PROCEDURE.

DELEGATION

That delegation until it is accepted does not bind the parties delegants; it only operates as an indication of payment.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 19 NOV. 1883, *Reeves & Darling*. **IV, Q. B. 357.**

CITATIONS.—*La Banque du Peuple & Desjardins* 8 *L. C. J.* 106.

Q'une délégation de paiement acceptée ne change pas la nature de la dette du débiteur et n'augmente pas ses obligations; de sorte que si la dette vient à s'éteindre, hors le fait du débiteur, vis-à-vis le premier créancier elle l'est également vis-à-vis le dernier.—CIMON, J., 27 FÉV. 1896, *Drapeau vs Marion*. **II, S. C. 99.**

CITATIONS.—*C. C.* 1173—*C. N.* 1275—*Pothier, oblig No.* 600—*The Trust and. Loan Co. vs Guertin*, 1 *Q. B. D.* 32—*La Soc. Permanente de Cons. J. C. vs Léonard*, 2 *L. N.* 168, 285—*Drummond vs Holland*, 3 *L. N.* 382—23 *L. C. J.* 240—8 *Q. L. R.* 370—4 *Marcadé*, 622—1 *Larombière, Oblig. p.* 117 *et seq.*—5 *Larombière, Oblig. p.* 535.

DELIT

See PRESCRIPTION—WARRANTY.

DEMURRAGE

See SHIPPING.

DEMURRER

See ALIMENTARY ALLOWANCE — PROCEDURE — ST. JOHNS.

DEPOSIT

The depositary of a sum of money gave a written acknowledgement that the money had been placed in his hands by the plaintiff; but it was added: "It is understood that the money belongs to the plaintiff's minor son, aged 7, and that I shall pay him the same when he becomes of age, on

his own demand; until that time, I shall pay intetest at 7 per cent to the person who takes charge of him." The mother having sued the depositary (who had not made default to pay interest) to recover the deposit:

That the son alone was entitled to claim the money.

That the plaintiff could not by special answer, raise the pretension that the terms of the receipt implied a donation by the mother to her son, which was null for non acceptance by the minor; and, in any case, that the receipt did not mark the existence of a donation.—DAVIDSON, J., 28 JUNE 1888, *McKercher vs Mercier*. **IV, S. C. 333.**

See HOTEL KEEPER.

DEPOSIT IN REVIEW

See PROCEDURE.

DEPOSITION

See PROCEDURE.

DESCRIPTION

See SALE.

DESERTION FROM SERVICE

See MASTER AND SERVANT.

DESISTEMENT

See PROCEDURE.

DIME

See TITHE.

DIRECT TAXES

See CONSTITUTIONAL LAW.

DIRECTOR

See COMPANY CORPORATION.

DISAVOWAL

See ATTORNEY.

DISTURBANCE OF POSSESSION

See SALE.

DOMICILE

To constitute a matrimonial domicile there must be the fact of residence coupled with the intention to remain in the place.

Where the husband declared in the act of marriage that his domicile was in Quebec, such declaration in the presence of the officer who performed the ceremony, and whose duty it was to ascertain and set forth the domicile of the parties married, must be considered a formal declaration of intention to establish the matrimonial domicile.

Apart from such declaration in the act of marriage, the facts of the present case were sufficient to prove that the intention of the consorts was to establish their matrimonial domicile in the Province of Quebec, and that it was established there—DORION, MONK, TESSIER, CROSS, BABY, JJ., 25 NOV. 1885, *Wadsworth vs McCord.* (Reversed by Supreme Court, 12 S. C. R. 466.) (Judg. of Supreme Court affirmed by Privy Council, 12 L. N. 314). **II, Q. B. 113.**

CITATIONS.—*Rogers vs Rogers*, 1 *R. de L.* 255—*Magurn v. Magurn*, 3, *O. R.* 570; 11 *O. R.* 178—5 *Aubry et Rau* 275, 276—*Fœlix, Droit International et privé, Nos.* 20, 27 *et* 69—*Odier*, 1, 47 *à* 51—*Merlin, Rép. vo. Loi, sec.* 6, *No.* 2 *et vo. Conventions matrimoniales, sec.* 2—*Rodière et Pont, I*, 36.

DONATION

I.—BY MARRIAGE CONTRACT-INSOLVENCY OF HUSBAND.
II.—CLAUSE OF INSAISISSABILITÉ.
III.—CONDITION CONTRARY TO THE PUBLIC ORDER.
IV.—DONATION INTER VIVOS-CHANGING NATURE OF DEED OF GIFT BY SUBSEQUENT DEED-GIVING IN PAYMENT-REGISTRATION-TENDER.
V.—GIFT OF IMMOVABLE PROPERTY MADE TO CONSORTS JOINTLY BY ASCENDANT OF ONE OF THE CONSORTS-EFFECT OF.
VI.—OF PROPERTY OF OTHERS.
VII.—PROPERTY REVESTING IN DONOR.
VIII.—REGISTRATION.
IX.—VERBAL PROMISE-IMPROVEMENTS.

See SALE—USUFRUCTUARY.

1. By marriage contract-Insolvency of husband registration.—A gift by marriage contract is deemed to be gratuitous;

and where the husband, donor, is insolvent at the time of the marriage, the gift is voidable without proof of bad faith on the part of the donee.

A gift contained in a marriage contract must be registered, unless in the case of movables there is actual delivery to and public possession by the donee; which is not shown where the husband, by marriage contract, makes a gift of furniture, and the wife, donee, comes and lives with him in the house where the furniture was at the time of the marriage.—DAVIDSON, J., 12 MARCH 1890, *McIntosh vs Reiplinger.* **VII,** S. C. **456.**

CITATIONS.—*Behan et al v. Erickson,* 7 *Q. L. R.* 295—*McGarvey v. Sauvalle* 15 *R. L.* 462.

2. Clause of insaisissabilité.—Que dans une donation une clause d'insaisissabilité est distincte de celle d'inaliénabilité et qu'une pension alimentaire insaisissable est cessible.—TELLIER, J., 29 NOV. 1888, *Persillier vs Brunet.* **IV,** S. C. **455.**

3. Condition contrary to public order.—Que la liberté de conscience est un principe fondamental de notre législation coloniale et de notre droit civil, et est, par conséquent, d'ordre public.

Qu'en vertu de ce principe, une condition mise dans un testament créant une substitution en faveur des enfants du testateur, que ceux-là seuls qui professeront la religion protestante pourront recueillir, est nulle comme contraire à l'ordre public.—MATHIEU, J., 1 SEPT. 1888, *Kimpton vs C. P. R. Co.* **IV,** S. C. **338.**

4. Donation inter vivos—Changing nature of deed of gift by subsequent deed giving in payment—Registration—Tender. —The parties to a deed of gift inter vivos may, by a later deed, change its nature from an apparently gratuitous donation, to a deed of giving in payment.

The forfeiture (under art. 806 C. C.) resulting from neglect to register, applies only to gratuitous and remuneratory donations.

The giving of a thing in payment being equivalent to a sale of it (art. 1592 C. C.) and the necessity of registering a

deed of sale existing only as to third parties acquiring the thing and hypothecary creditors, absence of registration of the original deed could not be invoked by the testamentary executors of the person giving, against the deed which converted it into a giving in payment, which, moreover, was duly registered.

A person who asks by his action that a deed of giving in payment be annulled is bound to tender the amount of the debt discharged by the party receiving the thing.—TESSIER, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 24 SEPT. 1890, *Wilson & Lacoste.* (Confirmed by Supreme Court 20 S. C. R. 218.)

VI, Q. B. **316.**

CITATIONS.—*Pothier, Donations, Art.* 3, *par.* 1—12 *Laurent, No.* 834 *et* 340.

5. Gift of immovable property made to consorts jointly by ascendant of one of the consorts.—Effect of.—Held : That the gift of immovable property by a father to his daughter and her husband jointly, is deemed to be a gift to the daughter alone (C. C. art. 1275) ; and so where a judgment against the son-in-law is registered against property so given, there is no hypothec, the title not being in the son-in-law. —MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 28 NOV. 1882, *St. Ann's Mutual Building Society & Watson.*

IV, Q. B. **328.**

6. Of property of others.—Que la donation entrevifs de biens meubles appartenant à autrui, quoique nulle vis-à-vis du propriétaire, est bonne et valable contre le donateur, si par la suite, ce dernier devient l'héritier du propriétaire.

Que, dans ce cas, le donateur ne peut faire annuler la donation pour cause d'erreur, les motifs de la donation restant les mêmes et l'erreur ne tombant pas sur la substance de la chose donnée.—TELLIER, J., 26 JANV. 1889, *Boucher vs Bousquet.* **V,** S. C. **11.**

CITATIONS.—8 *Pothier, Donation, Nos.* 134, 135—*C. C.* 992—*Larombière, sur art.* 1110 *C. N. No.* 24.

7. Property revesting in donor.—Que lorsqu'une donation entrevifs est faite à certaine condition qui, par son avènement, annulle l'acte, le donateur qui redevient propriétaire a droit d'obtenir des donataires un titre régulier et authentique.

Que, dans ce cas, les donataires sont tenus conjointement et solidairement de rendre compte au donateur de leur jouissance de la propriété depuis l'avènement de la condition.—TASCHEREAU, J., 8 MAI 1886, *Thivierge et vir vs Thivierge et vir et al.* **II,** S. C. **198.**

8. Registration.—Under 14–15 Vict., ch. 93, s. 4, the registration of a donation has the same effect as the insinuation thereof under the law previously in force, even as to donations registered before the passing of the Act and not insinuated; consequently the want of insinuation cannot be invoked against a donation contained in a marriage contract, passed in 1842, which was duly registered during the lifetime of the donor, but not insinuated

Children of the age of majority, who have either accepted their father's succession as universal legatees, or have concurred in the testamentary dispositions made by him of his estate by accepting the particulars legacies made to them are estopped from making any claim under his marriage contract at variance with the dispositions of the will.

Gifts made in a mariage contract, to take effect only after the death of the donor, such as an appointment of heirs, partake of the nature of wills; and consequently in order to give effect to the appointment of heirs against third parties acquiring immovables in good faith from the legal heirs or legatees of the donor it is necessary that the marriage contract containing the appointment of heirs be registered in the same manner as a will, within six months from the death of the person making the appointment, with a declaration of the date of his death, the names of the heirs, and the designation of the immovables affected and transmitted thereby.

The want of such registration can be invoked even against minors.—WURTELE, J., 10 DEC. 1890, *Paré vs Allan.* **VII,** S. C. **107.**

That the don mutuel d'usufruit between future consorts by their contract of marriage in favor of the survivor is subject to registration.—DORION, CROSS, CHURCH, BOSSÉ, JJ., 23 NOV. 1889, *Marchessault & Durand.* **V,** Q. B. **364.**

CITATIONS.—*Pothier, Bugnet, vol.* 7 *pp.* 497-8, *No.* 130—15 *Laurent, p.* 341, *No.* 307—12 *Laurent, p.* 423, *No.* 342—*Ferrière, Coutume de Paris, vol.* 3 *p.* 1621 *No.* 25.

9. Verbal promise—Improvements.—Affirming the judgment of Brooks, J. That a promise of gift of real property without legal consideration made verbally, is null; but where the promisee entered into possession of the land in pursuance of the promise, it was sufficient to make him possessor in good faith, and therefore entitled to the value of his improvements if proceedings were taken to evict him. —JOHNSON, WURTELE, TELLIER, JJ., 15 NOV. 1890, *Montgomerie vs McKenzie.* **VI, S. C. 469.**

CITATIONS.—*C. C.* 776—*C. N.* 931—*Demolombe, Donations, vol.* 3 *Nos.* 8, 9 *and* 10.

DOUBLE LIABILITY

See BANK.

DOWER

Qu'une femme qui, sans mise en demeure préalable, poursuit en réclamation de son douaire coutumier, un tiers possesseur de bonne foi d'un immeuble affecté à son douaire, n'a droit aux fruits et revenus de l'immeuble qu'à partir de l'institution de l'action.

Dans l'espèce, l'action n'étant que pour arrérages de fruits et revenus, a été déboutée. — TASCHEREAU, J., 30 AVRIL 1888, *Lamirande vs Lalonde.* **IV, S. C. 55.**

CITATIONS —*Gadbois vs Bonnier* 5 *L. C. J.* 257—*Pothier, Substitution, sect.* 5 *art.* 2, *pp.* 543 *et* 548—*Guyot, Substution, p.* 529—2 *Ricard, Substitution, Traité* 3 *ch.* 13, *sect. I, 2e partie, pp.* 496 *et* 498—*Renuson, Douaire, ch.* 3, *No.* 31, *et ch.* 12, *No.* 4—*C. C.* 411, 412, 1463—*Basnage, arts.* 376 *et* 377—*Bretonnier sur Henrys, pl.* 15.

DROIT DE BANALITE

See SERVITUDE.

DRUGGIST

The plaintiff claimed damages from a druggist, for an alleged error of his apprentice in giving plaintiff's messenger "carbolic acid" instead of "carbolic oil" which was

asked for. It appears that carbolic acid was given, but the evidence of the messenger that she asked for carbolic oil was contradicted by that of the apprentice, who testified that carbolic acid was asked for. It also appeared that the bottle was merely labelled "poison" instead of being labelled with the name of the substance it contained as required by the pharmaceutical Act, 48 Vict. (Q) ch. 36, s. 24 (now R. S. Q. 4039).

That the action being for damages and not for a penalty under the Pharmaceutical Act and there being no evidence that the injury complained of resulted from the insufficiency of the label, this circumstance would not justify judgment against the defendant.—JOHNSON, GILL, WURTELE, JJ., 31 OCT. 1889, *Singer et al vs Léonard.* **V,** S. C. **418.**

DRUNKARD

See INTERDICTION—LICENSE ACT, QUEBEC.

EDUCATIONAL INSTITUTION

That the exemption from municipal taxes enjoyed by educational institutions under 41 Vict. (Q.) c. 6, s. 26 extends also to taxes imposed for special purposes as the construction of a drain.—TORRANCE, J., 30 JUNE 1885, *Montreal vs Ecclesiatiques St. Sulpice.* **I,** S. C. **450.**

That the exemption from municipal taxes enjoyed by educational institutions under 41 Vict. (Q.) c. 6, s. 26 extends to taxes imposed for special purposes e. g. the construction for a drain in front of their property.—LORANGER, J., 31 DEC. 1885, *Montreal vs Ecclesiatiques St. Sulpice.* **II,** S. C. **265.**

(Reversing the judgment of the Superior Court M. L. R. 2 S. C. 265). That the assessment imposed on the proprietors benefited, for the cost of a work of a local character and for the benefit of properties in a particular section of the City of Montreal, is not a municipal tax within the meaning of 41 Vict. (Q.) ch. 6, s. 26 but is of the nature of a local assessment for local purposes, and as such does not come under the exemption from municipal taxes accorded to

educational institutions by the statute above cited.—TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 27 JAN. 1888, *Cité de Montréal vs St. Sulpice.* (Jt. in appeal reversed by Supreme Court 16 S. C. R. 399). **IV, Q. B. 1.**

CITATIONS—*Harrison's Mun. Man. p.* 608 *note b et seq. et p.* 611 *note e* — 2 *Dillon, Mun. Corp. p.* 717, *à* 720, 719 *à note, Nos.* 116-117—*Cooley, Taxation p.* 146 *et seq. et notes*—*Lord Coke on wood Taliage*—*Angell, Highways p.* 196 *Nos* 172, 173—11 *John's Repts. N. Y. p,* 77—*Exparte Mayor of New York & Nassau St.*—4 *Zabriskie's R. p.* 385 *à* 400—*Paterson v. Manufacturer, etc.*—*Hilliard Taxation, p.* 72 § 5 *p.* 74, 75—*Burroughs, Taxation, p.* 113 § 67—38 *Vict. (Q) ch.* 73 § 3—41 *Vict. (Q.) ch.* 6, *s.* 26—*Code Mun. art.* 19 *par* 22—*Kirby v. Shaw,* 19 *Pa. St.* 258—*Wright v. Boston,* 9 *Cush.* 233, 241—*Hayden v. Atlanta* 70 *Ga.* 817—*Haynes v. Copeland,* 28 *U. C. C. P.* 150—*Maxwell, on Statutes* 66.

That a school for the education of young ladies, kept by a private individual and not under public control, is not an "educational institution" within the exemption of 41 Vict. (Q.) c. 6, s. 26.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 24 MARCH 1885, *Wylie & Montreal.* (Reversed by Supreme Court 12 S. C. R. 384). **I, Q. B. 367.**

See MUNICIPAL LAW—EXEMPTION FROM TAXES.

EJECTMENT

See LESSOR AND LESSEE.

ELECTION—ELECTION LAW (QUEBEC)—QUEBEC CONTROVERTED ELECTIONS LAW

I.—BENEFIT SOCIETY.
II.—COUNTER PETITION.
III.—CORRUPT ACTS BY AGENT.
IV.—DELAY FOR FILING ANSWER.
V.—DUTIES OF SECRETARY AND MAYOR.
VI.—ELECTORS' LIST—QUALIFICATION.
VII.—MARK ON VOTING PAPER.
VIII.—MISE EN CAUSE.
IX.—PENALTY.
X.—PROMISSORY NOTE—PROMISE REFERRING TO AN ELECTION FUND.
XI.—PROCEDURE.
XII.—QUALIFICATION OF VOTERS.
XIII.—QUEBEC CONTROVERTED ELECTIONS ACT.
XIV.—RENTIERS—VALUATION ROLL—TENANT—PROPRIETOR.
XV.—SECRECY OF VOTE.
XVI.—VOTERS' LIST.

See SECRETARY TREASURER.

1. **Benefit society.**—The members of such body cannot be deprived of their votes for non-payment of fines exigible under by-laws, without first having had an opportunity to give their reasons why the fines should not be imposed, and further, without the fines having been formally pronounced. —DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., NOV. 1886, *Heffernan & Walsh.* (Appeal to Supreme Court quashed 14 S. C. R. 738). **II,** Q. B. **482.**

2. **Counter petition.**—Que lorsque la loi permet de faire une procédure jusqu'à l'expiration d'un nombre donné de jours, le délai accordé doit être franc, et il n'est censé expiré que le lendemain de son échéance.—LORANGER, J., 7 AOUT 1884, *Lavoie vs Gaboury.* **I,** S. C. **75.**

3. **Corrupt Act by agent.**—That corrupt acts by agents were proved in the present case.—JOHNSON, LORANGER, TAIT, JJ., 20 DEC. 1887, *McQuillen vs Spencer.* **III.** S. C. **247.**

4. **Delay for filing answer.**—Qu'un défendeur, sous l'Acte des Elections Contestées de Québec, sect 55, peut être admis à poursuivre une contre pétition sans donner un cautionnement ou faire un dépôt.—LORANGER, J., 7 AOUT 1884, *Lavoie vs Gaboury.* **I.** S. C. **75.**

5. **Duties of secretary and mayor.**—Que le maire d'une municipalité ne peut être poursuivi en recouvrement de la pénalité imposée par l'Acte Electoral de Québec, pour ne pas avoir transmis, dans les délais, un double de la liste des électeurs au régistrateur tant que le secrétaire trésorier n'a pas entièrement complété cette liste, la négligence du maire, et partant sa responsabilité, ne commençant qu'à cette complétion.—SICOTTE, J., 28 FÉV. 1885, *Berthiaume vs Sicotte.* **I,** S. C. **200.**

6. **Electors list—Qualification.**—Que d'après l'Acte Electoral de Québec, la qualification foncière exigée des électeurs parlementaires doit exister au moment de la confection de la liste et que le rôle d'évaluation ne fait foi que de l'estimation des biens fonds.

Que lorsqu'un électeur, dont le nom est porté sur la liste électorale n'est pas qualifié de la manière indiquée sur la dite liste, mais qu'il est réellement qualifié d'une autre manière, son nom ne doit pas être retranché de la liste.

Que pour les locataires, il n'est pas nécessaire que le montant du loyer soit porté au rôle ; pour avoir le droit d'être inscrit au rôle, il suffit qu'il soit de fait qualifié suivant la loi.

Que lorsqu'une personne est propriétaire d'une partie distincte d'un immeuble porté au rôle d'évaluation, mais que cette partie n'est pas évaluée séparément du reste de l'immeuble, elle n'a pas le droit d'être portée sur la liste électotale.—MATHIEU, J., 16 DÉC. 1887, *Mongeau vs Corporation St. Bruno.* **III.** S. C. **278.**

7. Mark on voting paper.—Que, dans l'espèce, les marques faites sur le bulletin par le sous officier rapporteur, pour la référence de ce bulletin à l'objection faite à ce vote n'affecte pas le bulletin et qu'il doit être compté.—JETTÉ, J., 10 DÉC. 1881, *Bernard vs Brillon.* **I,** S. C. **121.**

8. Mise en cause.—The fact that an election was held may be proved by verbal evidence. Moreover such fact is a public fact which the courts cannot ignore, when it is not specially put in issue by the parties.

An admission of corrupt practice made by the defendant after the adduction of evidence cannot be revoked.

Where a person is brought into the case under sec. 272 of the Quebec Election Act of 1875, he is not entitled to security referred to in the 46 Vict. (Q.) ch. 2, s. 3.

A mise en cause under sec. 272 may be ordered by the judge presiding at the trial. No special form of summons is necessary ; it is sufficient that the person summoned be clearly informed of the nature of the charge against him.

A deposition of a witness on the case against a mis en cause, taken on a day not appointed for proof, and when the mis en cause was not regularly represented, is illegal and will be rejected.

The mise en cause of a witness who in his evidence has admitted corrupt practice, is not illegal, but such admission

cannot avail as a proof on the cause against him as mis en cause, and the corrupt practice must be established by other evidence.

A criminal prosecution against an agent for bribing a voter at an election does not prevent the mise en cause of such agent under sec. 272 of the Election Act and his condemnation for other corrupt practices at the same election.

The Court of Review sitting in an election case may give judgment on the mise en cause of a person not candidate. —JETTÉ, GILL, LORANGER, JJ., 3 JAN. 1889, *Brisson vs Goyette & McShane* **VI, S. C. 102.**

At the trial of an election petition against the return of a member to represent the County of Laprairie, in the Quebec Legislative Assembly, evidence was given that the appellant had committed acts of bribery and corruption at the election whereupon he was summoned, under sec. 272 of the Quebec Election Act of 1875, to appear and answer the charges made against him. He appeared, denied the charges, went to evidence, and the case being heard before the Superior Court sitting in review, as Court of first instance, he was found guilty of two cases of corrupt practices, at the election, and condemned to pay a fine of $200 for each offence, with costs and imprisonment, in default of payment.

(Reversing the decision of the Court of Review M. L. R. 6 S. C. 102). That the Quebec Election Act of 1875 confers no authority upon the Superior Court sitting in Review, to enquire into and determine any charge of corrupt practices against the provisions of the Act; the only authority conferred by the Act to try and determine such charges being conferred on the Superior Court held by one judge thereof, as provided for by sects. 272, 273, 274 and 292 of the Act.

That the jurisdiction of the Superior Court sitting in Review is limited by the Controverted Elections Act of 1875, to the hearing of the parties to an election petition and the determination of the issues raised thereon between the parties to such petition, including charges of corrupt practices against any of the candidates, at the election, who are made parties to the Controverted Election Petition.

That, as the appellant was neither an elector, nor a candidate, nor a returning officer, nor a deputy returning officer, at the election, he could not be, and in fact was not, a party to the election petition, and was not amenable to the jurisdiction of the Court of Review, as a court of original jurisdiction.

That the power conferred by sub section 4 of section 89 of the Controverted Elections Act, to determine all matters arising out of the election petition refers to such matters only as are in issue on the election petition between the parties thereto, and does not extend to collateral and independent issues with parties unconnected with the election petition, such as charges of corrupt practices against persons who were not candidates to the election and are not parties to the election petition.

That the Superior Court sitting in Review had no jurisdiction to hear and determine, as a Court of first instance and without appeal, the charges of corrupt practices against the appellant; the Superior Court held by one judge or a judge thereof, having sole jurisdiction in the matter, subject to a review before three judges and to an appeal to this Court as provided for with regard to judgments rendered by the Superior Court.

That an appeal lies to this Court from every judgment rendered by the Superior Court sitting in Review for excess of jurisdiction, and that that part of the judgment of said Court by which the appellant was found guilty of corrupt practices and condemned to pay two fines of $200 each, with costs and imprisonment in default of payment, is ultra vires and must be set aside, and the record returned to the Superior Court, in order that the proceedings may be continued, as if the case had not been heard, nor adjudicated upon by the Court sitting in Review.—DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 25 JAN. 1890, *McShane & Brisson.* **VI, Q. B. 1.**

CITATIONS.—*Stevens vs Tillett L. R. 6 C. P.* 147—*Hopkins v. Oliver*, 1 *Hodgins* 238—*Cholette vs Bain* 10 *S. C. R.* 652—*Carré & Chauveau IV vol. p.* 113 *et* 117—*Bonnier, Traité de la Procédure Civile p.* 415—*McLaren & Corporation of Buckingham, Ramsay's Ap. Cas.* 42 — *Ralfe v. The Corporation of Stoke*, 24 *L. C. J.* 103—*Cooey & The Corporation of Brome* 1 *L. N.* 519.

9. Penalty.—Que lorsqu'un statut décrète qu'à défaut de remplir certains devoirs chacune de deux personnes pourra être condamné à payer une somme de $200 d'amende, on ne peut les poursuivre séparément pour $200 chacune, mais qu'il faut prendre une seule action pour une dette de $200 contre les deux ensemble.—SICOTTE, J., 28 FÉV. 1885, *Berthiaume vs Sicotte.* **I,** S. C. **200.**

10. Promissory note — Promise referring to an election fund.—The respondent made his promissory note payable to his own order, and endorsed and delivered the same to appellants, who got it discounted; and the proceeds were applied to an election fund of which the respondent was treasurer, the fund being used in promoting the election of members of the provincial legistative assembly. There was an understanding that the appellants would take up the note at maturity as their contribution to the election fund. The appellants having failed to take up the note, it was paid by the respondent. In an action by the latter against appellants:

That the respondent had no right no recover the amount of the note from the appellants, a promise on undertaking in any way referring to an election fund being void under 38 Vict. (Q.) s. 266, now R. S. Q. § 425.—DORION, TESSIER, CROSS, BABY, BOSSÉ JJ., 26 SEPT. 1889, *St. Louis & S nécal.* (Confirmed by Supreme Court 18 S. C. R. 587).

V, Q. B. **332.**

11. Procedure.—Que lorsque l'instruction d'une pétition d'élection est terminée et que l'inscription pour audition devant la Cour Supérieure, siégeant en Révision, a été faite et produite, une intervention de la part d'un électeur, demandant à être reçu partie dans la cause à la place du pétitionnaire, ne pourra être reçue par la Cour Supérieure présidée par un seul juge, ou par un juge de cette cour, vû que la cause ne se trouve plus alors devant cette cour, mais se trouve devant la Cour Supérieure siégeant en Révision. —MATHIEU, J., 18 OCT. 1884, *Décary vs Mousseau.*

I, S. C. **25.**

CITATIONS.—*I Pigeau, Procédure Civile, édit. de* 1789, *page* 334.

12. Qualification of voters.—Que la qualification exigée par les sections 8 et 9 de l'acte électoral de Québec pour être électeur doit exister de fait au moment de la confection de la liste, et qu'il ne suffit pas qu'elle paraisse au rôle d'évaluation, ce dernier ne servant qu'à constater la valeur des biens fonds.

Que lorsqu'un électeur a été par erreur mis sur la liste électorale sous une qualité qu'il n'a pas, mais que tout de même, au moment de la confection de la liste, il était réellement qualifié d'une autre manière, son nom ne doit pas être retranché de la liste des électeurs.—MATHIEU, J., 8 AVRIL 1885, *Filiatrault vs Corporation St-Zotique.* **I,** S. C. **308.**

Que pour être qualifiés comme électeurs parlementaires pour la province de Québec d'après la loi électorale de Québec 52 Vict., ch. 4, art. 173, les locataires doivent jouir de biens immeubles qui par le rôle d'évaluation en force, sont évalués séparément à $200 au moins dans les municipalités autres que les cités.

Que les locataires, pour être ainsi qualifiés, doivent avoir loué à l'année et non au mois.—WURTELE, J., 22 MAI 1890, *Galipeau vs Corporation Pointe aux Trembles.* **VI,** S. C. **214.**

Que des employés du gouvernement qui travaillent pendant la saison de navigation et reçoivent $1.25 par jour, qui sont continués dans leur emploi d'année en année sans nouvel engagement, tombent sous le par. 4 de l'art. 186 de l'Acte Electoral de Québec et ne peuvent être mis sur la liste des électeurs.

Qu'un curé d'une paroisse qui occupe des biens fonds donnés à la fabrique pour l'usage du culte, n'en est que l'administrateur et n'occupe ces biens qu'en sa qualité de curé et, comme tel, il ne peut être mis sur la liste des électeurs parlementaires sous l'Acte Electoral de Québec, l'occupation officielle n'étant pas celle exigée par la loi.

Que le temps pendant lequel un fils de propriétaire doit avoir résidé avec son père, son beau-père, son grand'père, sa mère ou sa belle-mère, est un an avant la date de la confection de la liste des électeurs.

Qu'un fils de propriétaire qui travaille constamment en dehors de la municipalité, mais dont les absences sont moin-

dres que six mois, qui n'a pas d'autre résidence que celle de son père et qui contribue à l'entretien de l'établissement de son père est qualifié pour être mis sur la liste des électeurs.

Que la vente d'un immeuble pour taxes municipales déqualifie le propriétaire sur lequel la vente est faite, comme électeur parlementaire de Québec, à partir de la vente, quoique cette dernière reste révocable par le retrait que peut faire dans les deux ans l'ancien propriétaire; l'effet de la vente par les art. 1004 et 1013 du Code Municipal, étant de transporter immédiatement la propriété du lot vendu à l'acheteur.

Qu'il ne peut être permis à un fils de propriétaire, pour établir sa qualification de prouver que, depuis la confection du rôle d'évaluation, la propriété de son père sur laquelle il veut se qualifier a augmenté en valeur; dans ce cas, le rôle d'évaluation seul fait foi de la valeur de l'immeuble.—WURTELE, J., 26 MAI 1890, *Brunet vs Ste-Anne de Bellevue.*

VI, S. C. 222.

13. Quebec Controverted Elections Act.—(1) *Corrupt act-Evidence.*—Where the uncorroborated statement of a person who alleged that he had been bribed, was positively denied by the person charged with the corrupt act—the evidence of the latter being the more credible and trustworthy,—that the charge should be rejected; and especially as this was the sole case by which the allegation of corrupt practices in the election was supported.—JOHNSON, TASCHEREAU, GILL, JJ., 23 MAI 1888, *Prévost vs Boyer.* **IV, S. C. 350.**

(2). *Employment of speakers by the candidate.—Advance of money by candidate to official agent—Corrupt purposes not presumed.—Intimidation.—Agent-General treating.*—A candidate may lawfully employ and pay a speaker to advocate his cause by public speeches during the election contest. (Wheeler vs Gibbs, 4 S. C. R. 430).

It will not be assumed, as against the candidate, from the fact that money placed by him in the hands of an official agent for disbursements, has not been fully or accurately accounted for by the agent (who expended only one third

thereof) that it was advanced by the candidate or expended by the agent for corrupt purposes. Proof must be made of the corrupt payments, and that the candidate sanctioned them. Such advance of money, however, is objectionable.

A person who takes part in committee work and assists in checking voter's list with the knowledge and sanction of the candidate, is an agent within the meaning of the election law.

A father and son were notified by an agent of the candidate that if they voted, the wife of the first mentioned would be prosecuted for illegal practice of midwifery ; held a case of intimidation sufficient to annul the election.

Where ordinary hospitality is shown during an election by an agent of the candidate to a friend, it will not be presumed because the person receiving it was a voter, that the entertainment was offered with a corrupt motive.

Forty or fifty persons, including several voters, assembled on the eve of the election at the house of an agent, where liquor was served to them indiscriminately, and there was heavy and general drinking. Held (Taschereau, J., differing) that it was a case of general treating sufficient to annul the election.—JOHNSON, TASCHEREAU, LORANGER, JJ., 30 NOV. 1888, *Magnan vs Forest.* **IV,** S. C. **265.**

CITATIONS.—*Benoit v. Jodoin* 19 *L. C. J.* 185—*Gingras v. Shehyn* 1 *Q. L. R.* 295—*Wheler v. Gibbs* 4 *S. C. R.* 430—*Hodgins Election Cases p.* 547, 577, 785, 343, 304—*Bodmin,* 1 *O'M et H. p.* 125— *Westminster* 1 *O'M et H.*

(3). *Mis en cause.*—That after the enquete on the trial of an election petition has been closed, the respondent is no longer entitled, on R. S. Q. 514, to adduce evidence to show that any other candidate has been guilty of corrupt practice.—DOHERTY, MATHIEU, TAIT, JJ., 3 OCT. 1889, *Séguin vs Rochon.* **V,** S. C. **461.**

(4). *Mis en cause.—Jurisdiction.*—That where a person has been brought into an election case, under the provisions of 38 Vict. (Q) ch. 7 s. 262, and the evidence on the charge against the mis en cause has been taken before the trial judge, that the determination of such matter is within the competence of the court sitting in Review upon the merits

of the petition.—LORANGER, J., 6 FEB. 1888, *Brisson vs Goyette.* **IV, S. C. 323.**

(5). *Mis en cause—Preliminary objection—Review.*—That the mise en cause (whether by the answer to the petition or subsequently of any other candidate not petitioner in the cause, is in the nature of an election petition and is subject to the rules prescribed for such petitions; and an appeal lies to the Superior Court sitting in Review, under s. 41 of the Quebec Controverted Elections act (R. S. Q. 500) from a judgment maintaining preliminary objections of themis en cause.—JETTÉ, LORANGER, DAVIDSON, JJ., 8 JUIN 1889, *Séguin vs Rochon.* **V, S. C. 458.**

(6). *Preliminary objection —Sevvice of petition.—Description of electoral district.—Stamps.—Corrupt practice.—Knowledge of candidate.—Evidence.*—A petition presented on the 7th. november and served on the following day—the notice of election having been published on the 8th October—is within the delay prescribed by R. S. Q. 482.

The description of the electoral district, in the petition, as "the electoral district of the County of Ottawa" instead of " electoral district of Ottawa" is not a sufficient ground for rejecting the petition, the electoral dist:ict being in fact composed of the county of Ottawa alone.

In a district where the fee on filing petition is payable in money to the clerck of the Court, and has been duly paid, the absence of stamps on the petition is not an irregularity.

The fact that large sums were being illegaly spent by the agents of a candidate and that this circumstance must have been known to those who were engaged in promoting his election in that part of the county, is not of itself sufficient to prove knowledge by the candidate of corrupt practice, where it appears that he was not present at the place where the money was being disbursed, but was engaged in a remote part of the county. Knowledge of corrupt practice must be clearly established, and where the evidence is so contradictorv as to raise a doubt, the defendant is entitled to the benefit of the doubt.—JETTÉ, WURTELE, DAVIDSON, JJ., 30 DEC. 1889, *Séguin vs Rochon.* **V, S. C. 465.**

(7). *Requête civile after judgment*—That after the Court, has, in compliance with the provisions of the Quebec Controverted Elections Act, 1875, transmitted to the Speaker its report and a certified copy of the judgment in an election case, it is dispossessed of the case and cannot entertain a requête civile asking for the revocation of the judgment on the ground of fraud and surprise.—JOHNSON, LORANGER, TAIT, JJ., 31 JANV. 1888, *McQuillen vs Spencer*.

IV, S. C. **155.**

(8). *Substitution of petitioner.— Collusion.—Admission by defendant.*—Que pour qu'une substitution de pétitionnaire soit permise, dans le cas où le premier pétitionnaire refuse ou néglige de procéder, il faut: 1o. Qu'il soit démontré à la Cour qu'il y a collusion entre le premier pétitionnaire et le défendeur: 2o. La pétition de substitution doit être signée par la partie elle-même et non par son procureur ad litem.

Que le défendeur dans le cours de l'instruction de la cause, à l'enquête, pour éviter des frais, et en vue d'un compromis ayant fait une admission écrite admettant que des manœuvres frauduleuses de nature à annuler son élection avaient été commises par ses agents légaux, mais hors sa connaissance personnelle, pouvait, plus tard, alors que le pétitionnaire qui n'avait ni accepté ni refusé cette admission, avait déclaré poursuivre la cause pour déqualification personnelle, signer et produire un retraxit; et que l'effet de ceretarix a été d'annuler cette admission qui n'a plus formé partie de la preuve,—JOHNSON, TASCHEREAU, LORANGER, JJ., 23 MAI 1888, *Faille vs Lussier*. **IV,** S. C. **139.**

(9). *Trial.—When concluded.*—That the trial of an election petition is concluded when the enquête of petitioner and respondent has been closed; and it is not competent thereafter for the respondent to give notice, under R. S. Q. 514, that he intends to prove that another candidate not in the cause has been guilty of corrupt practice,—DOHERTY, TAIT, DELORIMIER, JJ., 3 OCT. 1889, *Séguin vs Rochon*.

V, S. C. **463.**

(10). *Substitution of new petitioner.*—(Buchanan, J., differing partly as to this point). Where a petitioner abandons

the personal charges, but inscribes the case before three Judges sitting in Review in order to have the defendant's election annuled for admitted acts of corruption by agents, such petitioner is proceeding withint he meaning of sec. 104 of the Quebec Controverted Elections Act, 1875 and therefore the right to substitute another petitioner does not arise under the circumstances stated.—JOHNSON, BUCHANAN, LORANGER, JJ., 31 OCT. 1884, *Décary vs Mousseau.*

II, S. C. 228.

(11). *When a case has been inscribed for hearing.*—That when the case has been inscribed for hearing before three judges sitting in Review as an election tribunal, the Court has no jurisdiction to send the case back to the trial judge in order that another petitioner may be substituted, and that the trial may proceed upon the personal charges.—*Décary vs Mousseau.* **II, S C. 228.**

14. Rentiers.—Valuation roll.—Tenant.—Proprietor.—Que la qualification des rentiers, sur la loi électorale de Québec est personnelle et que partout les rentiers doivent être inscrits comme électeurs sur la liste des électeurs de la municipalité où ils demeurent et non sur celle de la municipalité où sont situés les immeubles pour lesquels leur rentes ont été constituées.

Que si la valeur réelle de l'immeuble loué doit être constaté uniquement par le rôle d'evaluation, les autres faits qui constituent chez un locataire la qualité d'électeur peuvent être établies par une autre preuve, et que sa qualité de locataire d'un bien fonds mentionné au rôle peut être prouvé oralement ou par la production d'un écrit.

Que le fait qu'un locataire occupant tout un lot suffisant pour le qualifier, aurait convenu de laisser à son propriétaire certaines réserves, ne l'empêche pas d'être inscrit comme électeur.

Qu'une personne qui n'est pas locataire d'un immeuble, mais qui l'occupe comme le serviteur du propriétaire, n'a pas la qualité requise pour être électeur.

Que pour être inscrit sur plainte, comme électeur, il n'est pas nécessaire que le nom d'un propriétaire soit entré sur

le rôle d'évaluation, si la qualité de propriétaire est établi par la production du titre, et si la valeur voulue est établie par le rôle d'évaluation.

Que pour être qualifié comme électeur, un fils de propriétaire doit avoir demeuré, depuis un an, avec son père ou autres ascendants, possédant un immeuble suffisant en valeur, d'après le rôle d'évaluation pour la qualification foncière des deux, mais il n'est pas nécessaire qu'il réside sur le bien fonds qui peut même être situé dans une municipalité autre que celle où il demeure.

Que lorsqu'un nom d'électeur est entré erronément sur la liste des électeurs, le conseil municipal ne doit pour cela le retrancher sur la liste, mais il doit le corriger et l'inscrire correctement.—WURTELE, J., 2 JUIN 1890, *Jeannotte vs Corporation Belœil.* **VI, S. C. 261.**

15. Secrecy of vote.—Que le secret de la votation est établi en faveur du voteur, et qu'il peut lorsqu'il réclame son bulletin déclarer de vive voix, pour qui il entend voter sans pour cela perdre son droit de vote.—JETTÉ, J., 10 DÉC. 1881, *Bernard vs Brillon.* **I, S. C. 121.**

16. Voters list.—Que le secretaire trésorier d'une municipalité ne peut être poursuivi pour le recouvrement de la pénalité édictée par la section 38 de l'acte électoral de Québec, en cas de retard dans l'envoi d'un double de la liste électorale au régistrateur du comté, si c'est le conseil de la municipalité qui a causé ce retard en retenant la liste jusqu'après le délai établi par la loi, surtout lorsque le secrétaire a envoyé la liste des électeurs aussitôt que le conseil eût terminé l'examen de la dite liste.—TASCHEREAU, J., 5 MARS 1885, *Jodoin vs Archambault.* **I, S. C. 323.**

(Reversing the decision of Taschereau' J., supra). The fact that the electoral list was still under the consideration of the Council, is not a valid ground of defence where a secretary-treasurer is sued for a penalty for not transmitting a duplicate of the list to the registrar of the registration division, within eight days after it came into force, as required by 38 Vict. (Q.) ch. 7, and the penalty may be recovered even where the secretary treasurer does not appear

to be in bad faith.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 23 NOV. 1886, *Jodoin vs Archambault.* **V,** Q. B. **1.**

Que le Conseil d'une corporation municipal n'a pas le droit de réviser la liste électorale sous l'Acte électoral de Québec et d'y ajouter et d'y retrancher des noms sans que des plaintes aient été déposées devant lui, et sans donner avis aux personnes dont les noms doivent être ainsi retranchés.

Que tout électeur a droit de se plaindre de cette illégalité et d'en appeler à un juge de cette décision du Conseil Municipal.—TAIT, J., 28 JUIN 1887, *Robertson vs Corporation de la Paroisse de St. Vincent de Paul.* **III,** S. C. **178.**

EMPLOYER

See MASTER AND SERVANT.

ENDORSEMENT

See BANKS AND BANKING—PROMISSORY NOTE

ERROR

S. brought suit to compel V. to render an account of the sum of $2500, which S. alleged he paid V on the 6th October, 1885, to be applied to S's first notes maturing, and in acknowledgement of which V.'s bookkeeper gave the following receipt :—"Montreal, October 6, 1885. Recd. from Mr. D. S. the sum of $2500, to be applied to his first notes maturing, M. V. (Fred)" V. pleaded that he never got the $2500, and that the receipt was given by his clerk by error, and that it should be for a case of sealskins, and not for $2500. The clerk and other witnesses were examined without objection to prove error.

That parol evidence is admissible in commercial matters to prove error in a written receipt given by a clerk, and that the evidence in this case proved error.—DORION, CROSS, BABY, BOSSÉ, JJ., 22 MARCH 1890, *Schwersenski & Vineberg.* (Confirmed by Supreme Court 19 S. C. R. 243).

VII, Q. B. **137.**

CITATIONS.—*Bell & Ariton* 20 *L. C. J.* 281.

See ACTION.

EVIDENCE

I.—Acknowledgement after institution of action.
II.—Action for assault.
III.—Action in separation de corps.
IV.—Action to recover penality for non registration.
V.—Admission of testimony to prove that debtor was granted delay.
VI.—Attorney ad litem.
VII.—Aveu judiciaire—To contradict a writing.
VIII.—Certificate of judge of session of the peace.
IX.—Commencement of proof—Admission.
X.—Examination of consort.
XI.—Hearsay.
XII.—Interpretation of written document—Admissibility of extrinsec evidence.
XIII.—Of public documents.
XIV.—Onus probandi.
XV.—Oral evidence—Commencement of proof in writing.
XVI.—Oath put by the court.
XVII.—Parol testimony of warranty.
XVIII.—Payment of hypothecary claim.
XIX.—Partnership.
XX.—Pass Book.
XXI.—Proceedings in criminal prosecution.
XXII.—Proof of payments under $50.00.
XXIII.—Proof of claim—Account Sales.
XXIV.—Saisie arret.
XXV.—Services rendered to a candidate in an election.
XXVI.—Servitude.
XXVII.—Statement in deed.
XXVIII.—Statement of account by book keeper.
XXIX.—Supplemental oath.
XXX.—Tender of rent.
XXXI.—To establish real relationship of parties to a promissory note.
XXXII.—To establish that indorser of a note was not to be bound by indorsement.
XXXIII.—Uncertain bounds—Claim for trees cut.
XXXIV.—Valuation roll.
XXXV.—Valuation.
XXXVI.—Verbal testimony.
XXXVII.—Will

See CARRIER—CHEQUE—COMPANY—CUSTOM LAW DEED—ERROR—FILIATION—FOREIGN JUDGMENT—LARCENY AS A BAILEE—LESSOR AND LESSEE—MASTER AND SERVANT—PARTNER-

SHIP — PERJURY — PHYSICIAN — PRINCIPAL AND AGENT — PROCEDURE — PROHIBITION— PROMISSORY NOTE—RAILWAY—RESPONSIBILITY SALE—SUBROGATION.

1. Acknowledgement after institution of action.—Qu'un écrit signé par le défendeur, après l'institution de l'action, dans lequel il reconnaît être endetté envers le demandeur et promet lui payer le montant mentionné dans l'action, n'a pas d'effet rétroactif, et ne peut être une preuve suffisante pour obtenir un jugement dans l'action intentée avant la date de l'écrit, lorsque ce dernier ne reconnaît pas le droit du demandeur au temps de l'institution de l'action.—GILL, J., 30 OCT. 1888, *Baxter vs Grau*. **IV,** S. C. **446.**

2. Action for assault.—Que dans une cause en dommage pour assaut, le plaidoyer de coupable fait devant la Cour du Recorder dans une poursuite criminelle pour le même assaut, est une admission du fait de l'assaut dont le demandeur peut prendre avantage dans l'action civile.—TAIT, J., 18 FÉV. 1888, *Fortier vs Sauvé*. **IV,** S. C. **30.**

3. Action en séparation de corps.—Que l'aveu de l'époux défendeur dans une action en séparation de corps, soit judiciaire soit extrajudiciaire ne peut être admis en preuve; que la prohibition contenue dans les articles 186, 193, 1231 C. C. est formelle et ne laisse au juge aucune discrétion sur le sujet.

Que l'allégué de la déclaration "the whole as confessed and admitted by the defendant" peut être rejetée sur motion.—LORANGER, J., 28 NOV. 1884, *Smith vs Wheeler*.

I, S. C. **80.**

Que dans une action en séparation de corps et de biens, la Cour ou un juge a un pouvoir discrétionnaire d'admettre le témoignage de l'une ou de l'autre des parties, et lorsqu'il ne paraît pas avoir de collussion ce témoignage peut être admis.—JETTÉ, J., 7 JUILLET 1886, *Moore vs Duclos*.

II, S. C. **254.**

4. Action to recover penalty for non registration.—In an action to recover a penalty under 48 Vic. (Q.) ch. 29, for

non registration, the plaintiff is bound to establish not only that the defendant carried on business under a name indicating a plurality of members, but also that he failed to register the declaration in the mode and within the time prescribed by the statute.

As to failure to register within sixty days after the passing of the statute, the plaintiff proved that defendant was carrying on business under a firm name after the sixty days, and further called a clerk in the tutelle office, who deposed that he had examined the index of the registers in that office, and that the only person of defendant's name therein mentionned was registered after the expiration of the sixty days.

That this evidence was inconclusive; that it is necessary to prove absence of registration in any of the books of the prothonotary's office, and that an examination of the index alone was insufficient; moreover the best evidence in such cases is a certificate of the prothonotary. — DOHERTY, PAPINEAU, LORANGER, JJ., 31 MAI 1886, *Pringle vs Martin.*

II, S. C. 285.

5. Admission of testimony to prove that debtor was granted a delay.—The fact that an extension of time was given by a grocer to a customer, for the payment of the grocer's account for goods sold and delivered, may be proved by testimony, where no writing exists which would be contradicted by such testimony.—JOHNSON, J., 29 SEPT. 1888, *McGarry vs Bruce.* **IV, S. C. 363.**

6. Attorney ad litem.—That the attorney of record is only allowed to offer his testimony in favour of his client under exceptional circumstances; and that the introduction of the evidence of the defendant's attorney as to a private conversation between himself and the plaintiff, was under the circumstances improper, and such testimony would be rejected by the court.—TASCHEREAU, J., 10 NOV. 1888, *Rielle vs Benning.* (Confirmed in appeal VI, M. L. R. Q. B. 365).

IV, S. C. 219.

The evidence of an attorney ad litem in behalf of his client is admissible but such testimony is repugnant to lhe

discipline of the profession.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUIN 1886, *Waldron & White.* **III,** Q. B. **375.**

7. Aveu judiciaire.—To contradict a writing.—Que l'article 1234 du Code Civil qui décrète que, dans aucun cas, la preuve testimoniale ne peut être admise pour contredire ou changer les termes d'un écrit valablement fait, ne s'applique pas à la partie qui peut admettre et avouer même lorsqu'elle est entendue comme témoin, que l'écrit valablement fait ne contient pas toutes les conventions qu'elle a faites.—MATHIEU, J., 10 OCT. 1886, *McConnell vs Millar.*
II, S. C. **270.**

8. Certificate of judge of the sessions of the peace.—Que le certificat donné par le juge des sessions de la paix, constatant qu'une caution pour la comparution d'un prisonnier avait été forfaite par la non comparution de ce dernier, est un acte authentique qui ne peut être contredit que par la voie de l'inscription en faux.—WURTELE, J., 6 MAI 1889, *Regina vs St-Hilaire.* **V,** S. C. **116.**

9. Commencement of proof.—Admission.—In an action for the recovery of a loan, where the defendant pleaded that he had borrowed the money, but with the stipulation that the principal was not to be payable untif after the lender's death, that the admission could not be divided to make a commencement of proof.—WURTELE, J., 14 SEPT. 1891, *Favret vs Phaneuf.* **VII,** S. C. **282.**

CITATIONS.—*Christin vs Valois* 3 *L. N.* 59

10. Examination of consort.—That under 35 Vict. (Q.) ch. 6, sect. 9 the right to examine a consort as a witness is conferred upon the adverse party only, and the evidence of the husband of the transferor of a claim is inadmissible in an action by the transferee, on the part of the plaintiff.—TORRANCE, J., 16 JUIN 1886, *Layeunesse vs Price.*
II, S. C. **281.**

CITATIONS.—*Brush v. Stephens et vir* 17 *L. C. J.* 140—*Four v. McGreevy* 9 *R. L.* 383—*Lareau vs Beaudry* 22 *L. C. J.* 336—*C. C. P.* 252.

11. Hearsay.—The apprentice having died since the institution of the action, and there being no other living

eye-witness of the facts, the statement made by him to his master, the defendant in explanation of the circumstance is admissible as evidence, not as absolute proof, but as explanatory and corroborative of other circumstantial proof.—DAVIDSON, J., 17 FÉV. 1888, *Laskey vs Lyons*.

IV, S. C. **4.**

CITATIONS.—*Dickson, Law of Evidence in Scotland,* (1887 *ed.*) § 226—*Desquiron, Preuve,* p. 398—*Guyot, Rép vo. Preuve—Connoly vs Woolrich,* 4 *L. C. J.* 197—*Filion vs Binette,* 4 *L. C. J.* 36—*Jousse, Ord. Civ. vol.* 1, *p.* 243—*Lavoie vs Drapeau M. L. R.* 3 *S. C.* 304.

The apprentice having died since the institution of the action, and there being no other living witness of the fact, the statement made by him to his master, the defendant, in explanation of what had happened, is admissible as evidence when coming from the lips of the defendant himself. —TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 26 FEB. 1889, *Lyons vs Laskey*. **V,** Q. B. **5.**

CITATIONS.—(*Same authorities as above*) *Bonnier, vol.* 1, *pp.* 308 *and* 310.

12. Interpretation of written document.—Admissibility of extrinsic evidence.—That where a deed of sale sets out in detail the various properties and goods thereby transferred, the court cannot take into consideration any other documents between the parties, or any extrinsic evidence, but must look at the deed alone to decide what property has passed there under.—JETTÉ, J , 23 DEC. 1887, *Mullarkey & MacDougall*. **IV,** S. C. **89.**

13. Of public documents.—Que la preuve des documents publics doit se faire au moyen de copies ou extraits attestés suivant la loi, mais non par la production du document public lui-même.—*Schiller vs C. P. R. Co.* **VII,** S. C. **174.**

14. Onus probandi.—Where the defendant is sued in a jurisdiction within which he comes solely by virtue of a particular fact alleged in the declaration (e. g. that goods were sold and delivered to him in the district wherein the action is brought) and the defendant by declinatory exception denies such fact, the proof of the facts rests upon the plaintiff.—DOHERTY, PAPINEAU, LORANGER, JJ., 31 MAY 1886, *Shaw vs Cartier*. **II,** S. C. **282.**

Where to a demand for money lent, the defendant pleaded compensation by a bon given to him by the plaintiff, which bon was in these terms "good to W. L. Forsyth (defendant) for $500, balance of the payment of $1,000 purchase price of 2/12ths of Anticosti, not transferable" and the plaintiff answered specialy that the bon was not given to the defendant personally but in his capacity of manager of the Anticosti Company,—that the burden of proof was on the plaintiff to prove the truth of the special answer.—JOHNSON, PAPINEAU, LORANGER, JJ., 20 DEC. 1887, *Bury vs Forsyth.*

III, S. C. **359.**

15. Oral evidence.—Commencement of proof in writing.—Que lorsque dans un écrit signé par un créancier, il est dit que ce créancier a déclaré et manifesté l'intention de faire don et remise de sa créance à son débiteur, pour des causes et raisons à lui connues, la preuve testimoniale de la remise de la dette est admissible, cet écrit constituant un commencement de preuve par écrit suffisant.—TELLIER, J., 26 MAI 1888, *Voligny vs Palardy.* **IV,** S. C. **108.**

16. Oath put by the Court. –Where there is no evidence of the cause of the accident, it is not a proper case for submitting the serment supplétoire, and thus permitting the case to be proved entirely by the plaintiff's oath.—DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Sherbrooke & Short.*

III, Q. B. **50.**

17. Parol testimony of warranty.—Que la preuve d'une condition de garantie dans une vente pour plus de $50 ne peut être faite par témoin.—TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 16 NOV. 1887, *Tassé vs Ouimet.*

III, Q. B. **312.**

18. Payment of hypothecary claim.—Evidence of payment of a hypothecary claim registered against an immovable must be made by the production of a duley registered discharge.—TAIT, J., 31 MAY 1887, *Green vs Mappin.*

III, S. C. **393.**

19. Partnership.—Que l'existence d'une société commerciale peut être prouvée par témoin vis-à-vis des tiers, mais

que cette preuve n'est pas permise entre les associés.—PAPINEAU, J., 29 NOV. 1884, *Rowan vs Massé.* **I,** S. C. **177.**

CITATIONS.—*Troplong, edition belge, vo. Société, No.* 210, 229, 230, *Commentaires de l'art.* 1814—*Pardessus, vol.* 4, *No.* 1009, *p.* 122 *et* 124—*Pratt vs Berger,* 4 *L. N.* 341—*de Villeneuve, Dictionnaire du Contentieux Commercial, vo. Société, No.* 42—*Lindley, on Partnership, p.* 94, 95, *édit. de* 1873—*Merlin, Questions de Droit, vo. Société, p.* 312 § 1 1ère *colonne, et aussi Répertoire, vo Société, sect.* 3 § 2 *art.* 2, *No.* 7.

A partnership cannot be proved as between the alleged partners by oral evidence, unless there is a commencement de preuve par écrit.—DAVIDSON, J., 29 JUIN 1888, *McIndoe vs Pinkerton.* **IV.** S. C. **101.**

CITATIONS.—*Pratt vs Berger* 28 *L. C. J.* 192—*Beaudry vs Laflamme,* 6 *L. C. J.* 134—*Lemire vs Bourdeau,* 12 *R. L.* 362—*Graham vs Bennett,* 12 *R. L* 448—*Rowan vs Massé, M. L. R* 1 *S. C.* 177.

20. Pass book.—Where dealings between the parties have been conducted upon the basis of pass books held by each, the one presumably the counterpart of the other, the one which is produced, and which is reasonably substantiated by testimony, must prevail, particularly in the absence of secondary evidence founded upon the proved loss of the other, tending to show a discrepancy.—JOHNSON, DOHERTY, JETTÉ, JJ., 31 OCT. 1885, *Gaudry vs Judah.* **I,** S. C. **473.**

21. Proceedings in criminal prosecution.—The clerk of the Police Magistrate, being called as a witness in a civil suit, was asked to state the contents of a criminal information. This was objected to on the part of the defendant, on the ground that the prosecution in question was not yet terminated.

Held that the rule of the Criminal Procedure Act, 32 & 33 Vict. c. 30 s. 58 is applicable to criminal proceedings only; and it was ordered that copies of the proceedings in the criminal prosecution should be furnished on payment of the usual fees.—TORRANCE, J., 13 DEC. 1884, *Kennedy vs O'Meara.* **I,** S. C. **143.**

CITATIONS.—*Addison, on Torts,* 592, 608—*Bigelow's Leading Cases on Torts,* 196.

22, Proof of payments under $50.—Que l'on peut prouver par témoins le paiement de diverses sommes d'argent au-

dessous de $50 chacune payées à diverses époques, quoique le total excède $50.—PAPINEAU, J., 17 OCT. 1887, *Mayer vs Leveillé.* **III,** S. C. **190.**

23. Proof of claim—Account sales.—Where appellants, by a claim filed upon an estate in liquidation, claimed indemnity for an alleged loss made by them upon shipments of cattle from Boston to Liverpool, that the account sales received by claimants from their Liverpool agents were insufficient per se to make proof of the loss.—BABY, BOSSÉ, DOHERTY, CIMON, JJ., 26 SEPT. 1391, *Hathaway & Chaplin.* (Confirmed by Supreme Court 15 L. N. 197).

VII, Q. B. **317.**

24. Saisie arrêt.—Que l'on ne peut justifier l'émanation d'un bref de saisie arrêt avant jugement par des faits postérieurs à la saisie.—JETTÉ, J., 12 JAN. 1885, *DeMaisonneuve vs Larue.* **I,** S. C. **124.**

25. Services rendered to a candidate in an election. — Qu'une réclamation de la part d'un avocat pour services rendus à un candidat durant son élection, telles que rédaction de circulaires, d'annonces dans les journaux, pas et démarches, obtention de signatures et de votes en faveur du candidat, organisation de comités et d'assemblées publiques, discours, etc. s'élevant à une somme excédant $50.00 ne peut être prouvée par témoins.—MATHIEU, J., 16 AVRIL 1888, *Ethier vs Hurteau.* **IV,** S, C. **36.**

26. Servitude.—Que l'existence d'un héritage dominant non constatée par l'acte ne peut pas être établie par la preuve testimoniale —MONK, RAMSAY, TESSIER, CROSS, BABY, JJ, 20 NOV. 1882, *Mondelet & Roy.* **I,** Q. B. **9.**

CITATIONS.—*Hamilton & Wall,* 24 *L. C. J.* 49.

27. Statement in deed.—That the borrower's acknowledgement in the deed, that he had received the whole amount, might be contradicted by the lender's admission that she had paid the money to her notary, and the notary's admission that he had not paid over a portion of the amount. DORION, MONK, TESSIER, CROSS, BABY, JJ., 22 FÉV. 1887, *Webster vs Dufresne* **III,** Q. B. **43.**

28. **Statement of account by bookeeper.**—The respondent, by notarial agreement, leased to appelant the right to mine for asbestos, on certain property belonging to the respondent. Subsequently, the respondent agreed to reduce the amount of royalty he was to receive; but to what extent, the appellant and respondent did not agree. The appellant kept no regular books, but his son-in-law and agent, at all events for some purposes, kept full accounts, and the appellant was in the habit of referring those who dealt with him to this agent, and he had even paid respondent on the statements of this agent.

That the appellant was bound by the statement of account of such agent, the amount so fixed being less than the respondent would be entitled to under the original agreement.—DORION, MONK, RAMSAY, CROSS, BABY, 30 JUNE 1886, *Jeffery & Webb.* **III,** Q. B. **147.**

29. **Supplemental oath.**—Where there is absolute proof of injuries resulting from chemical action and of an explosion having occurred on the defendant's premises, and the only eye-witness is dead, the Court will examine the plaintiff under Arts. 1245 and 1254 C. C. and 448 C. C. P.—DAVIDSON, J., 17 FEV. 1888, *Laskey vs Lyons.* **IV,** S. C. **4.**

CITATIONS.—8 *Aubry et Rau*, 360—5 *Marcadé*, 243—*Danty*, 74—*Dickson, on Evidence* § 1615—*Gilbert sur Sirey, art.* 1366, *No.* 8.

Where there is absolute proof of injuries resulting from a chemical explosion upon defendant's premises, and the only witness is dead, the supplementary oath may properly be administered to the plaintiff.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 26 FÉV. 1889, *Lyons & Laskey.*

V, Q. B. **5.**

30. **Tender of rent.**—That a tender of rent, not being a commercial matter, cannot be proved by parol evidence.—TORRANCE, J., 2 JUNE 1885, *MacFarlane vs MacIntosh.*

I, S. C. **451**

CITATIONS.—7 *Carré & Chauveau, Suppl* 2783 *ter.*—*Danty, cap. X, No.* 19 *p.* 294—7 *Toullier Nos.* 199, 201—3 *Carré, Procédure p.* 331—3 *Larombière Oblig. C. C.* 1258, *p.* 459, *No.* 16 — 28 *Demolombe No.* 95 *p.* 70—*Pothier, Oblig. No.* 578 — 1 *Pigeau p.* 432, *No* 5 *offres reelles.*

31. To establish real relationship of parties to a promissory note.—In a suit founded on promissory notes or bills of exchange, in the investigation of facts recourse must be had to the laws of England in force on the 30th may 1849 (C, C. 2341).

According to the laws of England parol evidence is admissible to establish the real relationship of the parties to a bill of exchange or promissory note, and the circumstances under which it was endoresed.—WURTELE, J., 26 MARS 1891, *Northfield vs Lawrance.* **VII, S. C. 148.**

CITATIONS.—*Story, on Promissory Notes, No.* 479—*Chalmers, on Bills of Exchange p.* 206—8 *Ap, Cas. P. C. p.* 733 *MacDonald & Whitfield.*

32. To establish that indorser of a note was not to be bound by indorsement.—Parol evidence is inadmissible, under art. 1234 C. C. on the part of an indorser of a promissory note, to establish an agreement, pleaded by him, that he would not be required to pay the note.—JOHNSON, DOHERTY, JETTÉ, JJ., 29 SEPT. 1888, *Decelles vs Samoisette.* **IV, S. C. 361.**

CITATIONS.—*Scott vs Turnbull* 6 *L. N. p.* 397—*Deschamps vs Léger M. L. R.* 3 *S. C.* 1—*Story, on Promissory Notes, No.* 479.

33. Uncertain bounds.—Claim for trees cut. — Where persons are occupying lands which have never been marked off by a regular survey, and one of them, instead of bringing an action en bornage to settle the limits of his property, sues a neighbour for the value of the trees alleged to have been cut by him upon plaintiff's land, it is incumbent on the plaintiff to make it clear by positive testimony that the trees were in fact cut upon his land ; and if, upon the reports of surveyors, uncertainty exists as to the limits of the respective properties, the doubt must be interpreted against the plaintiff. In the present case, moreover, the weight of evidence was in favor of the defendant.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, 19 JAN. 1889, *Milliken & Bourget.* **V, Q. B. 300.**

34. Valuation roll.—Qu'un extrait dûment certifié d'un rôle d'évaluation d'une corporation municipale, fait preuve

de son contenu, mais n'exclut pas une preuve contraire d'une valeur plus élevée.—MATHIEU, J., 28 JANV. 1885, *Moisan vs Prevost.* **I,** S. C. **244.**

35. Valuation.—That in order to determine, for the winding up of a partnership the fair cash value of an asset of indefinite value, such as a phosphate mine, the Court will have regard to the estimate set upon it by persons experienced in the purchase and sale of mines, rather than to the opinion of the witnesses who assign a speculative value to the property ; and the fact that the mine could not be worked at a profit may also be properly taken into consideration.—DORION, MONK, CROSS, BABY, JJ., 27 NOV. 1885, *Jones & Powell.* **I.**Q. B. **499.**

36. Verbal testimony.—Qu'un défendeur poursuivi pour $158.40, prix d'une machine à lui vendue, et qui plaide qu'il n'a reçu cette machine qu'à l'essai et que n'en ayant pas été satisfait, il a informé le demandeur d'avoir à la reprendre, tel que convenu, peut prouver son plaidoyer par témoins.—TASCHEREAU, J., 27 FÉV. 1886, *Chapin vs Whitfield.* **II.** S. C. **187.**

37. Will.—Qu'en l'absence d'une inscription en faux, on ne peut attaquer par une preuve testimoniale rien de ce qui concerne la solennité extérieure d'un testament authentique, ni contredire les énonciations qui y sont contenues.—TASCHEREAU, J., 31 MARS 1887, *Leriger vs Daigneault.* **III.** S. C. **444.**

EVOCATION

Qu'une action réclamant le premier paiement d'une répartition pour la construction d'une église, laquelle répartition est payable en 12 versements annuels ne peut être évoquée à la Cour Supérieure de la Cour de Circuit, comme affectant des droits futurs, ce dernier tribunal seul ayant juridiction. — MATHIEU, J., 13 MARS 1885, *Syndics Ste-Cunégonde vs Coursol.* (Confirmed in appeal) I, Q. B. 394. **I.** S. C. **214.**

See JUDGMENT—PROCEDURE.

EXCEPTION TO THE FORM

See PROCEDURE.

EXECUTION

See PROCEDURE.

EXECUTIVE POWER

See CONSTITUTIONAL LAW.

EXECUTOR

I.—Discharge of—Action for account.
II.—Execution of will.
III.—Grounds for removal from office.
IV.—Inventory.
V.—Power to substitute—Liability for misappropriation by agent.
VI.—Removal of executor.
VII.—Replacing testamentary executor.
VIII.—Testamentary executors.

See SUBSTITUTION — SUCCESSION — LIBEL AND SLANDER.

1. Discharge of—Action for account.—That after a testamentary executor has been discharged by a deed signed by all the legatees, an action against him praying for an account, brought by one of the legatees who joined in the discharge, and without asking that the discharge be set aside, will be dismissed.—Dorion, Tessier, Cross, Baby, Church, JJ., 17 sept. 1887, *Newton & Seale.*

IV, Q. B. 158.

2. Execution of will.—A testamentary executor who has fulfilled the requirements of the will, and has left the movables of a substitution created thereby in the possession of the tutor to the institute (a minor) has no action against the tutor upon the death of the institute within a year and a day from the death of the testator to revendicate these effects for distribution among the substitutes,—the tutor being bound to account only to the substitutes or to the curator to the substitution.—Dorion, Cross, Church, Bossé, JJ., 23 nov. 1889, *Marchessault & Durand.*

V. Q. B. 364.

Citations.—*Paul Pont, Petits Contrats, vol. I p.* 181, *No.* 372—*Troplong, Du Dépôt et du Sequestre, No.* 245 *p.* 186—*Rolland de Villargues vo Dépôt p.* 348, *No.* 1—*Marcadé et Pont, vol.* 4, *p.* 112, *No.* 148—*Ricard, No.* 72—*Rolland de Villargues, vo Possession, sec.* 68.

3. Grounds for removal from office.—Where testamentary executors transferred the control of the estate to another person, who paid the monies belonging to it into a bank in his own name, and afterwards drew them out: that the Court below exercised a proper discretion in removing the executors from office, even without evidence of fraudulent intention or actual dissipation of the property.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 JAN. 1886, *French & McGee.* **II,** Q. B. **59.**

4. Inventory.—Que les héritiers ou légataires ne peuvent pas, après plusieurs années, se plaindre du fait que l'exécuteur testamentaire n'a pas fait un inventaire suivant la loi, mais s'est contenté d'un état des biens sous seing privé, fait par le testateur lui-même quelque temps avant sa mort, et que ce fait n'est pas une raison pour demander la destitution de l'éxécuteur.—RAINVILLE, J., 31 MARS 1881, *Howard vs Yule.* **IV,** S. C. **454.**

5. Power to substitute—Liability for misappropriation by agent.—(Affirming the decision of Johnson J., M. L. R. 4 S. C. 92). That while an executrix, who is also appointed administrator of the estate for a long term of years, has power to substitute another person for the management of the affairs of the estate, the executrix is bound to exercise supervision over the acts of the person so appointed, and cannot divest herself of her personal responsibility it she fails to take all due precautions.

An executrix cannot escape liability for the misappropriations commited by her agent, by simply establishing that such agent was a notary of excellent standing in the community; and the immunity granted to the mandatary empowered to substitute under art. 1711 C. C.) does not apply to a testamentary executrix.

In the present case the executrix had acted carelessly and without due precaution in making cheques payable to her agent instead of to the borrowers on the proposed mortgages, and in signing deeds without sufficiently examining their contents.—TESSIER, BABY, CHURCH, BOSSÉ, JJ., 23 NOV. 1889, *Low & Gemley.* (Confirmed by Supreme Court 18 S. C. R. 685). **V,** Q. B. **186.**

CITATIONS—*Speight vs Gaunt, L. R. 9 App. Cases, p. 17—22 Demolombe, No. 109—Dalloz, Rép. vol. 16, p. 1111, vo. Dispositions Testamentaires, No. 4100—Ricard, Part II, No. 64—Laurent, vol. 14 § 323 and 376—Learoyd & Whitely, 58 L. T. 93—2 Sourdat, Responsabilité, p. 187—Harold & Corporation de Montréal 3 L. C. L. J. 88.*

6. Removal of executor.—That a testamentary executor whose administration exhibit dishonesty or bad faith may be removed from office. Dishonesty on the part of the executor is shown in the present case (a) by his placing obstructions in the way of the administration of the estate, in order to favor another estate in which he has a greater interest; (b) by concealing from his co-executor a debt due by him to the estate; and (c) by his pleading in defence to an action by the estate, that he had been party to an evasion of the law, which plea, if successful, would destroy a security given to the estate—TORRANCE, GILL, MATHIEU, JJ., 30 NOV. 1886, *Mitchell vs Mitchell.* **III, S. C. 31.**

(Reversing the judgment of the Court of Review, M. L. R. 3 S. C. 31) that the existence of a law suit between one executor and the estate he represents, especially when there are several executors, is not a sufficient cause for the removal of such executor.

Art. 282 C. C. does not apply to executors chosen by the testator.—DORION, TESSIER, CROSS, CHURCH, JJ., 19 MAY 1888, *Mitchell & Mitchell.* **IV, Q. B. 191.**

CITATIONS.—*C. N. 444—Nouveau Denizart, vo Exécution Testamentaire vol. VIII p. 213—Dalloz et Verge, Codes annotés under 444 C. N.—II Toullier, No. 1165—Demolombe, vol. VII No. 489.*

7. Replacing testamentary executors.—That where a testator has given his testamentary executors power to appoint substitutes, such power may be exercised, even after the testamentary executors have commenced to act.

It is not necessary that the replacement should be made judicially unless the testator has so directed. A notarial declaration naming substitutes is legal and regular.—TAIT. J., 31 OCT. 1890, *Kennedy vs Stebbins* **VI, S. C. 456.**

8. Testamentary executors.—Held:—That the father of minors, legatees under a will, cannot exclude the testamentary executor from the possession of the moveable pro-

perty of the succession, even for the use of the minors.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MARS 1886, *Normandeau & McDonnell.* **IV, Q. B. 319.**

CITATIONS.—1 *Ricard, donations, part.* 2 *Nos.* 71 *et seq.*—2 *Bourjon part.* 5, *ch. II, sect.* 2 *et* 3, *Nos* 14, 17, 18—1 *Ricard, Don. part.* 2, *No.* 79—8 *Pothier (Bugnet) Don. test. Nos.* 218 *et seq.*

EXEMPTION FROM SEIZURE

See PROCEDURE.

EXEMPTION FROM TAXES

1. Educational institution.—That property occupied as a private boarding and day school for girls where there are numerous pupils and teachers, and no grant is received from the municipality in which it is situated, is an educational institution, within the meaning of par. 2 C. S. L. C., cap. 15 sec. 17, as amended by 41 Vict. cap. 6 sec. 26, and consequestly exempt from municipal and school taxes.—TESSIER, CROSS, CHURCH, DOHERTY, JJ., 27 NOV. 1888, *Haight vs Montreal.* **IV, Q. B. 353.**

CITATIONS.—*Wylie vs City of Montreal* 12 *S. C. R.* 384.

2. Taxes imposed by municipal by-laws for payment of interest and creation of sinking fund for redemption of municipal debentures.—*Of the village of Waterloo.*—That taxes imposed by municipal by-laws for the payment of the interest and the creation of a sinking fund for the redemption of municipal debentures constitute a hypothec upon all the real property of the municipality taxable at the date of the passing of such by-laws, and the hypothec continues to affect the property even when it passes into the hands of a purchaser in whose possession it would have been exempt from taxation had he owned it at the date of the passing of the by-laws. — DORION, TESSIER, CROSS, CHURCH, JJ., 22 NOV. 1887, *Sœurs Jésus et Marie & Corporation of Waterloo.* **IV, Q. B. 20.**

CITATIONS —*Corporation of Verdun v. Sœurs Notre-Dame* 1 *Q. B. (Dor.) p.* 168 —*Beaudry vs Hart* 11 *Q. L. R.* 257.

See EDUCATIONAL INSTITUTION—TAX.

EXHIBITS

See PROCEDURE.

EXPERTS

See PROCEDURE.

EXPERTISE IN FOREIGH COUNYRY

See PROCEDURE.

EXPRESS COMPANY

See RAILWAY.

EXPROPRIATION

See ARBITRATION—MONTREAL—MUNICIPAL LAW —RAILWAY—RIPARIAN PROPRIETORS.

EXTRADITION

Where a commissioner has been appointed under the Great Seal of Canada (sect. 5 of the Extradition Act. R. S. ch. 142), and his appointement as such commissioner has appeared in the Official Gazette, and he is thereby "authorized to act judicially in extradition matters, under the Extradition Act, within the Province" and he describes himself in a warrant of commitment, as "a judge under the Extradition Act," that this jurisdiction is sufficiently disclosed.

In examining, upon a petition for habeas corpus, whether the detention of the prisoner is lawful, the court or judge will set aside the commitment only if there be manifest error in the adjudication. If the commissioner had jurisdiction, and there was legal evidence before him which might justify a committal, the Court is not called upon to examine the sufficiency of the evidence.

If the first commitment be irregular but be replaced, before the return of the habeas corpus, by a valid commitment, the prisoner will not be discharged.

(Approving the decision of M. Rioux, 11 L. N. 323). A statement of account, such as is received by a bank, from

other banks, having business connections with it, and containing an acknowledgement of the receipt of money to be accounted for, is an "accountable receipt" within the meaning of R. S. ch. 165, s. 29, and the fraudulent alteration thereof is a forgery.

A confession as to alteration of such "accountable receipt," made by an officer of a bank, after his connection therewith has terminated, to a fellow-employee, no director of the bank, being present, is not made to a person in authority; and when such confession is made without any inducement being held out, and after the accused was warned not to state anything that he did not wish repeated to the directors, it is admissible in evidence.

In a case of forgery, it is not necessary to prove the legal existence of the bank intended to be defrauded: it is sufficient to prove generally an intent to defraud; but in this case the legal existence of the bank was sufficiently proved.

The omission, in the jurat, of the place where the depositions were taken, is not material, where the place is mentionned in the heading or margin, and is otherwise certified to.

The fact that an indictment for embezzlement has been found against the accused, in the state from which he fled, does not prevent a demand being made for his surrender for forgery.

An alteration of a writing or "accountable receipt," made to cover a fraud previously committed is a forgery, though no money was taken at that time.

In proceedings for the extradition of a fugitive, evidence to contradict that of the prosecution is not admissible. The accused is only entitled to show that the offence charged is not a crime mentionned in the treaty.—CHURCH, J., 13 NOV. 1888, *Ex-parte Debaun*. **IV, Q. B. 145.**

CITATIONS.—*Hurd*, 363—*Clarke, on Extradition*, 214—*Zinz case*, 6 *Q. L. R.* 260—*Phelan case*, 6 *L. N.* 261.

FABRIQUE

Authorization to sue—When absence of authorization cannot be invoked.—(Dorion et Cross, JJ., diss.) Que le bureau ordinaire d'une fabrique peut autoriser des poursuites pour

le recouvrement des revenus ordinaires et, pour l'obtention d'un titre nouvel.

Que cette autorisation n'a pas besoin d'être spéciale ; mais qu'une autorisation générale de prendre des procédés légaux contre ceux qui sont endettés envers la fabrique, sans spécifier le nom de chaque débiteur est suffisante.

Que le défaut d'autorisation pour appeler dans une action de ce genre ne peut pas être invoqué pour la première fois à l'audition de la cause en appel, quand il n'a pas été invoqué dans le cours de la procédure, et que les procureurs de l'appelante n'ont pas été mis en demeure de produire leur autorisation.

1o.—Que l'appel en telles matières devrait être autorisé (*Semble*, d'une manière tout aussi formelle que l'action en première instance ; 2o. Que le bureau ordinaire de la fabrique pourrait donner l'autorisation requise pour cet appel). —Dorion, Ramsay, Tessier, Cross, Baby, JJ., 21 mars 1885, *Curé, Etc. de Varennes & Choquette.* **I, Q. B. 333.**

Citations.—*Guyot, Répertoire, vo. Fabrique—Ancien Denisart, vo. Marguilliers*

Indemnity to churchwarden—Action to annul.—*St. Isidore et al.* Qu'une résolution d'un conseil de fabrique décidant de payer à un des marguilliers une somme d'argent, à même les deniers de la fabrique, pour l'indemniser d'un pareil montant qu'il aurait été condamné à payer sous forme de dommages à un tiers, en conséquence d'un délit par lui commis dans l'exercice de sa charge, est nulle, illégale et ultra vires.

Que le fait que cette somme a été entrée dans la reddition de compte du marguillier en charge, laquelle reddition de compte fut soumise à une assemblée des anciens et nouveaux marguilliers et approuvée par eux, et sans protestation de la part du contestant qui était présent à l'assemblée, et que ce compte fut ensuite approuvé par l'évêque, ne constitue pas de la part du contestant une ratification qui lui enlève le droit de contester la légalité de la dite résolution, surtout lorsque ce dernier a préalablement protesté contre la dite résolution ; que d'ailleurs cette ratification d'un acte ultra vires serait sans valeur.

Que dans l'action pour faire déclarer nulle et illégale une semblable résolution il n'est pas nécessaire de mettre en cause le marguillier en charge qui a fait le paiement suivant la résolution.—JETTÉ, J., 31 MARS 1887, *Perras, vs Curé, Etc. St. Isidore.* **III,** S. C. **57.**

FAITS ET ARTICLES

See PROCEDURE.

FALSE ARREST

Arrest as dangerous lunatic—Probable cause—Damages.—That arrest and privation of liberty, under charge of being a dangerous lunatic, although such charge does not involve any moral turpitude, entitles the person so arrested to damages, if the proceedings be taken without reasonable or probable cause.

Where an information was laid by the defendant against the person as a dangerous lunatic, without the consent or knowledge of his friends and relative, and it appeared that the person had always been perfectly harmless, and that defendant's apparent motive was to oust him from the house occupied by him, which belongs to the defendant, it was held that the proceedings were instituted, without probable cause and damages were awarded.—JOHNSON, MATHIEU, WURTELE, JJ., 30 MAI 1891, *Généreux vs Murphy.*

VII, S. C. **403.**

CITATIONS.—*Hope v. Evered*, 17 *L. R. Q. B. D. p.* 338—*Fletcher v. Fletcher*, 28 *L. J. Q. B.* 134.

Assault—Damages.—Qu'une personne qui prétend avoir des droits sur un immeuble ne peut de son chef exercer ces droits violemment et que le possesseur de cet immeuble a droit de repousser cette violence par la force.

Que, sous ces circonstances si l'agresseur repoussé fait arrêter le possesseur de l'immeuble, après son acquittement, ce dernier a droit de poursuivre en dommages pour fausse arrestation ; dans l'espèce $150 de dommages furent accordés.—GILL, J., 9 AVRIL 1889, *Filiatrault vs Prieur.*

V, S. C. **67.**

See JUSTICE OF PEACE—PROBABLE CAUSE—PROCEDURE—WARRANTY.

FALSE PRETENCES

See CRIMINAL LAW.

FAMILY COUNCIL

Composition of.—Que la composition d'un conseil de famille en partie par des amis lorsqu'il y a suffisamment de parents, et la nomination d'un tuteur étranger, ne sont pas des causes de nullité absolue, mais seulement relative, et ne peuvent être invoquées utilement que lorsque la chose a été faite frauduleusement et au préjudice des droits des mineurs.—LORANGER, J,, 30 MAI 1884, *Banque Jacques-Cartier vs Pinsonnault.* **I,** S. C. **18.**

Que dans un conseil de famille composé d'amis, le défaut d'y avoir convoqné tous les parents et allies résidant dans le district, n'entraine pas la nullité des actes de l'assemblée, si d'ailleurs les parents n'y ont pas été systématiquement exclus et si cela ne cause aucun préjudice aux mineurs.—TASCHEREAU, J., 22 NOV. 1884, *Caty vs Perrault.*

I, S. C. **131.**

The fact that all the relations residing in the district were not summoned to a family council, will not render the proceedings null where the omission to summon all the relations was not intentional, and no prejudice was caused thereby to the minors.—MONK, TESSIER, CROSS, BABY, JJ., 26 MAY 1886, *Caty vs Perrault.* **IV,** Q. B. **451.**

CITATIONS.—7 *Demolombe, Nos.* 323, 328 *et* 329—*Sirey,* 1848, *1ère partie, p.* 177 — *Ibidem, 2e partie, p.* 157 — *Rivière, Jurisprudence, p.* 217, *No.* 108 — *Revue Critique, vol.* 1 *p.* 175.

Irregularities.—Que l'ordonnance judiciaire prononçant sur l'avis du conseil de famille, couvre toutes les irrégularités antérieures de manière à protéger les tiers spécialement dans une vente de biens de mineur —TASCHEREAU, J., 22 NOV. 1884, *Caty vs Perrault.* **I,** S. C. **131.**

The order of the judge or prothonotary on the advice of a family council covers all antecedent irregularities, so as to protect the rights of third parties.—MONK, TESSIER, CROSS, BABY, 26 MAY. 1886, *Caty vs Perrault.*

IV, Q. B. 451.

CITATIONS.—7 *Demolombe, Nos.* 189, 190, 191, 231, 232.

FERRY BOAT

See CONSTITUTIONAL LAW.

FILIATION

Illegitimate child.—Claim for maintenance.—Evidence of filiation.—Commencement of proof in writing.—Obligation of parent deceased.—The tutor to a natural child whose reputed father died before the birth of the child, sued the heirs of the deceaser for maintenance. The heirs (father and mother, and brothers and sisters of the deceased) had received $1,200 in all from the succession. The action was dismissed by the Court below for want of proof, were upon the Court of Review reversed this judgment and ordered the examination of the defendants on oath. It was elicited from them that the deceased, shortly before his death, declared himself to be the father of the child, then unborn.

That the admissions of the defendants, showing that the deceased acknowledged the paternity of the child, were equivalent to a commencement of proof in writing, and established the filiation of the child; and this evidence which was expressly authorized by the previous judgment of the Court of Review was legal.

That although the defendants inherited their respective shares before the birth of the child, the obligation of the father for maintenance, art. 240, C. C., devolved upon them as his heirs, and as having accepted his succession.

That their obligation, in this respect, was not joint and several.

(Mathieu, J., diss.) That the obligation to furnish ali-

ment does not extend beyond what the heirs respectively have received from the succession.—JETTÉ, GILL, MATHIEU, 31 MAI 1889, *Miller vs Lepitre.* **V, S. C. 346.**

CITATIONS.—*Guyot, Repert. vo- Aliments, pp.* 318, 319—4 *Laurent Nos.* 23, 24—*C. C.* 1121, 1124, 1126, 1127—*Fournel, Traité de la séduction, pp.* 55, 59, 83, 84, 115, 116, 193, 199, 213—6 *Toullier No.* 799—*Lauzon v. Connaissant,* 5 *L. C J.* 99—*Valiquette v. Valiquette,* 8 *L. N.* 61—*Ranger vs Chevalier,* 5 *L. C. R.* 180—3 *Laurent No.* 418—*Kingsborough v. Pound,* 4 *Q. L. R.* 11—*Lizotte vs Descheneau,* 6 *L N.* 170—*Denault vs Bauville,* 7 *L. N.* 149—2 *Duranton, No.* 407—*Turcotte vs Nacké, Q. L. R.* 196.

Identity.—Que l'adjudicataire d'un immeuble substitué, autorisé a garder entre ses mains partie du prix de l'adjudication jusqu'à l'ouverture de la substitution sous condition de la rapporter lors de cette ouverture, est lié par la reconnaissance faite pas ses auteurs, de l'état civil du grevé qui demande le rapport des deniers.—DORION, CROSS, BABY, CHURCH, JJ., 20 SEPT. 1887, *Beaudry & Chevalier.*

III, Q. B. 159.

FOLLE ENCHERE

See PROCEDURE.

FORCE MAJEURE

See RESPONSIBILITY.

FOREIGN CORPORATION

See PROCEDURE—QUALITY TO SUE.

FOREIGN JUDGMENT

In an action on the exemplification of a foreign judgment, where the defendant pleaded "that no judgment as set up by plaintiff has ever been legally rendered against this defendant for any cause set up in the declaration, nor has any judgment been rendered against him as alleged by the plaintiff:" that the burden of proof was on the plaintiff to establish the identity of the defendant with the person against whom the foreing judgment had been obtained.

That where the defendant denied, not the contents of the exemplification of judgment produced, but that he was the person against whom the judgment was obtained, no

affidavit was necessary. — JOHNSON, GILL, MATHIEU, JJ., 30 NOV. 1888, *Bentley vs Stock.* **IV.** S. C. **383.**

CITATIONS.—*Almour & Harris, M. L. R.* 2 *Q. B.* 439—*May vs Ritchie,* 16 *L. C. J.* 81—*Stacey vs Beaudin,* 9 *L. N.* 363.

See PRESCRIPTION.

FORGERY

See CRIMINAL LAW—EXTRADITION.

FORFEITURE OF SHARES

See BUILDING SOCIETY—CORPORATION.

FRANC ET QUITTE

See SALE.

FRAUD

I.—CONVEYANCE OF REAL PROPERTY.
II.—PERSON PURCHASING PROPERTY OF RELATIVE AND AGREEING TO PAY HIS DEBTS—COMPOSITION NOTES — CREDITOR IGNORANT OF SUCH PURCHASE.
III.—PRINCIPAL AND AGENT — TRANSFER OF FIRE INSURANCE — CONTRACT—AGENT—POWERS OF.
IV.—SALE OF BOOK DEBTS.
V.—SIGNATURE TO DOCUMENT OBTAINED BY FRAUD.

See GARNISHEE — INSOLVENCY — INSOLVENT ACT INSURANCE (FIRE) — PROMISSORY NOTE — WARRANTY—ATTORNEY.

1. Conveyance of real property.—That an onerous deed of conveyance of real estate followed by possession, will not be set aside at the suit of a chirographary creditor as fraudulent and simulated where the transferor was perfectly solvent at the time the deed was made, through his circumstances became embarrassed before the same was registered four years subsequently.

That the date of the deed which was sous seing prive might be established against a third party by legal proof, and was so proved in the present case.—DORION, TESSIER, CROSS, BOSSÉ, JJ., 23 JAN. 1889, *Eastern Townships Bank & Bishop.* **V,** Q. B. **216.**

CITATIONS.—*Drouin vs Hallé* 7 *Q. L. R.* 146.

2. **Person purchasing property of relative and agreeing to pay his debts.—Composition with creditor ignorant of such purchase.**—That a person who buys the property of his brother in law in order to assist him, agreeing to pay his debts (which exceed the value of the property) may licitly contract with a creditor who does not know of the sale, to take less than the face value of the debt, more especially where the creditor had previously endeavored to sell the debt at such reduced amount, and the transaction is advantageous to him.—MONK, RAMSAY, TESSIER, CROSS, BABY, 20 NOV. 1882, *Blouin vs Brunelle.* **IV,** Q. B. **399.**

3. **Principal and agent.—Transfer of fire insurance.—Contact.— Agent.— Powers of.** — The defendant, an insurance broker, was the agent of two insurance companies, one of which instructed him to cancel a certain risk in Montreal. After asking for a reconsideration, and the order being repeated, he complied, and then transferred the insurance to the other company for which he was agent. He did this without the knowledge of the insured. The same day a fire occurred, and the loss was paid by the company to which the insurance was transferred. In an action by the latter against the agent, for fraudulently making them responsible for the loss.

That the transfer of the insurance was made by the defendant in good faith, and in accordance with the custom of insurance brokers in Montreal, and although not authorized by the insured, it was competent for the agent to act as mandatary of the company and of the insured.—WURTELE, J., 14 NOV. 1889, *Connecticut Fire Ins. Co. vs Kavanagh.* **V,** S. C. **262.**

CITATIONS.—*Troplong, Mandat, No.* 412—*Boileux, sur art.* 1992 *C. N. p.* 587.

The defendant, an insurance broker, was the agent in Montreal of two foreign insurance companies, one of which instructed him to cancel a certain risk in Montreal, which the defendant had accepted. After suggesting a reconsideration and the order being repeated, he complied, and he then immediately transferred the insurance to the other company for which he was agent, without informing them that the

risk had been refused by the first company He made the transfer, moreover, without the knowledge of the insured and without notice to them. On the same day a fire occurred in the premises insured, and the loss was paid by the company to which the insurance had been transferred. In action afterwards brought by the latter against the agent, to be reimbursed the amount of the loss, which they alleged they had paid without cause, and upon false representations by the agent:

(Affirming the judgment of Wurtele, J. M. L. R. 5 S. C. 262). That the transfer of the insurance being made by the defendant in good faith, before the fire occurred, and in accordance with the custom of the insurance brokers in Montreal, there was no fraud on his part, and he could not be held liable.—BABY, BOSSÉ, DAVIDSON, CIMON, JJ., 16 APRIL 1891, *Connecticut Fire Ins. Co. & Kavanagh.* (Confirmed by Privy Council 15 L. N. 308). **VII,** Q. B. **323.**

CITATIONS — *Goodwin v. L. F. & L. Ins. Co.* 18 *L. C. J.* 1—*Tough v. Provincial Ins. Co.* 20 *L. C. J.* 168—*May, on Insurance p.* 137 § 125—*Angell, on Fire Ins. p.* 509 § 467—*Wharton Commentaries on Principal and Agent,* § 56—*Dunlap's Paley on Agency p.* 33 § 33 *and note* — *Story, on Agency* § 28, 31, 210, 211 *et* 213 —*Parsons, on Contracts, vol. I p.* 86—*II Bedarride, No.* 1226—*IV Troplong du Mandat, p.* 383 *No.* 396 — *Gifford v. Queen Ins. Co.* 1 *Hannay* (*N. B.*) 432—*Ogden vs Montreal Fire Co.* 3 *U. C. C. P.* 497.

4. Sale of book debts. – Qu'une personne qui a déjà acheté à l'enchère publique, d'un curateur à une faillite, les livres et créances du failli, et qui fait revendre ces mêmes créances à l'encan public par un encanteur, après avoir fait dans les livres des fausses entrées et avoir préparé une liste fausse, y incluant des comptes qui n'ont jamais existé ou qui avaient été payés, sur laquelle liste la vente publique aurait eu lieu, commet un dol suffisant pour entacher la vente de nullité ; et que cette vente sera annulée quand même il serait prouvé qu'elle a eu lieu sans garantie aucune, pas même de l'existence des créances.—MATHIEU, J., 8 MAI 1889, *Perrault vs Tessier.* **V,** S. C. **102.**

5. Signature to document obtained by fraud. —Where a signature to a covenant of sale was obtained by deception and misrepresentation by pretending that a condition previously objected to by the party signing had been removed

from the agreement, that the agent who procured the signature was not entitled to recover the commission stipulated in such agreement.—DAVIDSON, J., 19 DEC. 1889, *Land and Loan Co. vs Fraser.* **V, S. C. 392.**

FRAUDULENT DEED

Real estate estimated to be worth about $1200 was sold to a person without means for a consideration stated in the deed to be $3650. No money was paid, and the vendors remained in possession. The vendee executed a deed of obligation and hypothec in favor of the vendors for the unpaid instalments. Two of these instalments amounting to $2000 were subsequently transferred by the vendors to W. in payment of goods.

That the sale of property and the oligation and hypothec in favor of the vendors being simulated and fraudulent, W. was entitled to have the deed of obligation and hypothec from the vendee to the vendors set aside as regards him (the vendee being a party to the suit), and to ask that the vendors be condemned to pay for the goods as his personal debtors.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 9 DEC. 1884, *Black & Walker.* (Affirmed by Supreme Court). **I, Q. B. 214.**

FRAUDULENT SALE

See SALE.

FREIGHT

See SHIPPING.

FRUIT AND REVENUES

See DOWER.

FUTURE RIGHTS

See EVOCATION—PROCEDURE.

GAMING CONTRACT

Time bargains are not necessarily illegal, nor does the law refuse to enforce them if they are made for serious

transactions intended to be fulfilled, although it may happen, contrary to the expectation of the parties, that they are not really carried out as contemplated, but from unforeseen causes come to be settled by differences. But, if in contemplation of the parties, they are at their inception intended to be speculative transactions, to be settled by adjustment of prices according to the rise or fall of the market, and not by delivery of the subjects bought or sold, they become gambling transactions, and, under C. C. 1927, there is no right of action for the recovery of money claimed thereunder.

Where brokers act for a person contracting as above to deliver grain at a future date (but without intention to make actual delivery) and the brokers, having full knowledge of the fictitious character of the transaction, disclose no purchaser or principal, they will be considered principals as regards the party contracting to deliver, and no action will lie by the brokers for the recovery of a deficiency upon the transaction. — DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 22 MARCH 1886, *McDougall & Demers.* **II, Q. B. 170.**

CITATIONS.—*Troplong, mandat no.* 30.—*I Paul Pont, Petits contrats p.* 323, *no.* 650 *in fine*—*Mollot: p.* 389, *No.* 485 — *Thacker v. Hardy L. R.* 4 *Q.B. D. p.* 685 —*Read v. Anderson L. R.* 10 *Q. B. D. p.* 100.

See PROMISSORY NOTE.

GARANTEE

See WARRANTY.

GARNISHEE

In determining whether a declaration was made by a garnishee fraudulenty and collusively, the principle applicable is, that it is only when an act operates a prejudice to legal rights that the motive can be questioned, and it is only a party who has been prejudiced that is entitled to complain. The facilitating of legal remedies by a debtor in favor of his creditors does not amount to fraudulent collusion. And in the present case, there was sufficient evidence of the indebtedness declared by the garnishee, apart from the exis-

tence or validity of the lease referred to in the case. — Do ion, Tessier, Cross, Baby, JJ., 26 march 1888, *Fairbanks & O'Halloran.* **IV, Q. B. 163.**

See SAISIE ARRET.

GARNISHMENT

Qu'un tiers qui a reçu signifiation d'une saisie-arrêt et qui subséquemment paie ce qu'il doit au défendeur, même en payant à l'huissier porteur d'un bref d'exécution et sous la menace de la saisie de ses biens par le défendeur, doit être condamné à payer de nouveau la même dette au demandeur saisissant par la saisie-arrêt. — Tellier, J., 28 avril, 1888, *Lalonde vs Archambault.* **VI, S. C. 62.**

See PROCEDURE—SAISIE ARRET.

GIFT

See DONATION.

GIVING IN PAYMENT

See DONATION.

GUARDIAN

See PROCEDURE.

GUARANTEE COMPANY

See INSURANCE (GUARANTEE).

H.

HABEAS CORPUS

1. Appeal from judgment of the Superior Court—Jurisdiction—That the Superior Court and the judges thereof having concurrent jurisdiction with the Court of Queen's Bench in matters of habeas corpus ad subjiciendum there is no appeal to the Court of Queen's Bench sitting in appeal from the judgment of the Superior Court, or of a judge thereof, in

such matters. — DORION, TESSIER, CROSSE, BABY, BOSSÉ. *Grande Ligne & Morrissette* **VI,** Q. B. **130.**

CITATIONS.—*Cooper vs Tanner*, 8 *L. C. J.* 113—*Rivard vs Goulet*, 1 *Q. L. R.* 174—*Stoppelben vs Hull*, 2 *Q. L. R.* 255—*Reg. vs Hull*, 3 *Q. L. R.* 136—*Reg. vs McConnell*, 5 *L. N.* 386—*Exparte Ham*, 6 *L. N.* 115—*Barlow & Kennedy*, 17 *L. C. J.* 253—4 *Pandectes Franc, p.* 328—6 *Demolombe, p.* 231, *Nos.* 303 *et seq.*— 4 *Laurent, p.* 367 — 2 *Chardon, Puissance Paternelle, No.* 18 *p.* 17 — *Pothier, Des Personnes, tit VI, sect. II*—2 *Toullier, Nos.* 1046 *et* 1047—*Hurd, on Habeas Corpus, p.* 527 *sect. VIII.*

2. In civil matters—**Magistrate's Court Montreal—Illegal order of imprisonment.**—That the Magistrate's Court for the district of Montreal, established under the authority of 32 Vict. c. 23, now Arts 2498 et seq. R. S. Q. is a court of inferior jurisdiction.

Where an order made by an inferior Court, is manifestly illégal, as where the guardian of goods under seizure is condemned to be imprisoned until he gives up the goods or pays the value thereof, and the value is not mentioned in the order, the discharge of the person imprisoned under such order, will be ordered, upon a petition for a writ of habeas corpus.—DORION, J., 9 JAN. 1891, *Ex parte Stephens.* **VII,** Q. B. **349.**

CITATIONS.—*Common Bench, Reports, vol.* 10, *p.* 8 — *Goff's case, Maule & Selwin, p.* 225—*Langlois vs Normand*, 6 *Q. L. R.* 162—*Fourkin et al.* 16 *L. C. J.* 103 —*Duvernay & Côté* 19 *L. C. J.* 248—*Exparte Lavoie*, 5 *L. C. R.* 99—*Donaghue*, 9 *L. C. R.* 285.

3. Process in civil maters.—A person imprisoned under a writ of contrainte par corps, for failing to produce effects of which he had been appointed guardian, petitioned for a writ of habeas corpus, on the ground that the warrant under which he was committed contained no enumeration of the effects he was required to produce.

That the petitioner being imprisoned under process in civil matters, the Court had no authority to grant a writ of habeas corpus. C. C. P. 1052.—DORION. TESSIER, CROSS, BABY, 22 NOV. 1886, *Ez parte Ward.* **II,** Q. B. **405.**

See EXTRADITION.

CITATIONS.—*Ex-parte McCaffrey*, 3 *L. N.* 106—*Ex-parte Donaghue*, 9 *L. C. R, p.* 285.

HARBOUR COMMISSIONERS

The jurisdiction of the Harbour Commissioners of Montreal within certain limits does not exclude the right of the city to tax and control ferry-boats within such limits.—Dorion, Tessier, Cross, Baby, JJ., 26 march 1887, *Cie de Navigation de Longueuil vs Cité de Montréal.* (Reversed by Supreme Court 15 S. C. R. 566). **III,** Q. B. **172.**

HEALTH, BOARD OF

In any case an action will not lie against the City of Montreal, for acts done by the central and local boards of health established under the authority of the provincial. legislature. — Torrance, Mathieu, Mousseau, JJ., 4 nov. 1885, *Municipalité St. Louis du Mile End vs Montreal.* **II,** S. C. **218.**

Citations.—*Dillon's Municipal Corporation, vol.* 1 *No.* 141.

HORSE

See LIEN—LEASE.

HOSPITAL

See ACTION EN DÉNONCIATION DE NOUVEL ŒUVRE.

HOTEL-KEEPER

Where a hotel-keeper retains in his custody baggage belonging to a traveller during his absence from the hotel and gives a chek or receipt therefor, it is considered a necessary deposit, and his responsibility as hotel-keeper still subsists; and the value of baggage so deposited may be proved by the oath of the traveller.

A hotel-keeper is not liable for the value of the effects so retained in his custody when he proves that they were lost or destroyed by inevitable accident, such as purely accidental fire, in the confusion caused by which the effects were stolen. — Pagnuelo, J., 23 feb. 1891, *McElwaine vs Balmoral Hotel.* **VII,** S. C. **139.**

Citations.—*Pelland vs C. P. R., M. L. R. VII, S. C.* 131—*Hogan vs G. T. R.,* 2 *Q. L. R.* 142.

See INN KEEPER—RESPONSIBILITY.

HUSBAND AND WIFE

I.—Action by husband.
II.—Action by wife for personal wrongs.
III.—Action in nullity of marriage.
IV.—Authorization of wife.
V.—Household expenses.
VI.—Insolvency of husband—Liability of wife separated as to property.
VII.—Gift during marriage.
VIII.—Marchande publique.
IX.—Married woman.
X.—Nullity of convenants during the marriage in respect of rights of the consorts.
XI.—Purchase of necessaries for family.
XII.—Replacement of propre—Action by wife's executor to recover a propre.
XIII.—Separation de corps—Grounds for separation—Ill treatment.
XIV.—Wife commune en biens.
XV.—Wife giving security for husband's debt.

See ACTION—MARRIED WOMAN—PROMISSORY NOTE—SEPARATION DE BIENS—SÉPARATION DE CORPS—PROCEDURE.

1. Action by husband.—That the condition annexed to a bequest of money to a married woman, commune en bien that it shall not be subject to the control of her husband, and shall be for aliment and not subject to seizure, is valid, and an action by the husband in respect of such money will not be maintained.—Torrance, J., 17 June 1885, *Minto vs Foster*. **I,** S. C. **472.**

Citations.—*Coutume de Paris*, 233—3 *Grand Cout, p.* 346—*J. G. vo. Comm. Conjugale*, 370, 571, 572—1 *Troplong, Mariage, No.* 68—21 *Laurent, No.* 276.

2. Action by wife for personal wrongs.—A married woman, authorized by her husband, can bring an action of damages in her own name for personal wrongs.—Monk, Ramsay, Tessier, Cross, Baby, JJ., 30 juin 1886, *Waldron & White*. **III,** Q. B. **375.**

Citations.—*Brodie v. Cowan* 7 *L. C. J, p.* 96—*Pothier vol,* 7 *p.* 24.

3. Action in nullity of marriage—Costs.—Que la femme poursuivie en nullité de mariage a droit à une provision

pour frais du procès, et que cette provision doit être proportionnée à ses besoins et aux facultés du mari.—MATHIEU, J., 4 OCT. 1888, *Tombyll vs O'Neill.* **V,** S. C. **101.**

4. Authorization of wife.—Que le défaut d'autorisation de la femme mariée pour ester en justice doit être plaidée par exception à la forme, et que cette informalité est couverte par la comparution du défendeur et son défaut de l'invoquer dans le délai de la loi.

Qu'il faut, procéder par exception à la forme, même dans le cas où la demanderesse allègue qu'elle est autorisée, et où le défendeur nie le fait de cette autorisation. Un plaidoyer au fond contenant ces moyens sera rejeté sur motion.

Examen de la doctrine de l'autorisation nécessaire à la femme pour ester en justice et sur l'effet du défaut d'autorisation. — TORRANCE, PAGNUELO, JETTÉ, JJ., 30 NOV. 1880, *Thomas vs Charbonneau.* **I,** S. C. **253.**

CITATIONS.—*Pothier, oblig. No.* 51—8 *Demolombe, minorité, titre* 2, *Nos* 658-660 *p.* 423 —1 *Bourjon, p.* 76 *No.* 12 *ch.* 4, *S.* 1 *Dist.* 2—1 *Pigeau* 160, 77, 163—2 *Rousseau et Laisney, vo. autorisation maritale, Nos.* 52 *et* 53-193—5 *Aubry et Rau* § 472 (7e) *p.* 165—4 *Demolombe, Mariage, titre,* 2 *No.* 351, *p.* 430—*Massé et Verger vol. I* § 134 *p.* 244 *note* 67 *et p.* 237, *note* 4—1 *Bourjon p.* 579—*Duplessis vol. I p.* 385—*Merlin, Rep. vo Autor, Marit, sec.* 3 § 4—2 *Rousseau et Laisney, vo Autorisation de la femme, No.* 197.

In an action against a married woman separate as to property, where husband and wife have appeared jointly by the same attorney, a petition by the wife to quash the writ of attachment before judgment issued in such suit is null and without effect, if the husband has neither joined with her in such petition nor specially authorized her for the purpose thereof; and the petition will be dismissed on demurrer.—WURTELE, J., 9 APRIL 1891, *Duncan vs Foy.* **VII,** S. C. **186.**

5. Household expenses.—Where a wife séparée de biens living with her husband, orders goods for the maintenance of the family, and they are charged to her in the books of the vendor, and her husband is without means that she is liable for the whole cost thereof under the provisions of C. C. 1317.—LORANGER, J., 14 MARCH 1885, *Merrill vs Griffin.* **I,** S. C. **335.**

CITATIONS.—*Hudon vs Marceau,* 23 *L. C. J.* 45.

(Affirming the decision of Loranger, J., M. L. R. 1 S. C. 335). Where a wife séparée de biens living with her husband, orders goods for the maintenance of the family, and the goods are charged to her in the books of the vendor, and the husband is without means, the wife is liable for the whole cost thereof, under the provisions of C. C. 1317, notwithstanding the fact that by the marriage contract the husband alone was bound to pay the expenses of the household. — DORION, TESSIER, CROSS, BABY, JJ., 24 JAN. 1887, *Griffin & Merrill.* (Same authorities as above).

III, Q. B. **130.**

6. Insolvency of husband–Liability of wife separated as to property.—That in the absence of a special agreement, a wife separate as to property is not responsible for rent of a house occupied by the family during the insolvency of the husband.—JOHNSON, GILL, TAIT, JJ., 31 DEC. 1889, *Harwood vs Fowler.* **VII,** S. C. **363.**

CITATIONS.—*Hudon v. Marceau* 23 *L. C J.* 45—*Paquette & Guertin* 2 *L. N.* 211 —*Bruneau, & Barnes* 3 *L. N.* 301—*Lefaivre v. Guy,* 3 *Dec. d'Ap.* 255—*Gibbon v. Morse,* 21 *L. C. J.* 311.

7. Gift during marriage.—Que le mari peut plaider à cette demande en partage qu'il avait fait don à sa femme, durant le mariage, des dits meubles, par personne interposée et que cette donation est nulle, et par conséquent ces meubles n'ont cessé de lui appartenir. — PAGNUELO, J., 12 NOV. 1889, *Evans vs Evans.* **V,** S. C. **414.**

8. Marchande publique.—Que la femme séparée de biens et marchande publique peut poursuivre en dommages pour des faits relatifs à son commerce sans être autorisée par son mari ou par le juge.—MATHIEU, J., 13 OCT. 1884, *Méthot vs Dunn.* **I.** S. C. **224.**

Que lorsqu'un demandeur reconnaît dans son action la qualité de femme séparée de biens à la défenderesse, il ne peut ensuite contester cette même qualité.

Qu'une femme mariée, non séparée de biens, et qui fait commerce comme marchande publique, ne s'engage pas personnellement, mais seulement comme commune.

Que la renonciation à la communauté de biens que fait

une femme en se séparant de biens judiciairement d'avec son mari, la libère entièrement de toutes les obligations qu'elle a pu encourir comme commune en biens avant la séparation.—JETTÉ, J., 27 JUIN 1887, *Bourgouin vs Roy.* **III,** S. C. **168.**

Qu'un mari, dont la femme, marchande publique tient au domicile commun un commerce sous le nom du mari seul, et qui achète des marchandises pour le commerce de sa femme, mais en son nom personnel, sans que le vendeur sache que c'est pour sa femme, est responsable du montant vis à vis de l'acheteur.—WURTELE, J., 20 MAY 1890, *Adams vs. Brunet.* **VI,** S. C. **241.**

9. Married woman.—That a promissory note, made by a wife séparée de biens, jointly and severally with her husband, is null and of no effect as regards the wife, such an obligation being prohibited by the terms of art. 1301 C. C. —JOHNSON, PAPINEAU, LORANGER, JJ., 31 MAY 1886, *Chapdelaine vs Vallée.* **III,** S. C. **380.**

CITATIONS.—*Buckley & Brunelle,* 21 *L. C. J.* 133—*Pariseau vs Trudeau,* 13 *R. L.* 593.

Separated as to property.—An action to set aside a will is not a matter of simple administration and therefore a wife separated as to property cannot bring such action without the authorization of her husband.

It is not sufficient that the wife alleges in the declaration that she is authorized by her husband. He must be a party to the cause or give his consent in writing.

The want of authorization is a radical nullity which cannot be covered by the husband's ratification or consent given subsequently. — JOHNSON, JETTÉ, MATTHIEU, JJ., 30 DEC. 1890, *Lamontagne vs Lamontagne.* **VII,** S.C. **162.**

CITATIONS.—*Troplong, Contrat de Mariage,* 2e *vol. No.* 1410—4 *Demolombe No* 164—*Rolland de Villargues, vo. Acte d'administration—Ferrière, Coutume de Paris,* 2e *vol. art.* 224—*Guyot, Rep. vo. Autorisation—Dalloz, Rep. vo. Mariage, No.* 773, —*Pothier-Puissance marit. No.* 5—*Dalloz, Rép. vo Cont. de mar. Nos.* 1970, 1971 —*Merlin, vo. Autoris. Marit. sec.* 6, *art.* 3, § 4.

That the making of a reduction in the rate of interest payable on a hypothecary claim, is not a mere act connected with the administration of her property, which a wife separate as to property may do alone without the authori-

zation of her husband, but is in reality a donation, which is null and void unless the husband becomes a party or gives his consent in writing.—Cross, Baby, Bossé, Doherty, JJ., 25 nov. 1890, *Hart & Joseph.* **VI,** Q. B. **301.**

Personal injuries—Right to sue for damages—Accident caused by defect of leased premises. — In an action brought by a married woman in this province, it will be presumed that she is common as to property with her husband, in the absence of proof of her matrimonial domicile or of the law which regulates it.

(Following Waldron & Wight, M. L. R. 3 Q. B. 375). A. married woman, common as to property, may bring an action in her own name authorized by her husband, for personal injuries. — Tait, J., 28 juin 1889, *Simmons vs Elliot.* **V,** S. C. **182.**

Affirming the judgment of Tait, J. M. L. R. 5 S. C. 182. —A married woman, common as to property, or who is presumed to be so in the absence of proof of her matrimonial domicile or of the law which regulates it, may bring an action in her own name, authorized by her husband, to recover damages for bodily injuries.

The owner and lessor of a building is responsible for damages caused by a defect in its construction, to a person rightfully on the premises, e. g. the wife of the lessee.

Semble, where the plaintif alleges that she is separated as to property, the defendant, if not admitting the allegation, ought to deny it specially by his plea. — Cross, Baby, Bossé, Doherty, JJ., 25 nov. 1890, *Elliot vs Simmons.* **VI,** Q. B. **368.**

Citations.— *Waldron & White, M. L. R.* 3 *Q. B.* 475.

10. Nullity of covenants during the marriage in respect of rights of the consorts.—Que la convention entre le mari et le beau-père que le mari et la femme vivraient séparés et que la femme ne poursuivrait point son mari en séparation de corps et de biens et ne réclamerait pas les droits lui résultant du mariage et notamment sa part de communauté est nulle ; le mari, poursuivi en séparation de corps et de biens, peut réclamer du beau-père les biens mobiliers qu'il lui avait abandonnés lors de l'arrangement, à la condition

que sa femme ne le poursuivrait point ; mais dans ce cas, le beau-père peut lui opposer en compensation la valeur de la pension et entretien de la femme. — PAGNUELO, J., 29 NOV. 1889, *Décary vs Pominville.* **V,** S. C. **366.**

CITATIONS.—*Pothier, Obligation, No.* 628—*Demolombe, Contrats, vol.* 5, *No.* 511, *p.* 378, *Nos.* 525, 527, 528—*Desjardins & Massé* 2 *L. C. L. J.*

11. Purchase of necessaries for family. — Qu'à défaut de conventions, la femme, même séparée de biens, qui achète pour les besoins de sa famille et de la maison commune est censée le faire pour et au nom du mari.

Que le marchand outre le crédit donné à la femme dans ses livres, doit établir, au moins par une preuve de circonstances que la femme s'est rendue responsable personnellement lorsqu'elle n'a pas acheté en son propre nom.

Qu'en poursuivant une femme pour les choses nécessaires à la vie, le demandeur doit alléguer et prouver que le mari est incapable de satisfaire à ces réclamations.—TELLIER, J., 30 NOV. 1888, **IV,** S. C. **462.**

CITATIONS.—*Hudon vs Marceau,* 23 *L. C. J.* 49—*Paquette & Guertin,* 2 *L. N.* 211.

12. Replacement of propre—Action by wife's executor to recover a propre. — In an action by the wife's executors against the husband, to recover possession of a propre belonging to her, it is sufficient to allege that the immovable in question was purchased by the wife during her marriage with defendant, with her own money and in her own name with the consent and authority of her husband, the defendant. The omission to state specifically that the immovable was a propre being purchased with the proceeds of a propre to the wife, and in replacement of it, is not fatal to the action.

Where a wife purchases property in her own name and with her own money, in replacement of a propre, a formal acceptance by her of the replacement is not necessary.—TAIT, J., 31 OCT. 1890, *Kennedy vs Stebbins.* **VI.** S. C. **456.**

13. Separation de corps. — Grounds for separation. — Ill treatment.—That isolated acts of ill treatment and insulting expressions applied to a wife by her husband (a carter) are not sufficient to justify a separation de corps, where it ap-

pears that the wife, on the occasions complained of, provoked the anger of her husband by her light behaviour and disobedience to his reasonable command —DORION, CROSS, BABY, BOSSÉ, JJ., 14 JUIN 1890, *Bonneau & Circé.*

VI, Q. B. **335.**

14. **Wife commune en biens.**—Qu'une femme commune en biens ne peut valablement s'obliger avec son mari qu'en qualité de commune; mais qu'une dette contractée par elle, du consentement de son mari, devient une dette de la communauté et, par conséquent une dette personnelle du mari, et peut être poursuivie tant sur les biens de la communauté que sur ceux du mari.

Que la femme commune en biens ne peut pas être poursuivie pour une dette de la communauté pendant sa durée.

Que l'obligation que contracte le mari en cautionnant la dette de sa femme commune en biens, n'est pas un cautionnement, mais un véritable engagement personnel, la femme n'ayant pu s'engager que comme commune, et le consentement du mari en faisant une dette de la communauté et du mari.—JOHNSON, DAVIDSON, DELORIMIER, JJ., 28 JUIN 1889, *Perreault vs Charlebois.* **VI,** S. C. **311.**

CITATIONS.—*de Lorimier, sous art.* 1301.—*Solon, Nullités, vol. I, p. 5, et vol. II, p.* 231.

15. **Wife giving security for husband's debt.**—Qu'une femme séparée de biens et marchande publique n'a pas le droit d'endosser un billet reçu dans son commerce, et de le transporter comme sureté collatérale à un créancier de son mari; ce billet ne pourra servir de base en loi à aucun recours du dit créancier contre la femme. — TASCHEREAU, J., 17 JANV. 1885, *Martin vs Guyot.* **I,** S. C. **181.**

HYPOTHEC

1. **Partial payment—Discharge.**—Qu'un débiteur hypothécaire qui paye une partie de son obligation, a droit d'obtenir de son créancier une quittance et décharge d'hypothèque partielle.—GILL, J., 17 OCT. 1888, *Christin vs Morin.*

IV, S. C. **469.**

2. Rente constituee.—Que depuis la mise en vigueur du code civil, le tiers détenteur d'un immeuble affecté au paiement d'une rente constituée, créée pour le paiement du prix de vente, n'est pas personnellement responsable du paiement de cette rente.

Que ce principe établi par le code civil s'étend à une rente constituée créée par un acte passé avant le code.—*Wright & Moreau.* **I,** Q. B. **456.**

CITATIONS.—*Coutume de Paris, arts.* 99, 100—*Loyseau, Traité du Déguerpissement, liv.* 2, *ch.* 6—*Merlin, Quest. de Droit, vo Arrérages* § 1—9 *Demolombe,* 217.

See PRIVILEGE OF BUILDER–REGISTRATION–SALE.

HYPOTHECARY ACTION

See ACTION—PRIVILEGES AND HYPOTHECS—PRESCRIPTION—REGISTRATION.

ILLEGAL ARREST

Where the respondent converted to his own use certain straw bought by him with money furnished to him by the appellant and intended for the appellant's benefit, that there was probable cause for his arrest.

Where a person lays an information before a justice of the peace, that a crime has been committed for which such justice has general jurisdiction, and the justice grants a warrant, upon which the accused is arrested, but he is afterwards discharged upon the ground that the justice had no authority in that special case, the complainant, if he had probable cause, is not liable in damages for illegal arrest and imprisonment. — MONK, RAMSAY, TESSIER, CROSS, BABY, 25 JAN. 1886, *Copeland & Leclerc.* **II,** Q. B. **365.**

CITATIONS.—*Addison, on Torts p.* 571, 573, 719. *Abrath v N. E. Ry Co. L. R.* 11 *Q. B. D.* 440.

ILLEGITIMATE CHILD

See FILIATION.

IMMORAL CONSIDERATION

See CONTRACT.

IMMOVEABLE

Que le propriétaire d'une bâtisse ou autres améliorations faites sur le terrain d'autrui peut, par l'enregistrement, acquérir une hypothèque sur ces améliorations.

Que ces améliorations sont immeubles. — PLAMONDON, BOURGEOIS, LORANGER, JJ., 4 DÉC 1885, *Prud'homme vs Scott.* **II,** S. C. **63.**

CITATIONS.—2 *Marcadé, p.* 341.

See PARTNERSHIP.

IMPROVEMENTS

See COMMUNITY — CROWN — IMMOVEABLES - SERVITUDE.

IMPUTATION OF PAYMENTS

I.—LIABILITY OF ACCEPTOR.
II.—NOTE DISCOUNTED BY BANK-WHEN HELD TO BE PAID.
III.—NOTE GIVEN AS FRAUDULENT PREFERENCE-KNOWLEDGE BY TRUSTEE.
IV.—PAYMENTS IMPLIED FIRST ON THE INTEREST.
V.—PROMISSORY NOTE-COLLATERAL SECURITY.

1. Liability of acceptor.—J., a customer of the Exchange Bank, respondent, discounted with that Bank appellant's acceptance. When it fell due, appellant failed to pay it, and the Bank charged it to J.'s account, who, at the time, owed the Bank a small balance, which balance was augmented by subsequent transactions, wherein nevertheless if the credits were imputed to the earliest indebtedness, the balance due when the acceptance matured would be more than covered. The Bank retained possession of the acceptance and brought this suit against appellant, the acceptor, to recover its amount. Appellant pleaded payment and compensation.

That the Bank was entitled to recover from appellant the amount of his acceptance, and that appellant was not discharged by the credits in the Bank's account with J. — DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 17 SEPT. 1887, *Goodall & The Exchange Bank.* **III,** Q. B. **430.**

2. Note discounted by bank—When held to be paid.—That the rule contained in art. 1161 C. C. (that the imputation of payment is made upon the oldest debt) applies to an account between a bank and a customer; and so, where the amount of a note discounted by a bank for the endorser was charged on maturity to the endorser's account, and the deposits subsequently made by the endorser, as shown by the books of the bank, were more than sufficient to cover his indebtedness to the bank at the time the note matured, such note must be held to have been paid, and the bank has no action thereon against the maker who has paid the endorser (but without obtaining possession of the note); and the fact that the endorser's aggregate indebtedness to the bank has continued to increase does not affect the question of payment of the note referred to, in the absence of a reserve of recourse by the bank thereon.—DORION, TESSIER, CROSS, BABY, JJ., 21 JAN. 1887, *Cleveland & Exchange Bank.*

III, Q. B. **30.**

CITATIONS.—4 *Aubry et Rau* § 320 *p* 167—*Dagle v Gaudette* 20 *T.* 134.

3. Note given as fraudulent preference—Knowledge by trustee.— Where J. R., trustee to an insolvent estate, is member of a firm holding insolvents' note, given it in illegal preference, and where the purchasers of the estate having appointed the insolvent, their agent, for the purpose of realizing its assets, the latter pays the proceeds to J. R.

On suit brought by trustee esqualité against purchasers for balance of price, that the moneys so paid will be imputed on account of the debt due trustee by purchasers.

That the knowledge by J. R. of the illegal preference which came to him as a member of the firm is a knowledge by him in his capacity of trustee. — DORION, TESSIER, CROSS, CHURCH, JJ., 22 NOV. 1887, *Ross & Paul.* **III,** Q. B. **299.**

4. Payments imped first on the interest.— Where the credits for each year, in an account current, are in excess of the amount of interest charged for the year, it cannot be pretended that compound interest has been charged, inasmuch as (under C. C. 1150) payments made by a debtor on account are imputed first on the interest.—DORION, MONK, CROSS, BABY, 26 MAY 1886, *Dudley & Darling.*

II, Q. B. **458.**

5. Promissory note.—Where a bank took a note endorsed by a customer as security for past advances amounting to about $10,000 and after the maturity of this note, deposits amounting to more than $100,000 were passed to his credit in the books of the bank.

That in the absence of any special imputation of payments or reserve as to the application of the subsequent deposits, these deposits were to be imputed in payment of the oldest debt, and the customer's liability at the maturity of the collateral security being more than paid by the subsequent deposits, the collateral was discharged, and bank's action against the maker and first endorser of said note would be dismissed. — DOHERTY, J., 14 MAY 1887, *Exchange Bank vs Nowell.* **III, S. C. 129.**

CITATIONS.—*Cleveland & The Exchange Bank. M. L. R.* 3 *Q. B.* 30.

INCORPORATED CITY

See PRESCRIPTION.

INDIANS—INDIAN ACT

That the rights of indians are regulated and determined by the Indian Act, (R. S. C. ch. 43), and not by the common law, which does not apply to them.

That a tutor, to an indian minor, should be appointed through the ministry of the superintendent general of Indian affairs, as indicated in said act. (sec. 20 subsec. 8) and such tutorship conferred by the prothonotary in the ordinary way, is of no effect. — TASCHEREAU, J., 14 APRIL 1891, *Tiorohiato vs Toriwaieri.* **VII, S. C. 304.**

That the sections of the Summary Convictions Act, 2 R. S. c. 178, relating to appeal are applicable to convictions under the Indian Act, 1 R. S. c. 43.

That except as to objections upon the face of the record, the respondent ought to begin.

That an exception contained in the clause enacting the offence ought to be negatived, but if it be in a subsequent clause or section it is matter for defence and need not be negatived; but this would not necessarily make the conviction illegal (2 R. S. C. 108, sec. 88.)

That in the circumstances of this case, Montour (the Indian to whom liquor was supplied) was a witness other than the informer or prosecutor. — DAVIDSON, J., 19 DEC. 1887, *Ex parte Lefort.* **III,** S. C. **298.**

CITATIONS.—*R v. Hall* 1 *T. R.* 320—*Steel v. Smith,* 1 *B. and Ald.* 94—*Dwarris on Stat.* 119.

See PROCEDURE.

INDICTMENT

See CRIMINAL LAW.

INEVITABLE ACCIDENT

See RESPONSIBILITY.

INJUNCTION

I.—DISPUTED TITLE.
II.—INJUNCTION AGAINST MINOR—ACTION EN DENONCIATION DE NOUVEL ŒUVRE.
III.—POLLUTION OF RUNNING WATER.
IV.—TO PREVENT ENCROACHMENT—BOUNDARIES NOT DETERMINED —BORNAGE.

See DAMAGES — NUISANCE — NAME — MUNICIPAL LAW — PATENT — PROBABLE CAUSE—RAILWAY.

1. Disputed title.—The Court will not, as a general rule, decide a question of title upon a writ of injunction, more especially, when there is a third party interested (here the Government of Quebec) who is not a party in the cause.—DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 23 SEPT. 1887, *Gilmour & Paradis.* **III,** Q. B. **449.**

2. Injunction against minor — Action en dénonciation de nouvel œuvre.—That the provisional injunction or restraining order is assimilated to the writ of mandamus, and exists in our law in cases other than those specified in the Act. 41 Vict. cap. 14 (Q).—LORANGER, J., 30 OCT. 1888, *Crawford vs The Protestant Hospital.* **IV,** S. C. **215.**

See ACTION EN DENONCIATION DE NOUVEL ŒUVRE.

3. Pollution of running water.—That where the proprietor of a tannery, for the purposes of his industry, makes such use of a private watercourse as to render the water unfit for domestic purposes and dangerous to health, and to deprive proprietors of land bordering on said stream of the use and enjoyment of same, damages will be granted against him.

Under the above circumstances, the Court will grant an injunction against such use of stream.—JOHNSON, J., 30 OCT. 1886, *Weir vs Claude.* **II.** S. C. **326.**

CITATIONS.—*C. C. L. C.* 549 550—*C. N.* 690 691—*Coutume de Paris art.* 186 —*Coquille, sur Nivernais, tit. des maisons — Guyot, Rep. vo. Cours d'eau—Nouveau Denizart vo. Cours d'eau p.* 651, *no* 3—*Sirey. C. N. art.* 644 — *Maleville vol II p.* 101—*XI Demolombe pp.* 43, 206—*Lalaure, Traité des Servitudes p.* 654—*Garnier Regime des Eaux vol. I p.* 202, *vol III p.* 18. — *Proudhon Domaine public, vol IV p.* 137 — *Demante, vol I p.* 573 — *Duranton, vol V p.* 159 — *Masse et Verger, sur Zach, vol II p.* 157—*III Aubry et Rau p.* 10, 51 — *Daniel, Cours d'eau vol II p.* 412-18—*Dalloz, Rep. Gen. vo. Servitude ch.* 4 § 79-80 — *Angell, Watercourse s.* 136—*Coulson & Forbes, Waters p.* 150—*VII Laurent* 354—*Minor & Gilmour I.V L. C. R.* 115 — *Allen's Reports vol XIII p.* 103 — *Bigelow, Leading Cases,* 465— *Addison, Law of Torts* (1874) *p.* 33 — *Addison, Law of Torts,* 117 — *Cooley, on Torts,* 46 — *Daniel vol II p.* 416 — *Pardessus, Servitude vol I p* 130—*Coulson & Forbes, Waters p.* 150—*Marcadé p.* 354—*Pardessus, Servitude, vol I par.* 65.

The appellant and his predecessors had from time immemorial, carried on the business of tanning leather in Côte des Neiges, that being the principal industry of the village. A small stream, which runs through the lands of both parties, and which was partly used as a drain received certain noxious substances from the tannery. The respondent, who had, within a few years acquired a lot ten or fifteen arpents lower down,—and with knowledge of the industry long established in that place,—complained of the pollution of the stream by the substances from the tannery and asked for an injunction. There were others proprietors between the parties, but the respondent alone complained of the nuisance. The effect of the injunction, if granted, would be to destroy the principal industry of the locality.

(Reversing the judgment of the Superior Court M. I. R. 2 S. C. 326). That the appellant was not entitled to the injunction.—DORION, TESSIER, CROSS, CHURCH, JJ., 20 JUNE 1888, *Claude & Weir.* (Jgt. in appeal confirmed by Supreme Court 16 S. C. R. 575). **IV, Q. B. 197.**

CITATIONS.—*Allen's Reports vol* 13 *p.* 103 — *Bigelow, Leading Case—Addison, Law of Torts, p.* 33 *edit.* 1874 *et p* 117—*Cooley, pp.* 46 *et* 47—7 *Marcadé* 367—*Daniel vol.* 2, *pp.* 416, 417, 411—*Pardessus, Servitudes, vol.* 1*er, p.* 130, *Nos.* 54, 65, 86 *et* 91—*Macarel, Ateliers dangereux, p.* 16—*Lalaure, Traité des Servitudes, p.* 654—*St. Charles & Doutre,* 18 *L. C. J.* 253—*Proudhon, Domaine Public, vol.* 4, *No.* 1240—2 *Aubry et Rau,* 194—*Rolland de Villargues, vo. Voisinage, No.* 5—6 *Laurent,* 195—12 *Demolombe, p.* 150, *No.* 658.

4. To prevent encroachment.—That the remedy by writ of injunction does not lie where another adequate remedy exists; and so, in the case of a dispute between adjoining proprietors of mining lands where an encroachment is complained of, and it appears that the limits of the respective properties have not been legally determined by a bornage, an injunction will not lie to prevent the alleged encroachment the proper remedy being an action en bornage. — LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 26 NOV. 1891, *Anglo Continental & Emerald Phosphate.* **VII,** Q. B. **196.**

CITATIONS.—*High, on Injunctions vol I p.* 7, *sec* 8—*White & Whitehead* 7 *L. N. p.* 292—*Delaney & Guilbault* 19 *R. L p.* 544 — *Robertson & Stewart* 13 *L. C. R. p.* 462—*Harbour Commissioners vs Hall* 5 *L. C. J.* 155—*Fraser vs Gagnon* 4 *Q. L. R.* 381—*Lacroix v Ross* 11 *Q. L. R.* 78—*Milliken v Bourget M. L R* 5 *Q. B.* 300—*Black v Stoddard* 4 *L N.* 282—*Pigeau (2nd edit) p.* 481 — *High, on Injunctions, No* 329, 730, 371, 732, 735—*Kerr, on Injunctions, p.* 294.

INJUNCTION

1. To prevent use of buildings a hospital.—That a municipality, which has no right of ownership in buildings situate within its limits nor any control thereof, is not entitled to obtain an injunction to prevent the use of such buildings for a particular purpose, which is not shown to be in contravention of any by-law of the municipality or dangerous to the inhabitants thereof.—TORRANCE, MATHIEU, MOUSSEAU, JJ., 4 NOV. 1885, *La Municipalité du Village St. Louis du Mile End vs la Cité de Montréal.* **II,** S. C. **218.**

INJURY RESULTING IN DEATH

See PRESCRIPTION.

INN KEEPER

1. Lien on effects of guests.—The line of a hotel keeper on the effects of a guest under 39 Vict. (Q.) ch. 23, exists

only for the price of board, and does not extend to charges for the custody of effects left behind by the boarder in the hotel on his departure.—DOHERTY, PAPINEAU, LORANGER, JJ., 30 JAN. 1886, *Ferguson vs Riendeau.* **II,** S. C. **136.**

That the lien of a hotel keeper on the baggage and effects of his guest, for the price of food and accommodation, extends to goods belonging to third persons, brought into the hotel by the guest with their permission express or implied. — TASCHEREAU, J., 5 MARCH 1890, *Marcuse vs Honan.* **VI,** S. C. **184.**

CITATIONS.—*Fogarty v Dion* 6 *Q. L. R.* 163.

2. Traveller.—A person who furnishes a room in a hotel and lives there during two months cannot be considered a traveller and therefore the innkeeper has no action for intoxicating liquors furnished to him (C. C. 1481.—DOHERTY, PAPINEAU, LORANGER, JJ., 30 JAN. 1886, *Ferguson vs Riendeau.* **II,** S. C. **136.**

See HOTEL KEEPER.

INSANE ASYLUM

See TAXATION.

INSCRIPTION FOR ENQUETE

See PROCEDURE.

INSINUATION

See DONATION.

INSOLVENT ACT OF 1864

Que la faillite du débiteur, en juillet 1865, accompagnée d'un bilan où la créance est portée par le failli, mais avec le nom d'un créancier autre que le créancier véritable, suspend la prescription durant tous les procédés en liquidation forcée et que le créancier véritable, ou son cessionnaire, peut, en 1885, 20 ans plus tard, et 22 ans après l'existence de la dette prescriptible par 5 ans comme dette commerciale, mais avant la liquidation finale de la faillite, produire va-

lablement une réclamation qui lui permette d'être colloqué avec les autres créanciers. — PAGNUELO, J., 30 DÉC. 1889, *Stephen & Fair & Seath & Hagar.* **V, S. C. 426.**

CITATIONS.—*Troplong, Prescription, No* 616 *et* 618—*Marcadé sur art.* 2248 *C. N. vol* 12 *No. X* § 178 *p.* 208 — 2 *Aubry & Rau* § 215 *No* 2. *p.* 354 *et* 355 — *Clarke's Ins. Act.* 1875, *sect.* 61 *p.* 194.

Reversing the judgment of Pagnuelo, J., M. L. R. 5 S. C. 426 (Dorion, C. J. and Cross, J. diss.) That the claim filed by the respondent on the insolvent estate of John Stephen was not legally established by the evidence which was as follows :—(1) that the claim was mentioned by the insolvent in his bilan, but under a different name ; (2) affidavit of claimant filed with his claim, and copy of transfer to him from Francis Stephen ; (3) evidence that claimant consigned goods to Francis Stephen who handed them over to John Stephen, the insolvent. — DORION, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 24 SEPT. 1890, *Hagar & Seath.*

VI, Q. B. 394.

INSOLVENT ACT OF 1875

1. Judgment obtained in fraud of creditors—Sale en bloc —Notice—Prescription — Intervention. — John Stephen, in 1865, became an insolvent under the Insolvent Act. of 1864. The principal asset was the share to which he would become entitled on the division of his deceased father's estate, which division was not to take place until the youngest child became of age (in 1881). In the meantime the insolvent's share of the revenues accumulated in the hands of the executors, and was at the disposal of his assignee, but was not claimed by him and remained in the hands of the executors. John Stephen obtained his discharge, and long afterwards, in 1879, made an offer of ten cents on the dollar for his estate. This offer amounted to about $3000. At this time there was nearly double the amount of accrued revenues in the hands of the executors. The offer was accepted by a resolution of creditors at a meeting which was called without specifying the object in the notice thereof, and creditors who were themselves insolvent attended and voted. An order of

the Insolvent Court was obtained on the 17th April 1879, ordering the assignee to carry out the resolution, and the estate was then reconveyed to John Stephen who paid the ten cents out of the accumulated revenues and retained the surplus. He subsequently, in 1881 sold his share of his father's real estate to his brother George C. Stephen, the appellant, for $5,000. On a petition by a creditor to the Insolvent Court to revoke the judgment of 17th April 1879, as having been obtained fraudulently, the assignee not having disclosed the true possession of the estate:

HELD—That the Insolvent Court had jurisdiction to entertain the petition and revoke the judgment of the 17th April 1879, and that an action at law to set aside the sale of the estate was not necessary.

That the prescription of one year under art. 1040 C. C. did not apply, as John Stephen, having obtained his discharge before he purchased the estate, was not a debtor.

That the judgment of the 17th April 1879 should be revoked, the resolution of creditors authorizing the sale en bloc being illegal, the meeting not having been called in accordance with s. 38 of the Insolvent Act of 1875, and the assignee having concealed the true position of the estate.

That the intervention of George C. Stephen was unfounded, his purchase of his brother's share of the real estate not being impugned by the present proceeding.—DORION, MONK, RAMSAY, TESSIER, BABY, JJ. 27 NOV. 1885, *Stephen & Hagar*. **IV, Q. B. 299.**

2. Official assignee continued as creditors' assignee.—Where an official assignee under the Insolvent Act of 1875, has taken possession of an insolvent estate in that capacity, and subsequently the creditors have appointed him assignee to the estate without exacting any further security, and while acting as assignee of the creditors, he makes default to account for monies of the estate, that the creditors have recourse upon the bond given for the due performance of his duties as official assignee.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 27 MAY 1885, *Dansereau & Letourneux* (Affirmed by Supreme Court 12 S. C. R. 307). **I, Q. B. 357.**

CITATIONS.—*Clark Treatise on the Insolvent Act. p.* 136 — *Church vs Cousins*, 28 *Q. B. U. c.* 540.

3. Notice of application for discharge of insolvent.— Qu'un failli sous la loi de faillite de 1875 n'était tenu de donner avis de sa demande de décharge qu'à ses créanciers au moment de sa cession de biens et non aux cessionnaires subséquents de ses créanciers.—TASCHEREAU, J., 10 AVRIL 1886, *Girouard vs Dufort.* **II, S. C. 179.**

INSOLVENT CORPORATION

1. Execution of order of Ontario Court.—That under 45 Vict. (D) ch. 23 s. 86 the courts in the Province of Quebec will enforce an order for the execution of a judgment issued from a competent court in Ontario, in like manner as if it had been issued from a court in Quebec.—MATHIEU, J., 16 JUNE 1886, *Queen City Refining vs Williamson.* **II, S. C. 425.**

2. Intervention by liquidator of insolvent corporation.— The liquidator of an insolvent corporation is entitled to intervene in an action by a creditor against a shareholder of such corporation for unpaid calls.—LORANGER, J., 26 JUNE 1885, *Banque d'Hochelaga vs Garth.* **II, S. C. 201.**

3. Preferential payment—Restitution. — The provisions of 45 Vict. (D) ch. 23 override any rule as to insolvency contained in the Civil Code; and therefore only payments made by an insolvent corporation within thirty days before the commencement of the winding up order (s. 75) i. e. the date of the order made by the Court for the winding up (s. 13) can be recovered by the liquidators.

In any case, a deposit of money made with a bank on the day and at the very hour when it suspended payments, may lawfully be returned to the depositor.—TORRANCE, MATHIEU, MOUSSEAU, JJ., 30 JAN. 1886, *Exchange Bank vs Montreal Coffee.* **II, S. C. 141.**

INSOLVENT BANK

The respondent having funds to his credit in a bank which had suspended payment drew cheques on the Bank for various sums. These cheques were accepted by the bank on the same day and the respondent then for valuable consideration, disposed of them to various parties who were paid the respective amounts by the bank by credits or otherwise.

That the bank had no action against the respondent to recover the amount of the cheques so paid, their recourse, if any, being against the parties to whom they had paid the money.—DORION, RAMSAY, CROSS, BABY, JJ., 22 NOV. 1886, *Exchange Bank & Hall.* **II, Q B. 409.**

CITATIONS.—*Daniel, vol* 2 *p.* 643—*Brown v Lockie,* 43 *Ill* 501—*Parsons, on Bills and Notes, vol* 2 *p.* 59—*Morse, on Banking p.* 249, 257, 260 *and* 275—*Hopkinson v Foster* 19 *L. R. Eq. p.* 74—*Daniels, vol* 2 *p.* 651—*Wharton vs Walker,* 4 *B. & C.* 463—*Yates v. Bell* 3 *B. and Ald.* 643 — *Schræder v Central Bank* 34 *L. T. R.* 735 *and* 24 *W. R.* 71 — *Parsons, vol.* 2 *p.* 60 — *Foster vs Bank of London,* 3 *Foster and Finlayson,* 214—*Addie vs National Bank* 45 *N. Y.* 735—*Daniels, on negotiable Instruments, vol.* 2, *p.* 636.

INSOLVENT TRADER

The fact that an insolvent trader has made a voluntary assignment of his estate, does not justify his departure from the country without the consent of his creditors. It is his duty to be present, in order to give such information as may be required for the realization of his assets, and his departure without explanation is ground for the issue of a saisie-arrêt before judgment. — DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Heyneman & Harris.*

II, Q. B. 466.

INSOLVENCY

I.—ABANDONMENT OF PROPERTY.
II.—ACTION AGAINST INSOLVENT.
III.—APPOINTMENT OF PROVISIONAL GUARDIAN.
IV.—BILL OF EXCHANGE—ACCOMMODATION BILL—INSOLVENCY—COMPENSATION.
V.—BOOK OF ACCOUNT.
VI.—CLAIM AGAINST INSOLVENT—NOTES AND GOODS HELD AS COLLATERAL SECURITY—COLLOCATION.
VII.—COMPANY IN LIQUIDATION.
VIII.—CURATOR—AUTHORIZATION TO SUE.
IX.—DISTRIBUTION OF ESTATE—PRIVILEGE—WINDING UP ACT—DEPOSIT WITH BANK AFTER SUSPENSION.
X.—ESTATE RECONVEYED TO INSOLVENT.
XI.—FRAUD—SALE OF INSOLVENT ESTATE BY ASSIGNEE—COLLUSION BETWEEN PERSONS WHO HAD TENDERED—DISTRIBUTION OF AMOUNT RECOVERED AS DAMAGES.
XII.—INCORPORATED COMPANY—WINDING UP ORDER.
XIII.—LESSOR AND CURATOR,
XIV.—MORTGAGE GRANTED BY INSOLVENT TRADER.

XV.—Liquidator—Petition for discharge.
XVI.—Payment by insolvent in fraud of creditors—Action of creditor.
XVII.—Privilege of unpaid vendor—Delays.
XVIII.—Promise of sale—Not accepted until after insolvency of promissor.
XIX.—Property acquired by insolvent after making an abandonment.
XX.—Sale by assignee.
XXI.—Sale of debts—Books of account.
XXII.—Sale of immovables—Distribution of proceeds.

See ASSIGNMENT—BANK AND BANKING—BUILDING SOCIETY—CAPIAS—COMPENSATION—INSURANCE (LIFE)—PRINCIPAL AND AGENT—PROCEDURE—PROMISSORY NOTE—SALE—SURETYSHIP—NAVIGATION.

1. Abandonment of property.—Que la cession de biens mentionnée à l'art. 763 et suivants du C. P. C. et au statut de Québec, 48 Vict. ch. 22 ne s'applique pas à la liquidation des biens d'une succession appartenant à des mineurs; que, par suite, une cession de biens ainsi faite par une tutrice esqualité pour ses enfants mineurs insolvables, à la demande d'un créancier, est illégale et doit être mise de côté.—Mathieu, J, 29 mars 1887, *Tourville vs Dufresne.*

III, S. C. **288.**

Que la disposition de la loi sur la cession de biens qui déclare toutes les procédures suspendues et que les frais faits par un créancier, après qu'il a eu connaissance de telle cession, ne peuvent être colloqués sur les biens du débiteur, ne prononce pas la nullité absolue de ces procédures, et n'empêche pas les tribunaux, suivant les circonstances, de permettre la continuation des procédés commencés.—Mathieu, J., 21 nov. 1888, *Thompson vs Kennedy.* **IV,** S. C. **443.**

Where the curator to an abandonment has been duly authorized to contest a claim upon the estate of the insolvent, the Court will not upon the contestation of the claim, revise the judgment authorizing the curator to contest.—Tessier, Cross, Baby, Bossé, Doherty, JJ., 22 sept. 1890, *McFarlane & Fatt.* **VI,** Q. B. **251.**

2. Action against insolvent.—Que rien n'empêche un cré-

ancier de prendre un jugement contre son débiteur, quand même celui-ci serait sous l'effet d'une loi de faillite et n'aurait pas encore obtenu sa décharge, et un plaidoyer à l'encontre de l'action du créancier ne contenant que l'allégation de cet état de faillite sera rejeté sur réponse en droit.—TASCHEREAU, J , 29 JAN. 1886, *Canadian Mutual vs Blanchard.*

II, S. C. 61.

3. Appointment of provisional guardian.—That the provisional guardian appointed to property judicially abandoned must be resident within the Province of Quebec.

The decision of the Prothonotary appointing a provisional guardian may be revised by the court or judge.

Where the interests of the provisional guardian appointed by the prothonotary are adverse to those of the creditors generally, his appointment may be set aside.—DAVIDSON, J., 15 JULY 1887, *McDougall vs McDougall.* **III,** S. C. **148.**

CITATIONS.—*Bate vs Lang,* 9 *L. N.* 393.

4. Bill of exchange — Accommodation bill — Insolvency — Compensation.—On the 25th June 1888, the defendants accepted G's accommodation draft for $249.75 at three months. On the 21th July 1888, the defendant purchased goods from G. to the amount of $215.00. On the 26th July 1888, G. made a judicial abandonment for the benefit of his creditors. On the 28th September 1888, the defendant paid the accommodation draft.

In a suit by the curator to G's estate for the recovery of the $215 price of goods, defendant pleaded that he was entitled to compensate this sum with the amount he had paid on the draft for G's accommodation.

That the judicial abandonment definitively settles the relative position of the insolvent and his debtors and creditors.

That, from the date of the abandonment, all the unsecured creditors acquire the right to be paid by contribution out of the proceeds of the debtor's estate.

That compensation cannot take place to the prejudice of rights acquired by the insolvent's creditors by reason of the abandonment and therefore that creditors are without right of compensation for claims maturing after the aban-

donment.—DELORIMIER, J., 22 JUNE 1889, *Riddell vs Goold* **V. S. C. 170.**

CITATIONS.—*Pardessus, vol I, no* 234—7 *Toullier, no* 381—2 *Beaudry Lacantinerie, no* 1119—*Sirey* 1842, 1, 8e *note*—5 *Pardessus no* 1125—2 *Aubry et Rau p.* 449 —*Merlin, Rep. vo Compensation* § 2. *no* 5—2 *Mourlon on art.* 1278 *C. N.*—6 *Q. L. R. p.* 78—*Dalloz vo Faillite, No.* 251, *p.* 105—1 *Renouard, Faillite, p* 321—1 *Bédarride, p* 120—*Larombière, sur l'art.* 1291 *C. N. No.* 27, § 2.

5. Books of account.—That the curator to an estate judicially abandoned is entitled to obtain possession of the books of account of the insolvent, from a person in whose hands the books were placed by the insolvent for the collection of debts on commission.—JOHNSON, JETTÉ, MATHIEU, JJ., 30 APRIL 1891, *Trudeau & Merizzi.* **VII, S. C. 451.**

6. Claim against insolvent—Notes and goods held as collateral security.—That a creditor, who holds notes as collateral security, is entitled, until fully paid, to be collocated upon the estate of his debtor in liquidation for the full amount of his claim, without deduction of any sums he may have received or collected from other liable upon such notes, previous to the declaration and payment of dividend.

But as to goods held as collateral security the law of pledge applies and whatever sums the creditor may have realized upon such goods, previous to the payment of dividend, extinguish his claim pro tanto and must be deducted from the total amount of the claim upon which he is collocated — TORRANCE, JETTÉ, LORANGER, JJ., 28 SEPT. 1886, *Benning vs Thibaudeau.* **II, S. C. 338.**

CITATIONS.—*Bessette vs Banque du Peuple* 25 *L. C. J.* 126 —*Rochette vs Louis* 3 *Q L. R.* 97—11 *Duranton no* 228 —3 *Pardessus, no* 1211—2 *Renouard, Faillites p* 221 *et* 223—5 *Demangeat sur Bravard p.* 601 — *Dalloz, Rep. vo. Faillites no* 993 —*Sirey* 1862, 2. 121 *et* 397—*Bell's Commentaries, vol.* 2, *pp.* 338, 339—2 *Larombière,* 617.

(Reversing the judgment of the Court of Review M. L R. 2. S. C. 338). That a creditor who holds notes or merchandises as collateral security is not entitled to be collocated upon the estate of his debtor in liquidation, under a voluntary assignment, for the full amount of his claim, but is obliged to deduct any sums he may have received from other parties liable upon such notes, or which he may

have realized upon the goods ; and it does not matter at what time such sums have been received on account, provided it is before the day appointed for the distribution of the assets of the estate on which the claim is made.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 25 JAN. *Thibaudeau & Benning.* (Confirmed by Supreme Court 20 S. C. R. 110). **V,** Q. B. **425.**

CITATIONS.—*Massé, Droit Commercial et Droit Civil, vol.* 3, *No.* 2021—*Dalloz, Rép. de Jurisp. vo Faillite, No.* 993—*MM. Vincens, t.* 4, *p.* 521—*Pardessus, No.* 1211—*Locré, t.* 7, *p.* 33—*Boulay-Paty, Nos.* 381 *et* 382—*Ontario Bank & Chaplin, M. L. R.* 5 *Q. B.* 407.

7. Company in liquidation.—Qu'aux termes de la loi relative à la liquidation des compagnies insolvables, aucune procédure ne peut être commencée ou continuée sans permission spéciale ; et qu'une cause prise en délibéré, sous de telles circonstances, sans que l'ordre préalable apparaisse au dossier pourra être déchargée du délibéré à la demande d'une des parties. — JETTÉ J., 23 DÉC. 1887, *Molleur vs Cie Pulpe St-Laurent.* **III,** S. C. **273.**

8. Curator—Authorization to sue.—Que le curateur aux biens d'un insolvable n'a pas le droit d'intenter une action pour recouvrer d'un débiteur une somme d'argent due à l'insolvable sans y avoir été autorisé par les créanciers ou les inspecteurs et le tribunal ou le juge (C. P. C. art. 772).

Que ce défaut d'autorisation peut être valablement soulevé, comme moyen préliminaire par une exception à la forme. —PAGNUELO, J., 10 NOV. 1890, *Kent vs Gravel.* **VII,** S. C. **159.**

CITATIONS.—*Walker vs Ville de Sorel* 5 *R. L.* 66—*Antaya v. Darqe,* 6 *R. L.* 727. —*Kent vs Ross* 16 *R. L.* 209.

9. Distribution of estate—Privilege—Winding up act—Deposit with Bank after suspension.—That a creditor is not entitled to rank for the full amount of his claim upon the separate estate of insolvent debtors jointly and severally liable for the amount of the debt ; but is obliged to deduct from his claim the amount previously received from the estate of other parties jointly and severally liable therefor.

A person who makes a deposit with a bank after its suspension, the deposit consisting of cheques of third parties

drawn on and accepted by the bank in question, is not entitled to be paid by privilege the amount of such deposit. — DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 25 JAN. 1889, *Ontario Bank & Chaplin.* (Confirmed by Supreme Court 20 S. C. R. 152). **V,** Q. B. **407.**

CITATIONS.—4 *Massé no* 2021 — *Bessette & Banque du Peuple,* 14 *L. C. J.* 21 *et* 15 *L. C. J.* 126—*Rochette vs Louis* 3 *Q. L. R.* 97—*Bedarride, Traité des Faillites, vol* 2, *No* 851.

10. Estate reconveyed to insolvent.—That a debtor against whose property a judgment has been registered, and who afterwards makes an assignment and obtains back his estate by a composition wich his creditors, in which he undertakes to pay the hypothecs on his property in full, cannot have the hypothec so registered set aside, at his own suit, on the ground that it is a fraud on his creditors.—DORION, MONK, RAMSAY, SANBORN, TESSIER, JJ., 22 JUNE 1877, *Foster & Baylis.* **III,** Q. B. **421.**

11. Fraud—Sale of insolvent estate by assignee. Collusion between persons who had tendered. Distribution of amount recovered as damages.—Where a person who had tendered for the purchase of an insolvent estate, and who had put in two bids, and acting in collusion with the insolvent, bought of a higher bidder in order that his own lowest tender might be accepted ; that this artifice was a fraud upon the creditors of the estate, and they, or any one of them, might recover from such bidder the amount of damage caused thereby to the estate

That two or more independent firms, creditors of the insolvent, may unite in such action, and claim one money condemnation.

But the amount recovered in such action is an asset of the estate, and must be distributed as such, and cannot be wholly paid to the creditors who instituted the suit — DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 26 FEB. 1889, *Jacobs & Ramsom.* **V,** Q. B. **260.**

12. Incorporated company — Winding up order.—That a winding up order may be obtained against an incorporated company when it is in fact insolvent, though sixty days

have not elapsed since the service on such company of a demand for payment of an overdue debt ; but when a petition for a winding up order is presented before the expiration of such delay, the petitioner is required to prove the insolvency of the company, unless it be acknowledged or unless one of the other cases in which a company is deemed insolvent exists.— WURTELE, J., 29 APR. 1890, *Eddy Mfg. Co. vs Henderson Lumber Co.* **VI, S. C. 137.**

13. Lessor and curator.—Que le locateur qui a saisi doit être payé sur le produit de la vente des effets garnissant les lieux loués par préférence aux frais d'administration, etc., encourus par le curateur nommé à la cession, faite par le locataire subséquemment à la saisie gagerie à l'exception des frais pour la conservation et la vente de ces effets.— TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 22 NOV. 1887, *DeBellefeuille & Desmarteau.* **III,** Q. B. **303.**

CITATIONS.—*Troplong, Privilèges et Hypothèques, No.* 22—29 *Laurent,* 371.

14. Mortgage granted by insolvent trader. — Qu'un commerçant insolvable ne peut valablement accorder d'hypothèque sur ses biens, au détriment de ses créanciers en général, quand même celui en faveur de qui l hypothèque est donnée ignorerait l'insolvabilité du débiteur.— JETTÉ J., 30 NOV. 1889, *Stevenson vs Lallemand.* **VI,** S.C. **305.**

15. Liquidator—Petition for discharge.—Where the liquidator petitioned for his discharge as liquidator, and it appeared that he had appropriated to himself, from the funds received, an amount exceeding the remuneration fixed by the court, and the evidence did not disclose the exact amount in which he was indebted to the estate, the Court refused to grant his discharge, without fixing any amount to be paid by him as a condition of obtaining his discharge.— DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 27 NOV. 1888, *Plender vs Fitzgerald.* **V,** Q. B **446.**

16. Payment by insolvent in fraud of creditors—Action of creditor.—(Following Boisseau et Thibeaudeau, 7 L. N. 274) That a creditor who alleges that his debtor while insolvent has made payments to another creditor who was aware of his insolvency, is entitled to sue the latter in his

own name, and to ask that such moneys be paid in court for the benefit of the creditors generally. Where a curator has been appointed to the insolvent the curator may bring the action, and in his default, it is competent to any creditor to bring it.—PAGNUELO, J., 20 NOV. 1890, *Jeannotte vs Banque St. Hyacinthe.* **VII,** S. C. **21.**

CITATIONS.—*Thompson v Molson's Bank* 16 *S. C. R.* 664—*Boisseau & Thibaudeau* 7 *L. N.* 274—*Jacobs & Ramsom M. L. R.* 5 *Q. B.* 260.

17. Privilege of unpaid vendor—Delay.—Que le privilège du vendeur d'être payé avant tout autre créancier à l'exception du locataire et du gagiste, sur le produit de la vente de la chose vendue par lui, lorsqu'elle est encore dans les mêmes conditions et qu'il n'est plus dans les délais pour la revendiquer, peut s'exercer même après les quinze jours qui suivent la vente dans un cas de faillite.—WURTELE, J., 27 MARS 1889, *Lallemand vs Stevenson.* **V,** S. C. **106.**

That the privilege granted to the unpaid vendor by art. 2000 C. C. can be exercised only within fifteen days from the date of the sale in cases of insolvency.—GILL, J., 30 JUNE 1888, *McDougall & Riddell.* **V,** S. C. **222.**

18. Promise of sale—Not accepted until after insolvency of promissor.—Several persons having claims against a railway company, executed an agreement to deliver to one G. the debentures of the company held by them, on payment of the respective amounts shown opposite their respective names. It was proved that this agreement was executed at G.'s request, but it was not accepted nor acted upon by G. until after the insolvency and death of P., one of the signatories; HELD—That an acceptance of the agreement by G and a transfer of his rights thereunder to a third person, after the insolvency and death of P. could not bind P.'s estate.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 21 SEPT. 1886, *Pauzé et Sénécal.* (Affirmed by Privy Council 12 L. N. 330). **V,** Q. B **461.**

19. Property acquired by insolvent after making an abandonment.—(Modifying the decision of Mailhot, J.) That the curator to the estate of a trader who has ceased his pay-

ments, has no right to receive, collect and recover property acquired by the latter after his abandonment.—WURTELE, TELLIER, DE LORIMIER, JJ., 30 JUNE 1891, *Quebec Bank vs Cormier*. **VII,** S. C. **283.**

20. Sale by assignee.—That creditors, by assenting to and ratifying a deed of assignment by an insolvent trader, do not become liable to warrant the acts of the assignee. They do not act jointly and severally in appointing a common mandatary, but each simply gives his sanction, quoad his individual interest, to the appointment of the assignee by the insolvent as his agent and administrator. And so, where the assignee sold the stock of an insolvent, and the purchaser was unable to obtain possession, it was held that an action of damages did not lie by the purchaser against creditors who had assented to the appointment of the assignee.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 31 DEC. 1886, *Marchildon & Denoon*. **III,** Q. B. **12.**

CITATIONS.—*Clamageran, du Mandat, No.* 329.

21. Sale of debts—Books of account.—Que dans une faillite, lorsque le curateur dûment autorisé, vend à l'encan public les dettes actives du failli et livre à l'acheteur les livres de comptes contenant les noms des débiteurs et les détails des divers comptes, le curateur ne sera pas recevable à revendiquer ensuite entre les mains de l'acheteur ces livres de comptes sous prétexte qu'il ne les avait que prêtés ; le curateur n'ayant aucun intérêt à faire cette demande et l'acheteur ayant absolument besoin de ces livres.—MATHIEU, J., 11 FÉV. 1889, *Kent vs Granger*. **V,** S. C. **40.**

22. Sale of immovables — Distribution of proceeds.—Que la distribution des deniers provenant de la vente par le shérif en vertu d'un mandat du curatenr, des immeubles cédés en justice par un débiteur pour le bénéfice de ses créanciers, doit être faite par le curateur.

Que, par analogie, ce mode de faire la distribution des deniers doit aussi s'appliquer au cas où une saisie d'immeubles a été pratiquée avant, mais où la vente a été faite après la cession judiciaire.—WURTELE, J., 22 JUILLET 1890, *Baker vs Gariepy*. **VI,** S. C. **385.**

INSULT

See PERSONAL WRONGS.

INSURANCE COMPANIES

Que les compagnies d'assurance étrangères faisant des affaires en la cité de Montréal ne peuvent être poursuivies devant les tribunaux de la Puisance du Canada que pour les obligations ou responsabilités par elles assumées en Canada.—TASCHEREAU, J., 7 MAI 1896, *Cie. Richelieu vs Phenix Ins. Co.* **II, S. C. 192.**

INSURANCE (ACCIDENT)

1. External injuries producing erysipelas — Proximate or sole cause of death—Immediate notice after death—Waiver.—An accident policy issued by the defendants was payable "within thirty days after sufficient proof that the insured, at any time during the continuance of this policy, shall have sustained bodily injuries effected through external, accidental and violent means, within the intent and meaning of this contract and the condition hereunto annexed, and such injuries alone shall have occasioned death within ninety days from the happening thereof.... Provided always that this insurance shall not extend to hernia nor to any bodily injury of which there shall be no external and visible sign, nor to any bodily injury happening directly or indirectly in consequence of disease, nor to any death or disability which may have been caused wholly or in part by bodily infirmities or disease, existing prior or subsequent to the date of this contract, or by taking of poison, or by any surgical operation, or medical, or mechanical treatment, nor to any case except where the injury aforesaid is the proximate or sole cause of the disability or death."

The insured was accidentally wounded in the leg by falling from a verandah and within four or five days the wound, which appeared at first to be a slight one, was complicated by erysipelas, from which death ensued twenty three days after the accident. There was some conflict in the evidence as to whether the erysipelas resulted solely from the wound,

but the Court found on the facts, that the erysipelas followed as a direct result from the external injury.

That the external injury was the proximate or sole cause of death within the meaning of the policy, and that the plaintiff was entitled to recover.

The policy also provided that "in the event of any accident or injury for which claim may be made under this policy, immediate notice must be given in writing, addressed to the manager of this company, at Montreal, stating full name, occupation and address of the insured, with full particulars of the accident and injury; and failure to give such immediate written notice shall invalidated all claims under this policy."

The local agent of the company at Simcoe, Ont., after receiving written notice of the accident before death, was verbally informed of the death four days after it took place, and thereupon stated that he would require no further notice and that he had advised the company. Further interviews and correspondence took place during the following days between the local agent and the claimants with respect to the papers required, but the formal notice was not sent to the head office until sixteen days after death. The manager of the company acknowledged receipt of proofs of death, without complaining of want of notice, and ultimately declined to pay the claim on the ground that the death was caused by disease, and that therefore the company could not recognize their liability.

That the company had received sufficient notice of death to satisfy the requirements of the policy, and that, in any event, they had expressly waived any objections which they might have urged in this regard, by declining to pay the claim on other grounds. **VI,** S. C. **3.**

CITATIONS.—*For plaintiff*— *Marble vs City of Worcester*, 4 *Gray* 412 — *North American Life & Accident Ins. Co. vs Burroughs*, 8 *Am. Rep.* 212— *McCarthy vs Traveller's Ins. Co.*, 8 *Bissel*, 362—*Kellog vs Chicago & W. Ry. Co.*, 26 *Wis.* 223 —*Barry vs U. S. Mut. Accident Association*, 23 *Fed. Rép.* 712—*Ins. Co. vs Tweed*, 7 *Wallace*, 44—*Martin vs Traveller's Ins. Co.* 1 *F. & F.* 505—*Fitton vs Accidental Death Ins. Co.*, 34 *L. J.* (*N. S.*) *C. P.* 28—*May, on Insurance, sec.* 468—*Bliss, on Life Insurance, sec.* 263.

For defendant—*Smith vs Accident Ins. Co., L. R.* 5 *Ex.* 302 — *Lawrence vs*

Accident Ins. Co. L. R 7 Q. B. D. 216 — Insurance Co. vs Transfer Co., 12 *Wallace*, 199—*Sheffer vs Railroad Co.* 15 *U. S. Sup. Ct. Rep.* 249— *Southeard vs Ry. Pass. Ass. Co.* 34 *Conn.* 574 — *Gamble vs Accident Ins. Co.*, 4 *I Ir. Comm. L. Rep.* 204— *Crandall vs Accident Ins. Co.* 120 *U. S. Sup. Ct. Rep.* 527— *Life Ins. Co. vs Perry*, 15 *Wallace*, 589—*Porter, Insurance*, 443—*Crawley, Life Insurance*, 149—*Whyte vs Western Ass. Co.* 22 *L. C. J.* 215.

An accident policy issued by the appellants was payable "within thirty days after sufficient proof that the insured, at any time during the continuance of this policy, shall have sustained bodily injuries effected through external, accidental and violent means, within the meaning and intent of this contract and the conditions hereunto annexed, and such injuries alone shall have occasioned death, within ninety days from the happening thereof.... Provided always that this insurance shall not extend to hernia, nor to any bodily injury happening directly or indirectly in consequence of disease, nor to any death or disability which may have been caused wholly or in part by bodily infirmities or disease, existing prior or subsequent to the date of this contract, or by the taking of poison, or by any surgical operation, or medical or mechanical treatment, nor to any case except where the injury aforesaid is the proximate or sole cause of the disability or death."

The insured was accidentally wounded in the leg by falling from a verandah, and within four or five days the wound, which appeared at first to be a slight one, was complicated by erysipelas, from which death ensued twenty-three days after the accident. There was some conflict in the evidence as to whether the erysipelas resulted solely from the wound, but the Court below found, on the facts, that the erysipelas followed as a direct result from the external injuries.

(Affirming the judgment of Tellier, J. M. L. R. 6 S. C. 3). That the external injury was the proximate or sole cause of death within the meaning of the policy, and that the respondent was entitled to recover.

The policy also provided that "in the event of any accident or injury for which claim may be made under this policy, immediate notice must be given in writing addressed to the manager of this company, at Montreal, stating full name, occupation and address of the insured, with full parti-

culars of the accident and injury; and failure to give such immediate written notice shall invalidate all claims under this policy."

The local agent of the company at Simcoe, Ont., after receiving written notice of the accident before death, was verbally informed of the death four days after it took place, and thereupon stated that he would require no further notice and that he had advised the company. Further interviews and correspondence took place during the following days between the local agent and the claimants with respect to the papers required, but the formal notice was not sent to the head office until sixteen days after death. The manager of the company acknowledged receipt of proofs of death, without complaining of want of notice, and ultimately declined to pay the claim on the ground that the death was caused by disease, and that therefore the company could not recognize their liability.

That the company had received sufficient notice of death to satisfy the requirements of the policy, and that, in any event, they had expressly waived any objections which they might have urged in this regard, by declining to pay the claim on other grounds. — CROSS, BABY, BOSSÉ, DOHERTY, CIMON, JJ., 21 MARCH, 1891, *Accident Ins. Co. vs Young*. (Judgment in appeal reversed by Supreme Court 20 S. C. R. 280). **VII, Q. B. 447.**

2. Partnership — Dissolution—Interest of retiring partner. The life of J. S. McLachlan was insured against accident, as one of the members of the firm of McLachlan Brothers & Co., the insurers (defendants) undertaking to pay the sum of $10,000, within 90 days after the death of one of the persons named in the policy, to the surviving representatives of the firm. By one of the provisions of the policy it was stipulated that when a member left the firm, the insurance should cease on his person. J. S. McLachlan ceased to be a partner seven months before his death by drowning, and the dissolution was duly registered. In answer to one of the question submited, the jury found that firm was dissolved, "but J. S. McLachlan had a continued and active interest in the business."

That the insurance, as far as J. S. McLachlan was concerned, lapsed at the date of the dissolution of the partnership, and the fact that he continued to have an interest in the business did not entitle the other partners to maintain an action upon the policy.—JOHNSON, DOHERTY, JETTÉ, JJ., 29 SEPT. 1888, *McLachlan vs Accident Ins. Co. of N. A.*

IV. S. C. **365.**

Where both parties move for judgment on a special verdict, and there is no motion for a new trial, nevertheless on appeal, if it appears to the Court that the facts as defined for submission to the jury were inapplicable and insufficient to enable a correct verdict to be rendered thereon, and that the answers of the jury were insufficient and contradictory to the extent that no correct judgment could be rendered thereon for either party, the Court of its own motion may set aside the judgment, and send the parties back to the Court below, to proceed anew to a proper definition of facts, for submission to a jury to be summoned by a *venire de novo.*

The condition of an accident policy in favor of members of a firm of McL. & Co., was: "Provided that on either of the above named members quitting the said firm, this insurance shall cease on his person, etc" The jury were asked: "Were McL. & Co. dissolved on or about the 10th April?" To which they answered, "Yes; but J. S. McL. had a continued and active interest in the business." "4 Did McL. & Co., in that month publicly advertise that J. S. McL. had retired and that a new firm had been formed?" To which they answered "Yes" "5 Was J. S. McL. a member of McL. & Co. on the 18th November?" (date of his death by drowning). To which they answered. "No, but had an interest in profits of."

That inasmuch as the jury were not asked, and did not state in the precise words of the condition whether J. S. McL. had "quit the firm" on the 18th November, and their answers were insufficient to enable the Court to render a correct judgment thereon, it was a case in which the Court should order a new definition of the facts for the jury, with

leave to the parties to proceed by *venire de novo*.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 25 JAN. 1890, *McLachlan & Accident Ins. Co. of N. A.* **VI, Q. B. 39.**

CITATIONS.—*Tobin vs Murison*, 2 *R. de L.* 200—*Davie & Sylvester*, *M. L. R.* 5 *Q B.* 143.

3. Risk incidental to employment—Breach of contract.—M, who was described in the application for insurance as "Superintendent of the International Railway" was insured by the company appellant against accidents. By one of the conditions of the policy it was stipulated as follows:—"The insured must at all times observe due diligence for personal safety and protection, and in no case will this insurance be held to cover either death or injuries occurring from voluntary exposure to unnecessary or obvious danger of any kind, nor death or disablement.... from getting or attempting to get on or off any railway train, etc., while the same is in motion." M., when travelling on the business of his railway, was killed while getting on a train in motion.

That inasmuch as M. was insured as superintendent of a railway, and there was evidence that his duties required him to get on and off trains in motion of which fact the insurers had knowledge, the condition did not apply and the company was liable.—DORION, BABY, BOSSÉ, DOHERTY, SIMON, JJ., 25 JUNE. 1891, *Accident Ins. Co. & McFee.*

VII, Q. B. 255.

INSURANCE (FIRE)

I.—AGENT—PRIVITY OF CONTRACT.

II.—ALTERATION IN USE OF PREMISES—INCREASE OF RISK—VERDICT CONTRARY TO EVIDENCE—NEW TRIAL.

III.—APPRAISEMENT OF LOSS—AWARD FINAL—DIVISION OF LOSS.

IV.—BY WIFE.

V.—CONSENT TO ARBITRATION.

VI.—CONTRACT—FORFEITURE.

VII.—GOODS DESTROYED IN PREMISES OTHER THAN THOSE DESCRIBED IN POLICY — INSPECTION BY COMPANY'S AGENT — MOTION FOR JUDGMENT ON VERDICT.

VIII.—LOSS, IF ANY PAYABLE TO PERSON NAMED IN POLICY—CONDITIONS OF POLICY — BREACH BY OWNER OF PROPERTY — PRELIMINARY PROOF OF LOSS.

IX.—MATERIAL CONCEALMENT.

X.—NON DELIVERY OF POLICY.

XI.—NOTICE OF OTHER INSURANCE.
XII.—POWERS OF AGENT.
XIII.—TERM OF POLICY — WHOLE OF LAST DAY INCLUDED—CONDITION REQUIRING STATEMENT OF LOSS TO BE FURNISHED.

See RAILWAY—FRAUD.

1. Agent—Privity of contract.—Qu'il n'y a pas de lien de droit entre un agent d'une compagnie d'assurance et une personne qui, par l'entremise de cet agent, prend une police d'assurance dans la compagnie et qu'une action intentée par l'agent contre cet assuré qui ne paie pas ses primes pour la part ou le profit que l'agent doit en retirer d'après ses arrangements avec la compagnie d'assurance pourra être déboutée sur défense en droit.—TAIT, J., 17 MAI 1890, *Daveluy vs Hénault.* **VI,** S. C. **205.**

2. Alteration in use of premises—Increase of risk—Verdict contrary to evidence—New Trial.—Premises insured as a tannery and leather dressing house were used for drying nine bales of cotton—a substance which it was proved was more inflammable than the stock of a tannery. The fire first appeared in the cotton. By a condition of the policy the use of premisses for more hazardous purposes avoided the contract. The jury found that the drying of cotton was not a material alteration in the use of the premises and that the alteration did not increase the risk.

That there being evidence that the insured, by the use of the premises for drying cotton, increassed the risk, the verdict was contrary to the evidence adduced, and a new trial was ordered.—JOHNSON, TORRANCE, LORANGER, JJ., 30 AUG. 1886, *Mooney vs Imperial Ins. Co.* **III,** S. C. **339.**

3. Appraisement of loss—Award final—Division of loss.—Where, after the fore, the parties agreed to an appraisement of the loss (for which liability is admitted) the award is final and conclusive as to the extent of the loss sustained by the insured.

Where, by a condition of the policy, the insurers are in no case to be liable for any greater proportion of the loss than the amount insured by them bears to the total insurance on the property, they are entitled to have the claim

reduced in accordance with such clause though the other insurance be still unpaid, and a contestation in relation there to be still pending. — JOHNSON, J., 17 OCT. 1888, *Heron vs Hartford Ins. Co.* **IV, S. C. 388.**

CITATIONS.—*Scott vs Phœnix Ins. Co, Stuart's Rep.* 152.

4. By wife.—Que la condition mise au dos d'une police d'assurance contre le feu, que tout recours légal contre la compagnie d'assurance qui a émis la police est prescrit après le laps de douze mois qui suivent la date de l'incendie n'a rien d'illégal, et que cette prescription doit être mise en force.

Qu'une femme commune en biens et sous puissance de mari ne peut valablement faire assurer les meubles de son ménage sans l'autorisation de son mari; et que le fait de n'avoir pas ainsi déclaré son état à la compagnie d'assurance rend nulle la police d'assurance.—TASCHEREAU, J, 6 JUIN 1885, *Rousseau vs Cie. Assur. Royale.* **I, S. C. 395.**

5. Consent to arbitration.—Qu'un grevé de substitution possède à titre de propriétaire et peut comme tel faire assurer la propriété qu'il possède; et que la déclaration qu'il aurait pu faire avant d'effectuer son contrat, qu'il était propriétaire, n'est pas une fausse déclaration.

Que lorsqu'une compagnie d'assurance assure une maison, une cuisine d'été et un hangar avec tout le ménage "contenu dans la dite maison" et lorsqu'il y a des meubles qui de leur nature doivent se trouver dans le hangar v. g. le charbon, l'assurance couvre tous les meubles de l'assuré, même ceux qui étaient dans la maison et qui auraient été transportés dans la cuisine d'été ou le hangar.

Que lorsqu'une compagnie d'assurance consent à un arbitrage pour faire déterminer le montant des dommages soufferts par l'assuré, elle renonce par là même à son droit d'invoquer toute cause de déchéance connue par elle avant la nomination des arbitres.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 22 MARS 1886, *Cie. Ass. Mutuelle & Villeneuve.* **II, Q. B. 89.**

6. Contract — Forfeiture. — Where several subjects are covered by one contract of insurance, the contract is indi-

visible, and where the insured incurs a forfeiture as to one subject the policy is wholly voided.

The failure to disclose all existing mortgages upon the property assured, in answer to a specific question upon the subject, even in the absence of an express condition in the policy, is a cause of nullity.

The non-disclosure of existing insurances, in violation of the condition of the policy, is a cause of nullity, even where the undisclosed insurance was effected by a third person, if the insured had knowledge of it. And he will be assumed to have knowledge where his deed bound him to insure in favor of his vendor, or, in default, to pay the premiums.—DOHERTY, WURTELE, DAVIDSON, JJ., 5 MAY 1888, *MacKay vs Glasgow and London Ins. Co.* **IV. S. C. 124.**

CITATIONS.—*London Ass. v Munsell* 11 *Ch. D.* 369—*Ferguson vs Gilmour* 1 *L. C. J.* 131—*Higginson v Lyman* 4 *L. C. J.* 329—*Tillstone vs Gibb* 14 *L. C. J.* 261—*Clark v. Murphy* 11 *L. C. R.* 105—*Ansell vs Bank of Toronto* 7 *R. L.* 262—*Gugy vs Brown*, 10 *L. C. J.* 225.

7. Goods destroyed in premisses other than those described in policy — Inspection by company's agent—Motion for judgment on verdict.—A policy of insurance was effected on goods of the insured no.—319, and the insurance was afterwards renewed without variation of its original conditions. Before the renewal, the insured had extended his premises into no.—315, and the company's agent visited the establishement, and saw the portion of both buildings occupied by the insured, and the goods contained therein. A fire destroyed the goods in no.—315, and slightly injured those in 319. In an action on the policy, claiming for the loss both in no.—319 and in no.—315, the jury found the facts as above stated, and both parties moved for judgment on the verdict.

Held.—(Reversing the judgment in Review 4 L. N. 140, that where the findings of the jury are accepted by both parties as favorable to their respective pretensions, and the plaintiff moves for judgment in his favor on the verdict, the defendant may also move for judgment in his favor, notwithstanding anything contained in art. 422, 433 C. C. P.

That on the facts found by the jury as above, the judg-

ment should be for the defendants as to the loss of the goods in no.—315, the inspection of the premises by the company's agent, before the renewal of the policy, not being sufficient to establish an agreement to vary the terms of the policy in respect of the locality in which the goods were represented to be.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 24 MARCH 1883, *Citizens Ins. & Lajoie.* **IV,** Q. B. **362.**

CITATIONS.—*Ferguson vs Gilmore* 1 *L. C. J.* 131—*Higginson vs Lyman,* 4 *L. C. J.* 329.

8. Loss, if any, payable to person named in policy—Conditions of policy—Breach by owner of property—Preliminary proof of loss.—(Cross and Doherty, JJ. diss.) Following Black & National Ins. Co. 24 L. C. J. 65. That where a policy of insurance against fire taken out by the owner of real property, declares that the loss, if any, is payable to a person named therein (without specifying the nature of his interest) such person becomes thereby the party insured to the extent of his interest and his right cannot be destroyed or impaired by any act of the owner of the property (e. g. an assignment of the property insured without notice to the company) and he may make the preliminary proofs of loss in his own behalf notwithstanding an express provisions in the policy to the contrary.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 25 JAN. 1889, *National Ass. Co. & Harris.*

V, Q, B. **345.**

CITATIONS.—*Black & National Ins. Co.* 24 *L. C. J.* 65—*C. C.* 2468, 2569, 2570, 2571, 2576—*Pouget, Dict. des Ass. t.* 2. *p.* 1113 — *Hettier, Assurances Terrestres p.* 309—*Delalonde Contrat d'Assurance contre l'Incendie p.* 189—*Boudauzquie p.* 35, 36—*Flanders, on Fire Ins.* 2nd *ed.* 488— *Stanton & The Home Ins. Co.* 24 *L. C. J.*

9. Material concealment. — Que lorsqu'une compagnie d'assurance refuse d'assurer, parce que déjà plusieurs fois des bâtisses semblables à celle qu'on cherche à assurer appartenant au même propriétaire ont été incendiées, chaque fois dans les mêmes circonstances, ce fait doit être déclaré par l'assuré lors de la demande pour une nouvelle assurance, comme étant de nature à étendre le risque, et la réticence de l'assuré sur ce point est une cause de nullité du contrat. —MATHIEU, J., 30 AVRIL 1885, *Minogue vs Quebec Ass. Co.*

I, S. C. **417.**

That the concealment by the insured of the fact that the risk had been refused by another company, in consequence of two fires having occurred previously on the same premises under suspicious circumstances, is a materaial concealment, and renders the contract void. — JOHNSON, BOURGEOIS, GILL, JJ., 31 OCT. 1885, *Minogue vs Quebec Ass. Co.* **I,** S. C. **478.**

10. Non delivery of policy.—Que le fait que le demandeur esqualité n'a pas prouvé que la compagnie d'assurance qu'il représente ait jamais transmis au défendeur une police d'assurance, rend nul l'application du défendeur, le reçu temporaire et le billet de prime.—TASCHEREAU, 17 JAN. 1885, *Giles vs Jacques.* **I,** S. C. **166.**

11. Notice of other insurance.—Que lorsque parmi les conditions d'une police d'assurance se trouve l'obligation de déclarer tout autre contrat d'assurance effectué sur la même propriété le fait de l'assuré de ne pas avertir la compagnie lorsqu'il assure de nouveau sa propriété à une autre compagnie, est une réticence qui rend nuls la police et le contrat d'assurance.

Que le même principe s'applique lorsque le nouveau contrat n'est pas fait par l'assuré mais par un de ses créanciers pour la conservation de son hypothèque si l'assuré en a eu connaissance.—MATHIEU, J., 17 FÉV. 1886, *Picard vs Cie. Ass. B. N. A.* **II,** S. C. **117.**

12. Powers of agent.—That the agent of an insurance company has no authority to accept an insurance and give a receipt for the premium in exchange for a receipt for his individual debt to the person insuring, and such act on his part will not bind the company.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 25 JAN. 1886, *Citizens Ins. Co. vs Bourguignon.* **II,** Q. B. **22.**

CITATIONS. — *Ottawa Ins. Co. & Bouthilier* 2 *L. N.* 304 — *Tough v Provincial Ins. Co.* 20 *L. C. J.* 168.

13. Terms of policy—Whole of last day included—Condition requiring statement of loss to be furnished.—Where the insurance runs from one day named in the policy to another day named therein, "both inclusive," the contract does not

expire until midnight on the last day This rule could only be rebutted by evidence of a clearly established and invariable custom to the contrary, which, in the present case was not shown to exist.

A condition of the policy requiring notice of loss to be given and a particular statement thereof to be delivered by the insured within fifteen days after the fire, may be waived and dispensed with by a distinct denial of liability, and refusal to pay, on the part of the company.—JOHNSON, J., 15 DEC. 1888, *Herald Co. vs Northern Ass. Co.* **IV,** S. C. **254.**

CITATIONS.—*Isaacs v. Royal Ins. Co.* 5 *Exch. Cases, p.* 296.

INSURANCE (GUARANTEE)

Where the condition of a guarantee bond required the employer to give notice immediately to the guarantor of any criminal offence of the employee entailing loss for which a claim was liable to be made under the bond, and the employer, although aware of a defalcation on the 25th, did not give notice thereof to the guarantor until the 27th after the employee had fled the country; that the bond was forfeited. —TASCHEREAU, J., 9 SEPT. 1886, *Molson Bank vs Guarantee Co.* **IV,** S. C. **376.**

By a condition of the policy it was provided that the company should make good to the employer such pecuniary loss as might be sustained by him by reason of the dishonesty of the employee "committed and discovered during the continuance of this agreement, and within three months from the death, dismissal, or retirement of the employee." The policy lapsed, and a defalcation was discovered four months afterwards.

(By the Superior Court). That the company was not liable in respect of such defalcation, inasmuch as it was not discovered as well as committed during the continuance of the agreement.

The policy also contained a clause that on the discovery of any fraud or dishonesty on the part of the employee, the employer should immediately give notice to the company. A

defalcation was discovered April 6, and the company was not notified until April 17, when the employee had left the country.

(By the Court of Queen's Bench). That the employer was not entitled to recover under the policy.—BABY, BOSSÉ, DOHERTY, CIMON, JJ, 25 JUNE 1891, *Commercial Building Society & London Guarantee.* **VII, Q. B. 307.**

CITATIONS.—*Bigelow, Fire and Accident Ins. Reports.* 4 *vol p.* 49—*Pouget Dict. Ass.* 1 *vol. p.* 221-222—*Molson's Bank v Guarantee Co. of N. A., M. L. R.* 4 *S. C.* 376.

INSURANCE (LIFE)

The assignment of a policy of life insurance is governed by the law of the place where the assignment is made, and not of the place where the policy was issued or where it is payable.

Where a person notoriously insolvent transfers a policy of life insurance to a creditor as collateral security for a pre-existing debt, and the amount of the insurance is received by such creditor after the death of the assignor, any other creditor may bring an action in his own name against such assignee to set aside the assignment, and to compel him to pay the money into Court for distribution among the creditors generally.—DAVIDSON, J., 18 DEC. 1888, *Prentice vs Steele.* **IV, S. C 319.**

(Affirming the decision of Davidson, J.) That the assignment of a policy of life insurance is governed by the law of the place where the assignment is made, and not of the place where the policy was issued or where it is payable.

Where a person notoriously insolvent transfers a policy of life insurance to a creditor as collateral security for a pre-existing debt, and the amount of the insurance is received by such creditor after the death of the assignor, any other creditor may bring an action in his own name against such assignee, to set aside the assignment, and compel him to pay the money into Court for distribution among the creditors generally. — JOHNSON, LORANGER, WURTELE, JJ., 30 APRIL 1889, *Prentice vs Steele.* **V, S. C. 294.**

2. Increase of risk — Change of habits. — The application, after the usual answers and declarations, contained an agreement that should the applicant become as to habits so far different from the condition in which he was then represented to be as to increase the risk on the life insured, the policy should become null and void. The policy stated by its terms that if any of the "declarations and statements" made in the application should be found in any respect untrue, the policy should be null and void. The applicant stated himself to be of temperate and sober habits. It was proved that he became intemperate during the year preceding his death.

That the applicant's agreement as to change of habits was included among the declarations and statements of the application, and as such became an express warranty.

That the contract thus formed was valid, and became binding on the assured and his assignees.

That in order to void the contract, it is sufficient to prove that the change of habits of assured was such as to increase the risk on his life, even though death be not proved to have resulted therefrom.

That in the present case, a change of habits was proved, which in its nature increased the risk on the life insured.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 SEPT. 1886, *Boyce & Phœnix Mutual Ins.* (Affirmed by Supreme Court 14 S. C. R. 723). **II,** Q. B. **323.**

CITATIONS.—*May, on Insurance* (*ed.* 1882) *s.* 180—*Bliss, on Insurance* (*ed.* 1874) *pp.* 61, 85.

3. Policy.—Qu'une companie d'assurance qui ne fournit pas à un applicant une police d'assurance conforme à l'application ne peut pas se faire payer les primes stipulées au contrat.

Que dans ce cas l'assuré a le droit de discontinuer le paiement des primes d'assurance convenues.—GILL, J., 31 MAI 1889, *La Canadienne vs Perrault.* **V,** S. C. **62.**

See PROCEDURE.

INSURANCE (MARINE)

That a condition in a policy of insurance "that all claims under this policy shall be void unless prosecuted within one

year from the date of loss " is a valid condition and the non-observance thereof defeats the remedy of the insured. Such condition is not a renunciation of prescription by anticipation within the meaning of C. C. 2184.

That correspondence between the insured or persons claiming to represent him and the insurer on the subject of loss without any admission of liability on the part of the insurer is not a " prosecution " of the claim by the insured, within the meaning of the above condition.

The alleged ruling in Anchor Marine Ins. Co. & Allen, 13 Q. L. R. 4 (that such condition is invalid) questioned and denied.—DORION, TESSIER, CROSS, CHURCH, JJ., 22 NOV. 1887, *Allen & Merchants Ins. Co.* (Affirmed by Supreme Court 15 S. C. R. 488). **III, Q. B. 293.**

CITATIONS —*Cornell v. L. & L. Ins. Co.* 14 *L. C. J.* 256—*Armstrong & N. Ins. Co.* 4 *L. N.* 77 — *Bell v. Hartford Ins. Co.* 1 *L. N.* 100 — *Rousseau v. Royal Ins. Co. M. L. R.* 1 *S. C.* 395—*Whyte v. Western Ins. Co.* 22 *L. C. J.* 215—*Browning v. Provincial Ins. Co. L. R.* 5 *P. C.* 274. 32 *Laurent* § 184, *p.* 191—*I Pothier p.* 340—*Pouget, Dict. des Ass. tome* 1.

See PROMISSORY NOTE.

INTERDICTION

1. Effect of, as to anterior contract. — Que l'interdiction d'une personne comme ivrogne d'habitude a les mêmes effets que l'interdiction pour prodigalité, et notamment, un contrat fait par un ivrogne avant son interdiction est valide comme le serait celui d'un prodigue dans les mêmes circonstances.—TELLIER, J., 7 AVRIL 1888, *Metayer vs McVey.* **IV, S. C. 21.**

2. Interdiction for prodigality — Goods supplied to interdicted person — Authority of curator — Lesion.—That when a person has been interdicted for prodigality according to law, every one is presumed to have knowledge thereof; and a tradesman who continues to supply goods on credit to the interdicted person, without the sanction of the curator, and to an extent greatly in excess of what the means of the interdicted person would justify, cannot recover from the curator the value of such goods, even, when they are household

supplies,—especially, where the curator has otherwise provided for the subsistence of the interdicted person.

A plea which amounts to lesion is sufficient, though lesion be not alleged nominatim.—JOHNSON, DAVIDSON, DE LORIMIER, JJ., 22 JAN. 1889, *Riendeau vs Turner.* **V,** S. C. **278.**

3. Joint curator—Powers of curator—Purchase of diamonds.—Where two persons have been appointed curators to a person interdicted for insanity one of them cannot make the state of the interdict liable for the price of goods bought by such curator without the knowledge or consent of his co-curator.

Where the income of an interdicted person is barely sufficient for the board and maintenance of himself and his wife, the latter cannot make the estate liable for the price of diamonds purchased by her, the value of diamonds being greatly beyond the means of the interdict.—WURTELE, J., 14 MAY 1891, *Hemsley vs Morgan.* **VII,** S. C. **273.**

INTEREST

1. On costs—Where judgments of Superior Court is reversed.—Judgment was rendered in February 1889 in favor of plaintiff in the Superior Court, costs reserved. Upon appeal to the Court of Queen's Bench, the judgment was reversed in November 1889 and the action was dismissed with costs of both Courts in favor of the defendants.

Upon taxation of the bill, defendants pretended that under arts. 3598 et 5904 R. S. Q. interest was due on the Superior Court costs from the date of the judgment of the Superior Court, on the ground that the Queen's Bench judgment reversing was the judgment which the Superior Court ought to have rendered, and should be taken *nunc pro tunc.*

The interest was due on the Superior Court costs only from the date of the judgment of the Court of Queen's Bench.—MATHIEU, J., 10 JAN. 1890, *Fraser vs McTavish.* **VI,** S. C. **436.**

2. On interest.—Que l'appelant n'ayant reçu les deniers appartenant à la dite substitution que comme procureur des

grevés et simple negotiorum gestor, il n'était pas tenu de payer les intérêts des sommes par lui reçues, si ce n'est depuis la demande qui en a été faite par l'intervention produite par l'intimé ; l'obligation de payer les intérêts des intérêts n'incombant qu'à ceux qui reçoivent des deniers pour les incapables.— DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 26 MAI 1885. *Dorion vs Dorion.* (Affirmed in part by Supreme Court 13 S. C. R. 193). **I, Q. B. 483.**

3. When term is stipulated. —Qu'en matière commerciale l'intérêt peut être chargé sur un compte de marchandises à partir de l'échéance du délai convenu sans autre mise en demeure.—PAPINEAU, J., *Rowan vs Masse.* **I, S. C. 177.**

See PRESCRIPTION.

INTERLOCURORY JUDGMENT

See PROCEDURE.

INTERVENTION

See ELECTION ACT—INSOLVENT ACT.

INTOXICATING LIQUORS PROHIBITION OF SALE OF

See CONSTITUTIONAL LAW.

INVENTORY

See PRESCRIPTION—PROCEDURE.

JOINDER OF ACTION

See PROCEDURE.

JOINT STOCK COMPANY

See CORPORATION.

JUDGMENT

1. Death of several of the plaintiffs.—That the death of several of the plaintiffs, during the pendency of the suit, does not render a judgment, pronounced in their name absolutely null ; the nullity being only relative and such as

can be invoked only by the legal representatives of the deceased, on the ground that their rights have been prejudiced by the judgment.—JETTÉ, J., 30 NOV. 1885, *Lowrey vs Routh.* **II,** S. C. **58.**

(Affirming the decision of Jetté J. M. L. R. 2, S. C. 58). That the death of several of the plaintiffs, during the pendency of the suit, does not render a judgment pronounced in their name absolutely null; the nullity being relative, and such as can be invoked only by legal representatives of the deceased, on the ground that their rights have been prejudiced by the judgment. — TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 22 DEC. 1887, *Lowrey vs Routh.* **III,** Q. B. **364.**

2. Rectification of clerical error in judgment.—That an accidental omission which occurs in the draft of judgment rendered in appeal, may be corrected, even after the record has been transmitted to the Court below.—DORION, MONK, RAMSAY, CROSS, BABY, 20 NOV. 1886, *McGibbon & Bédard.* **VI,** Q. B. **430.**

JUDGMENT OF DISTRIBUTION

See PROCEDURE.

JUDICIAL ABANDONMENT

See CAPIAS—INSOLVENCY.

JUDICIAL ADMISSION

Que l'aveu d'une partie qui reconnaît avoir reçu une somme d'argent réclamée par l'action, mais qui prétend avoir reçu la dite somme à titre de don, et non à titre de prêt, peut être divisé lorsque cette prétention paraît tout à fait invraisemblable en vue des circonstances de la cause et du caractère des parties. Et l'admission contenue dans l'aveu ainsi divisé, peut servir de commencement de preuve par écrit, de manière à permettre l'introduction de la preuve testimoniale pour contredire la prétention invraisemblable de la partie interrogée et pour rétablir les véritables circonstances.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 21 MARS 1885, *Raymond & Latraverse.* **I,** Q. B. **321.**

JUDICIAL PROCEEDINGS

See LIBEL AND SLANDER.

JUDICIAL SALE OF MOVABLES

1. Nullity. — Que lorsqu'un adjudicataire à une vente judiciaire de meubles a payé son prix d'achat, la vente ne peut être annulée et mise de côté pour informalités, mais seulement pour fraude et collusion.—GILL, J., 27 MAI 1886, *Nordheimer vs Leclaire.* **II,** S. C. **11.**

(Reversing the decision of Gill, J. M. L. R. 2 S. C. 141). That a judicial sale of movables may be set aside for irregularities in the proceedings as well as for fraud and collusion; and where a piano not the property of defendant was seized and sold as belonging to him for an insignificant part of its value, and the owner had no knowledge of such seizure, and it further appear that there was no bidder at the sale, except the person who purchased the piano, it was held that the sale was a nullity, and that the owner was entitled to revendicate the property.—MONK, RAMSAY, TESSIER, CROSS, 21 SEPT. 1886, *Nordheimer vs Leclaire.*

II, Q. B. **446.**

JUNK STORE

See MUNICIPAL LAW.

JURAT

See EXTRADITION.

JURISDICTION

I.—BILL OF EXCHANGE.

II.—DECLINATORY EXCEPTION—COMPLETION OF CAUSE OF ACTION IN CONTRACT OF SALE—CONTRACT BY TELEGRAM AND DELIVERY.

III.—EMPLOYEE LODGED BY HIS MASTER—EJECTMENT.

IV.—GOODS ORDERED BY LETTERS.

V.—JURISDICTION OF THE COURTS.

VI.—PROMISSORY NOTE.

VII.—RETRAXIT.

VIII.—RIGHT OF ACTION—PLEADING—COSTS.

See ALIMENTARY ALLOWANCE—CAUSE OF ACTION COMMISSIONNERS COURT — CONSTITUTIONAL LAW — ELECTION LAW — EVIDENCE—HABEAS CORPUS—INSURANCE COMPANY—LESSOR AND LESSEE — LICENSE ACT — PROCEDURE — SALOON KEEPER.

1. Bill of exchange.—Qu'une lettre de change, faite et datée à Montréal, payable à Montréal, mais acceptée par les défendeurs à Coaticook, ne peut être recouvrée en justice à Montréal la Cour n'ayant pas de juridiction ; l'action doit être intentée au lieu où la lettre de change a été acceptée, ce dernier endroit étant le lieu où a pris naissance le droit d'action.

Qu'une lettre de change, acceptée sans que rien n'indique à quel endroit elle a été acceptée, est censée l'être au domicile de celui qui l'accepte.—MATHIEU, J., 22 MAI 1890, *Lockerby vs Weir.* **VI, S. C. 285.**

2. Declinatory exception—Completion of cause of action in contract for sale — Contract by telegram and delivery.—That where a merchant domiciled at S., asks by telegram from a merchant domiciled at M., for the quotation of certain goods to be delivered at S., to which the merchant at M. telegraphs in reply offering certain quantities at certain prices, and the merchant at S. thereupon responds accepting the prices but changing the quantities, upon which the merchant at M. ships in accordance with the last telegram, no complete right of action arises in the District of M., and an action brought in such district is dismissed.—PAGNUELO, J., 9 OCT. 1889, *McFee vs Gendron.* **V, S. C. 337.**

CITATIONS.—*Benjamin, on Sales*, 3rd. édit. 7 p. 40, 48, 49—*Massé, Droit Commercial, No.* 579—*Ross vs Rouleau, M. L. R.* 1 *S. C.* 424—*Davidson v. Laurier*, 1 *Dor. Q. B. p.* 366—*National Ins. Co. & Paige*, 24 *L. C. J.* 187 — *Gratton vs Brennan*, 15 *R. L.* 713—*Gault & Bertrand* 25 *L. C. J.* 340—*Bedarride, achats et ventes, Nos.* 100 *et seq.*—*Pothier, vente, No.* 22.

3. Employee lodged by his master—Ejectment.—Que dans le cas où une corporation municipale a engagé, pour un an, un employé pour travailler pour elle, à raison de $550, logé et chauffé, et où pour causes jugées suffisantes par le conseil, cet employé a été renvoyé après un mois d'avis, la corpora-

tion ne peut prendre une action en expulsion sous l'Acte sommaire, article 887, par. 1 du C. P. C. pour expulser l'employé d'une maison appartenant à la municipalité.

Qu'un employé, dont le salaire est de $550 par année, sans convention quant aux termes de paiement n'est payable qu'au bout de l'année, et ne tombe pas sous l'Acte Sommaire, article 887, par. 4 du C. P. C.—TASCHEREAU, WURTELE, TAIT, JJ., 30 AVRIL 1890, *La Ville de Maisonneuve vs Lapierre.* **VI,** S. C. **144.**

CITATIONS.—*Hart vs O'Brien*, 15 *L. C. J.* 42—*Reid vs Smith*, 6 *Q. C. R.* 372.

4. Goods ordered by letter.—Que dans le cas où un commerçant expédie des marchandises sur une commande contenant un ordre formel, le contrat est parfait par l'exécution qu'en fait le commerçant à qui la commande est adressée, sans autre déclaration de sa part, et la cause d'action origine alors à l'endroit où le contrat a été exécuté.—MATHIEU, J., 30 AOUT 1887, *Gratton vs Brennan.* **III,** S. C. **95.**

Que lorsque des marchandises ont été en partie ordonnées et achetées à Montréal et que le reste a été ordonné et acheté par lettre du défendeur au demandeur, la cause d'action a originé à Montréal où l'action peut être intentée pour le tout.—JETTÉ, J., 9 DÉC. 1890, *Cartwright vs McCaffery.* **VII,** S. C. **41.**

5. Jurisdiction of the courts.—Under C. C. P. 1016, any person interested may bring a complaint in the nature of a quo warranto, whenever another person usurps, intrudes into, or unlawfully holds or exercises any office in any corporation, or other public body or board; whether such office exists under the common law, or was created in virtue of any statute or ordinance.

The jurisdiction of the courts of justice cannot be ousted save by express words in the statute incorporating such public body, and a mode of appeal provided by the by-laws does not, therefore, deprive the members of their recourse before the ordinary tribunals.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 27 NOV. 1886, *Heffernan & Walsh.* (Appeal to Supreme Court quashed 14 S. C. R. 738. **II,** Q. B. **482.**

Que lorsque, après l'émanation d'un bref de sommation et sa signification au défendeur, mais avant l'entrée de la cause en cour, le demandeur fait signifier au défendeur un retraxit de partie de la somme réclamée, suffisant pour réduire cette somme au dessous de $100, la cour supérieure n'a pas de juridiction pour juger l'action, qui sera renvoyée sur un plaidoyer du défendeur.—SICOTTE, J., 14 OCT. 1884, *Sexton vs Paradis.* **I, S. C. 437.**

6. Promissory note. — Que lorsqu'un débiteur signe en dehors du district de Montréal un billet promissoire daté de Montréal, il fait une élection de domicile qui donne juridiction, en cas de poursuite sur ce billet à la Cour Supérieure de ce dernier district, quand même la dette aurait été contractée en dehors du dit district.

Qu'une exception déclinatoire sous ces circonstances peut être renvoyée sur réponse en droit.—WURTELE, J., 20 FÉV. 1889, *Leclaire vs Beaulieu.* **V, S. C. 95.**

That an action may be brought in the district of Montreal for the recovery of the amount of a promissory note dated at Montreal, but which was in fact signed in the district of Ottawa where the promissor has his domicile. The promissor in dating the note at Montreal, makes as it were an election of domicile at Montreal and consents that the action for the recovery of the note be brought there.—DE LORIMIER, J., 8 FEB. 1890, *Banque du Peuple vs Prévost.* **VI, S. C. 88.**

CITATIONS.—*Wurtele vs Lenghan*, 1 *Déc. de Québ.* 61—*Hudon vs Champagne* 17 *L. C. J.* 45—*Ry. Newspaper Co vs Hamilton*, 20 *L. C. J. p.* 28—*Mulhalland & Cie, de Fonderie Chagnon*, 21 *L. C. J. p.* 114—*National Ins. Co. v. Cartier*, 22 *L. C. J. p.* 336—*Duchesnay v. Laroque*, 25 *L. C. J. p.* 228—*Leclaire vs Beaulieu*, *M.* 4 *R.* 5 *S. C.* 95.

7. Retraxit.—Que dans une action intentée au montant de $200 lorsque le demandeur produit un retraxit de $149.21, ne laissant une balance réclamée que de $50.79, la Cour Supérieure n'a pas de juridiction, et l'action peut être renvoyée sur exception déclinatoire.—WURTELE, J., 5 AVRIL 1889, *Marsan vs Mandeville.* **V, S. C. 120.**

8. Right of action—Pleading—Cost.—Where the plaintiff domiciled in the district of M., revendicates as his proprety

goods in the possession of a person domiciled in another district, and alleged to be illegally detained by him therein, the defendant should be impleaded in the district of his domicile.

Where the action is manifestly beyond the jurisdiction of the court, it will be dismissed even though no declinatory exception has been pleaded.

A person who intervenes in the suit (the defendant making default) in order to contest such seizure may raise the question of jurisdiction by his plea to the merits, without having filed a declinatory exception within four days from the allowance of the intervention ; but in such case he will not be awarded costs on the intervention.

The intervening party in such case is not bound by any consent to the jurisdiction which may be proved to have been given by the defendant before the institution of the action.—WURTELE, J., 17 NOV. 1890, *Goldie vs Beauchemin.* (Confirmed in appeal 1 R. O. Q. B. 385). **VI,** S. C. **495.**

JURY TRIAL

1. Exclusion of evidence.—Where a witness arrived after the evidence at the trial was closed, but before the jury was charged, the exclusion of his testimony was not in itself a sufficient ground for allowing a new trial ; but the Court will look to the relevancy and importance of the evidence which the witness was prepared to give, and where the affidavit of such witness is before the court, and the testimony which he proposed to give does not appear to be relevant or material, a new trial will not be ordered on the ground that the evidence was excluded.—DORION, RAMSAY, CROSS, BABY, JJ., 16 JAN. 1886, *Robinson vs C. P. R. Co.* (Reversed by Supreme Court 19 S. C. R 105).

II, Q. B. **25.**

2. Partiality of juror.—The fact that one of the jury, in the course of the trial, put a question to a witness which appeared to indicate a leaning to the side of the plaintiff and the further circumstance that the jury presented her with their own taxed fees after the verdict was rendered,

are not such indications of bias or partiality as to constitute grounds for a new trial.—*Robinson & The C. P R. Co.*
II, Q. B. **25.**

3. Verdict—Damages.—Where on a former trial, the jury awarded the respondent $3000 damages, but the verdict was set aside by the Supreme Court on the ground of misdirection and on the second trial the jury awarded $6500 damages: that the amount was not so excessive that the Court should set aside the verdict and order a new trial.—DORION, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *C. P. R. Co. & Robinson.* **VI,** Q. B. **118.**

4. Verdict—Jury unable to answer questions.—Where the jury, in answer to a question submitted to them at the trial, reply "impossible to say" such answer is not a compliance with art. 414 C. P. C. which requires that the verdict be explicitly affirmative or negative upon each fact submitted: and there is a right to a new trial.—DORION, CROSS, BABY, BOSSÉ, JJ., 23 MAY 1890, *The Royal Institution for the advancement of Learning & Barrington et al & The Scottish Union and National Insurance Company.*
VI, Q. B. **458.**

See DAMAGES—LIBEL AND SLANDER PROCEDURE.

JUSTICE OF THE PEACE

That justices of the peace are responsible in damages where they act illegally and maliciously, e. g. in committing a person to gaol for refusal as a witness to answer a question at the trial which had taken place before them, the order of imprisonment being signed out of Court, some days after the termination of the trial, and under circumstances indicating malice.—JETTÉ, MATHIEU, WURTELE, JJ., 27 JUNE 1891, *Gauvin vs Moore.* **VII,** S. C. **376.**

CITATIONS.—*Kerr's Magistrates Acts p.* 76, 77—*Fraser & Gagnon* 2 *R. de L.* 517—*Beaudoin & Boisseau, Ramsay's Ap. Cas. p.* 298—*Cloutier & Trepanier* 11 *R. L. p.* 670 — *Marois & Bolduc* 7 *R. L.* 148 — *Cartier v Burland* 2 *R. L.* 475—*Lacombe vs St. Marie* 15 *L. C. J.* 271—*Ray vs Pagé* 27 *L. C J.* 11.

LANE

Qu'un chemin qui a toujours servi à l'usage des propriétaires avoisinants, doit être considéré comme une rue publi-

que et qu'aucun des voisins n'a le droit de l'obstruer pour la détourner à son propre avantage sous prétexte que ce chemin est établi sur sa propriété. — MacKay, Torrance, Rainville, JJ., 31 oct. 1878, *Théoret vs Ouimet*.

I, S. C. **275.**

LARCENY

See CRIMINAL LAW.

LARCENY AS A BAILEE

The prisoner was indicted for larceny, as a bailee, of a sum of money. The complainant produced a receipt, taken at the time of the deposit in the hands of the prisoner, by which it appeared that the deposit was made "en attendant le paiement qu'il pourrait faire d'une même somme à R. A. Benoît."

That this receipt implied that the prisoner was to pay a similar sum, and not actually the same pieces of money, and that there was no larceny.

That parol testimony could not be admitted to vary the nature of the transaction.—Dorion, Ramsay, Tessier, Cross, Baby, JJ., 25 sept. 1886, *The Queen vs Berthiaume*.

III, Q. B. **143.**

LEASE

Qu'un bail de meubles pour une certaine somme représentant leur valeur, avec la condition que lorsque la somme stipulée sera payée les meubles seront la propriété du locataire, est parfaitement régulier et constitue bien un louage et non pas une vente.—Mousseau, J., 23 avril 1885, *May vs Fournier*.

I, S. C. **389.**

See CONTRACT—LESSOR AND LESSEE.

LEGACY

1. Capital of annual rent.— Qu'un legs d'une rente annuelle dont la moitié seulement est payable pendant la minorité du légataire, et dont l'autre moitié doit être capitalisée et payée avec le total de la rente, à l'âge de majorité

du légataire, est un legs à terme et un droit acquis transmissible aux héritiers (art. 902 C. C.)—TASCHEREAU, J., 17 JAN. 1885, *Prescott vs Thibault.* **I, S. C. 187.**

2. Subject to usufruct.—Qu'un legs fait dans les termes suivants "je donne à E. une somme de $500 à lui être payée une année après le décès de ma dite épouse, ou une année après son convol en secondes noces; quant à la jouissance de la dite somme, je la donne à ma dite épouse tant qu'elle gardera viduité," n'est ni à terme, ni conditionnel mais un legs absolu à E. sujet au dit usufruit, de sorte que la renonciation de l'usufruitière à son usufruit donne à E. le droit de toucher et de jouir de son legs immédiatement.

Qu'un legs d'une somme d'argent fait à une personne en propriété et à une autre en usufruit donne à l'usufruitière le droit de toucher la somme léguée et de la faire fructifier à sa guise pendant la durée de son usufruit;

Que l'intérêt sur son legs ne compte que de la demande en justice.—CIMON, J., 20 FEV. 1886, *St. Aubin vs Dame Lacombe.* **II, S. C. 110.**

LEGATEE

That a usufructuary legatee who is specially exempted by the will from the obligation of giving security, will not be ordered by the Court to do so, on the demand of the nus proprietaires, unless his administration or the change in his financial position, be such as to put the interests of the nus proprietaires in jeopardy, which, in the opinion of the majority of the Court was not the case here.—DORION, TESSIER, CROSS, BABY, BOSSÉ, 26 JUIN 1889, *Dorion & Dorion.* **V, Q. B. 247.**

CITATIONS.—10 *Demolombe, No.* 500 *p.* 433—*Sirey,* 26, 2, 231—*Sirey,* 80, 2, 77, *Aix,* 12 *juin* 1879—*Id.* 77, 2, 181, *Paris,* 15 *juin* 1877—*Id.* 79, 2, 332, *Aix,* 3 *janvier* 1879.

See WILL.

LEGISLATIVE POWERS

See CONSTITUTIONAL LAW.

LESION

See INTERDICTION.

LESSOR AND LESSEE

I.—Accident by fire.
II.—Change of destination of premises leased—Resiliation of lease.
III.—Damages.
IV.—Demolition of buildings on leased lands.
V.—Demolition of wall—Resiliation of lease.
VI.—Disturbance of lessee's use.
VII.—Ejectment by co-proprietor.
VIII.—Injury to tenant in business.
IX.—Interference with lessee's enjoyment of premises.
X.—Jurisdiction.
XI.—Lease.
XII.—Obligation of lessor—Putting in default.
XIII.—Obligation to furnish premises.
XIV.—Occupation of shed not mentioned in the lease—Accessory—Acquiescence.
XV.—Possession vaut titre—Opposition.
XVI.—Privilege of lessor.
XVII.—Repairs to leased premises.
XVIII.—Verbal lease—Resiliation.

See EVIDENCE — HUSBAND AND WIFE — INSOLVENCY — JURISDICTION — PROCEDURE — SALE — TRUSTEES AND ADMINISTRATORS.

1. Accident by fire.—That the presumption of fault established by C. C. 1629 against the lessee cannot be invoked by the lessor who by the terms of the lease stipulated for the delivery of the premises in as good order etc., at the expiration of the lease "accidents by fire excepted" and more particularly where the lessees undertook to pay all extra premiums of insurance which might be charged to the lessor consequent on the nature of the business carried on in the premises by the lessees. In such case the burden of proof is on the lessor to establish fault on the part of the lessees.

Where in such circumstances the cause of the fire is not established, it will be considered an accidental fire for which the lessees cannot be held responsible. And the fact that the lessees did not conform strictly to the regulations of police with reference to the deposit of ashes will not affect

the case in the absence of any proof that such negligence on their part was the cause of the fire.—DORION, TESSIER, CROSS, CHURCH, JJ., 26 NOV. 1887, *Skelton & Evans.* (Affirmed by Supreme Court 12 L. N. 220 ; 16 S. C. R 637).

III, Q. B. **325.**

2. Change of destination of premises leased—Resiliation of lease.—Where premises were leased "to be used and occupied only for the purposes of concerts, lectures, fairs, bazaars, clubs, societies, public exhibition and meetings in accordance with law" and the lessee sublet to parties who used the premises for the religious meetings of the Salvation Army, an organization which was obnoxious to a large portion of the inhabitants of the locality, and windows were broken and other damage was done to the property in consequence, and insurance was refused by the insurance companies on account of the increased risk, held that there had been a change of destination sufficient to entitle the lessor to obtain the rescission of the lease.—CROSS, BABY, BOSSÉ, CIMON, JJ., 26 MARCH 1891, *Pignolet & Brosseau.*

VII, Q. B. **77.**

CITATIONS.—*Denisart, vo Ministere public—Domat (Remy), vol.* 4 *p.* 460—*Blackstone, livre* 3 *ch* 13—*Sedgwick, on Damages, p.* 146—*Hilliard, on Torts, vol.* 1 *p.* 555, *No.* 2—*Hight v. Thomas,* 10 *Ad & Ellis,* 590—*Larombière, Oblig. vol.* 5 *p.* 715—*Curasson, des actions posses, p.* 367—7 *Laurent, p.* 412—XI *Demolombe, p.* 230—*Bourdon v. Benard,* 15 *L. C. J. p.* 60—*Merlin, Quest. V bis question d'Etat* § 1—*Mangin, act. pub. T.* 1, *p.* 252—3 *Aubry et Rau, p.* 56—*Duvergier, Louage, No.* 448.

3. Damages.—In any case the damages which a tenant can claim for non fulfilment of a condition of the lease must be the immediate and direct consequence of such inexecution, and will not include indirect losses e. g. damages alleged to have been suffered owing to the lessee's inability to fulfill contracts, or for waste of wood prepared for his business.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 JAN. 1886, *Bell & Court.* **II,** Q. B. **80.**

4. Demolition of buildings on leased lands.—The defendants had leased certain lands, with stipulation that it should be sublet only to persons approved by them ; that no liquor was to be sold thereon and defendants should have the

right of entry, at any time, and right of ejectment of any tenant who did not conform to the terms of the lease.

HELD :—That the defendants were justified in causing the demolition of buildings existing on such lands, the buildings in question being used for the sale of spirituous liquors, contrary to law, and for purposes of prostitution, and the defendants never having authorized the construction thereof by the plaintiff, whose occupancy, moreover, was not proved.—TORRANCE, J., 13 SEPT. 1886, *Bacon vs C. P. R.*

II, S. C. **277.**

5. Demolition of wall—Resiliation of lease.—Que la démolition du mur d'un des côtés d'une maison rend cette maison inhabitable.

Que le propriétaire ne peut, sous ces circonstances, faire débouter l'action en résiliation du locataire en établissant que ce mur avait été démoli par son voisin, exerçant ses droits de mitoyenneté, pour le rebâtir et que dans le bail, le locataire s'était engagé à souffrir toutes les réparations nécessaires.—TASCHEREAU, J., 1er JUIN 1889, *Jacotel vs Galt.*

V, S. C. **60.**

6. Disturbance of lessee's use.—Until a judicial disturbance has arisen, and a partial eviction has been the consequence thereof, no claim by a lessee for a reduction of rent can be maintained. A judicial disturbance may arise either by an action by a third person setting up a claim of right to the detriment of the lessee, or by an exception setting up a claim of right, in answer to an action in damages brought by the lessee against a trespasser.

A lessee who is disturbed in his possession by the material act of a third party, wathever may be the assertion of right made by such third party at the time of the commission of the act, should treat such disturbance as a mere trespass, and should bring suit against the trespasser for the recovery of the damages which he has suffered by reason of such trespass, and to prohibit the trespasser from further tisturbing him in his enjoyment. If the trespasser by his pleas raises a claim of right, the lessee should notify the lessor of the disturbance, and can then bring an action in warranty against the lessor for the purpose of obtaining a reduction

of rent, and damages.—WURTELE, J., 31 JAN. 1890, *G. N. W. T. Co. vs Montreal Tel. Co.* **VI, S. C. 74.**

CITATIONS.—*Rolland de Villargues, vo Bail, No.* 350—6 *Barlin, p.* 63—IV *Aubry & Rau, p* 479—25 *Laurent, vo,* 167—6 *Boileux,* 59, 63—*Poucet, Traité des Actions, No.* 77—*Pothier, Louage, No.* 91.

(Affirming the judgment of Wurtele J. M. L. R. 6 S. C. 74). Until a judicial disturbance has arisen, and a partial eviction has been the consequence thereof, no claim by a lessee for the reduction of rent can be maintained. A judicial disturbance may arise either by an action of a third person setting up a claim of right to the detriment of the lessee, or by an exception setting up a claim of right, in answer to an action of damages brought by the lessee against a trespasser.

A lessee who is disturbed in his possession by the material act of a third party, whatever may be the assertion of right made by such third party at the time of the commission of the act, should treat such disturbance as a mere trespass, and should bring suit against the trespasser for the recovery of the damages which he has suffered by reason of such trespass, and to prohibit the trespasser from further disturbing him in his enjoyment. If the trespasser by his pleas raises a claim of right, the lessee should notify the lessor of the disturbance, and can then bring an action in warranty against the lessor for the purpose of obtaining a reduction of rent, and damages.

Per Dorion C. J.—On the merits the action should be dismissed, the appellants by the agreement in question having assumed all risk of diminished income in the working of the telegraph lines transferred by respondents, and having entered into this agreement after the Canadian Pacific Railway Company had obtained authority from Parliament to establish telegraph lines for the transmission of messages for the public.—DORION, TESSIER, BABY, CROSS, DOHERTY, JJ., 22 SEPT. 1890, *Great North Western Telegraph Co. of Canada & Montreal Telegraph Co.* **VI, Q. B. 257.**

7. Ejectment by co-proprietor.—That the proprietor for one undivided half in usufruct may bring alone an action

of ejectment against the tenant; but he cannot of himself lease the premises subject to his usufruct.

"Grosses réparations" do not include the putting on of a new roof.—TORRANCE, J., 22 AUGUST 1885, *Ross vs Stearns*. **I, S. C. 448.**

CITATIONS.—*Duvergier, No.* 87—1 *Troplong, No.* 1000—*Agnel, Code de Propriétaires, p.* 10 *No.* 30—2 *Bourjon*, 38.

That the proprietor par indivis has a right to bring an action of ejectment against a person holding the property solely by the will of a co-proprietor, the proprietor of an undivided share not having any right to lease the whole property, nor even his own share of it, without the consent of his co-proprietor.—DORION, RAMSAY, CROSS, BABY, JJ., 30 DEC. 1885, *Stearns & Ross*. **II, Q. B. 379.**

CITATIONS.—*Guyot, Bail, p.* 12.

8. Injury to tenant in business.—Qu'un propriétaire qui, en faisant des réparations à sa maison, emploie des matériaux émanant des odeurs infectes, lesquelles causent des dommages à son locataire, sera condamné à payer le montant de ces dommages en sus de la résiliation du bail.—SICOTTE, GILL, LORANGER, JJ., 20 MAI 1885, *Levesque vs Daigneault*. **I, S. C. 414.**

(Affirming the decision in Review, M. L. R. 1 S. C. 414). Where the lessor, in making repairs to the leased premises, used material which emitted a disagreeable odour and damaged the stock of the lessee, a grocer, that the latter was entitled to have the lease rescinded, and to recover the amount of damage sustained by him.

In such circumstances the more regular course is that the lessee should put the lessor en demeure to remove the cause of damage, before bringing an action in resiliation of the lease and to recover damages.—DORION, TESSIER, CROSS, BABY, JJ., 27 JAN. 1886, *Daigneault & Levesque*. **II, Q. B. 205.**

CITATIONS.—*Tylee vs Donegani*, 3 *R. L.* 441 — *Remillard vs Cowan*, 6 *Q. L. R.* 305.

9. Jurisdiction.—Que dans une action en résiliation de bail où aucune somme d'argent n'est réclamée ni pour com-

me loyer, ni comme dommages, c'est la valeur du bail qui détermine la juridiction du tribunal ; mais que dans le cas où des sommes d'argent ont déjà été payée au locateur, c'est la balance due ou à devenir due en vertu de ce bail qui en fixe la valeur.—MATHIEU, J., 29 DÉC. 1886, *Wood vs Varin.*

III, S. C. **110.**

Que les procédures spéciales permises par l'art. 887 du Code de Procédure Civile entre locateurs et locataires ne s'appliquent qu'aux baux d'immeubles et non à ceux de meubles.—GILL, J., 3 JUIN 1887, *Lusignan vs Rielle.*

III, S. C. **197.**

Masse & Co., sublet to respondent certain premises held by them under a lease and they also leased sundry movables therein for a certain sum payable in monthly instalments : the respondent also becoming liable for the rent payable to the proprietor of the premises under the lease to Masse & Co. In case of default to pay the instalments, the right to resiliate the lease was stipulated. Masse & Co., transfered their rights to the appellant, who brought an action to resiliate the lease on the ground of default to meet the instalments. The proceedings were under the special procedure ad hoc, provided by C. C. P. 887 et seq.

HELD :—(Reversing the judgment of the Superior Court M. L. R. 3 S. C. 197). That the appellant having the right to resiliate for default, the action was improperly dismissed on a declinatory exception.

Per Bossé J.—That, in any case, the Superior Court, having jurisdiction, the objection to the summary procedure was matter to be pleaded by exception to the form, and not by declinatory exception.—DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 21 DEC. 1888, *Lusignan & Rielle.*

IV, Q. B. **265.**

Que dans le cas où une saisie gagerie en expulsion émanée de la Cour Supérieure sous l'Acte des Locateurs et Locataires, soulève des questions et fait voir un droit d'action qui ne tombent pas sous l'application de ce dit Acte, il n'y a pas lieu à une exception déclinatoire, la Cour Supérieure ayant toujours juridiction, le défendeur doit plaider

par exception à la forme.—MATHIEU, J., 31 DÉC. 1887, *Cadieux vs Porlier.* **III,** S. C. **453.**

An action under art. 1624 C. C. to recover possession of the premises leased, where the lessee continues in possession after the expiration of the lease may be brought by the lessor under the provisions of arts. 887 et seq. regulating suits between lessors and lessees.

Where to an action to recover possession of the premises a demand is joined for the value of the use and occupation since the expiration of the lease the action must be brought in the Superior or Circuit Court according to the amount claimed.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 22 SEPT. 1890, *McBean & Blachford.* (Confirmed by Supreme Court, 20 S. C. R. 269). **VI,** Q. B. **273.**

CITATIONS.—*Beaudry v. Denis* 20 *L. C. J.* 254—*Wood v. Varin, M. L. R.* 3 *S. C.* 110—*Voisard v. Saunders,* 1 *L. N.* 41—*Gauthier v. Désy,* 9 *Q. L. R.* 13—*Cadieux v. Pothier, M. L. R.* 3 *S. C.* 453— *Fisher vs Vachon,* 6 *L. C. J.* 189—*Guy vs Goudrault,* 14 *L. C. R.* 202.

10. LEASE.—1. *Construction of* —That where the lease stipulated that the lessee should have the use of a portion of the yard in rear of the building leased, which portion should be determined by the lessor, with right to the lessee to fence the same at his option, that the lessor was not entitled, after the lessee had been four years in possession with the yard open, to erect a fence across the yard, more especially as the fence deprived the lessee of light and air.—DORION, CROSS, BABY, CHURCH, JJ., 25 FEB. 1888, *Myles & Styles.* **IV.** Q. B. **116.**

2. *Of agricultural land.*—Que d'après la loi, le locataire d'un terrain en culture a huit jours, après l'expiration du bail, pour enlever ses récoltes s'il n'y a aucune convention contraire

Que le propriétaire qui prend possession de l'immeuble avant l'expiration de huit jours est responsable des dommages que ses animaux pourront causer à la récolte du locataire.—PLAMONDON, J., 30 JUIN 1886, *Crevier vs Blaignier.* **II,** S. C. **256.**

3. *Of house—Unhabitable premises.*—When leased premises are in such unsanitary condition as to expose the lessee and

his family to danger of disease, the lessee may abandon the premises without an antecedent judgment of the Court.

When a complaint about the unhealthy condition of the premises is well founded, it becomes of landlord's clear and immediate duty to relieve his tenant of danger to life and health, and he cannot shelter himself behind a demand for a sanitary's inspector report.

The landlord before the institution of the action to resiliate the lease which was in notarial form, had been verbally notified of the highly unsanitary conditions of the premises and had received the sanitary inspector's written notice to put the premises in order, but refused to consent to a cancellation of the lease, and took no steps to repair the defective drain during the three months which intervened between the service of the writ and the trial of the case. HELD That under these circumstances the landlord could not complain of the absence of a notarial or other written protest putting him in default to repair the premises.—DAVIDSON, J., 13 OCT. 1891, *Palmer vs Barrett.* **VI,** S. C. **446.**

CITATIONS.—*Daigneau vs Levesque, M. L. R.* 2 *Q. B.* 205—*Pagels vs Murphy, M. L. R.* 3 *S. C.* 50—*Boucher v. Brault* 15 *L. C. J.* 117—*Seymour v. Smith,* 33 *L. C. J.* 165—*Marchand v. Caty,* 23 *L. C. J.* 259—*Johnson v. Brunelle,* 14 *R. L.* 219—*Boulanger v. Doutre,* 4 *L. C. R.* 170—*Pothier, Louage, No.* 325.

4. *Of a newspaper—Change of editor.*—Que dans un contrat de louage d'un journal, organe d'un parti politique, la condition que le locateur se réserve la direction politique du journal et la nomination de son rédacteur en chef est une clause essentielle du contrat dont la violation entraine la résiliation de son bail.

Que le fait du locataire de refuser d'employer comme rédacteur en chef celui qui est nommé par le locateur, et de le remplacer par une personne professant des opinions contraires au parti politique dont le journal était l'organe, est une violation des conditions du bail suffisante pour le faire annuler.—GILL, J., 20 DÉC. 1890, *Cie Imprimerie Minerve vs Berthiaume.* **VII,** S. C. **114.**

5. *Of telegraph system for* 97 *years.* — An agreement by which a company undertakes to operate the telegraph system of another company for a term of 97 years, and to pay

quarterly a fixed sum for the privilege, is in effect a lease and, although made for a term exceeding nine years, is an ordinary and not an emphyteotic lease, there being no right of ownership conveyed to the lessee.

Under art. 887 C. P. C. as reproduced in R. S. Q. 5977, all actions arising from the relation of lessor and lessee are subject to the summary jurisdiction therein established, and therefore an action by the above mentioned company lessee against the company lessor, for diminution of rent, is subject to such summary jurisdiction. — MATHIEU, J., 27 MARCH 1889, *G. N. W. Tel. Co. vs Montreal Tel. Co.*

VI, S. C. **68.**

6. *Tacit reconduction.* — That where a lease in writing is continued by tacit reconduction, the notice necessary to terminate it must be in writing.—CROSS, BABY, BOSSÉ, DOHERTY, JJ., *Lacroix & Fauteux.* **VII,** Q. B. **40.**

CITATIONS.—17 *Duranton, Nos.* 121, 122—37 *Guillouard, Nos.* 381, 382, 383, 431—*Bélanger & Paxton,* 14 *R. L.* 526—*Beckham & Farmer,* 22 *L. C. J.* 261—25 *Laurent, Nos.* 388, 389—4 *Aubry et Rau, p.* 501—25 *L. C. J.* 107—*Agnel, Prop. et Loc., No.* 885—25 *Laurent, Nos.* 327, 328.

11. Obligation of lessor—Putting in default.—The owner of a building is responsible for damages caused by the falling or giving way of a portion of it, where the accident occurs either from want of repairs or from a defect in its construction.

The obligation of the lessor towards the lessee is similar to that of the owner.

The wife of the lessee is entitled to invoke the conditions of the lease or the obligations arising from the relation of lessor and lessee in an action for personal injuries suffered by her from the defective condition of the leased premises. —TAIT, J., 28 JUNE 1889, *Simmons vs Elliott.* (Confirmed in appeal VI M. L. R. Q. B. 368). **V,** S. C. **182.**

The plaintiff, principal lessee, was condemned, in an action brought against her by her subtenant to pay damages caused to the latter by the choking of a water pipe which carried rain from the roof. She had not called her lessor into the case to defend her. By the terms of the lease, the plaintiff was bound to make all repairs except those to the

roof. She had been in possession fifteen months and during this time, had never called upon her lessor to make any repairs.

That, under the terms of the lease to her, the plaintiff was herself responsible for the good condition and maintenance of the water pipe.

That even if the principal lessor were under an obligation to put a grating on the pipe, the plaintiff who had accepted the premises as they were, was bound to notify her, and put her in default to do so.—JOHNSON, GILL, MATHIEU, JJ., 30 APRIL 1891, *Holland vs DeGaspé.* **VII,** S. C. **440.**

CITATIONS.—*Charbonneau vs Duval,* 13 *R. L.* 309—*Johnson vs Brunelle,* 14 *R. L.* 219—*Bélanger vs Paxton,* 14 *R. L.* 526—*Peatman vs Lapierre,* 18 *R. L.* 35—*Marcile vs Mathieu,* 7 *L. N.* 55—*Lorrain, p.* 117, *No.* 319—*Agnel, p.* 171, *Nos.* 358, 359.

12. Obligation to furnish premises.—Que sous un contrat de louage où le bail est authentique, fait pour cinq ans, le loyer payable $25 chaque mois, le locataire n'est tenu de garnir les lieux loués que pour le terme échu et le terme à écheoir.—PAPINEAU, GILL, LORANGER, 30 JAN. 1886, *Lynch vs Reeves.* **V,** S. C. **23.**

CITATIONS.—*Gareau v. Paquet,* 11 *L. C. J.* 267—*Deslauriers v. Lambert* 1 *Q. L. R.* 365—6 *Toullier* 258—3 *Delvincourt* 201—17 *Duranton* 133 *No.* 157—2 *Troplong, Louage, No.* 531, 536— *Bourjon II Liv.* 4, *tit* 4 *ch.* 3, *s.* 3, *No.* 31—6 *Boileux,* 104—4 *Duvergier* 22 *Nos.* 14, 16—6 *Marcadé C. N. art.* 1752 *p.* 490—3 *Mourlon, No.* 773—*Merlin, vo Bail, sec.* 7 *art.* 3—*Pothier, Louage, No.* 318.

Que dans le cas d'un bail authentique pour deux années et neuf mois, payable $25 par mois, lorsque le locataire enlève les meubles garnissant les lieux loués, et qu'une saisie gagerie est prise par droit de suite le 26 octobre, le locataire sera tenu de garnir les prémisses jusqu'au mois de mai suivant.—BOURGEOIS, J., 27 MARS 1886, *Longpré vs Cardinal.* **V,** S. C. **28.**

CITATIONS.—*Agnel p.* 140 *No.* 291—4 *Duvergier p.* 25—6 *Boileux,* 105.—3 *Toullier, p.* 201.

13. Occupation of shed not mentioned in the lease — Accessory—Opposition.—Where the lessee leased buildings in course of construction, and, on taking possession of the same, also occupied and used, without objection on the part of the lessor, during nearly four years, a small shed in the rear of

the leased premises that the shed, though not mentionned in the lease, nor shown in the architect's plans of the building, must be considered as an accessory of the premises leased and that the lessor, by acquiescing in the lessee's occupation for so long a period, without claiming rent, had placed that construction upon the contract.—DORION, CROSS, BABY, CHURCH, JJ., 25 FEB. 1888, *Mytes & Styles.*

IV, Q. B. **113.**

14. Possession vaut titre.—Que le locataire d'une maison est présumé être le propriétaire des effets qui s'y trouvent, et en avoir la possession à titre de propriétaire ; et que ce titre est suffisant pour faire maintenir une opposition, sauf preuve contraire.—MATHIEU, J., 8 MAI 1889, *Peltier vs Lamb.*

V. S. C. **69.**

15. Privilege of lessor.—Que le privilège du locateur pour son loyer prime celui du curateur et tous les frais pour l'organisation de la faillite, sauf ceux de vente des meubles sujets au privilège.

Que les frais du curateur et autres frais nécessaires à l'organisation de la faillite ne sont pas, quant au locateur, des frais de justice.—TASCHEREAU, J., 29 JAN. 1886, *Ménard & Desmarteau.* (Reformed in review jgt. in review reversed in appeal III M L. R. Q. B. 303). **II,** S. C. **130.**

CITATIONS.—*Grenier, Hypothèques, t.* 2., *pp.* 15, 17, *No.* 300.

Que le privilège du locateur ne porte pas sur les effets qui doivent être, en vertu de l'art. 556, laissés au débiteur à son choix. — TORRANCE, PAPINEAU, TASCHEREAU, JJ., 12 JUIN 1886, *Michon vs Venne.* **II,** S. C. **367.**

The lessee of premises under a written lease for one year, which prohibited subletting continued to occupy for a second year under a verbal agreement to pay an increased monthly rental, and with some modification as to the premises leased. In the course of the second year the lessee sublet the premises and removed the greater part of his effects to other premises. The lessor having seized the effects removed, by saisie gagerie par droit de suite, there being no rent due and exigible :

That the privilege of the lessor for the unexpired period of the lease extends to the effects of the lessee, and also includes the effects of the under-tenant in so far as he is indebted to the lessee; and so long as the under-tenant has sufficient effects upon the premises to secure the rent payable by him to the tenant, and the tenant leaves sufficient effects to secure the difference, the principal lessor has no right to issue a saisie gagerie for rent not due and exigible.

Even where the under-tenant has bound himself to pay the tenant monthly in advance, it is sufficient if there are enough moveables upon the premises including those of the under-tenant to the extent of his obligation to the lessee, to secure the whole rent for the remainder of the lease.

SEMBLE:—That where there is a written lease, with prohibition to sublet and the lessee remains in the premises after the term of the original lease, the parties agreeing verbally to certain modifications, the stipulation against subletting still applies, and the effects of a sub-tenant who enters in contravention of such stipulation, become subject to the principal lessor's privilege in the same manner as those of any other third person.—JOHNSON, GILL, WURTELE, JJ., 30 NOV. 1889, *Vinette vs Panneton & Jones.*

V, S. C. 318.

CITATIONS.—*Agnel, Manuel des Prop.* 247—*Arnoldi v. Grimard* 5 *R. L.* 748—*Boyer v. McIver* 21 *L. C. J.* 160—*Barry v. Boucher*, 14 *R. L. p.* 289—17 *Duranton*, 157—4 *Duvergier*, 15 *et* 16—2 *Troplong*, 531—*Agnel*, 291, 550—6 *Marcadé*, *Art.* 1752 *no.* 1—*Lorrain, Locateurs et Locataires, p.* 178, *No.* 474.

16. Repairs to leased premises.—That the lessee is not entitled, without first putting the lessor en demeure to demand the resiliation of the lease because repairs are necessary, unless the condition of the premises be such as absolutely to prevent his use and enjoyment, the proper course is for the lessee to ask that the lessor be ordered to make the repairs which are necessary, and, in default that the lessee be authorized to make them at the lessor's expense. —JOHNSON, PAPINEAU, GILL, JJ., 30 DEC. 1886, *Pagels vs Murphy.* **III, S. C. 50.**

CITATIONS.—*Boucher vs Brault*, 15 *L. C. J.* 117.

Where the lessor undertakes by the lease to put the premises in good tenantable condition, and he neglects to

do so, that the lessee may, after putting the lessor in default, make such repairs as are urgently needed for the safety and health of the occupants, without first having obtained judicial authority; and may recover the cost of the same from the lessor.—DAVIDSON, J., 12 NOV. 1888, *McCaw vs Barrington.* **IV,** S. C. **210.**

CITATIONS.—*Pothier, du Louage, No.* 131—25 *Laurent, No.* 109—*Boulanger vs Doutre,* 4 *L. C. R.* 170—*Spelman v. Muldoon,* 14 *L. C. J.* 306—*Pagels v. Murphy, L. R.* 3 *S. C.* 50—*Boucher v. Brault,* 15 *L. C. J.* 117—*Heney v. Smith,* 10 *L. N.* 333.

17. Verbal Lease — Resiliation.—Que lorsque le bail quoique verbal est défini et le loyer payable mensuellement le locateur peut demander la résiliation du bail quand il y a un mois de loyer de dû.

Que le locateur qui poursuit en expulsion pour un terme de loyer dû, savoir, $16.66, peut en même temps réclamer la somme de $133.33, balance de loyer à devenir dû sur un bail verbal d'un an, à savoir, de $200 comme dommages résultant de la résiliation du bail.—GILL, J., 25 OCT. 1887, *Robert vs Chateauvert.* **III,** S. C. **214.**

LIBEL AND SLANDER

I.—CANDIDATE FOR ELECTION TO THE LEGISLATURE — CHARGES OF BEING A FREEMASON OR ORANGEMAN.
II.—CHARGES IN ELECTION PETITION.
III.—CHARGES OF BLACKMAIL.
IV.—CRIMINAL ACCUSATION.
V.—CRITICISM OF MEMBERS OF PARLIAMENT.
VI.—DAMAGES AWARDED FOR LIBEL.
VII.—DEFAMATORY STATEMENT IN PLEADING.
VIII.—FAIR AND HONEST REPORT OF PROCEEDINGS BEFORE COURT OF JUSTICE—ABSENCE OF DAMAGES.
IX.—INFORMER.
X.—INJURY TO CREDIT.
XI.—JUSTIFICATION.
XII.—LIBEL BY NEWSPAPERS.
XIII.—LIBEL IN PLEADINGS.
XIV.—MATTERS OF PUBLIC INTEREST — DAMAGES — APPEAL — COSTS.
XV.—MAYOR OF VILLAGE — IMPUTATION OF BIGOTRY — EXEMPLARY DAMAGES.
XVI.—MERCANTILE AGENCY.
XVII.—PLEA.
XVIII.—POST CARD.

XIX.—PRIVILIEGED COMMUNICATIONS.
XX.—PUBLIC ANNOUNCEMENT OF TERMINATION OF AGENCY — INJURIOUS EXPRESSIONS.
XXI.—TELEGRAPH COMPANY — TRANSMISSION OF LIBELLOUS MATTER — PUBLICATION OF JUDICIAL PROCEEDINGS—DAMAGES.
XXII.—WORDS SPOKEN IN CONFIDENCE.
XXIII.—WORDS UTTERED IN FOREIGN LANGUAGE — AVERMENTS OF DECLARATION.

See MERCANTILE AGENCY — PROCEDURE — DAMAGES.

1. Candidate for election to the legislature — Charges of being a freemason or orangeman.—That when a person is offering himself for election to the legislature, newspapers have a right, in the public interest, to state the truth respecting his character and qualifications; and therefore a statement, true in itself that a candidate is a Freemason, is not ground for an action in damages.

A term not injurious in itself may become injurious from the intent of the writer or speaker in its application. Hence to allege falsely of a candidate for election to the legislature, that he is an Orangeman in a community where Orangism is held in detestation by a large proportion of the people, is an injure, and under art 1053 C. C. gives rise to an action of damages.

As to the amount of damages, no substantial damages being proved, the Court of Review reduced the amount from $500 to $100 with full costs of the suit.—JOHNSON, WURTELE, DAVIDSON, JJ., 31 MAY 1890, *Noyes vs Cie Imprimerie.* **VI, S. C. 370.**

2. Charges in an election petition.—Qu'il n'y a pas d'action en dommages contre un pétitionnaire qui, dans sa pétition en contestation d'élection parlementaire, accuse le candidat élu d'avoir dans son élection induit et contraint diverses personnes a faire un faux serment, d'avoir fait ce qu'on appelle "supposition de personne" d'avoir tenté de violer le secret du scrutin, ces accusations étant généralement des faits pertinents aux contestations d'élections.

Que le fait que le pétitionnaire n'a pas répété ces accusations dans son "articulation de faits" n'est pas en loi une

admission que les accusations étaient fausses, mais ne peut être considéré que comme un abandon de ces moyens de contestation par le pétitionnaire.—OUIMET, J., 29 DÉC. 1888. *Charlebois vs Bourassa.* **IV,** S. C. **424.**

(Reversing the decision of Ouimet J.) That the pertinency of a libellous allegation in a pleading is a justification only when the allegation is made in good faith with probable cause and without intention to injure; and the proof of these facts is incumbent on the party making such allegation; and in the absence of evidence of the truth of the allegation or of probable cause malice will be presumed. And so, where the plantiff in an action to annul an election alleges subornation of perjury and other offences against the defendant, and made no proof in support of the charges, he was condemned to pay $100 damages.—LORANGER, WURTELE, DAVIDSON, JJ., 6 JUNE 1889, *Charlebois vs Bourassa.* **V,** S. C. **423.**

3. Charges of blackmail. — Qu'un maître de poste qui retarde injustement d'expédier une lettre à lui confiée et qui lorsque la personne qui lui a remis cette lettre, se plaint de ce retard, lui reproche de vouloir lui faire du chantage et ajoute "qu'elle avait besoin d'argent et qu'elle se servait de faux prétextes pour en obtenir" peut être poursuivi en dommages, et une somme de $10.00 par lui offerte, n'est pas suffisante.—TORRANCE, J., 20 NOV. 1886, *Chartrand vs Archambault.* **II,** S. C. **427.**

4. Criminal accusation.—Que la publication par un journal de l'article suivant: "Heureusement que les voyous qui ont crié et hurlé n'étaient pas des électeurs du comté. Les rouges avaient fait monter là une cinquantaine de repris de justice, à la tête desquels se distinguait un charretier du nom de Sabourin qui a déjà purgé une sentence de six mois à la prison commune de Montréal pour parjure. C'est à ces gibiers que les honnêtes gens doivent de n'avoir pu entendre paisiblement la discussion hier soir" constitue un libelle, pour lequel le journal a été condamné à $50 de dommages et dépens d'une action de $100.—WURTELE, J., 5 NOV. 1889, *Sabourin vs Cie. d'Imprimerie.* **III,** S. C. **263.**

5. Criticism of members of parliament.—That while the conduct of a member of Parliament in his public capacity is subject to criticism, and an action is not maintainable for an imputation which arises fairly and legitimately out of his conduct, yet an imputation unsupported by evidence of dishonest motives in voting upon a question and of selling his influence is unjustifiable and an action based upon such accusation will be maintained.—JOHNSON, JETTÉ, LORANGER, JJ., 30 NOV. 1886, *Champagne vs Beauchamp*.

II, S. C. **484.**

(Affirming the judgment of the Court of Review M. L. R. 2 S. C. 484). That while the conduct of a member of Parliament in his public capacity is subject to criticism, and an action is not maintainable for an imputation which arise fairly and legitimately out of his conduct as such member, an imputation, unsupported by evidence, of dishonest motives in voting upon a question, and of selling his influence, is unjustifiable, and an action of damages based upon such an accusation will be maintained.—TESSIER, CROSS, CHURCH, DOHERTY, JJ., 27 SEPT 1888, *Beauchamp & Champagne*.

VI, Q. B. **19.**

CITATIONS.—*Levi vs Reid*, 4 *L. N.* 91—*Gingras vs Désilets*, 6 *S. C. R.* 482.

6. Damages awarded for libel.—That the amount of a judgment obtained as damages for libel is not exempt from seizure by garnishment.—TORRANCE, J., 20 NOV. 1886, *Lalonde vs Archambeault*. (Confirmed in appeal 2 Q. B. 486).

II, S. C. **410.**

CITATIONS.—*Chef v. Léonard*, 6 *L. C. J.* 305—*Maurice v. Desrosiers*, 7 *L. N.* 264—*Pigeau, vol.* 1, 423—24.

7. Defamatory statements in pleading.—Que l'action pour dommages résultant d'allégués diffamatoires fait dans une défense, peut être intentée avant que la cause dans laquelle cette défense a été produite, soit terminée.

Que les pièces de procédure contenant des allégués diffamatoires contre l'une des parties dans la cause, ne sont privilégiées que lorsqu'elles portent sur des faits pertinents et qu'elles ont été produites de bonne foi dans un but de dé-

fense légitime.—LORANGER, J., 15 OCT. 1884, *Hodgson vs Banque d'Hochelaga.* **I, S. C. 15.**

8. Fair and honest report of proceedings before Court of justice—Absence of damage.—A fair and honest report in a newspaper of proceedings before a court of justice, whether condensed or not, and even if injurious to persons referred to therein, is privileged.

The defence of justification is strenghtened by evidence showing that the plaintiff's character was such that he suffered no damage by the publication.—DAVIDSON, J., 17 OCT. 1887, *Downie vs Graham.* **III, S. C. 333.**

9. Informer.—Que personne n'a le droit d'appliquer à une autre personne des termes qui n'ont rien en eux-mêmes d'injurieux, mais qui par l'interprétation qu'en font les personnes à qui on s'adresse, constituent une injure; que le terme de "dénonciateur" quelque permis que soit en loi la dénonciation, est humiliant dans l'opinion publique et une cause de reproche qui donne ouverture à l'action en réparation. MATHIEU, J., 26 MARS 1889, *Duquette vs Major.* **V, S. C. 134.**

10. Injury to credit.—Que le fait de dire en présence de témoins à un créancier, qu'il avait tort d'avancer à son débiteur, que sa dette était risquée, que ce débiteur ne payait personne et avait déjà fait perdre de l'argent à d'autres créanciers, et d'autres paroles semblables, lorsque cela est dit sans motif légitime, d'une manière non confidentielle, ni privilégiée, donne droit en faveur du débiteur à une action en dommages et même à des dommages exemplaires.—TASCHEREAU, J., 27 FÉV. 1886, *Hus vs Lespérance.* **II, S. C. 127.**

11. Justification.—That a plea of partial prescription to an action of damages for libel, is not demurrable on the ground that the matters sought to be prescribed were not alleged as charges of libel, but to show animus; that being matter of fact, and not of law.

That the defendant in an action of damages for the publication of a libel may lawfully plead the truth of the alleged libel, and that it was published in the interest of the public, and concerning matters of public import; and

such allegations if duly established constitute a sufficient defence in such case.

The defendant may oppose to a demand for damages for libel and slander, the fact that the plaintiff on his part libelled defendant, and that there is compensation d'injures, where the attack and defence are alleged to have been simultaneous, as in a discussion between the editors of two newspapers in the columns of their respective journals.—JOHNSON, J., 12 JAN. *Trudel vs Cie. d'Imprimerie.* (Leave to appeal refused V. M. L. R Q. B. 510). **V, S. C. 297.**

(Affirming the decision of Johnson, Ch. J. 5 S. C. 297). That in an action of damages for the publication of a libel, the defendant may plead the truth of the matter charged as libel, more especially where (as in this case) he alleges that the publication was made in the interest of the public and concerning matters of public import.

The defendant may oppose to a demand of damages for libel and slander the fact that the plaintiff on his part libelled the defendant, and that there is compensation d'injures, where the attack and defence are alleged to have been simultaneous, as in a discussion between the editors of two newspapers in the columns of their respective journals. —DORION, TESSIER, CHURCH, BOSSÉ, DOHERTY, JJ., 27 MARCH 1889, *Trudel vs la Compagnie d'Imprimerie et de Publication du Canada.* **V, Q. B. 510.**

Qu'il n'y a pas lieu à une action en dommages contre le propriétaire d'un journal, lorsque ce journal a publié des nouvelles de nature à nuire à la reputation de quelqu'un, si ces nouvelles sont publiques de leur nature, substantiellement vraies et publiées dans l'intérêt public.—DELORIMIER, J., 16 MAI 1890, *Turgeon vs Wurtele.* **VI, S. C. 390.**

A plea of justification, to an action against a newspaper for libel, cannot be supported, where it appeared that the facts were grossly misstated, but without malice, in the article complained of; as where it was stated that a collision between vehicles, was caused by the plaintiff's intoxicated condition, and the proof showed that he was not intoxicated, and not to blame for the collision.

In an action for libel, where the plaintiff obtains judgment for part of the amount claimed, it cannot be charged with any part of the costs unless there has been a tender by the defendant. — JOHNSON, MATHIEU, PAGNUELO, JJ., 30 MAY 1891, *Turgeon vs Wurtele.* **VII, S. C. 409.**

12. Libel by newspapers.—Que la publication des procédés publics d'une assemblée délibérante n'entraine aucune responsabilité lorsque cette publication est faite de bonne foi et sans malice, de faits qui ont rapport à l'objet de l'assemblée et qui sont d'un intérêt public.—DORION, TESSIER, CROSS, CHURCH, JJ., 25 FÉV. 1888, *Donovan & The Herald Co.* **IV, Q. B. 41.**

Although a motion for judgment non obstante veredicto may now be made by either party (C. P. C. 433) such motion in any case can be based only upon the insufficiency in law of the allegations of the other party.

A libel in a plea is actionable, and may also form the basis of an incidental demand, under C. P. C. 149, when the libel occurs in a plea to an action of libel.

The absence of a material witness at the trial is not the ground for a new trial if the party, though aware of the absence of such witness, did not move to postpone the trial.

Insufficiency of the assignment of facts cannot be urgent in support of a motion for a new trial, if no objection was made thereto before the trial especially if the party complaining of such insufficiency himself adopted proceedings to bring the trial on.

In considering whether the damages allowed by a jury in a case of personal tort are so excessive as to be set aside under C. C. P. 426 the Court may, and should have regard to the condition of the parties, and a new trial will not be granted unless the damages are so excessive and unreasonable as to make it manifest that the jury were led into error or were actuated by partiality or prejudice. And in the present case an action by an ex-minister of justice, against a newspaper for libel, HELD—that $6,000 damages for the libel and $4,000 additional for libel in the plea were not excessive.

The affidavit of a juror as to the motives which influenced either him or his fellow jurors cannot be received (C. C. P. 428).—JOHNSON, DOHERTY, TASCHEREAU, JJ., 31 MARCH, 1886, *Laflamme vs The Mail Printing Co.* **II, S. C. 146.**

CITATIONS.—*Grant vs Ætna Life Ins Co.*, 12 *L. C. R*, 386—*Pacaud vs Price*, 15 *L. C. J.* 281—*Gadbois & Truteau*, 17 *L. C. J.* 271—*Grellet & Dumazeau, Traité de la Diffamation, vol.* 2, *p.* 216, *No.* 932—*Cannon vs Huot*, 1 *Q. L. R.* 139—*Venning vs Steadman*, 9 *S. C. R.* 206.

That an incidental demand is sufficiently libellée if instead of setting out at length a libel complained of, it refers to an answer to plea immediately preceding, as forming part thereof.

That an incidental demand will not be rejected as illegally filed because it is not accompanied by a petition as required by art. 152 C. C. P.

That under the laws of this Province an action lies for libellous allegations contained in pleadings.

That a plaintiff in an action for libel, who is attacked by an additional libel in the plea to his action, may proceed by incidental demand in order to obtain a condemnation for this additional demand.

That when the defendants in a jury trial have issued a venire facias attended at the striking of the panel, proceeded to trial, and taken their chance of a favorable verdict, they cannot afterwards obtain a new trial on account of alleged defects in the assignment of facts for the jury.

That a new trial will not be granted because a material witness was absent, although he was duly subpoenaed and the proper conduct money was tendered him, when the party who called him neglected to apply for a postponement of the trial.

That evidence tendered by defendant in an action of libel as to the previous conduct and character of the plaintiff was properly rejected as illegal, especially when such matters were not referred to in the pleadings.

(By the majority of the Court). That in action for libel, the assessment of damages is peculiarly the province of the jury, and that a verdict of $6,000 for the newspaper libel complained of in this case, and of $4,000 for the libellous

allegations of the plea, was not so excessive as to lead the interference that the jury were led into error or actuated by improper motives.

(Per Baby and Church, JJ. diss.) That the verdict of $6,000 for the libel in the newspaper was excessive and justified the defendants in asking for a new trial.

SEMBLE :—That if the Court reduced these damages to $1,000 leaving the damages for the libel in the plea undisturbed, so as to make the total condemnation $5,000, the judgment maintaining the verdict should be confirmed.—DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 20 JUNE 1888, *The Mail Printing Co. & Laflamme.* (Modified by Supreme Court 12 L. N. 33). **IV, Q. B. 84.**

CITATIONS.—*Pigeau, Proc. Civ.* 337—*Pothier, Proc. Civ. vol.* 7 *ch.* 2, *s.* 7 *p.* 37 *Gilbert sur Sirey Code de Proc. art.* 336, *note* 1—*Carré, Proc. vol.* 3 *p.* 192—*Gadbois vs Trudeau* 15 *L. C. J.* 271—*Logange v. Carliste* 8 *L. C. J.* 182—*Stadacona Ins. Co. v. Trudel* 6 *Q. L. R.* 31—*Dareau, Traité des Injures vol. II p.* 332—*Pacaud v. Price* 15 *L. C. J.* 281—*Hall v. Mayor of Montreal* 27 *L. C. J.* 129—*Cannon v. Huot* 1 *Q. L. R.* 139.

Qu'un journal ne peut plaider la vérité des imputations contenues dans un prétendu libelle comme justification de sa publication, et que tel plaidoyer a une action en dommages peut être renvoyé sur réponse en droit.

Qu'un employé public est responsable de sa conduite à l'autorité compétente et qu'un journal n'a aucun droit, en l'absence d'une mission spéciale, d'informer le public de sa conduite.—MATHIEU, J., 27 MARS 1888, *Daoust vs Graham.* **IV, S. C. 49.**

(Reversing the decision of Mathieu, J. 4 S. C. 49). That the acts of every public official ware subject to fair and legitimate criticism by the press and the general public; that the dismissal of a public officer is a matter of general interest of which the public are entitled to be informed; and the announcement of such dismissal and of cause thereof, is not ground for an action of damages except in cases where it appears that the publication was made maliciously and with intention to injure. It is for the Court or for the jury (if the case be tried before a jury) to determine on the evidence, whether the publication complained of was made

maliciously and with intention to injure, and the truth or untruth of the facts is one of the most important circumstances to be considered in arriving at a decision of this point; therefore a plea alleging the truth of the publication is not demurrable.—DORION, TESSIER, CROSS, CHURCH, JJ., 20 JUNE 1888, *Graham et al & Daoust.* **V,** Q. B. **498.**

13. Libel in pleadings.—That libels in pleading are actionable, when the allegations complained of are false, or made without probable cause.

That malice is inferred by law from the nature and the falsity of such accusation.

That an unproved plea of justification constitutes an aggravation of the libel.

That executors are personaly liable for libels published by them in their said quality.

That the mere fact of having taken counsel's opinion apart from any other circumstances, does not excuse a party making libellous allegations in pleadings.—TASCHEREAU, J., 10 NOV. 1888, *Rielle vs Benning.* **IV,** S. C. **219.**

(Affirming the judgment of Taschereau, J. M. L. R. 4 S. C. 219). That libels in pleagings are actionable, when the allegations complained of are false, or made without probable cause.

That malice is inferred by law from the nature and the falsity of such accusations.

That an unproved plea of justification constitutes an aggravation of the libel.

That the executors are personally liable for libels published by them in their said quality.

That the mere fact of having counsel's opinion, apart from any other circumstances, does not excuse a party making libellous allegations. — DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 22 NOV. 1890, *Benning & Rielle.*

VI, Q. B. **365.**

CITATIONS.—*The Mayor &c & Hall,* 12 *S. C. R.* 74.

14. Matters of public interest—Damages—Appeal—Costs. —Where the Court below dismissed without costs an action of damages against the publishers of a daily journal, on the ground that the matters charged as libellous were substan-

tially true, and referred to a subject of public interest: that an appeal should not be maintained from such judgment, where no damages were proved, even supposing that a small sum of exemplary damages might properly have been allowed the plaintiff by the Court of first instance on account of certain injurious expressions used by the defendants; but the Court of Appeal in such cases may exercise its discretion, and dismiss the parties without costs in either court.—DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 19 JAN. 1889, *Ouimet vs Cie. d'Imprimerie.* **VI,** Q. B. **36.**

15. Mayor of village—Imputation of bigotry—Exemplary damages.—The defendant called the plaintiff who was mayor of the village, a bigot, and said that his conduct as mayor was influenced by his bigotry.

That these words were actionable per se, and that a small amount might be awarded as exemplary damages, though no actual damages was proved.—WURTELE, J., 5 NOV. 1889, *Wickham vs Hunt.* **VI,** S. C. **28.**

16. Mercantile agency.—That a mercantile agency is responsible in damages for communicating to its subscribers a false rating of a person engaged in business, whereby his credit is injured. Absence of malice, and the fact that the report was subsequently corrected, will not exonerate the defendant, but may be considered in mitigation of damages. —DAVIDSON, J., 12 NOV. 1888, *Steel vs Chaput.*

IV, S. C. **200.**

CITATIONS.—*Carsley vs Bradstreet, M. L. R.* 2 *S. C.* 33 *and M. L. R.* 3 *Q. B.* 83.

That persons carrying on a mercantile agency are responsible for the damage caused to a person in business by an incorrect report concerning his standing, though the report be only communicated confidentially to subscriber to the agency on his application for information.—WURTELE, J., 12 NOV. 1887, *Cossette vs Dun.* **III,** S. C. **345.**

CITATIONS.—*Girard vs Bradstreet, M. L. R.* 3 *Q. B.* 69 & 83.

(Cross, J. diss.) Affirming the decision of Wurtele, M. L. R. 3 S. C. 345. That persons carrying on a mercantile agency are responsible for the damage caused to a person in business by an incorrect report made by them concerning

his standing; and that such report is not privileged though it be only communicated confidentially to a single subscriber to the agency, on his application for information. A communication relating to purely civil matters (as in this case) to be privileged must be based on the truth of the facts to which it relates.—DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 26 MARCH 1889, *Dun & Cossette* (Affirmed by Supreme Court 18 S, C. R. 222). **V,** Q. B. **42.**

CITATIONS.—*Bradstreet & Carsley M. L. R.* 3 *Q. B.* 83—*Wason v. Walker, L. R.* 4 *Q. B.* 73 — *MacDougall v. Knight L. R.* 17 *Q. B. Div.* 672 — *G. T. R. vs Meegan, M. L. R.* 1 *Q. B.* 367—*Ancien Denizart vo Lettres Missives, vol.* 2 *p.* 49—*Starkie, on Slander vol.* 1 *p.* 292— 4 *Massé et Vergé, sur Zachariæ* § 624, *note*—20 *Laurent, No.* 480 *p.* 512.

17. PLEA.—1. *Notoriety*—Que, dans une action en dommages pour diffamation de caractère, dans laquelle la demanderesse se plaint que la défenderesse a fait circuler dans la paroisse des calomnies propres à la ruiner dans son honneur et sa réputation, la défenderesse peut plaider que les accusations incriminées avaient notoirement cours dans la dite paroisse et étaient répétées publiquement par diverses personnes; une réponse en droit à cette partie de la défense sera renvoyée. — LORANGER, J., 31 MAI 1890, *Robert vs de Montigny.* **VI,** S. C. **345.**

A defendant sued in damages for libel cannot plead compensation by damages suffered by him from calumnious attacks made upon him by the plaintiff.

(Dorion, Ch. J. diss.) The notoriety of the facts contained in the publication complained of may be pleaded in mitigation of damages.—DORION, TESSIER, CHURCH, BOSSÉ, DOHERTY, JJ., 27 MARCH, 1889, *Trudel & Viau.*

V, Q. B. **502.**

CITATIONS.—36 *Dalloz, Rep. vo Presse-Outrage No.* 1324 *à* 1335—*Merlin, Rep. vo Compensation v.* 2 *par.* 13, *p.* 639—*Merlin, Rep. par.* 3 *p.* 108— 20 *Laurent No.* 492—36 *Dolloz vo Presse Outrage No.* 1489 *et seq.*—2 *Grellet du Mazeau No.* 809 *p.* 128—*Bélanger & Papineau* 6 *L. C. R. p.* 715—*Pétrin et Larochelle* 4 *R. L.* 286—*Noël & Clabot* 8 *L. C. R.* 211—*Hart & Thérien* 2 *L. N.* 202.

2. *Truth.*—In a plea to an action of damages for libel, where the defendant denies the intention to injure, he may allege the truth of the matter charged as libel in mitigation

of damages.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 29 MAY 1883, *Graham & McLeish.* **V,** Q. B. **475.**

CITATIONS.—*Dareau "Des Injures" ch. 1 s. 1 No. 5—Bélanger & Papineau* 6 *L. C. R.* 415—*Noël & Chabot* 8 *L. C. R.* 211—*Pétrin & Larochelle* 4 *R. L.* 286—*Hart & Thérien* 2 *L. N.* 202—*Gugy & Ferguson* 11 *L. C. R.* 409—*Langelier v. Brousseau* 6 *Q. L. R.* 198—*Brillon, vo Injure, & 2 p.* 442.

Following Graham & McLeish ante. That in action of damages for malicious libel the truth of the alleged libel, may be pleaded in justification or in mitigation of damages. —DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 26 JUNE 1889, *Leduc & Graham.* **V,** Q. B. **511.**

18. Post-card.—Que l'envoi d'une carte postale avec les mots suivants écrits dessus: "Received the amount all right—nicely caught in your own trap—honesty is the best policy—your confidence games will work no more—you do not need a diploma—rest on your laurels, deeds go further than works—through your words of Saturday and Monday were strong enough. Au revoir" est une injure; et que, en l'absence d'aucun dommage réel, le défendeur doit être condamné à des dommages exemplaires. $40 de dommages accordées.—MATHIEU, J., 30 MAI 1890, *O'Brien vs Semple.* **VI,** S. C. **344.**

19. Privileged communications. — Qu'une lettre privée écrite à un particulier et qui lui est envoyée sans lui donner aucune publicité, est une communication privilégiée qui ne peut donner droit à une action en dommages.—JETTÉ, J., 27 OCT. 1884, *Burnstein vs Davis.* **I,** S. C. **67.**

That a letter written in good faith and without malice, by the lessor of premises occupied by a manufacturing company of which the plaintiff was manager, and addressed to one of the directors and principal shareholders, charging the manager with inefficient administration, the writer at the time having reason to be anxious respecting his interests as landlord of the company, is a privileged communication. —JOHNSON, PAPINEAU, LORANGER, JJ., 20 DEC. 1887, *Mac-Farlane vs Joyce.* **III,** S. C. **326.**

20. Public announcement of termination of agency — Injurious expressions.—That a public announcement of the ter-

mination of an agency concluding with the following expression "je tiens à en donner connaissance au public afin qu'il ne soit pas mis sous une fausse impression" is injurious and constitutes a valid ground for a action of libel.—JOHNSON, GILL, LORANGER, JJ., 29 FEB. 1888, *Demers vs Chapleau.* **IV,** S. C. **66.**

21. Telegraph company—Transmission of libellous matters—Publication of judicial proceedings—Damages.—That the publication of an extract from the declaration of a party in a suit entered but before the return of the action, is not privileged.

That the communication by a telegraph company of a dispatch to its employees engaged in transmitting and receiving such dispatch is a publication.

That a telegraph company is not bound to transmit a dispatch of a libellous character and is not entitled to plead its statutory obligation to transmit the dispatches entrusted to it, in answer to an action of libel for the transmission of a libellous dispatch.

That the refusal of the defendant to disclose the name of the person at whose request the libellous matter was transmitted was an aggravation of the wrong, and substantial damages should be awarded.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 27 MARCH 1886, *Archambeault vs G. N. W. Tel. Co.* **IV,** Q. B. **122.**

CITATIONS.—*Odgers, on Libel, No.* 243, 247 *and* 250—*Flord, on Libel, p.* 189—*Sourdat, No.* 1320—2 *Cotelle, p.* 466—*Dominion Tel. Co. & Silver,* 10 *S. C. R.* 238.

22. Words uttered in confidence.—Qu'il n'y a pas droit d'action en dommages pour des paroles même injurieuses dites dans l'intimité ; et notamment par une femme à son mari, une nuit, dans leur domicile, quoique ces paroles ait été entendus du fils et de la fille du demandeur qui réside dans la même maison au-dessous du défendeur.—JETTÉ, J., 20 DÉC. 1886, *Soulières vs de Repentigny.* **II,** S. C. **414.**

23. Words uttered in foreign language—Averment of declaration.—Reversing the decision of Brooks, J. 11 L. N. p. 2, that in an action of slander, where the injurious words complained of were uttered in a foreign language it is not

necessary to set out the words in the language in which they were spoken. It is sufficient to state the words in the language of the declaration and to established that they were uttered in the hearing of persons who understood their meaning, and that plaintiff suffered damages in consequence thereof.

To charge againts a minister that he had retained for his own use the whole or part of collections made by him for foreign missions is actionable, and $150 damages were allowed.—JETTÉ, TASCHEREAU, MATHIEU, JJ., 12 MAY 1888, *McLeod vs McLeod.* **IV, S. C. 343.**

CITATIONS.—*Beaudry & Pepin*, 1 *L. C. J.* 114—*Hilliard, on Torts, vol.* 2 *ch.* 7 *p.* 266—*Starkie, on Slander, p.* 342, 689—*Greenleaf, on Evidence, vol.* 2, *sect.* 414.

LICENSE ACT QUEBEC

I.—ACTION UNDER.
II.—CERTIFICATE.
III.—CITY OF MONTREAL — AUTHORITY OF LICENSE COMMISSIONNER—SECOND APPLICATION BY SAME PERSON.
IV.—DISCRETION OF COUNCIL.
V.—JURISDICTION—LICENSE—ACTION FOR AMOUNT NOT EXCEEDING $200.
VI.—OPPOSITION TO GRANTING A LICENSE.
VII.—REFUSAL OF COUNCIL TO CONFIRM CERTIFICATE.
VIII.—SALE OF LIQUORS TO DRUNKARD.
IX.—SEIZURE OF CIRCUS WITHOUT PREVIOUS JUDGMENT.

See CONSTITUTIONAL LAW.

1. Action under.—Que la désignation du défendeur, comme hôtelier, dans le bref de sommation est suffisante aux termes du par. 4 de la première section de l'Acte des Licences de 1878.

Que la sect. 95 du dit acte s'applique non seulement aux personnes licenciées pour la vente des boissons enivrantes, mais aussi à celles qui en vendent habituellement sans licence.

Que l'action autorisée par les sect. 96, 97, 98 du dit acte est une action en indemnité d'un caractère purement civil, et est soumise aux règles ordinaires de la procédure.

Que cette action peut être indistinctement soumise à la cour ou à un jury au choix des parties.

Que le demandeur doit alléguer et prouver que le défendeur savait au moment de la vente, que la personne à laquelle il avait vendu, était la personne désignée dans l'avis qu'il a reçu.—LORANGER, J., 10 NOV. 1884, *Cayionnette vs Girard.* **I,** S. C. **117.**

That in action under sections 95, 97 of the Quebec License Act of 1878 (41 Vict. c. 3) it is sufficient to prove that a notice in writing was delivered to the tavern keeper, and that he knew that the person named in such notice was the person to whom he sold liquor. The inability of the tavern keeper to read will not relieve him from responsibility under the circumstances.—JOHNSON, J., 31 JAN. 1885, *Cayionnette vs Girard.* **I,** S. C. **182.**

2. Certificate.—Que sous l'Acte des Licences de Québec (1878) il est de la compétence du conseil municipal de s'enquérir si l'applicant a tenu par le passé son hôtel dans les conditions voulues par la loi, avant de confirmer son certificat; et qu'une fois ce certificat légalement confirmé, le conseil ne peut revenir sur sa décision sur ce point.—LORANGER, J., 14 SEPT. 1886, *Normandin vs Hurteau.* **II,** S. C. **260.**

Que le certificat pour obtenir une licence pour vendre de la boisson enivrante, doit être signé par vingt-cinq électeurs qualifiés au temps de la signature du certificat.—DOHERTY, J., 14 MAI 1887, *Wiseman vs Corporation St-Laurent.* **III,** S. C. **108.**

3. City of Montreal—Authority of License Commissioner—Second application by same person.—The enactment contained in 1 R. S. Q. art. 843 s. 13, that the decision of the license commissioners, either granting or refusing the confirmation of a license certificate, is final, does not preclude the reconsideration by them of an application, or the consideration by them of a new application, by the same person in the current license year. The decision of the commissioners is final only in the judicial sense that it is not subject to appeal or Review.—WURTELE, J., 16 MAY 1889, *Ex-parte Citizens League.* **V,** S. C. **160.**

4. Discretion of council.—
St-Amour vs St-François de Sales. **VII,** S. C. **479.**

5. Jurisdiction — License — Action for amount not exceeding $200.—That although the jurisdiction of the Superior Court has been extended generally to action between $100 and $200 which were formerly in the jurisdiction of the Circuit Court art. 1031 R. S. Q. which restricts the jurisdiction of the Superior Court, in action for the recovery of fines and penalties under the license Act, to amounts exceeding $200 constitutes an exception to the general rule, and therefore the Superior Court has no jurisdiction in an action for penalties to the amount of $150.

Where the Superior Court excercises a jurisdiction not pertaining to it, such judgment is subject to review by the Court sitting in Review, and the absence of jurisdiction of the Court below may be raised for the first time when the case is in Review.

The deposistions of witnesses in action for penalties or offences against the License Act, need not be taken in writing unless there be a demand by one of the parties (R. S. Q. 1046). — JOHNSON, LORANGER, WURTELE, JJ., 30 APRIL 1889, *Crépeau vs Lafortune.* **VI,** S. C. **422.**

6. Opposition to granting a license.—That persons who sign an opposition to the granting of a license, have the right to desist from such opposition at any time previous to the day fixed for the consideration of the application.—WURTELE, J., 10 APRIL 1890, *Wiseman vs Dugas.* **VI,** S. C. **133.**

7. Refusal of council to confirm certificate.—Qu'un conseil municipal est en droit de refuser la confirmation d'un certificat dont plusieurs des vingt-cinq signatures, quoique portées sur la liste des électeurs, se trouvent déqualifiés par le fait qu'ils doivent des taxes municipales ou scolaires.—MATHIEU, J., 5 FÉV. 1886, *Wiseman vs St-Laurent.* **III,** S. C. **108.**

8. Sale of liquor to drunkard.—Que d'après l'Acte des Licences de Québec la pénalité imposée contre toute personne qui vend ou livre de la boisson enivrante à une autre personne qui a l'habitude de boire après qu'il y a eu défense

de lui en vendre ou livrer par quelqu'un ayant le droit de faire telle défense, n'est qu'à titre de dommages intérêts à raison du tort éprouvé ou du gain perdu ; et que dans le cas où il n'y a aucune preuve de dommages soufferts, la somme de $10. c'est-à-dire le minimum fixé par le dit statut (sec. 96) sera considérée suffisante. — JETTÉ, J., 23 DÉC. 1887, *Sauvage vs Trouillet.* **III,** S. C. **276.**

9. Seizure of circus without previous judgment.—Que sous l'Acte des License de Québec de 1878 41 Vic. ch. 3, le juge des sessions de la paix a juridiction pour émaner un mandat de saisie des biens d'un cirque ou d'une ménagerie sans avis ou condamnation préalable.—LORANGER, J., 14 SEPT. 1886, *Sparon & Desnoyers.* **II,** S. C. **273.**

LICITATION

See PARTNERSHIP.

LIEN

Que celui qui nourrit un cheval et en prend soin et qui le dresse pour la course au trot, a sur ce cheval et les objets à son usage, tels que harhais, licou &c, un droit de rétention pour sûreté du paiement de tels nourritures et soins et pour l'avoir ainsi dressé pour la course.—PAPINEAU, J., 29 DÉC. 1882, *Brazier vs Léonard.* **I,** S. C. **419.**

CITATIONS.—*Pothier, Mandat, Nos.* 50, 51, 58, 59, 68, 69, 78, 79, 106—*Domat, liv.* 1 *tit.* 15 *sec.* 3, *No.* 8—*Troplong, Mandat, Nos.* 698 *et seq*—*Story, Bailments, par.* 193—*C. N. arts.* 1947, 1948, 1993, 1999, 2102—2 *Pardessus, Droit Commercial, Nos.* 489, 571—*Pothier, Dépôt,* 59, 69, 70, 74—*Idem, Propriété,* 343—*Idem, Prêt à usage,* 43—2 *Grenier, Hypothèque,* 298—2 *Bourjon,* 691—*Stewart v. Ledoux,* 6 *R. L.* 217—*Lachapelle v. Renaud,* 3 *R. de L.* 300—*Ryland v. Gingras,* 6 *R. J. de Q.* 163 à 173—*Paley, Principal and Agent, pp.* 124, 125, 127—18 *Duranton.* 509—*Troplong, Nantis, s.* 97, 100, 297, 451.

LIEN DE DROIT

See CONTRACT—DAMAGES—PLEDGE.

LIMITATION

See PRESCRIPTION.

LIQUIDATION

See BUILDING SOCIETY — INSOLVENCY — QUANTUM MERUIT.

LIQUIDATOR

See PARTNERSHIP—PROCEDURE.

LITIGIOUS RIGHTS

That C. C. 1584 par. 4, which states that "the provisions of C. C. 1582 do not apply when the judgment of a court has been rendered affirming the right" refers to a judgment upon the particular demand in litigation, and not to a judgment affirming another right of a similar character. —DORION, MONK, RAMSAY, CROSS, BABY, JJ., 22 MARCH 1886, *Brady & Stewart.* **II,** Q. B. **272.**

CITATIONS.—*Dansereau & Letourneux, M. L. R.* 1 *Q. B.* 357.

Where an advocate, in contravention of art. 1485 C. C. becomes the buyer of a litigious right which falls under the jurisdiction of the Court, in which he exercises his functions, his action for the recovery of such right will not be maintained.

Where an advocate takes a transfer of a note after maturity, knowing that payment thereof has been refused by the maker because no consideration was received, he will be deemed to be buying a litigious right.—DORION, TESSIER, CROSS, BABY, BOSSÉ, JJ., 19 JUNE 1890, *Bergevin & Masson.* **VI,** Q. B. **104.**

See COMPANY.

LOAN

Where money is loaned at interest, the term is presumed to be stipulated in favor of the creditor as well as of the debtor.—JOHNSON, PAPINEAU, LORANGER, JJ., 12 JUNE 1886, *Ouimet vs Ménard.* **III,** S. C. **42.**

See PARTNERSHIP.

LOCATION TICKET

A location ticket of certain lots was granted to G. C. H., in 1863. In 1874, the Commissionner of Crown Lands registered a transfer of the location ticket from G. C. H. to respondent. In 1878, the Commissionner cancelled the location ticket for default to perform settlement duties.

That the registration by the Commissionner, in 1874, of the transfer to respondent, was not a waiver of the right of the Crown to cancel the location ticket for default to perform settlement duties, and the cancellation was legally effected. — DORION, MONK, TESSIER, CROSS, BABY, JJ., 21 SEPT. 1886, *Ross & Holland.* **II,** Q. B. **316.**

See CROWN LANDS.

MAGISTRATE'S COURT

Que la Cour de Magistrat pour la Cité de Montréal a juridiction dans toutes les poursuites jusqu'à concurrence de $50 pour cotisations, pour la construction et la réparation des églises, presbytères et cimetières, même dans les actions hypothécaires.—GILL, J., 17 MARS 1890, *Guillemette vs Cour Magistrat.* **VI,** S. C. **273.**

CITATIONS.—*Rodier vs Hebert,* 16 *L. C. J.* 41—*Massé vs Côté,* 3 *Q. L. R.* 322—*Commis, Sillery vs Gingras,* 6 *Q. L. R.* 355—*Fabrique St-Paul vs Lanouette,* 9 *R. L.* 542—*Syndics de Ste-Cunégonde vs Forte,* 10 *L. N.* 20.

See HABEAS CORPUS.

MALICIOUS PROSECUTION

Where a person was discovered cutting and removing trees from the land of the defendant, and the excuse given, viz., that he had received permission to remove dead trees from the land of the adjoining proprietor, and that his men had unwittingly crossed the boundary line, was untrue, as he had not received such permission, that there was probable cause for his arrest for trespass.—LORANGER, J., 29 FEB. 1884, *Wiseman vs McCulloh.* **I,** S. C. **338.**

See DAMAGES.

MALICIOUS ARREST

See PROBABLE CAUSE.

MALICIOUS SEIZURE

See BROBABLE CAUSE.

MANDAMUS

That when arbitrators, appointed to value a property, proceed upon an erroneous basis in law, and refuse to admit the best evidence of value, an interested party may obtain a writ of mandamus against the arbitrators to compel them to admit such evidence.

That the best mode of ascertaining the value of a property for purposes of expropriation, is to establish its market value and such value should be based upon the annual revenue of the property.—TORRANCE, J., 26 JUNE 1885, *Jones vs Laurent.* **I,** S. C. **438.**

That the court has power to compel the performance of a public duty by public officers though the statutable time for performing the duty has passed; consequently the board of Revisors was ordered to place names on the list of municipal electors after the statutable time for performing the duty had passed.—JOHNSON, PAPINEAU, LORANGER, JJ., 31 MAY 1886, *Déchêne vs Fairbairn.* **II,** S. C. **442.**

See MONTREAL—MUNICIPAL ELECTION—RAILWAY —SUPERINTENDENT OF EDUCATION.

MANDATE

See ASSIGNMENT — COMPANY — PRINCIPAL AND AGENT—TRUST.

MAPLE GROVE

See MUNICIPAL LAW.

MARCHANDE PUBLIQUE

See HUSBAND AND WIFE.

MARITIME LAW

See SHIPPING.

MARRIAGE

1. Absence of husband—Effect of in relation to marriage.—That the absence of plaintiff's first husband for twenty years coupled with information that he had been drowned was

sufficient to establish his death.—DAVIDSON, J., 28 JUNE 1888, *McKercher vs Mercier.* **IV,** S. C. **333.**

2. Breach of promise.—Que si par inconstance ou autrement celui qui avait promis de se marier change de résolution et refuse d'accomplir sa promesse, il doit des dommages intérêts à l'autre partie. — TASCHEREAU, J., 4 AVRIL 1888, *Cardinal vs Dorice.* **IV,** S. C. **17.**

3. Empêchement dirimant.—Que jusqu'à la mise en force du Code Civil de la Province de Québec la parenté au second degré de consanguinité en ligne collatérale a toujours pour les catholiques de cette Province, été reconnu comme un empêchement dirimant de mariage, dont les parties pour contracter mariage devaient obtenir dispense de l'autorité ecclésiastique.

Que le Code Civil (Articles 127 et 134,) a laissé subsister pour les catholiques de la dite province les empêchements jusque là admis dans la dite Eglise catholique et a conservé à chaque croyance la jouissance de ses usages et pratiques relatifs au mariage.

Que par conséquent le mariage célébré par un ministre protestant entre deux catholiques cousins germains, sans publication de bans, en vertu d'une licence du lieutenant gouverneur de la province, mais sans dispense de l'autorité ecclésiastique du dit empêchement ou de telle publication de bans, doit être déclaré nul quant à ses effets civils.—BOURGEOIS, J., 11 MARS 1886, *Globensky vs Wilson.* **II,** S. C. **175.**

MARRIAGE CONTRACT

See DONATION.

MARRIED WOMAN

See HUSBAND AND WIFE—ACTION QUI TAM.

MASTER AND SERVANT.

I.—ACCIDENT THE RESULT OF DANGER INHERENT TO EMPLOYMENT—RESPONSIBILITY.
II.—DAMAGES.
III.—DEFECTIVE TACKLE.
IV.—DEGREE OF CARE.

V.—Desertion from service.
VI.—Dismissal of employee—Damages.
VII.—Hire of work—Engagement at so much a year.
VIII.—Injury to employee.
IX.—Negligence of foreman.
X.—Public carter—Negligent driving—Accidental employment.
IX.—Responsibility.

See MINOR—JURISDICTION—PRESCRIPTION—TRUSTEES TURNPIKE ROADS.

1. Accident the result of danger inherent to employment—Responsibility.—That an employer, who is not guilty of negligence, is not responsible for loss suffered by an accident to his workman, which is the result of dangers inherent to the trade or employment and of which the workman was aware when he voluntarily assumed the employment. And so, it was held that master roofers were not responsible for the death of an apprentice, aged 16, who fell from a platform while engaged in his employment where it appeared that the apprentice was aware of the danger of the work, was fitted to engage in it and the employers were wholly free from negligence or fault in respect of the platform tackle, or method of work.—Davidson, J., 28 dec. 1887, *Lavoie vs Drapeau.* **III,** S. C. **304.**

Citations,—*St. Lawrence Sugar Refinery & Campbell M. L. R., 1 Q. B* 290—.

2. Damages.—Que dans une manufacture lorsque l'arbre de couche et le manchon d'accouplement n'est pas entouré, et qu'il est facile de le faire, il y a contravention à l'Acte des Manufactures, (art. 3024 S. R. Q.) et la manufacture est réputée tenue illégalement et dangereuse pour la vie des personnes qui y sont employées.

Que dans une manufacture tenue dans cet état, le propriétaire est responsable du malheur arrivé à un de ses employés qui étant chargé de huiler les arbres de couche aurait été par eux saisi et tué instantanément.

Que la négligence de l'employé qui avait reçu défense de huiler pendant que la manufacture était en opération, et son imprudence en passant sur un tas de rognures de bois qui se trouvait près de l'arbre de couche, tout en ne relevant

pas entièrement le propriétaire de sa faute, cause principale de l'accident, doit néanmoins être pris en considération dans le montant des dommages à être accordés. Jugement pour $500.—MATHIEU, J., 6 DÉC. 1890, *Lapierre vs Donnelly.*

VII, S. C. 197.

CITATIONS.—*Dalloz*, 1876-2, *p.* 72; 1879-2, *p.* 47; 1873-2, *p.* 189—*Dalloz et Vergé, sur art.* 1383, *No.* 92—*Dalloz*, 1875-1-320; 1870-2-111; 1871-2-208; 1871-41—*Ross & Langlois, M. L. R.* 1 *Q. B.* 281—*Cossette vs Leduc*, 6 *L. N.* 181—*Cadieux & Cie. du Pacifique, M L. R.* 3 *Q. B.* 315—*Legault vs Cité de Montreal*, 17 *R. L.* 279—*C. P. R. vs Goyette, M. L. R.* 2 *Q. B.* 310—*Coallier vs Dominion Oil Cloth Co., M. L. R.* 5 *S. C.* 97—*Desroches & Gauthier*, 5 *L. N.*, 404—20 *Laurent* 487, 488—31 *Demolombe, p.* 434, *Nos.* 502,503, *et seq.*

Pour le défendeur:—*Laurent, No.* 489—34 *Dalloz vo Ouvrier, Nos.* 103, 104, 105, 106, 107.—18 *R. L.* 57—*Ramsay, Appeal Cases, p.* 221—*Fisher's Digest.* 1889, *p* 303 *et* 1888, 297-8—*L. R.* 14 *Appeal Cases*, 179—19 *R. L.* 81—*Dalloz, Recueil vo Responsabilité*, 1867, *p.* 371.

Que même en loi et en l'absence de toute convention spéciale, un patron a droit de retenir sur le salaire de son employé le montant des pertes que ce dernier lui a fait subir par sa faute.—TASCHEREAU, J., 19 NOV. 1886, *Levesque vs Benoît.* **II, S. C. 357.**

Que dans l'espèce le salaire stipulé entre les parties doit être la base d'évaluation des dommages, aucune preuve de dommages n'ayant été faite.

Que l'action de l'intimé ayant été portée avant l'expiration de l'année pour la balance de salaire pour tout ce qui restait a courir de l'année, la demande était prématurée pour la somme représentant le salaire non encore échu à la date de l'action, et le jugement obtenu par l'intimé pour le plein montant de son salaire doit être réduit à ce qui était échu à la date de l'institution de son action.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 26 MARS, 1890, *Commissaires des Chemins & Rielle.* **VI, Q. B. 54.**

3. Defective tackle.—An employer is responsible for injuries to his employees from defects in the tackle, machinery or appliances provided for their use. Tackle used in work such as loading or unloading a vessel ought to be amply sufficient to withstand any strain that is likely to be put upon it by ordinary unskilled laborers; and where tackle breaks, without any extraordinary strain upon it, it will be

presumed to be insufficient, though it may have been used previously for the same purpose without accident.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 APRIL 1885, *Ross & Langlois.* **I,** Q. B. **280.**

4. Degree of care.—A laborer engaged in work such as loading or unloading a vessel is only bound to use ordinary care, and the employer is not relieved from responsibility by showing that if the laborer had used the greatest skill and care the accident might not have happened.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 JAN. 1885, *Ross & Langlois* **I,** Q. B. **280.**

CITATIONS.—*Periam & Dompierre,* 1 *L. N.* 5—*Desroches & Gauthier,* 5 *L. N.* 404—*Cie Richelieu et Ontario & St. Jean, M. L R.* 1 *Q. B.* 252.

5. Desertion from service.—That a journeyman shoemaker engaged to make boots and shoes at so much per dozen, falls within the provisions of 14-15 Vict. ch. 128 and the by-law of the city of Montreal passed in accordance therwith, and may be punished for desertion from service of his employer as therein provided.—PAGNUELO, J., 11 JAN. 1890, *Ex parte Gagnier & DeMontigny.* **VII,** S. C. **19.**

6. Dismissal of employee.—Qu'un ouvrier engagé pour un temps fixé et à prix fait, qui est déchargé sans raison suffisante avant l'expiration de son engagement a une action en dommage contre son patron, et que la mesure des dommages dans ce cas est le montant du salaire convenu pour le terme de l'engagement à partir de la date du renvoi. —LORANGER, J., 17 MAI 1890, *Bonneau vs Montreal Watch Case Co.* **VI,** S. C. **426.**

7. Hire of work—Engagement at so much a year.—Que l'engagement de l'intimé comme secrétaire de la commission pour un salaire de tant par année constitue un contrat de louage d'ouvrage pour une année, sujet à tacite reconduction.

Qu'un tel engagement n'est pas pour un temps indéterminé, et n'est pas révocable à la volonté du locataire.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 26 MARS 1890, *Commissaires Chemins à Barrières vs Rielle.* **VI,** Q. B. **53.**

CITATIONS.—*Demangeat,* p. 360—*Lennan vs St. Lawrence & Atlantic Ry. Co.* 4 *L. C. R.* 91—*Cité de Montréal & Dugdale,* 3 *L. N.* 204.

8. Injury to employee.—That where a servant meets with an accident while engaged in the ordinary duties of his employment, and the accident is not the result of any fault or negligence on the part of the employer or of those for whom he is responsible, the servant or his representatives has no right to recover damages from the employer.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ , 17 DEC. 1883, *Cie Navigation Richelieu & St-Jean.* **I,** Q. B. **252.**

CITATIONS.—*Desroches & Gauthier,* 5 *L. N.* 404.

An employer is liable for any want of care on his part by which his servant is injured ; and, therefore, if he engages an unskilled or careless person to conduct his work, and owing to the want of skill or care of the person so employed, another workman is injured, the employer is responsible. But in order to hold the employer responsible, it must be clearly established that the negligence or want of skill of the fellow workman caused the accident by which the damage was occasioned. So, where two workmen were engaged in an operation not shown to be hazardous, and an explosion occurred which killed the superior workman and injured the plaintiff who was assisting the other, it was held that the workman injured had no right of compensation from the employer, in the absence of any evidence as to the cause of the accident, or that the employer was in fault by having hired a careless or unskilful workman. — DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 MARCH 1885, *St. Lawrence Sugar & Campbell.* **I,** Q. B. **290.**

An employer is responsible for the damages sufferred by an employee through the negligence or want of skill of a fellow employee. — DORION, RAMSAY, CROSS, BABY, JJ., 16 JAN. 1886. *Robinson vs C. P. R.* **II,** Q.B. **25.**

(Reversed by Supreme Court 14 S. C. R. 605.)

The defendants were constructing a building in the city of Montreal, and at their sollicitation, men (of whom the plaintiff was one) were sent by the Corporation to introduce water from the street by a pipe connecting with the building. This could not be done without working inside as well as outside. A man passing along the wall, above

where the plaintiff was working at the pipe hole, loosened and started a brick in the wall, and the brick, falling down, injured the plaintiff. A hammer had fallen previously and warning had been given to the men above.

(Ramsay & Cross JJ., diss) That the burden of proof was on the defendants to rebut the presumption of negligence, and this not having been done, the defendants were liable. —DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 27 JAN. 1886, *Evans, et al & Monette.* **II,** Q. B. **243.**

9. Negligence of foreman. — The plaintiff (respondent) was employed in one of two gangs of men who were engaged in discharging defendants' steamship. After the gang to which plaintiff belonged had been dismissed for lunch the foreman of the other gang called for volonteers to assist in removing a heavy iron girder. The respondent volunteered and while assisting, was injured in consequence of the girder toppling over. The accident was attribuable to the negligence of the foreman in charge.

(Affirming the decision of Torrance J.) That masters and employers are responsible for the fault and negligence of the foreman placed in authority by them, whether the damage be caused to a fellow servant or not.

The fact that the plaintiff, while in the employment of the defendants, volunteered for the particular service in which he was engaged when injured, does not relieve the employer from responsibility. — DORION, TESSIER, CROSS, BABY, 18 MARCH 1887, *Allan & Pratt.* **III,** Q. B. **7.**

10. Public carter–Negligent driving–Accidental employment–Responsibility.—The defendants, a firm of coal merchants, were in the habit of hiring public carters, carrying the corporation license, for the cartage and delivery to customers of their coal, such carters being paid so much per load, and being free to take one or more loads as they pleased. It appeared that one of these carters, while carrying a load of defendants' coal to a customer, had, through negligent driving, inflicted severe bodily injuries on the plaintiff.

That such carter was not a servant of the defendants or one of whom they were responsible under art. 1054 C. C., but an independent contractor in the nature of a private carrier.—DAVIDSON, J., 28 JUNE 1889, *Loiselle vs Muir*.

V, S. C. **155.**

CITATIONS.—2 *Sourdat, Resdonsabilité* § 889—11 *Toullier*,§ 284—2 *Sourdat, Responsabilité* § 894—*Addeson, on Torts (Wood's Ed.)* § 550, *p.* 589 *note* 1 *New York, etc. Ry. Co. vs Stembrenner*, 54 *Am. Rep.* 126.

11. Responsibility.—M. the husband of plaintiff was employed by the defendant master of a steamship to assist in unmooring the steamship then lying at the wharf at Montreal, and about to put to sea. While M. was standing ready to cast off the stern hawser from the post to which it was fastened, the hawser snapped and M. was fatally injured.

(Ramsay & Cross JJ., diss.) That the presumption was that the rope was insufficient for the purpose for which it was being used, or that the ship was unskilfully handled, and in either case the master of the ship was responsible.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 JAN. 1886, *Corner & Byrd*.

II, Q. B **262.**

CITATIONS.—3 *Meerman*, 495—*Periam & Dompierre*, 1 *L. N.* 5.

A gang of men engaged by a railway company were proceeding on a construction train to the place where they were about to be employed. Platform cars were provided by the company, but the men (of whom the plaintiff was one) mounted upon a car laden with lumber, and the lumber giving way, the plaintiff and others were injured :

That it was the duty of the company's officials to have prevented the workmen from riding in such a dangerous position, or, at least, to have warned them very clearly of peril, and the company were held responsible for the damages suffered by the men. — DORION, MONK, RAMSAY, CROSS, BABY, JJ., 30 JUNE 1886, *The C. P. R. & Goyette*.

II, Q. B. **310.**

Que le maître est responsable du dommage causé par son ouvrier à un autre ouvrier dans l'exécution des fonctions auxquelles il est employé.

Que, par suite, il est responsable du dommage csusé à un

de ses employés, par l'écroulement d'un échafaud construit par un autre de ses ouvriers sur son ordre. — MATHIEU, J., 19 OCT. 1887, *Bélanger vs Riopel* **III,** S. C. **198.**

(Affirming the judgment of Mathieu, J. M. L. R. 3 S. C. 198) that an employer is responsible for injuries suffered by his workman in consequence of the insufficiency of a scaffolding constructed by a fellow servant in obedience to the orders of the employer. — PAPINEAU, LORANGER, DAVIDSON, JJ., 30 DEC. 1887, *Bélanger vs Riopel.* **III.** S. C. **258.**

Qu'un manufacturier qui emploie un ouvrier pour faire un ouvrage dangereux est tenu de prendre toutes les précautions possibles pour diminuer le danger de manière à ne pas exposer l'ouvrier à un danger déraisonable.

Qu'un manufacturier est obligé de tenir ses machines et son mécanisme en bonne condition, et dans un état n'offrant pas de danger pour ses employés.

Qu'un manufacturier qui emploie, ordonne ou permet à ses ouvriers de changer les courroies des poulies qui servent à faire mouvoir les machines de sa manufacture pendant que les essieux, les poulies et les courroies sont en mouvement, augmente imprudemment le danger auquel l'ouvrier est exposé, et est coupable de négligence et responsable des accidents qui peuvent arriver à son employé.—DOHERTY, J., 7 OCT. 1888, *Coallier vs Dominion Oil.* **V,** S. C. **97.**

(Reversing the judgment of Doherty J. M. L. R. 5 S. C. 97.) That where an accident occurs to an employee, not in consequence of any fault or neglect of his employer, but solely through his own negligence and disregard of the directions given to him, the employee has no action to be indemnified. So where an employee was directed to change a belt after six o'clock, when the machinery would be stopped, and in disregard of the order he attempted to remove the belt before six o'clock while the shaft was still in motion, it was held that he had no right to be indemnified for the injury sustained.—DORION, TESSIER, CROSS, BABY, BOSSÉ, JJ., 22 SEPT. 1890, *Dominion Oil & Coallier.* **VI,** Q. B. **268.**

CITATIONS.—*Desroches & Gauthier,* 5 *L. N.* 404—*St. Lawrence Sugar Refining Co. & Cambell, M. L. R.* 1 *Q. B.* 290.

Qu'un maître qui emploie des journaliers est responsable des dommages qu'ils souffrent par suite d'un accident arrivé par le mauvais état des outils ou des machines qu'il met à leur usage.

Que le maître n'est pas déchargé de sa responsabilité parce que le serviteur aurait été imprudent et aurait désobéi à ses ordres, pourvu que ce dernier ne soit pas la cause première de l'accident.—JOHNSON, LORANGER, WURTELE, JJ., 28 FÉV. 1890, *Gingras vs Cadieux.* **VI,** S. C. **33.**

CITATIONS.—Pour le demandeur:—1 *Sourdat, Responsabilité, No.* 108 *et* 911—5 *Larombière, Obligation art.* 1384—2 *Laurent no.* 475—*Dalloz,* 1876, *2e partie, p.* 72, 47—*Dalloz* 1870-2, *p.* 211; 1875-1, 320; 1877-2, *p.* 204—*Dalloz & Vergé, art.* 1383 *C. N. No.* 92—*Dalloz,* 1873-2, *p.* 189, *Guillemin vs Comp. des Mines de Montthéry—C. C.* 1053, 1054—*M. L. R.* 1 *Q. B.* 281, *Ross & Langlois*—25 *L. C. J.* 251, *Auprix vs Lafleur*—5 *L. N.* 404, *Desroches vs Gauthier—M. L. R.* 3 *Q. B.* 316, *Cadieux vs C. P. R.*—17 *R. L.* 269 *Legault vs Montréal.*

Pour le défendeur:—1 *L. N.* 5 *Périam vs Dompierre*—5 *Larombière, p.* 708—11 *Toullier No* 154—*Sourdat, No.* 661—*Sirey vo Dommages, No.* 2 *bis—Field, on Damages, p.* 21, 158, 171—*Cooley, on Torts,* 674—*Harrison, on Municipal Law.* 489—16 *L. C. R.* 231 *Moffett vs G. T. R.*

A contracter is responsible for the negligence of his employees in allowing a plate to be blown from the roof where they were at work, by which a passer-by was injured.—TELLIER, J., 31 JAN. 1889, *Shackell vs Drapeau.* **V,** S. C. **81.**

MASTER AND APPRENTICES

See MONTREAL.

MASTER OF SHIP

See SHIPPING.

MATRIMONIAL DOMICILE

See DOMICILE.

MEDICAL EXAMINATION

See PERSONAL INJURIES.

MEMBER OF PARLIAMENT

See LIBEL AND SLANDER.

MEMBERSHIP

See ASSOCIATION.

MENS REA

See PROCEDURE.

MENTAL ANGUISH

See PROCEDURE.

MERCANTILE AGENCY

That where the report of a mercantile agency to its customers, concerning the standing of a person in business, is true, and no malice is proved, an action of damages for such publication will not be maintained.—DORION, MONK, TASCHEREAU, SANBORN, JJ., 15 FEB. 1875, *Girard & Bradstreet.* **III,** Q. B. **69.**

CITATIONS.—*Fleming et Tibbins vo Failed and Failure—Acte de faillite de* 1869 *—Guyot, Rep. vo Banqueroute, pp.* 149, 151—*Nouv. Denizart vo faillite, p.* 402—*Robertson's Reports, N. Y. S. C.,* 3, 284, *Estall vs Brooks—Grellet Dumazeau, p.* 161, *Nos.* 246, 249, 259—*Starnes vs Kinnear,* 6 *L. C. R.* 410—*Wilson vs Morris,* 1 *L. C. J.* 237—5 *Larombière,* 692—11 *Toullier, No.* 116—*Lenoir Rolland v. Jodoin,* 16 *L. C. R.* 387—2 *L. C. J.* 20—*Côté vs Gaspé,* 16 *L. C. R.* 381—*Blackstone, livre III, ch.* 8—*Starkie, on Slander, p.* 433, *part.* 1—

See DAMAGES—LIBEL AND SLANDER.

MINOR

1. Action for slander.—Qu'un mineur émancipé, par mariage peut, sans l'assistance de son curateur, intenter les actions mobilières, et, par suite, poursuivre en dommages pour injures.—MATHIEU, J., 1 OCT. 1884, *Miller vs Cléroux.* **I,** S. C. **223.**

2. Change of domicile.—Qu'un père qui engage son fils mineur comme apprenti pour un nombre déterminé d'années, dans l'endroit où il réside avec sa famille, est justifiable de retirer son fils d'apprentissage, avant l'expiration du temps fixé lors que le maître veut l'emmener résider dans une place éloignée où le père ne sera pas en état de surveiller la conduite de son fils.—TASCHEREAU, J., 8 FÉV. 1888, *Gravel vs Malo.* **IV,** S. C. **43.**

3. Ratification.—Qu'un mineur devenu majeur peut ratifier les procédures par lui faites pendant sa minorité, et ainsi les rendre valables.—MATHIEU, J., 8 MAI 1889, *Pelletier vs Lamb.* **V,** S. C. **69.**

See CORPORATION—TUTOR AND MINOR—TRUST.

MISDIRECTION

See PROCEDURE.

MISNOMER

See PROCEDURE—PLEADING.

MISREPRESENTATION

See SALE.

MITOYENNETE

La limite d'épaisseur d'un mur mitoyen est de dix-huit pouces et le propriétaire d'un mur d'une plus grande épaisseur ne peut forcer son voisin, qui veut bâtir contre ce mur, de payer plus que la moitié du coût d'un mur de dix-huit pouces, plus la moitié du sol occupé par ce mur.

Toutefois le voisin, poursuivi pour la valeur d'un mur d'une plus grande épaisseur, doit plaider spécialement qu'il n'a pas besoin d'un mur de plus de dix-huit pouces, et en l'absence d'une semblable allégation, la Cour ne pourra suppléer au défaut de ce moyen de défense.—MATHIEU, WURTELE, PAGNUELO, JJ., 30 AVRIL 1891, *St. Stephens Church vs Evans.* **VII, S. C. 255.**

CITATIONS.—1 *Delvincourt, p.* 160, *note* 9—*Marcadé, art.* 661, *No.* 2—2 *Zachariæ,* § 322, *p.* 173, 4*e édit*—*Pardessus, Servitude, I, No.* 155—7 *Laurent,* 511—2 *Demaule No.* 515 *bis*—*Du Caurroy, Bonnier et R, II, No.* 292—*Demolombe, Servitudes, I,* (*vol. XI*), *No.* 362.

MONEY PAID BY ERROR

See ACTION.

MONTREAL (CITY OF)

I.—ACCIDENT CAUSED BY DISCHARGE OF FIRE WORKS.
II.—ACTION.
(1) For fines or penalties.
(2) To set aside by-law.
III.—ALDERMEN SUPPLYING MATERIALS FOR FULFILMENT OF CONTRACT WITH CITY OR SELLING GOODS TO CITY.
IV.—ASSAULT BY CONSTABLE.
V.—ASSESSMENT AS OWNER.
VI.—ASSESSMENT ROLL—WHEN IT COMES INTO FORCE.
VII.—BOARD OF REVISORS.

VIII.—By-law concerning masters and apprentices.
IX.—Changing level of street.
X.—Contestation of election.
XI.—Constitutional law—Butcher's stall—Taxation—By-law.
XII.—Disability of corporations acquiring immovables property—Expropriation.
XIII.—Division of debt.
XIV.—Driving in the streets.
XV.—Election of alderman—Contestation—Qualification of petitioners.
XVI.—Expropriation—Indemnity.
XVII.—Fire brigade—Negligence.
XVIII.—Interest in contracts.
XIX.—Liability for assault by policeman—Damages.
XX.—Liability for special assessments.
XXI.—Licence—Expiration of.
XXII.—Licensing sale of meat.
XXIII.—Mandamus — Expropriation — Commissioners whose powers have lapsed.
XXIV.—Municipal election—Date of election—Extraordinary vacancy.
XXV.—Nomination of candidates.
XXVI.—Prescription.
XXVII.—Proprietors par indivis—Joint and several liability for taxes.
XXVIII.—Public street—Destination.
XXIX.—Qualification of alderman.
XXX.—Responsibility.
(1) Demolition of building.
(2) For acts of police in making illegal arrest.
(3) For condition of sewers
(4) Of proprietor.
XXXI.—Rules of council—Reconsideration of questions.
XXXII.—Sewer—Warranty.
XXXIII.—Sidewalk in front of public market.
XXXIV.—Special tax for sewer.
XXXV.—Statute labor tax—Water rate.
XXXVI.—Street Railway Company — Construction of charter and Municipal by-laws—Repairs to streets—New pavements—Liability of company to contrainte to cost of permanent improvements.
XXXVII.—Taxation—Delegation of powers.
XXXVIII.—Tree.
XXXIX.—Warranty.
XL.—Widening of St. Lawrence St.

See CONTRACT—EXEMPTION FROM TAXES—CONSTITUTIONAL LAW—HARBOUR COMMISSION.

ERS HEALTH, BOARD OF — LICENSE LAW— MAGISTRATES' COURT—MANDAMUS—MUNICIPAL LAW—PRESCRIPTION—PROCEDURE—RECORDER'S COURT — SERVITUDE — USUFRUCTUARY.

1. Accident caused by discharge of fireworks.—Qu'à l'occasion de fêtes ou réjouissances publiques, lorsque la cité de Montréal permet, dans des endroits publics des feux d'artifice elle est responsable des accidents qu'ils peuvent occasionner, même dans le cas où ces feux d'artifices sont sous le contrôle d'un organisateur particulier.—LORANGER, J., 30 MAI 1888, *Forget vs Montréal.* **IV,** S. C. **77.**

CITATIONS.—*Whitly vs Brock & Co.*, 4 *Times Law Reports*, 241.

2. Action.—1. *For fines or penalty.*—Que d'après la charte de la Cité de Montréal, en force depuis le 21 mars 1889, les poursuites pour le recouvrement des amendes ou pénalités imposées par la charte doivent être portées devant la Cour du Recorder, qui seule a juridiction. — TASCHEREAU, J., 8 MAI 1890, *Daveluy vs Hurteau.* **VI,** S. C. **335.**

2. *To set aside by-law.*—Proceedings to annul a by-law must be brought within three months from the time the by-law comes into force.—LORANGER, J., 20 NOV. 1885, *Cie Navigation Longueuil vs Montreal.* (Confirmed in appeal 3 M. L. R. Q. B. 172). (Reversed by Supreme Court 15 S. C. R. 566). **II,** S. C. **18.**

3. Aldermen supplying materials for fulfilment of contract with city or selling goods to city.—An alderman who undertakes to supply the materials required by a contractor, for the execution of a contract with the city of Montreal, derives an interest from such contract, which comes within the prohibition of the statute 37 Vict. (Q) ch. 51, s. 22, and renders him incapable of holding his seat as an alderman.

All sales of goods by an alderman to the corporation, either directly or through a person interposed, fall within the prohibition of the law.

The revised charter of the city of Montreal, 52 Vict. (Q) ch. 79 being merely a consolidation of the previous Acts

affecting the city, the provisions of the latter, re-enacted in the consolidated charter, are deemed to be still in force as to acts done before the consolidation.

The contracts referred to in s. 25 of 52 Vict., (Q.) ch. 79, are not those from which a profit to the extent of $100 is derived, but contracts the price and consideration of which amounts to $100. The limit applies to the contract itself and not to the profit made from it. — JOHNSON, LORANGER, WURTELE, 17 MARCH 1890, *Stephens vs Hurteau.*

VI, S. C. **148.**

CITATIONS —*Endlich, Interpretation of Statutes, No.* 490.

4. Assault by constable. — Que la cité de Montréal est responsable de la conduite de ses hommes de police dans l'exercice de leurs fonctions. — PAGNUELO, J., 16 FÉV. 1891, *Courcelles vs Montréal.* **VII,** S. C. **154.**

5. Assessments as owner.—The fact that the name of the person assessed did not appear in the books of the corporation as owner, does not preclude a demand for assessments as owner where it appears that he was in fact, owner.—TORRANCE, J., 10 NOV. 1886, *Montreal vs Robertson.* **II,** S. C. **429.**

6. Assessment roll–When it comes into force. — That an assessment roll comes into force from the date of its final completion and deposit by the commissioners in the office of the city treasurer, and the prescription of three months under 42-43 Victoria ch. 53 s. 12 runs from that date. — DORION, TESSIER, CROSS, BABY, JJ., 26 MAY 1887, *Joyce & Montreal.* **III,** Q. B. **200.**

7. Board of Revisors.—That the discretion of the Board of Revisors extends merely to matters of fact, such as the verification of names and residences of voters, and not to matters of law and if they decide a question of law, the court, by mandamus, may interfere to prevent such illegal exercise of discretion.

The water rate imposed in the city of Montreal is in the nature of a tax, and not the price of a commodity sold and those who pay such water rate are exempts from the payment of the statute labor tax, which is due only by those who do not otherwise contribute to the municipal revenue.

— TASCHEREAU, GILL, LORANGER, JJ., 9 NOV. 1886, *Glalon vs Fairbairn.* **II,** S. C. **452.**

CITATIONS.—*Cooley, Taxation,* 2—*High Extraordinary legal remedies, No.* 327—2 *Dillon* § 832—*Redfield, on Railways, p.* 643—*Wood, on Mandamus,* 63, 80, 84, 88.

8. By-law concerning masters and apprentices. — Qu'une personne qui est " engagée " par écrit à une autre personne qui se qualifie " bourgeois ou maître ", pour un an, pour travailler de son métier soit à l'entreprise ou à la pièce, ou à la quantité, e. g. tant de mille, doit être considérée comme tombant sous l'effet du règlement de la cité de Montréal concernant les " maîtres et apprentis " et peut être légalement condamnée a l'amende et à la prison par le Recorder au cas d'abandon de son service sans permission.—GILL, J., 6 JUIN 1887, *Dinelle vs Gauthier.* **III,** S. C. **134.**

9. Changing level of street.—Qu'une corporation municipal est responsable des dommages qu'elle cause à un propriétaire sur une rue dont elle change le niveau.—MATHIEU, J., 5 NOV. 1884, *Turgeon vs Montréal.* **I,** S. C. **111.**

10. Contestation of election.—Que d'après la charte de la cité de Montréal (37 Vict. ch. 51, sect. 25) il n'est pas nécessaire, dans le cas de contestation d'une élection municipale, que le bref d'assignation soit signé par le juge ou que le défendeur soit assigné à comparaître devant le juge,—MATHIEU, J., 2 AVRIL 1889, *Massicotte vs Berger.* **I,** S. C. **28.**

Que les échevins, pour la cité de Montréal, ne sont, d'après la charte de cette dernière, réellement élus que lorsque, sur le rapport du bureau des réviseurs, le conseil de la cité a déclaré qui a obtenu le plus grand nombre de votes et que par conséquent, le délai de trente jours pour contester l'élection ne commence à courir que de ce jour.

Que tant que l'événement qui constitue une condition suspensive n'est pas accompli ou défailli, le sort de l'obligation conventionnelle qui s'y trouve subordonné, n'est pas lui-même fixé définitivement ; qu'ainsi une obligation consentie par contrat de mariage en faveur de la femme comme gain de survie, est une obligation dépendant d'une condition suspensive et que durant la vie du mari cette obligation ne

peut être considérée comme juste dette de ce dernier, quand même cette obligation serait garantie par hypothèque.

Qu'un échevin de la cité de Montréal ne peut invoquer dans une demande contre lui pour manque de qualification foncière, le défaut de mise en demeure, suivant la sect. 19 du ch. 51 du statut de 1874, Québec, qu'en autant qu'il peut justifier d'une nouvelle qualification au temps de la poursuite.—MATHIEU, J, 28 JANV. 1885, *Moisan vs Prevost.*

I, S. C. **244.**

11. Constitutional law–Butcher's stall–Taxation–By-law.—That subsections 27 and 31, of sect. 123 of 37 Vict. (Q) ch. 51 by which the Council of the city of Montreal is authorized to regulate, license or restrain the sale in any private stall or shop in the city outside of the public meat markets of fresh meats, vegetables, fish, or other articles usually sold on markets, is within the powers of the provincial legislature.

That the by-law passed by the City Council under the authority of the above-named subsections, fixing the license to sell in a private stall at $200 is valid.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 26 JUNE 1889. *Pigeon & Recorder.* (Affirmed by Supreme Court 17 S. C. R. 495).

VI, Q. B. **60.**

CITATIONS.—*Walker & Cité de Montréal,* 3 *L. N.* 201 *and M. L. R,* 1 *Q. B.* 469—*Cooley, on taxation, ch.* 18, *p.* 386—*Levesque vs City of Montreal,* 2 *L. N.* 306—*Mallette vs City of Montreal,* 2 *L. N.* 370.

12. Disability of corporation acquiring immovable property–Expropriation.—On demurrer, that a municipal corporation has a right to expropriate, or acquire by voluntary sale, such real estate only as may be required for the municipal administration, or as it may have been authorized to acquire and hold for specific purposes. A corporation cannot without special authorization expropriate or acquire real estate for the purpose of erecting a building thereon to be let as shops and dwellings.

In the absence of express authorization to the corporation, the expropriated owner of real estate taken for a public purpose, has the right, when the property is not used for such purpose, to have it restored to him, and when part only has been used for the public purpose, to have the unused portion restored to him.

It is immaterial whether the acquisition is made by process of expropriation or by voluntary sale, after the adoption of a resolution declaring that the property is required for a public purpose, and authorizing its acquisition.—WURTELE, J., 8 JUNE 1891, *Roy vs Montreal.* **VII,** S. C. **238.**

CITATIONS.—*Deyperronny et Delamarre, Nos* 724 *et* 729.

13. Division of debt.—1, 2, and 3 as in the city of Montreal vs Robertson supra. — The correction of the assessment of one year by a bailiff under a warrant is not a bar to an action for the assessment due for anterior year. — TORRANCE, J., 10 NOV. 1886, *Montreal vs Fleming.* **II,** S. C. **432.**

14. Driving in the streets.—Qu'un charretier qui traverse une rue, dans la cité de Montréal, doit conduire son cheval au pas, autrement il est responsable des dommages qu'il pourra causer si son cheval ou sa voiture frappe quelqu'un. —MATHIEU, J., 6 FÉV. 1888, *Roberts vs Bastien.*

IV, S. C. **45.**

15. Election of alderman - Contestation - Qualification of petitioners.—Que l'élection d'un échevin du conseil de ville de la cité de Montréal ne peut être contestée que par des électeurs dûment inscrits et habiles à voter à cette élection.

Que le défaut de qualification de la part des contestants peut être invoqué par exception à la forme. — LORANGER, J., 9 MAI 1889, *Poudrier vs Bonin.* **V,** S. C. **56.**

16. Expropriation-Indemnity.—Qu'une personne dont les biens sont expropriés pour cause d'utilité publique a une action en justice pour le supplément d'indemnité lorsque les commissaires nommés pour évaluer ces biens ont erré dans leur sentence.

Que, dans l'indemnité à être accordée à un locataire doit être compris (1) un montant proportionné à la jouissance qu'il devait avoir jusqu'à la fin de son bail, les améliorations faites par lui à la maison expropriée, lorsque ces améliorations doivent, à l'expiration du bail, appartenir au locateur. (2) les frais de déménagement occasionnés par l'expropriation. (3) les frais de réparations faites par lui et qui deviennent inutiles (4) les dommages que le déplacement lui occa-

sionne, soit perte de contrat ou pratique ; (5) la différence de loyer qu'il est tenu de payer jusqu'à la fin de son bail.

Que les frais payés aux avocats de l'exproprié pour services professionnels rendus devant les commissaires ne doivent pas être compris dans l'indemnité. — LORANGER, J., 27 FEV. 1891, *Ouimet vs Montréal.* **VII,** S. C. **193.**

17. Fire brigade—Negligence.—Que la cité de Montréal sera responsable des dommages que pourront causer les pompiers allant au feu dans leurs voitures menées à toute vitesse lorsque rien ne distingue ces voitures et qu'aucune cloche n'est sonnée pour mettre le public en garde.—JETTÉ, J., 16 FÉV. 1889, *Gadbois vs Montréal.* **V,** S. C. **43.**

18. Interest in contracts. — That the qualification of plaintiffs, in an action to set aside the election of the defendant as mayor, may be examined into, though the names of the plaintiffs be on the voters' list, and it may be shown that their names are on the voters' list by error.

The fact that the defendant, when elected Mayor of Montreal was proprietor of a newspaper, which at the time of the election, was publishing advertisements for the Corporation, is not sufficient to void the election, in the absence of any evidence to show that the defendant at the time of his election was receiving a pecuniary allowance from the city.—TORRANCE, J., 18 JUNE 1885, *Ste-Marie vs Beaugrand.* **I,** S. C. **328.**

CITATIONS.—*Caverhill vs Ryan,* 18 *L. C. J.* 323.

19. Liability for assault by policeman.—That the city of Montreal is liable in damages for an unjustifiable assault committed on a citizen by a policeman while on duty.

That without identifying such policeman by name or number, it is sufficient to prove that he was one of the squad wearing the policeman's uniform andcarrying the *bâton* — MATHIEU, J., 21 APRIL 1888, *Guénette vs Montreal.* **IV,** S. C. **69.**

20. Liability for special assessment.—The original assessment roll made for the purpose of levying the cost of an improvement in the city of Montreal having been set adise and annulled by the Courts, a new roll for the costs of the

same improvements was made under the authority of an Act of the Provincial Legislature.

HELD:—That the assessment under the new roll was payable by the person who was the proprietor at the time the new roll came into force and that he had no recourse against the person who was proprietor at the time the roll which was annulled by the Courts came into force.—TASCHEREAU, J., 17 JAN. 1885, *Lunn vs Windsor Hotel.*

I, S. C. **137.**

CITATIONS.—*Dalloz, Repirtoire vo Commune, No.* 2626—*Idém. vo vente, Nos* 1046, 1047—*Pothier, vente, Nos.* 194, 198—6 *Marcadᵉ, p,* 253.

21. License—Expiration of.—Que les licences que la cité de Montréal accorde pour vendre sur les marchés publics les produits de la campagne expirent au 1er mai, chaque année, quelle que soit la date à laquelle cette licence a été prise et quand même l'officier chargé de l'émettre, l'aurait prolongé au delà de cette date.—TELLIER, J., 5 MAI 1888, *St-Michel vs Montréal.* **IV,** S. C. **99.**

22. Licensing sale of meat.—The by-law passed by the city Council of Montréal under the authority of the statute 37 Vic (Q) ch. 51, s. 123 s. s. 27, 31, fixing the license to sell in a private stall; at $200 is valid.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 24 SEPT. 1890, *Corbeil vs City of Montreal.* **VI,** Q. B. **271.**

CITATIONS.—*Pigeon & Cour du Recorder, M. L. R.* 6 *Q. B.* 60.

23. Mandamus — Expropriation — Commissioners whose powers have lapsed.—Commissioners appointed for expropriation have two duties (1) to appraise and determine the indemnity for each property required, and to make and deposit a report of the appraisements; and (2) to apportion the cost among those who are to bear it.

That when the commissioners have made and deposited the report of their appraisements, or when the delay for the completion of their work of appraisement and for the deposit of their report, has expired, without such deposit being made, all their powers, as experts for the purposes of valuation cease and a writ of mandamus will not then lie to compel them to proceed (as they were by law bound to do)

to value the residue not exceeding fifty feet in depth of a property taken for the improvements.—WURTELE, J., 3 JUNE 1889, *Guérin vs Proctor.* **V,** S. C. **166.**

24. Municipal election—Date of election—Extraordinary vacancy.—That the date of a municipal election within the meaning of 46 Vict. (Q) ch. 78 s. 27, is not the day of polling, but the day on which the city Council declares the person to be elected; and the same rule applies where an election is held to supply an extraordinary vacancy which occurs during the year.—TAIT, J., 28 JUNE 1887, *Donnelly vs Kennedy.* **III,** S. C. **385.**

CITATIONS.—*Moisan vs Prevost, M. L. R.* 1 *S. C.* 244.

25. Nomination of candidates.—Que dans les élections municipales pour la cité de Montréal, la loi ne déterminant aucun délai pour la mise en nomination des échevins à partir du moment où l'assemblée est ouverte, le temps d'agir est laissé à la prudence du président et à la diligence des candidats.—LORANGER, J., 25 OCT. 1884, *Massicotte vs Berger.* **I,** S. C. **29.**

26. Prescription.—The prescription of three years under the Act 42 43 Vict. (Q) ch. 53 s. 11 is not applicable to arrears of assessments exigible before the passing of said act. —TORRANCE, J., 10 NOV. 1886, *City of Montreal vs Robertson.* **II,** S. C. **429.**

27. Proprietors par indivis - Joint and several liability for taxes.—Que l'obligation des propriétaires de biens immeubles de payer les taxes dues à la cité de Montréal, est indivisible, conjoint et solidaire, et que cette dernière peut en poursuivre le paiement, en entier, contre celui dont le nom est inscrit au rôle d'évaluation, ou de tout autre propriétaire par indivis.—TELLIER, J., 22 MARS 1888, *Cité de Montréal vs Cassidy.* **IV,** S. C. **32.**

(Affirming the judgment of Tellier J., M. L. R. 4 S. C. 32). That the obligation to pay the taxes imposed by the corporation of the city of Montreal on real property is indivisible, *solutione*, and that the city is entitled to recover the entire amount of such taxes from any one of the co-

proprietors par indivis whose name is entered on the assessment roll as one of the owners.—TESSIER, CHURCH, BOSSÉ, DOHERTY, JJ., 23 MAY 1889, *Cassidy & Cité de Montréal.*

VI, Q. B. **388.**

28. Public street—Destination.—En 1846, B. propose à la cité de Montréal d'ouvrir une rue sur sa propriété. Sa requête fut référée au comité des chemins qui déclara accepter l'offre en y apposant certaines conditions, mais le projet ne fut jamais sanctionné par le conseil de ville. Cependant B. fit préparer un plan de ses terrains, en y indiquant comme rue projetée, la nouvelle rue et vendit même certains lots décrits comme étant bornés par la dite rue. Les acquéreurs de ces lots bâtirent sur la ligne de cette rue qui ne fut jamais définitivement ouverte et dont une extrémité fut fermée par une clôture avec ouverture pour piétons. Depuis plus de trente ans, cependant la rue a servi au public comme voie de communication, mais sans que la ville de Montréal l'ait jamais reconnue formellement comme rue publique.

Que dans ces circonstances il y avait suffisament destination de cette rue de la part de B. pour empêcher les représentants de ce dernier de prétendre que les terrains ainsi ouverts à sa circulation générale sont propriété privée.

Que l'usage général par le public comme rue d'un terrain destiné par le propriétaire à faire une rue comporte acceptation du terrain pour les fins d'une rue publique.

Qu'aucune acceptation formelle par la ville de Montréal n'était pas nécessaire dans ces circonstances, l'acceptation de la dite rue par le public, de la manière indiquée, étant suffisante pour faire du terrain une rue publique.

Qu'un propriétaire ne peut, après avoir ouvert une rue à la circulation publique revenir sur cette destination et fermer la dite rue, après qu'elle a été ainsi acceptée par le public.—PAGNUELO, J., 28 JUIN 1890, *Childs vs Montréal.*

VI, S. C. **393.**

CITATIONS.—*Isambert, Possession, No.* 308—*Nouveau Denizart. vo Chemins* § 3 *No.* 5—*Dillon, Municipal Corporations, vol.* 2 *No.* 490—*Glen, on Highways, p.* 18—*Myrand vs Legaré,* 6 *Q. L. R. p.* 120—*Pardessus, Servitudes, vol. I, No.* 216—*Curasson, Actions Possessoires, p.* 246—*Proudhon, Domaine, Public, No.* 562, *p.* 181—*Wodon, Possession, II, No.* 503—*Guy & Montréal,* 25 *L. C. J.* 132.

29. Qualification of alderman.—Qu'une société commerciale est un être moral distinct des associés, et que l'actif de la société est un patrimoine distinct de l'avoir des associés individuellement.

Que dans l'espèce il n'y a pas lieu à l'application des art. 746, 1898 C. C. attendu qu'il s'agit d'une société commerciale, et que le partage des biens de la dite société ne réagit que jusqu'au jour de sa dissolution ; que comme matière de fait la société plaidée par le défendeur n'était pas dissoute lors du partage.

Que par suite des principes ci-dessus un échevin de la cité de Montréal ne peut se qualifier comme tel sur les biens d'une société commerciale existant entre lui et une autre personne, durant l'existence de cette société.—LORANGER, J., 30 JUIN 1887, *Girard vs Rousseau.* **III, S. C. 293.**

CITATIONS.—26 *Laurent, No.* 418—7 *Pont, No.* 124—2 *Aubry et Rau,* 406—10 *Laurent, No.* 291, 263.

30. Responsibility. — 1. *Demolition of building.* — Que lorsque l'inspecteur des bâtises de la cité de Montréal, en sa dite qualité, contracte avec un tiers pour faire démolir une bâtisse suivant les prescriptions des règlements municipaux, la cité de Montréal est responsable du coût des travaux ainsi faits.

Que dans ce cas, sur une action en garantie par la cité de Montréal contre le propriétaire de la maison démolie, la cité de Montréal devra tenir compte au dit propriétaire de la valeur des matériaux enlevés par l'inspecteur.—MATHIEU, J., 7 FÉV. 1889, *Frappier vs Montréal.* **V, S. C. 37.**

2. *For acts of police in making illegal arrest.*—Que la cité de Montréal est responsable des actes de ses employés faits dans l'exécution de leur charge, ces derniers étant alors censés agir comme agents autorisés de la dite cité ; qu'en conséquence elle est responsable des fausses arrestations faites par ses hommes de police.

Que lorsque la cité de Montréal envoie ses hommes de police garder la paix publique à quelqu'endroit et qu'elle place ses hommes sous les ordres d'une personne quelconque qui n'est pas à son emploi, cette délégation de pouvoirs n'empêche pas sa responsabilité.

Que les hommes de police qui font une fausse arrestation sont aussi personnellement responsables, et ne peuvent être excusés par le fait qu'ils ont reçu d'une personne, autorisée ou non, l'ordre de faire l'arrestation. — JETTÉ, J., 8 JUILLET 1881, *Laviolette vs Thomas.* **I,** S. C. **350.**

3. *For conditions of sewers.*—Que lorsque la cité de Montréal est en possession de canaux d'égoût quand même ces égoûts n'auraient pas été construits par elle-même, elle est tenue en loi de les entretenir en bon état et est responsable des dommages que peut causer leur mauvais état à ceux qui s'en servent ; en cela ses pouvoirs ne sont pas législatifs et elle ne peut prétendre qu'elle n'est tenue à cet entretien que suivant ses ressources pécuniaires et qu'il est laissé à sa discrétion.—MOUSSEAU, J., 8 AVRIL 1885, *Leduc vs Montréal.* **I,** S. C. **300.**

4 *Of proprietor.*—Que d'après la loi et les règlements de la cité de Montréal, un propriétaire ne peut être poursuivi pour ne pas avoir enlevé la neige ou la glace des trottoirs situés en face d'une maison, d'une bâtisse ou d'un lot lui appartenant, que lorsque ce propriétaire occupe lui-même cette maison ou bâtisse, ou lorsqu'il s'agit d'un lot vacant. —TASCHEREAU, J., 1 DÉC. 1882, *Montréal vs Beaudry.* **I,** S. C. **467.**

31. Rules of council - Reconsideration of question. — Que pour appliquer la 26e règle du Conseil de Ville de la cité de Montréal qui défend de reconsidérer à la même séance une question plus d'une fois, il faut que la question soit identiquement la même ; qu'ainsi la règle ne s'applique pas lorsque le Conseil a nommé un employé, puis a reconsidéré son vote pour en nommer un autre, et qu'elle reconsidère de nouveau son vote pour renommer le premier ; dans ce cas, la première reconsidération s'appliquait au premier nommé, tandis que la seconde s'applique au second nommé. — TASCHEREAU, J., 28 JUIN 1889, *Vannier vs Montréal.* **VI,** S. C. **315.**

32. Sewer-Warranty. — En 1887 et 1888, la ville de la Côte-St-Louis, municipalité limitrophe de la cité de Montréal, a construit divers canaux d'égoût pour l'égoutement

des rues et de plusieurs cours d'eau, lesquels canaux elle a illégalement et sans la permission de la cité de Montréal, reliés au canal d'égout de la rue St-Denis en la cité de Montréal. Cette connection s'est faite à la connaissance des officiers, mais sans la permission du conseil de la corporation de Montréal. Dans l'hiver et le printemps de 1890, l'égout de la rue St-Denis ne pouvant suffire à l'écoulement des eaux de la Côte-St-Louis, la maison du Demandeur fut inondée par le refoulement des eaux dans le canal d'égout. De là action en responsabilité par le demandeur contre la cité de Montréal qui, à son tour, appela en garantie la ville de la Côte-St-Louis.

Que la ville de Montréal, ayant laissé faire la connection entre les égouts de la ville de la Côte-St-Louis et son égout de la rue St-Denis, est responsable vis à vis du demandeur des dommages que ce dernier a éprouvés par suite du refoulement des eaux de l'égout de la rue St-Denis.

Que la ville de la Côte-St-Louis, ayant fait la dite connection illégalement et sans la permission de la cité de Montréal, et dirigé toutes ses eaux dans le seul égout de la rue St-Denis, est tenue de garantir la cité de Montréal contre la condamnation prononcée contre elle en cette cause.

Le fait que les officiers de la ville de Montréal savaient que la dite connection avait été faite, ne décharge pas la défenderesse en garantie de la responsabilité de son acte.—PAGNUELO, J., 19 MARS 1891, *Grothé vs la cité de Montréal & la cité de Montréal & la ville de la Côte-St-Louis.*

VII, S. C. **267.**

Que pour le prélèvement de ces taxes, le Conseil de la cité de Montréal peut déléguer ses pouvoirs à un de ses officiers municipaux.

Que pour la confection de travaux publics de même nature dans la cité de Montréal, il n'est pas nécessaire de faire un règlement particulier pour chaque cas ; un règlement général, fait par le Conseil sur la recommandation d'un de ses comités, est suffisant.

Qu'il n'est pas nécessaire que la cité de Montréal donne avis préalablement à la construction d'égoûts qu'elle fait faire dans les rues, mais que l'avis qu'elle donne aux pro-

priétaires de relier leur conduit privé à l'égout public est suffisant.

Qu'une résolution du Conseil de la cité de Montréal doit être contestée dans le délai de trois mois. — LORANGER, J., 30 NOV. 1887, *Cité de Montréal vs Cuvillier.* **III.** S. C. **265.**

33. Sidewalk in front of public market. — Que la cité de Montréal est responsable de l'état des trottoirs vis-à-vis les marchés publics et que lorsqu'un accident arrive par le mauvais état de ces trottoirs qui ne seraient ni couverts de cendres, ni coupés de manière à les rendre non glissants, la cité de Montréal devra payer les dommages qui en résulteront.—JETTÉ, J., 18 FÉV. 1889, *Gould vs Montréal.*
V, S. C. **45.**

34. Special tax for sewer.—Que la cité de Montréal, lorsqu'elle fait un égout commun dans une rue homologuée sur le plan de la cité, mais qui n'est pas encore ouverte au public, ne peut en faire payer le coût aux propriétaires des lots vacants qui bordent cette rue.

Que l'homologation d'une rue tracée sur le plan officiel de la cité de Montréal ne donne pas à cette dernière un titre à la propriété de la rue qui ne peut lui être acquise que par expropriation ; jusque-là la rue reste la propriété du propriétaire du terrain sur lequel est tracée la rue.

Que la prescription de trois mois dans lesquels tout règlement d'un rôle d'évaluation ou de cotisation doit être contesté, ne s'applique pas lorsqu'il s'agit de repousser une action basée sur iceux quand par le plaidoyer la nullité n'en est pas demandée. — LORANGER, J., 31 JANV. 1891, *Montréal vs Lacroix.* **VII,** S. C. **190.**

35. Statute labor tax–Water rate. — That a person who pays water rate in the city of Montreal, thereby contributes to the municipal revenue and is exempt from the payment of statute labor tax. — CARON, J., 18 FÉV. 1886, *Déchêne vs Fairbairn.* **II,** S. C. **440.**

36. Street railway company – Construction of charter and municipal by laws – Repairs to streets – New pavements–Liability of company to contribute to cost of permanent improvements.—That a Street Railway Company, authorized by their charter to construct and maintain a railway upon a

certain street, are not liable under a municipal by-law requiring the company "to keep the roadway between their rails, and twelve inches on each side thereof, paved, macadamized or graveled as the case may be so as to suit the kind of paving used in the streets, through which their lines run" to contribute to the cost of a new pavement laid down by the city over the street, in question, including the portion that the company were bound to keep in order.

That the laying of new pavements like the making of the street itself, is a permanent improvement, which is solely at the charge of the city, and to which the company are not bound to contribute.

That the company are only bound to keep their tracks and the specified portion of the roadway in good condition, and to make all necessary repairs thereto; but are not bound to perform work altering the form or nature of the roadway and of the paving of the streets. — WURTELE, J., 10 NOV. 1887, *Montreal vs M. Street Railw.* **III,** S. C. **320.**

37. Taxation–Delegation of powers.—Que la cité de Montréal, lorsqu'elle exerce le droit qu'elle a par sa charte d'imposer des taxes par règlement, doit le faire en désignant d'une manière claire, déterminée et spécifique, quelle classe de personnes elle entend taxer.

Que la cité de Montréal ne peut pas imposer une taxe par des termes généraux et ne peut pas non plus déléguer ses pouvoirs de manière à permettre aux cotiseurs d'inclure pour la taxe d'affaires certaines classes de personnes non spécialement désignées dans le règlement.—WURTELE, J., 6 MAI 1889, *Acer vs Demontigny.* **V,** S C. **117.**

38. Tree.—Que les arbres d'ornement qui sont plantés sur la voie publique, dans la cité de Montréal, sont la propriété des propriétaires des lots de terrains faisant front sur la rue; et que ces arbres doivent être considérés comme un accessoire de la propriété des dits terrains.

Que ces propriétaires ont une action en dommage contre la cité de Montréal pour avoir fait couper et enlever ces arbres.—LYNCH, J., 28 AVRIL 1891, *Beauchamp vs Montréal.* **VII,** S. C. **382.**

39. Warranty.—A vendor who sells a property during the proceedings of expropriation for a public improvement is not garant of the purchaser for the share of the cost of the improvement with which the property is charged by an assessment roll made subsequent to the date of the sale — DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 25 SEPT. 1885, *Cross & Windsor Hotel.* (Affirmed by Supreme Court 12 S. C. R 624) **II,** Q. B. **8.**

40. Widening of St. Lawrence Street.—That under 51-52 Vict. (Q) ch. 79, s. 14, as revised and consolidated by 52 Vict. (Q) ch. 79, s. 243, the portion of the indemnity payable by the city for the expropriation of the property required for the widening of St. Lawrence Street, may properly be paid out of the capital funds of the city, and not out of the annual revenue.—WURTELE, J., 17 MAY 1889, *Foster vs Montreal.* **V,** S. C. **164.**

MORTAGE OF VESSEL

See SHIPPING.

MOULIN BANAL

See SERVITUDE.

MUNICIPAL CORPORATIONS—MUNICIPAL LAW

I.—ACTION AGAINST SECRETARY TREASURER.
II.—ACTION OF DAMAGES—NOTICE.
III.—AGREEMENT TO OPEN STREET.
IV.—ANIMAL STRAYING.
V.—APPOINTMENT UNDER 814 C. M.
VI.—BOOKS OF ACCOUNT—OFFICE HOURS.
VII.—BY-LAW—GROUNDS OF NULLITY.
VIII.—CITY OF MONTREAL.
IX.—COLLECTION ROLL.
X.—CONDITION OF STREETS — EXTRAORDINARY CIRCUMSTANCES.
XI.—COUNTY COUNCIL—BRIDGE—PROCES VERBAL.
XII.—LOCAL MUNICIPALITIES.
XIII.—MANDAMUS.
XIV.—MEETING OF MUNICIPAL COUNCIL — ADJOURNMENT — BY-LAW—PUBLICATION OF.
XV.—MEMBERS OF COUNCIL PERSONNALY INTERESTED.

XVI.—Monies of municipality handed by mayor to his successor—Responsibility of mayor to secretary-treasurer.
XVII.—Occupant.
XVIII.—Power to license and regulate.
XIX.—Powers of county council.
XX.—Powers of municipal corporations.
XXI.—Proces verbal.
XXII.—Qualification of councillors.
XXIII.—Sale of land for taxes—Nullity of—Rights of purchaser—Warranty—Costs.
XXIV.—School commissioners.
XXV.—Town council—Assessments for debts of town—Appeal.
XXVI.—Violation of domicile—Arrest without warrant—Damages.
XXVII.—Water course—Jurisdiction of county council—Jurisdiction of Superior Court.

See CLERK—CONSTITUTIONAL LAW—EDUCATIONAL INSTITUTION—ELECTION ACT—EXEMPTION FROM TAXES—MONTREAL—NEGLIGENCE SHERBROOKE—PRESCRIPTION.

1. Action against secretary-treasurer.—That an action by the superintendent of education does not lie under s. 22 of Vict. 40, c. 22 (Q) against the secretary treasurer of a school municipality after he has rendered his account and the account has been approved at a regular meeting of the ratepayers and also by the trustees.

That even supposing that the action by the superintendent in this case could be regarded as an action instituted under s. 36 of the above mentioned act, and sect. 19 of 41 Vict. c. 6, the action would not lie until after the trustees had been put in default to bring such action and had refused or neglected to do so.—Dorion, Monk, Ramsay, Cross, Baby, JJ., 19 nov. 1884, *Ouimet & Normandin.*

I, Q. B. **107.**

2. Action of damages—Notice.—A municipal corporation is responsible for damages arising from the bad condition of the sidewalks and streets, without proof that it had notice of the defects which led to the accident complained of.

That the notice of suit required by art. 793 of the Municipal Code, as amended by 45 Vict. (Q) c. 35, s. 26 and

by 48 Vict. (Q) c. 28, s. 15 applies not only to actions for the penalty therein enacted, but also to actions for damages resulting from the non-execution of procès-verbaux and by-laws.

But such notice is not a matter of public order and may be waived by the defendant's failure to invoke the absence of notice by their pleadings, and by their admission of liability.—JOHNSON, TASCHEREAU, MATHIEU, JJ., 31 OCT. 1888, *Charron vs Corporation St. Hubert.* **IV,** S. C. **431.**

CITATIONS.—*Beauchemin v. Corp. St. Jean,* 6 *L. N.* 357—*Laurin vs Corp. Sault Récollet,* 7 *L. N.* 318—*Corp. Douglass & Maher,* 14 *R. L.* 45.

Que l'on ne peut poursuivre en dommages une corporation municipale soumise au Code municipal, pour défaut d'entretien des chemins ou cours d'eau, sans lui avoir donné un avis de quinze jours (C. M. arts. 793 et 878) ; l'avis est nécessaire même dans le cas où dans une action d'une autre nature, le demandeur joint à son action une demande de dommages.—TASCHEREAU, J , 14 MAI 1890, *Senécal vs Corporation St-Bruno.* **VI,** S. C. **338.**

3. Agreement to open street.—A municipal corporation cannot validly bind itself to make a by-law for the opening of a street, and no action will lie against such corporation for failure to carry out an agreement for the opening of a street.—DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 26 SEPT. 1885, *Brunet vs Corporation St. Louis.* **II.** Q. B. **103.**

4. Animal straying.—Que lorsqu'un animal trouvé errant est mis en fourrière, le propriétaire de cet animal ne peut le réclamer, sans avoir préalablement offert de payer l'amende et les dommages encourus et sans renouveler les offres et consigner l'argent en Cour, s'il procède à la saisie revendication.—CIMON, J., 9 AVRIL 1885, *Brosseau vs Brosseau.* **I,** S. C. **307.**

5. Appointment under 814 C. M.—The mode of recovery under Art. 941, Municipal Code, for the collection of taxes imposed for county purposes under a proces verbal is not exclusive and an action by the county corporation lies against a local corporation for the recovery of taxes imposed by such proces verbal.

The apportionment under art. 814 M. C., is an apportionment of work, and may be dispensed with by a procès verbal; and where a procès verbal made by a county council for the cost of a bridge declared that no apportionment should be required, and fixed the portion payable by the local corporations, and the homologation of the procès verbal was never opposed nor appealed from, the effect was to make the local corporation debtor to the county council for the amount.—TORRANCE, JETTÉ, BUCHANAN, JJ., 30 JUNE 1886, *Corporation of Missisquoi vs Corporation St. Georges.*

II, S. C. **333.**

6. Books of account—Office hours.—Que les livres de compte du secrétaire trésorier de toute ville régie par le ch. 1 du titre 11 des S. R. Q., les pièces justificatives de ses dépenses de même que tous les registres et documents en sa possession comme archives du conseil doivent être tenus ouverts à l'inspection de tout contribuable les jours de bureau entre neuf heures du matin et quatre heures de l'après-midi.

Qu'une résolution du conseil municipal d'une telle ville, fixant les heures de bureau de son secrétaire trésorier de sept heures à dix heures du soir est illégale, et sans effet comme contraire à l'art. 4343 S. R. Q.—WURTELE, J., 8 JUILLET 1890, *Vermette vs Ville Côte St-Louis.*

VI, S. C. **442.**

7. By-law—Grounds of nullity.—The corporation respondent passed a by-law on the 11th September, 1882, granting a bonus to a railway. At a meeting of the council on the 16th September, 1882, a change was made in the by-law, extending the date for finishing the road from 1st February, 1883 to 15th July, 1883. Before the meeting of the 16th September the by-law as originally drawn was published in one issue of the Ormstown Courier, and after the 16th September it was published, as changed, in two issues of the of the Courier. Counting from the 16th September only 19 clear days remained before the 6th October, the first day of polling. On petition by municipal electors, 4th May, 1883 to annul the by-law on the ground (1) that the by-law voted on was not the one passed or advertised, (2) that if the by-

law was considered as being of the 16th September, it could not be submitted to the electors on the 6th October :—

That no substantial injustice being done, the electors having acquiesced by voting, and the by-law having been approved by the lieutenant-governor-in-council without protest, the petition should be dismissed.

That the change made in the by-law on the 16th September was not a *faux*.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 26 NOV. 1884, *Simpson et al & Corporation of the Parish of Ste. Malachie d'Ormstown.* **VII,** Q. B. **400.**

CITATIONS.—*Cooey & Brome*, 1 *L. N.* 519.

8. City of Montreal. — 1. *Collection of tax—Farming out system.*—The electors and rate payers of a municipality have the rigth of knowing, from the books and records of the corporation, the amount collected from each tax imposed by the council, and the details of the expenditure.

The salary of the officers appointed by the council of the city of Montreal, must be fixed ; and be either a stipulated sum for a given period, or a stipulated commission or percentage on collections.

The farming out of a tax imposed on horse dealers, whereby the farmer pays the council a stipulated sum of money for a given period and collects the tax for his own benefit is illegal ; and a resolution of council sanctioning such an arrangement will be annulled.—WURTELE, J., 8 JULY 1890, *Kimball vs Montreal.* (Reversed in review 18 R. L. 52.)

VI, S. C. **270.**

2. *Expropriation.*—Under the statute 31 Vict. (Q) ch. 37, it was necessary that the commissioners appointed to carry out an expropriation and to determine the parties interested therein and to be assessed for the purpose of the proposed improvement, should give public notice of their proceedings in the manner therein provided, and in the absence of such notice the assessment roll made by the commissioners was null and void ; nor could the subsequent homologation of the report of commissioners by the Superior Court give validity to such proceedings.—RAMSAY, TESSIER, BABY, DOHERTY, CARON, JJ., 24 NOV. 1884, *Hubert vs Montreal.*

I, Q. B. **237.**

3. *Taxes on real estate.*—Par acte du 4 novembre 1873 C. obtint du gouvernement fédéral une promesse de vente d'un immeuble situé dans la cité de Montréal, dont la possession ne devait lui être donnée que sous certaines conditions mentionnées à l'acte. Le 25 octobre 1875 C. vendit et transporta à l'appelant tous ses droits résultant de la dite promesse de vente. Les conditions stipulées ne furent remplies et la possession de l'immeuble ne fut donnée à l'appelant que le 1er novembre 1876, et il n'obtint son titre que le 4 novembre. Le rôle annuel de cotisation pour l'année civique commençant le 1er mai 1876 fut parachevé et déposé au bureau du secrétaire trésorier de la cité le 28 septembre 1876, et sur ce rôle l'appelant était mentionné comme contribuable pour l'immeuble en question.

Que les taxes municipales dans la cité de Montréal ne sont pas payables jour par jour et sont dues par le propriétaire et possesseur de l'immeuble sujet à cotisation au temps de l imposition des taxes.

Que l'appelant n'est devenu propriétaire de l'immeuble en question que le 4 novembre 1876, et que le gouvernement fédéral en a été le propriétaire jusqu'à cette date.

Que par conséquent, les propriétés du gouvernement n'étant pas sujettes aux taxes municipales, l'immeuble en question n'était pas susceptible d'être taxé le 28 septembre 1876, date de la mise en vigueur du rôle de cotisation pour l'année civique commençant le 1er mai 1876; et l'acquisition subséquente de l'immeuble par l'appelant ne l'a pas rendu contribuable pour aucune partie des cotisations pour cette année.

Que le fait que l'appelant avait été cotisé et taxé sur le rôle de cette année, et qu'il ne s'en était pas plaint de la manière réglée par la charte de la cité, ne pouvait pas le rendre contribuable pour ces taxes.—DORION, MONK, RAMSAY, TESSIER, CARON, JJ., 19 NOV. 1889, *Hogan & Montréal.* **I, Q. B. 60.**

9. Collection roll.—That the formalities prescribed by the municipal Code with the reference to a collection roll must be strictly followed, as in the case of an acte de répartition annexed to a procès verbal and where such formalities have

not been observed, the taxes thereby imposed are not exigible and a sale of land for arrears of such pretended taxes will be annulled.

Where the taxes are illegal in consequence of there being no valid collection roll in existence, acquiescence will not give validity to such assessment.—DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 24 NOV. 1884, *Corporation Bassin Chambly & Scheffer.* **I,** Q. B. **42.**

10. Conditions of street—Extraordinary circumstances.—That a municipal corporation is not bonnd to make extraordinary exertions, out of proportion to the means at its disposal, in order to keep the streets free from snow and ice, but only to such extent as is reasonable, taking into consideration the means at its disposal.—DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Corporation Sherbrooke & Short.* **III,** Q B. **50.**

11. County council—Bridge—Procès verbal. — Que les pouvoirs conférés par l'article 535 du Code municipal sont du ressort particulier des conseils locaux et que par les dispositions de la loi tous les travaux faits sur les ponts municipaux, soit en vertu de la loi, en vertu des règlements ou des procès verbaux, sont à la charge exclusive des contribuables, propriétaires ou occupants de terre.

Que les conseils de comté n'ont pas le pouvoir de mettre ces travaux à la charge des municipalités locales, s'il n'a pas été passé de règlement à cet effet par le conseil des municipalités locales en vertu de l'art. 535 C. M.

Que bien que le Code municipal accorde un droit d'appel à la Court de Circuit du comté ou du district de toute décision, règlement ou procès verbal de la muicipalité locale pour cause d'illégalité, néanmoins la jurisprudence reconnaît à la Cour Supérieure le droit et le pouvoir d'adjuger sur les décisions des conseils municipaux, à raison du contrôle supérieur qu'elle possède sur les corps publics et corporations. —GILL, TELLIER, TAIT, JJ., 31 MARS 1890, *Corporation Varennes vs Corporation Verchères.* **VII,** S. C. **3.**

CITATIONS.—*Dansereau & Corp. Verchères* 1 *L. C. L. J.* 92—*Paris vs Couture* 10 *Q. L. R.* 1—*O'Shaugnessy vs Corp. Ste-Clotilde* 11 *Q. L. R.* 152 — *Barbeau vs Corp. Laprairie M. L. R.* 5 *S. C.* 84.

County bridges are under the exclusive control of the county council. The decisions of the county council are subject to appeal to the Circuit Court of the county or district, and may be quashed for illegality. The special remedy, however, does not deprive the Superior Court of the control which it has over every corporation, when such corporation exceeds or illegaly uses its powers.

Under art. 941 M. C. the charges imposed by a procès verbal for the cost of a county bridge should be collected by the officers of the local municipality.

In the matter of municipal taxation the persons on whom taxes are imposed, whether as proprietors or occupants, should be clearly indicated.

The county council cannot charge the cost of a county bridge upon the local municipality, unless the local council has passed a by-law under art. 535 C. M. — CROSS, BABY, BOSSÉ, DOHERTY, JJ., 27 JAN. 1891, *Corporation Verchères & Corporation Varennes.* (Confirmed by Supreme Court, 19 S. C. R. 365. **VII,** Q. B. **368.**

12. Local municipalities.—Qu'aux termes du Code municipal (34 Vict. ch. 68, art. 19, par. 3) les "municipalités locales" comprennent les municipalités de villages.

Que l'art. 27 du même code ne fait qu'indiquer quelles municipalités rurales seront considérées comme municipalités locales, sans égard aux municipalités de village qui tombent sous la règle générale établie par l'art. 19, par. 3.

Que par conséquent une compagnie dûment incorporée en vertu de l'acte 33 Vict. ch. 32, avait le droit d'empierrer un chemin de front dans les limites d'une municipalité de village, d'y poser des barrières et d'y percevoir des péages.

Qu'en vertu du dit acte, une telle compagnie a le droit d'exiger un péage pour une fraction de mille parcourue, pourvu que sur toute la longueur du chemin parcouru, le taux n'excède pas le montant par mille, fixé par la cédule B du dit statut.—DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 9 DEC. 1884, *Cie péage de Pointe Claire & Leclerc.*

I, Q. B. **296.**

13. Mandamus.—Que lorsqu'une corporation municipale déclare illégalement que le siège d'un conseiller est vacant,

le remède de ce dernier est un mandamus contre la corporation.

Que la prestation du serment d'office par un conseiller municipal est une chose essentielle, mais que la disposition du Code Municipal qui veut qu'une entrée de la prestation du serment soit faite dans le livre des délibérations du conseil n'est que directoire, et n'est pas à peine de nullité. —WURTELE, J., 5 AOÛT 1887, *Savaria vs Corporation Varennes.* **III,** S. C. **157.**

14. Meeting of municipal council–Adjournment–By-law–Publication of.—When a general meeting of a municipal council, regularly summoned, has been properly adjourned to another day, the meeting held in pursuance of such adjournment is regular and legal, although not preceded by notice required for the original meeting, the adjourned meeting and the two forming together but one session.

Where a procès verbal was on the table during the deliberation of the council thereon and the members of the council and the persons interested therein who where present knew the tenor of such procès verbal, it was not necessary to read the procès verbal, the examination consisting in such case of the discussion with full knowledge of its contents.

Where it has been decided by a resolution that a councillor is not personally interested, such resolution is final and has full effect.

Where the notice given by the secretary treasurer of the passing of a by-law is irregular and insufficient, such irregularity does not entail the nullity of the by-law, but merely suspends its going into execution until duly published.—WURTELE, J., 1 SEPT. 1890, *Provost vs Ste-Anne de Bellevue.* **VI,** S. C. **489.**

15. Members of council personally interested.—En droit, que tout contribuable peut prendre des procédés judiciaires pour forcer le secrétaire trésorier d'une municipalité à entrer dans les minutes des délibérations du conseil, toute résolution qui a été régulièrement passée par ce dernier.—JOHNSON, TASCHEREAU, GILL, JJ., 31 MARS 1887, *Massue vs Nadeau.* **III,** S. C. **118.**

CITATIONS —*Dubuc vs Cie. Chemin, M. & S*, 7 *L. N.* p. 5—*Moffatt vs St-Amour*, 9 *R. L.* 439—*Gouin vs Duhord*, 2 *R. L.* 52—*High, Extraordinary Legal Remedies*, pp.304, 306, 316 *et* 321—*Tapping, on Mandamus*, 15—*Moses, on Mandamus*, 194—*Wood, on Mandamus*, 17, 18, 24, 64, 86, 93, 96.

Que d'après le statut incorporant la ville de Saint-Jean, un membre du conseil municipal n'a pas droit de voter aux assemblées du conseil sur une question dans laquelle, soit personnellement, soit comme membre d'une société commerciale, il a un intérêt pécuniaire, et qu'une résolution du conseil adoptée par une majorité d'une voix, sera déclarée nulle lorsqu'un membre ainsi intéressé aurait voté du côté de la majorité.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 19 JANV. 1889, *Stefani & Monbleau.* **V,** Q. B. **23.**

16. Monies of municipality handed by mayor to his successor—Responsibility of mayor to secretary-treasurer.—(Affirming the judgment of Brooks, J.) That the defendant, Mayor of a municipality, who had received monies belonging to the municipality, from the secretary-treasurer, was bound to account for the same to the secretary-treasurer, who had been held accountable to the municipality therefor; and that the fact that the defandant has handed the monies over to his successor in the office of Mayor, without proof that it was done at the request or with the approval of the secretary-treasurer did not relieve him from so accounting.—JETTÉ, TASCHEREAU, LORANGER, JJ., 31 OCT. 1888, *Main vs Wilcooks.* **IV,** S. C. **238.**

17. Occupant.—Qu'un conseil municipal ne peut ouvrir un chemin à travers une érablière située dans un rayon de 400 pieds de la maison habitée par l'occupant de telle érablière sans le consentement par écrit du propriétaire.

Que le fermier habitant la maison appartenant au propriétaire d'une érablière affermée "est occupant" de telle érablière dans le sens de l'art. 904 C. M.—DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 23 SEPT. 1887, *Massue vs Corporation St-Aimé.* **III,** Q. B. **263.**

18. Power to license and regulate.—That a power granted to a municipal corporation to license and regulate a particular business does not authorize the exaction of a revenue duty, but only of a moderate fee sufficient to cover the

cause of issuing the licenses and of inspecting and regulating the sale. So, where the city of Montreal was empowered to license and regulate junk stores, it was held that the exaction of a license of a license of $50 per annum, was illegal.—DORION, MONK, CROSS, BABY, JJ., 27 NOV. 1885, *Montreal & Walker.* **I,** Q. B. **469.**

19. Powers of county council.—A local council passed a by-law which was amended by the county council on appeal. The local council without new proceedings or any effort to amend, passed a by-law in similar terms to the former by-law, which was then again taken to the county council on appeal, when following resolution was proposed and adopted: "Attendu que la question en litige sur le présent appel a été réglée par ce conseil, en homologuant le procès-verbal de Louis Parent, en octobre dernier; et attendu que le conseil municipal de la paroisse de St-David, au lieu le mettre à exécution le dit procès-verbal et de respecter la décision de ce conseil, a adopté, à sa session du 7 avril dernier, un règlement mettant à néant la dite décision de ce conseil; que l'appel porté devant ce conseil par requête de Dolphis Lessard et autres, en date du 12 avril dernier soit maintenu; et que le règlement dont est appel, adopté par le conseil municipal de la paroisse de St-David à sa session du 7 avril dernier, ainsi que tous les procédés, ordres et résolutions du dit conseil municipal de la paroisse de St-David, adoptés à sa dite sessions du 7 avril dernier, amendant le dit procès verbal de Louis Parent, soient et ils sont par la présente résolution, cassés annulés et mis à néant à toutes fins que de droits, avec dépens contre Régis Crépeault, père (and four others) de la paroisse de St-David qui ont par requête en date du 1er mars dernier sollicité du conseil municipal de la paroisse de St-David, la passation du dit règlement, savoir les intimés sur le présent appel."

That the county council, in thus setting aside the by-law of the local council acted within its jurisdiction.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 JAN. 1886, *Corporation Comté Yamaska & Durocher.* **III,** Q. B. **219.**

20. Powers of municipal corporations.—Que la corporation de Ste-Cunégonde, autorisée à acheter l'aqueduc de

Ste-Cunégonde et de St-Henri, pour une somme de $400,000, par un statut passé alors que l'un des deux propriétaires de l'aqueduc était interdit pour démence, ne pouvait acquérir la part de l'interdit que judiciairement; en conséquence elle pouvait acquérir privément l'autre moitié à un prix n'excédant pas la moitié de $400,000, sauf à acquérir l'autre moitié, lorsqu'elle sera vendue judiciairement, soit à la poursuite des créanciers de l'interdit, ou sur licitation provoquée par l'un des co-propriétaires.

Qu'il doit être laissé au conseil de ville, une discrétion raisonable dans une transaction de ce genre et que la Cour n'interviendra pas pour l'empêcher d'acquérir la moitié de l'aqueduc, lorsqu'il prétend que c'est le seul mode pratique d'arriver à l'acquisition du tout et qu'il est constant qu'il est de l'intérêt de la ville d'acquérir l'aqueduc—PAGNUELO, J., 2 NOV. 1889, *Roy vs La Corporation de la Ville de Ste-Cunégonde & Berger.* **V,** S. C. **361.**

21. Procès-verbal.—Although it is within the attributes of municipalities to make by-laws and procès-verbaux for the opening of water-courses, and a person injured thereby may have exercised his right of appeal to the county council and the procès-verbal has been confirmed by the county council, nevertheless such confirmation is not a bar to an action to set aside the procès-verbal where it orders something to be done which is in itself contrary to law. And so, where the effect of a water-course established by procès-verbal was to aggravate greatly the servitude which the plaintiff's land had to bear owing to its being lower than that of his neighbours, it was held that he was entitled to bring a suit to have the procès-verbal set aside, although he had appealed previously to the county council and the procès-verbal had been confirmed thereby.—MONK, RAMSAY, TESSIER, CROSS, JJ., 26 NOV. 1884, *Corporation Ste. Anne Bout de l'Ile & Reburn.* (Confirmed by Supreme Court 15 S. C. R. 92). **I,** Q. B. **200.**

22. Qualification of councillor.—Que la qualification exigée par la loi des conseillers municipaux doit être considérée au moment même de son élection; notamment un candidat déqualifié au moment de sa mise en nomination par

le non-paiement de ses taxes peut être qualifié une heure après, lors de son élection s'il les acquitte dans l'intervalle, et alors, son élection sera maintenue.—PAPINEAU, J., 19 NOV. 1881, *Bouvier vs William.* **IV,** S. C. **381.**

23. Sale of land for taxes—Nullity of—Rights of purchaser —Warranty—Costs.—Where lands are sold illegally for taxes by school trustees and the purchaser has brought à petitory action to obtain possession, and the trustees intervened and admit the nullity of the sale, which was made *super non domino et non possidente*, they are bound not only to repay the purchaser the purchase price, cost of deeds and registration, but also to pay all costs as well of the principal action as of the intervention. But they are not liable to pay the costs uselessly incurred by the purchaser in an action en garantie against the corporation of the county, which was dismissed.

The prescription of two years enacted by art. 1015 M. C. is in favor of the purchaser as against attacks made by the original owner, and is not applicable to a case where the purchaser, at the end of two years or more, finds himself without lawful title or possession.—DAVIDSON, J., 5 DEC. 1889, *Brunet vs Davidson.* (Modified in appeal 1 R. O. Q. B. 79). **VII,** S. C. **423.**

24. School commissioners.—Que d'après les provisions de l'Acte 45 Vict. ch. 29 s. 2, et les articles 346 et seq. du code municipal, les contestations d'élection de commissaires d'écoles doivent être portées devant la Cour de Circuit ou la Cour de Magistrats, qui ont une juridiction exclusive en ces matières.

Que partant le recours par bref de quo warranto établi par S. R. B. C. c. 15 s. 40 contre l'usurpation de telles fonctions, est abrogé.

Que même si ce recours existait encore concurremment avec celui indiqué par la loi nouvelle, la simple élection des défendeurs comme commissaires d'écoles, sans qu'ils se soient immiscés dans l'exercice de telle charge, ne donnerait pas lieu à l'émanation d'un quo warranto. (Art. 1016 C.

P. C.)—DORION, MONK, TESSIER, CROSS, BABY, JJ., 27 MAI 1885, *Metras & Trudeau.* **I,** Q. B. **347.**

CITATIONS.—*Paris & Couture* 10 *Q. L. R.* 1.

25. Town council — Assessments for debts of town—Appeal.—Qu'un conseil de ville, en vertu de l'acte des clauses générales des villes, peut, par une résolution, ordonner au secrétaire-trésorier de prélever une somme déterminée pour acquitter une dette de la corporation, ce que le secrétaire-trésorier fera par un rôle spécial de perception.

Que les villes constituées en corporation par acte spécial sont tenues de contribuer au coût de l'achat d'un terrain et de la construction sur icelui d'une bâtisse pour servir à la Cour de Circuit et au bureau d'enregistrement du comté dans lequel elles sont situées;

Que la part à contribuer par chacune de ces villes sera établie par le conseil de comté d'après toutefois le montant total de l'évaluation des biens imposables de cette ville, ce montant total étant fourni au conseil de comté par un certificat du secrétaire-trésorier de cette ville.

Qu'il y a lieu à appel du jugement rendu en cette cause par la Cour Supérieure, étant une action en la forme ordinaire pour faire annuler des procédés du conseil de ville de Lachute.—DORION, BOSSÉ, BABY, DOHERTY, CIMON, JJ., 23 MARS 1891, *McConnell & Corporation Lachute.*

VII, Q. B. **99.**

26. Violation of domicile—Arrest without warrant—Damages.—Officers of police in the employment of a municipal corporation have no right to enter the dwelling of a citizen in the night time, without a warrant and arrest him on mere suspicion that a felony has been committed and the corporation will be held responsible in damages for such illegal arrest.—DORION, CROSS, BABY, BOSSÉ, JJ., 20 MARCH 1890, *Pratt & Charbonneau.* **VII,** Q. B. **24.**

CITATIONS.—*Allan v. Wright,* 8 *C. & P.* 522—*Addison, on Torts, vol. II, No.* 853, 876—*Levi v. Reed,* 6 *S. C. R.* 483—*St. Lawrence Steam Navig. Co. v. Lemay, M. L. R.* 3 *Q. B.* 214—*Lanctot, p.* 90, 91, 99, 95—*Archbold,* 1 *vol.* (116 *notes* 101, 102), *p.* 24 *et note*— *Cooley, on Torts,* 183—*Gingras & Desilets, Dig. Sup. Court, R.* 116-18—*Woolrich,* 8—*Taschereau, Crim. Acts, vol.* 2, *p.* 15, 23—*Droit Criminel, Arrestations, de Montigny,* 159.

27. Water-course–Jurisdiction of county council–Jurisdiction of Superior Court.—Qu'un cours d'eau qui traverse deux municipalités locales est un cours d'eau de comté, placé par la loi sous la juridiction originaire du conseil de comté.

Qu'un conseil de comté qui rend une décision relativement à un procès-verbal au sujet d'un pareil cours d'eau, n'exerce pas une fonction judiciaire, mais simplement administrative.

Que bien que le Code municipal (art. 100) donne un recours devant la Cour de Circuit et devant la Cour du Magistrat pour la cassation de tout procès-verbal, rôle, résolution, etc., néanmoins la Cour Supérieure ne cesse pas d'avoir juridiction en ce cas vu le controle qu'elle possède sur toute corporation ou corps politique.

Que dans tous les procès-verbaux réglant les cours d'eau, tous les propriétaires intéressés doivent être assujettis aux travaux nécessaires dans la proportion de leur terrain égouté ; que dans le cas contraire tout contribuable a droit de se plaindre.—JETTÉ, J., 15 MAI 1889, *Barbeau vs Corporation Laprairie.* **V, S. C 84.**

CITATIONS.—*Laviolette vs Corp. Napierville* 31 *L. C. J.* 216—*Corp. Pointe-aux-Trembles vs Corp. Hochelaga* 7 *L. N. p.* 417—*Corp. St. Alexandre v. Maillioux* 7 *R. L.* 418—*Viau vs Corp. Longue-Pointe* 8 *L. N.* 110—*Corp. Arthabaska v Patoine* 12 *R J. de Québec* 57—*Corp. Yamaska v. Durocher* 30 *L. C. J.* 216—*Reburn vs Corp. Ste. Anne* 11 *R. L.* 133—11 *Demolombe No.* 298.

MUNICIPAL ELECTION

See MONTREAL.

MUNICIPAL TAXES

See USUFRUCTUARY.

MUNICIPAL DEBENTURES

A debenture is a negotiable instrument, and cannot bear a condition on the face of it, making its validity dependent upon obligations to be performed in future. And so, where a municipal corporation voted a bonus to a railway company payable in debentures, and the by-law imposed certain future obligations upon the company as to the mode of operating

the road, it was held that debentures in which those obligations were set forth as conditions were not a valid tender.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 27 MARCH 1886, *MacFarlane vs Corporation Se. Cessaire.* (Affirmed by Supreme Court 15 S. C. R. 738). **II,** Q. B. **160.**

MUR MITOYEN

See MITOYENNETE.

MUTUAL INSURANCE COMPANY

The by-laws of mutual insurance company gave the president the management of its concerns and funds, with power of act in his own discretion and judgment in the absence of specific directions from the directors, and it was also his duty to sign all notes authorized by the board or by virtue of the by-laws. The president was both president and treasurer, and was also acting as secretary.

That the plaintiff, which was the transferee for value given before maturity, of a note signed in behalf of the company by the president, as president and treasurer, and given to the payee in settlement of a valid claim against the company, was entitled to recover the amount of said note from the company.—TASCHEREAU, MATHIEU, DAVIDSON, JJ., 5 NOV. 1887, *Jones vs The E. T. Mutual Fire Ins. Co.*

III, S. C. **413.**

NAME

Que le nom d'un commerçant est sa propriété exclusive, et que personne autre que lui ne peut se servir de son nom sans son autorisation.

Qu'une personne dont on usurpe ainsi le nom a droit à une injonction contre l'usurpateur.—MATHIEU, J., 13 NOV. 1889, *Dun et al vs. Croysdill.* **VI,** S. C. **46.**

NATURALIZATION

See MONTREAL.

NAVIGABLE RIVER

See CONSTITUTIONAL LAW

NECESSARY DEPOSIT

See HOTEL KEEPER.

NEGLIGENCE

I.—Accident occuring without fault.
II.—Corporation.
III.—Person driving—Accident.
IV.—Street railway.

See BAILLIFF — DAMAGES—MASTER AND SERVANT — MONTREAL—MUNICIPAL CORPORATION — RAILWAY - RESPONSIBILITY.

1. Accident occurring without fault.—Where a reaping machine was being driven by the defendant along the highway, the knife to the right side of the road ; and the plaintiff's colt, which was straying upon the road, ran upon the machine, notwithstanding the defendant's efforts to keep it off, that the plaintiff was not entitled to recover the loss.—Johnson, Papineau, Loranger, JJ., 26 dec. 1887, *Carr vs Black.* **III,** S. C. **350.**

2. Corporation.—That a municipality is not responsible for an injury sustained through the imprudence of the person injured ; as where a person crossing the ice on the St. Lawrence in winter, deviated from the course marked out by branches, and plunged into an opening in the ice, and was drowned.—Dorion, Tessier, Baby, Church, Bossé, JJ., 22 jan. 1890, *Laforce vs Sorel.* **VI,** Q. B. **149.**

Citations.—*Corp. Quebec & Howe* 13 *Q. L. R.* 315—*Corp. Sherbrooke & Dufort M. L. R.* 5 *Q. B.* 266.

3. Person driving—Accident.—Que la prudence la plus ordinaire, ainsi que les règlements municipaux, obligent tous ceux qui conduisent des voitures à modérer l'allure de leurs chevaux en traversant les rues.

Qu'en vertu de ce devoir, une personne dont la voiture et le cheval sont conduits avec une grande vitesse et qui frappe un enfant qui traverse la rue assez gravement pour amener la mort de cet enfant, sera responsable au père de ce dernier du dommage qui lui en résultera.—Mathieu, J., 28 mai 1890, *Kennedy vs Courville.* **VI,** S. C. **308.**

4. Street railway.—1. *Child killed.*—Qu'une compagnie de chars urbains est responsable d'un accident par lequel un enfant de deux ans a été tué sur sa voie, par suite de l'infirmité du conducteur qui avait la vue trop corte pour voir à distance.

Que dans l'espèce, l'enfant tué étant très jeune ne pouvait pas discerner le danger et n'a pas pu contribué à l'accident.

Qu'aucune faute n'étant imputable aux parents de l'enfant décédé, il n'y a pas lieu d'appliquer la question de la responsabilité contributoire ; qu'à tout événement elle ne pourrait donner lieu qu'à une diminution des dommages.

Que dans l'espèce, il y a eu négligence de la part de la compagnie défenderesse et qu'il y a lieu d'accorder au père de l'enfant comme partie des dommages réels une compensation suffisante pour les frais encourus par lui depuis l'époque de la naissance de l'enfant jusqu'à sa mort.—LORANGER, J., 29 DÉC. 1889, *Dufresne vs Compagnie Passagers Montréal.* **VII,** S. C. **10.**

CITATIONS.—*Beauchamp vs Cloran* 11 *L. C. J.* — *Ibl. v.* 42*nd St. Railroad Co.* 1 *L. N.* 452—*Robinson vs C. P. R.* 14 *S. C. R* 105—*St. Lawrence & Ottawa River Ry. Co. Dig. S. C. R* 439—*Sedgwick, Leading Cases on Negligence,* 803.

Revesing the judgment of Loranger, J. M. L. R. 7 S. C. 10.—Where a child, two years of age, through the negligence or want of vigilance of its parents, is allowed to leave the residence and get on the track of a street railway, and is killed there by a car of the railway company, an action of damages by the father of the child will not be maintained. — BABY, BOSSÉ, DOHERTY, CIMON, JJ., 25 JUNE 1891, *Cie Passagers Montréal & Dufresne.* **VII,** Q. B. **214.**

CITATIONS.—*Dominion Oil Cloth Co. & Coallier, M, L. R.* 6 *Q. B.* 268.

2. *Collision.*—In an action of damages arising out of a collision between the plaintiff's tow-wheeled cart and the defendant's omnibus where it appeared to the court that notwithstanding the bad condition of the thorough fare and the narrowness of the space in which the vehicles had to pass, a collision might have been avoided by the exercise of a greater care on the part of the defendant's driver, and at all events by stopping the omnibus when the difficulty of

passing safely was perceived, that the defendants were responsible for damages.—JOHNSON, JETTÉ, LORANGER, JJ., 30 NOV. 1888, *Thibaudeau vs M. S. R. Co.* **IV,** S. C. **400.**

Where the plaintiff, while standing on the platform or step of a street car, was injured by a passing load of wood, that as the immediate cause of the accident was the conductor's want of vigilance in failing to stop the car, as he might have done, in time to prevent the collision, the defendants were responsible. The fact that the plaintiff was standing on the platform at the time of the accident did not relieve the defendants from responsibility, inasmuch, as he was permitted to stand there by the conductor who had collected fare from him while he was in that position.—JOHNSON, DOHERTY, JETTÉ, JJ., 29 SEPT. 1888, *Wilscam vs M. S. R. Co.* **IV,** S. C. **193.**

(Affirming the decision of the Court of Review M. L. R. 4 S. C. 193). Where the respondent, a passenger on a street car, while standing on the platform or step of the car, was injured by a passing cart loaded with planks, that as the immediate cause of the accident, was the conductor want of vigilance in failing to stop the car, (as he might have done) in time to avoid the collision, the appellant, his employer was responsible. The fact that the respondent was standing on the platform of the car at the time of the accident did not relieve the appellant from responsibility, inasmuch as the car was crowded and he was permitted to stand there by the conductor who had collected fare from him while he was in that position.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 23 NOV. 1889, *M. S. R. Co. & Wilscam.* **V,** Q. B. **340.**

NEWSPAPER

See LIBEL AND SLANDER—LESSOR AND LESSEE.

NEW TRIAL

See CRIMINAL LAW — INSURANCE (FIRE) — JURY TRIAL — PROCEDURE.

NOTARY

Qu'un notaire, dans la rédaction de ses actes, est responsable des vices de forme soit extrinsèques ou intrinsèques, et pourra être condamné à payer des dommages s'il y insère des clauses illégales qui sont la cause de l'annulation de l'acte par les tribunaux.

Qu'il est de jurisprudence que ces domnages soient accordés plutôt comme peine que comme indemnité et que le tribunal peut les mitiger suivant les circonstances.—JETTÉ, J., 5 JUIN 1885, *Dupuis vs Rieutord.* **I,** S. C. **356.**

(Affirming the judgment of Jetté M. L. R. 1 S. C. p. 356). That a notary is responsible in damages for a nullity committed in a deed received by him, even when such nullity involves the substance of law. TORRANCE, BOURGEOIS, MATHIEU, JJ., 31 MARCH 1886, *Dupuis vs Rieutord.* **II,** S. C. **226.**

Qu'une mise en demeure et un protet peut être valablement fait, par un notaire dans la salle de la Cour de Police, pendant une séance de la Cour, lorsque le défendeur était introuvable ailleurs les jours précédents.—GILL, J., 17 OCT. 1888, *Christin vs Morin.* **IV,** S. C. **469.**

See PRINCIPAL AND AGENT—PROCEDURE—PROMISSORY NOTE.

NOTICE OF ACTION

See MUNICIPAL CORPORATION—PROCEDURE—PUBLIC OFFICE.

NOVATION

1. Composition agreement—Not signed by all the creditors—Opposition—Tender.—That where an agreement of composition is prepared, by which the creditors agree to accept a composition on the amount of their respective claims, and the agreement is not signed by all the creditors as was contemplated and it does not appear that those who signed, individually intended, to compound for the amount of their respective claims independently of the other creditors, novation is not effected of the claim of a creditor who signed the

agreement but who subsequently refused to accept the composition and did not receive the same. — DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 20 NOV. 1889, *McDonald & Seath.*
VI, Q. B. **168.**

2. Deed of composition.—Where a creditor, whose claim does not appear to be of a commercial nature, becomes a party to a voluntary deed of composition with his debtor by the terms of which he remits half of the debt, and the interest, and agrees to accept the remainder by instalments, with security, without stipulating that the debtor shall not be discharged until the composition is fully paid, that novation is effected; and the creditor has no right, upon the debtor's default to pay the instalments of the composition as they become due, to issue execution de plano upon the judgment obtained by him for the original debt.—JOHNSON, LORANGER, WURTELE, JJ., 31 JAN. 1889, *Vincent vs Roy.*
V, S. C. **451.**

3. Extinction of obligation by granting a term to substituted debtor.—The appellant being indebted to the respondent, settled by giving his own note (paid at maturity) for part of the debt, and for the balance he gave an order or draft on the St. H. Company which was accepted. But instead of exacting immediate payment of the draft (which was payable forwith), the respondent took from the St. H. Company their two promissory notes payable at one and two months respectively and before these notes matured, the St. H Company became insolvent.

That novation was effected by the acceptance of the new debtor in the room of the old, whom it was intended to discharge, as evidenced by the term granted by the creditor to the substituted debtor without the concurrence of the former debtor.—DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *O'Brien & Semple.* **III,** Q. B. **55.**

CITATIONS.—18 *Demolombe, No.* 312, *p.* 2.9—*Dalloz, vo Obligation, Nos.* 2393, 2452 *et* 2457—*Pothier, Bugnet, vol.* 2, *p.* 313.

4. Second obligation not incompatible with first.—That novation does not take place where the second obligation is only to be the result of the non-fulfilment of the first, and

its conversion, à titre d'indemnité into the payment of a sum of money.—TORRANCE, GILL, MATHIEU, JJ., 30 NOV. 1886, *Forgues vs Brosseau.* **II,** S. C. **376.**

NUISANCE

1. Limekiln.—Que le fait qu'un propriétaire de four à chaux ou autre établissement industriel avait établi et commencé à exploiter son industrie avant que le voisin qui se plaint ait acquis sa propriété, n'empêche pas l'industriel d'être responsable des dommages qu'il cause; cette pré-occupation ne pouvant tout au plus, que le protéger contre la suppression de son établissement en certains cas, et donner au tribunal une certaine discrétion dans l'appréciation du dommage.—TASCHEREAU, J., 8 MAI 1891, *Gravel vs Gervais.* **VII,** S. C. **326.**

CITATIONS.—6 *Laurent* 203, *No.* 149—*Dalloz*, 1954-5-655.

2. Tannery.—That where the person complainting of the offensive smell caused by chemicals used in a tannery, and which emptied into a drain passing by his property, was thoroughly acquainted with the condition of things before he purchased, having been five or six years employed in the tannery, and moreover, it appeared that he had promoted the covering of the drain, and thereby caused an aggravation of the nuisance, an action of damages against the proprietor of the tannery would not be maintained.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 25 SEPT. 1886, *McGibbon & Bédard.* **VI,** Q. B. **422.**

CITATIONS.—*Doutre v. St. Charles*, 18 *L. C. J.* 253—*Parent v. Daigle*, 4 *Q. L. R.* 154—*Taillandre, Leg. de Manufactures—Brunet, Etablissements Insalubres—Trabuchet, Code des Etablissements Dangereux—Wood, Law of Nuisances—Addison, on Torts*, 2 *vol.*

See CONSTITUTIONAL LAW.

NULLITY OF DEED

See PLEADING.

NU PROPRIETAIRE

See PARTIES TO ACTION.

OBLIGATION

1. Joint and several.—Where two persons who had sold one-fourth interest in an invention were condemned to make a practical test of the value of the invention, as stipulated in the contract, or to repay the purchased money, that condemnation was properly joint and several.—TORRANCE, BOURGEOIS, LORANGER, JJ., 30 JAN. 1886, *Dyson vs Sweanor.*

III, S. C. **361.**

2. Payment.—Que lorsqu'un débiteur donne à un tiers un ordre de payer sa dette à son créancier, pour son acquit, à même l'argent que ce tiers a en mains lui appartenant, il ne cesse pas d'être responsable vis-à-vis le créancier quand même celui-ci et le tiers auraient accepté l'ordre, s'il n'est pas payé.—JETTÉ, J., 15 DÉC. 1890, *Bernier vs Brazeau.*

VII, S. C. **38.**

3. Void for violence and fear.—(Affirming the decision of the Court below).—That a person lending money to a minor is bound at his peril to see that the authorisation to borrow is regular on the face of it; and where no proper summary account was submitted by the tutor as required by Art. 297 C. C., and the sub-tutor was moreover the agent and son of the lender, and was bound to know that in fact the loan was not required by the minor, but was improperly obtained by the tutor for his own purposes, the obligation so given was held null and void. (Reversing the judgment of the Court below). That threats to a woman in a weak state of health, and feeble bodily and mentally, that she would be turned out of her property, unless she signed an obligation and hypothec, constituted violence and fear within the meaning or arts 994, 995, and were a cause of nullity the obligation executed in such circumstances and without consideration. — TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 28 MAY 1889, *Kerr & Davis* (Reformed by Supreme Court 17 S. C. R. 235). **V,** Q. B. **156.**

See MONTREAL.

OFFICE

See ST. JOHNS.

OPPOSITION

See PROCEDURE.

OPPOSITION TO SEIZURE

See PROCEDURE.

PARENT AND CHILD

That the obligation of children to maintain their father, mother and other ascendants who are in want (C. C. 166) does not cease when the necessitous condition of the parents is caused by his own fault. The intemperance of an aged father does not constitute a valid ground for refusing to maintain him.—JOHNSON, GILL, LORANGER, JJ., 31 JAN. 1887, *Arless vs Arless.* **III,** S. C. **43.**

PARISH

(Affirming the decision of Cimon, J., 7 L. N. 415). That when a portion of a canonical parish civilly constituted, is detached by decree of the bishop, and annexed to a canonical parish not civilly constituted, the tithe is due by an inhabitant of the dismembered parish to the new curé.

Under the old law of France prior to the cession, the bishop had the right to create, unite or divid parishes in the interest of the church, having due regard to vested rights; and this condition of things has not been affected by the laws enacted for the Province of Quebec, since the cession of Canada.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 21 MAY 1886, *Cadot & Ouimet.* **II,** Q. B. **211.**

CITATIONS.—*Thomassin, Descipline Ecclésiastique, 1ère partie, liv. 1er ch. 12—Fleury, Institution du Droit Ecclésiastique, 1ère partie, ch. 18—Edils de Néron—Louis XIV, avril 1695, Juris, de Off. 29—Néron, vol. I, Edit. de Henri IV, Déc. 1606 Juris de Off. p. 29—2 R, C. 447—Roy & Bergeron, 2 R. L. 523.*

PARTIES TO ACTION

The plaintiff part owner of a steamship, brought an action as owner, claiming demurrage, etc., under a charter-party. The defendants denied that they contracted with

the plaintiff or that plaintiff was owner. On motion the plaintiff was permitted to amend by making the other part owners co-plaintiffs with him.—LORANGER, J., 22 APRIL 1885, *MacKill vs Morgan* **I,** S. C. **262.**

Where a person intervened in the marriage contract of his niece, and made her a donation of $200,000 payable at his death, the intended husband to have "the administration and enjoyment of the said sum of $200,000 from the time of the same becoming due" and the only condition of the husband's administration an enjoyment was the birth of children, which was a fact admitted. HELD that the husband was usufructuary, and the wife had the nue propriété.

In such cases the action against the donor's universal legatees, for the recovery of the amount of the donation, can be brought by the usufructuary only. An action by the wife, even with her husband's authorization, will be dismissed.—JOHNSON, TORRANCE, PAPINEAU, JJ, 30 JUNE 1885, *Kimber vs Judah.* **II,** S. C. **86.**

CITATIONS.—10 *Demolombe, No.* 323—3 *Proudhon, No* 1395—2 *Aubry et Rau, p.* 591—6 *Laurent, Nos* 413, 414—*Bélanger & Talbot,* 3 *Dorion, Q. B. D.* 317 *et* 319.

See PROCEDURE.

PARTITION

See COMMUNITY—PARTNERSHIP—SUCCESSION.

PARTITION OF MOVABLES

Qu'un co-propriétaire par indivis a droit de saisir, par voie de saisie conservatoire, des meubles que son co-propriétaire a commencé à vendre et que le compte de tutelle que le défendeur doit rendre à la demanderesse ne peut empêcher cette dernière de demander le partage des meubles et d'accompagner cette demande de mesures conservatoires.—PAGNUELO, J., 12 NOV. 1889, ***Evans vs Evans.*** **V,** S. C. **414.**

PARTNERSHIP

I.—ACTION.
  (1) Between partners after final settlement.
  (2) For dissolution pending—Appointment of liquidator.
II.—ADMINISTRATION.

III.—Agreement not carried out.
IV.—Association to provide water supply—Action to dissolve partnership—Partition.
V.—Dissolution—Factory built by firm on land of one partner.
VI.—Formed in France.
VII.—Garnishment.
VIII.—Illegal conversion of partnership's funds.
IX.—Limited partnership—Certificate—False statement—Insufficiency of certificate.
X.—Loan to partner—Promissory note representing loan—Action against firm—Evidence—Loan of money—Entries in books.
XI.—Participation in profits.
XII.—Misappropriation by partner of other money to use of firm—Liability of firm—Limited partmership—Registration—Special partners.
XIII.—Participation in profits.
XIV.—Partnership to build railway—Commercial matters—Prescription.
XV.—Payment of debts of.
XVI.—Release of joint and several debtor.
XVII.—Special partner.
XVIII.—Work done by firm.
XIX.—Insufficient identification.

See ACTION QUI TAM—EVIDENCE—INSURANCE (ACCIDENT)—JURY TRIAL—PENAL ACTION.

1. Action.—1. *Between partners after final settlement.*—That when a final settlement of accounts has been made between partners, after the dissolution of the firm, there is no longer any occasion for an action pro socio in respect of a claim of one partner against another, based upon the final arrangement between them.—Johnson, Taschereau, Mathieu, JJ., 30 Nov. 1887, *Gourlay vs Parker.*

III, S. C. **243.**

2. *For dissolution pending—Appointment of liquidator.*—The fact that an action is pending for the dissolution of a co-partnership, the management of the business of which, by the deed of co-parnership, was entrusted to the partner defendant, is not a sufficient ground for depriving him of the management, and for the appointment of a liquidator.—Dorion, Cross, Baby, Bossé, JJ, 26 March 1890, *Gerhardt & Davis.* **VII,** Q. B. **437.**

2. Administration.—Que le gérant d'une société en commandite a l'administration entière de la société et est le juge des besoins de l'établissement de la société; il peut donc, dans le cas d'une manufacture, acheter ailleurs des objets semblables à ceux qui sont manufacturés par la dite société sans par là outrepasser ses pouvoirs.—CHAGNON, J., 10 JUIN 1885, *Williams vs Beauchemin.* **I,** S. C. **455.**

3. Agreement not carried out.—B. cessionnaire du droit d'exploiter une patente, dans la Province de Québec, fait avec L. ce contrat: "L. désireux de s'associer à cette exploitation paie à B. la somme de $1000 comptant à condition de partager également etc.... Ce dernier s'engage à se rendre à Québec et à consacrer son temps, son travail et son énergie à mettre ce projet à exécution, et se fait fort de mettre en marche la compagnie projetée avant le 15 novembre prochain."

Que dans le cas où B. n'a pu remplir ses obligations et mettre en marche la dite compagnie pour l'exploitation de la patente en question, avant le délai fixé, ce contrat ne peut être considéré comme un acte de société et L. a droit de faire résilier le dit contrat et de faire condamner B. à lui remettre les $1000 par lui payées.—SICOTTE. TORRANCE, MATHIEU, JJ., 31 MARS 1883, *Laviolette vs Bossé.* **I,** S. C. **429.**

CITATIONS.—*Troplong, Société, Nos.* 931, 932—*Lindley, Partnership, vol. I, p.* 28, 62—*Boileux, Com. sur C.N.C. vol. VI, p.* 349—*Larombière,* 262—*Pothier, Obligations, No.* 56—12 *Laurent,* 617, 619.

4. Association to provide water supply—Action to dissolve partnership—Partition.—Where several persons, owners of lands in the vicinity of River Richelieu, associate themselves by deed before notary, for the purpose of providing a water supply for their respective dwellings, HELD that an ordinary partnership was not thereby created, and that an action for dissolution of partnership, brought by one of the associates who had ceased to have property there and had left the neighborhood, could not be maintained.

Art. 689 C. C. is not applicable to the state of things existing under the deed of association above mentioned, and a partition could not be demanded by one of the associates, inasmuch as the association had no common property

susceptible of partition, the water works being merely an accessory of the real property, and designed for its perpetual use.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Michon vs Leduc.* **VI,** Q. B. **337.**

CITATIONS.—*Aubry et Rau, vol.* 2, *p.* 405 — *Dalloz, Jurisp, Gen, vo Société, Nos.* 25, 94, 95, 99, 318 *et* 319—*Pothier, Bognet, "Société" No.* 54—*Troplong, "Société" No.* 13, 20 *et seq. et No.* 315—*Pant, "Société" No.* 84—4 *Pothier, Bugnet, Nos.* 181, 182, 183, 184, 194, 195, 196, 197, 198—*Domat, "De la Société" sec. V*—2 *Aubry et Rau, p.* 413 — 11 *Demolombe, Nos.* 425, 444 *et seq* — 5 *Duranton, No.* 149—*Pardessus, Servitudes, vol. I, No.* 190 *et seq.*—2 *Delvincourt,* 344—*Merlin, Rep. vo. Partage* § 10, *No* 2—3 *Toullier, vol. III No.* 469 *bis*—*Sirey* 1857, *II,* 140—1857, *II,* 61—1877, *I,* 267—*Solon, Servitude, No* 593.

5. Dissolution—Factory built by firm on land of one partner.—Where two persons carried on the business of manufacturing cheese in partnership and for the purposes of the business, a factory was erected on the land of one of the partners, for which land rent was paid by the firm, that on the dissolution of the partnership and after the settlement of its affairs except as to the factory, the factory so erected belonged in common to the partners; and the partner on whose land the factory was entitled under art. 1562 C. C. (if the buildings in the opinion of experts, were not susceptible of convenient partition), to have them sold by licitation, to the highest bidder, with obligation on the purchaser to remove the same, and the price divided between the partners.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 20 MAY 1889, *Sangster & Hood.* **V,** Q. B. **384.**

CITATIONS.—6 *Laurent, No.* 250—2 *Delvincourt, p.* 8—9 *Demolombe, No.* 128—4 *Duranton, No.* 370 *et seq.*—3 *Toullier, Nos.* 124, 125—2 *Aubry et Rau, pp.* 6 *et* 7—*Hennequin, Traité de Législation, Tome I, p.* 5—3 *Toullier, No.* 125—4 *Duranton, No.* 375—6 *Laurent, p.* 339, *No.* 260—9 *Pothier, p.* 157, *No.* 170—1 *Mourlon, p.* 736.

6. Formed in France.—Que dans une société commerciale en nom collectif formée en France, les droits respectifs des parties sont régis par le droit commercial français en force au temps de la convention.

Qu'en France, sous peine de nullité absolue, l'extrait des actes de sociétés en nom collectif doit être remis dans la quinzaine, au greffe du tribunal de commerce de l'arrondissement dans lequel la maison du commerce social pour être transcrit sur le registre et affiché pendant trois mois dans la salle des audiences.

Que cette formalité est d'ordre public et peut être apposée en tout temps et sous toutes circonstances.

Qu'en loi, une société commerciale ne peut être valablement contractée par une personne à laquelle un conseil judiciaire a été donné sans le consentement de ce conseil judiciaire. — LORANGER, J., 30 NOV. 1886, *Furniss vs Larocque.* **II,** S. C. **405.**

CITATIONS.—4 *Pardessus, Droit Comm. Nos.* 1005 *et* 1007—*Merlin, Rép. de Jurisp. vo Sociétés, sec.* 3, § 2, *art.* 2 55, 56 — 17 *Duranton, No.* 337 — 4 *Massé, Droit Commercial, No,* 2550—*Troplong, Contrats de Société, No.* 226.

7. Garnishment.—Qu'un tiers saisi, membre d'une société commerciale et qui déclare pour elle que le défendeur a une part dans la dite société peut être forcé de déclarer qu'elle était, lors de la signification de la saisie arrêt, le fonds capital de la dite société commerciale dont le défendeur fait partie. —JETTÉ, J., 7 JAN. 1885, *Laframboise vs Rolland.* **I.** S. C. **366.**

Que l'on peut saisir par saisie arrêt la part ou l'intérêt d'un associé dans une société commerciale et que les associés seront condamnés personnellement à payer au demandeur saisissant toute somme d'argent qu'ils auront payée à leur coassocié, dont la part ou l'intérêt aura été ainsi saisi, depuis la signification du bref de saisie arrêt.—MATHIEU, J., 25 AVRIL 1885, *Laframboise vs Rolland.* **I,** S. C. **367.**

Que les réponses d'un tiers saisi aux questions qui lui sont posées par le saisissant et qui sont écrites à la suite de sa déclaration, ne forment pas partie de sa déclaration, et qu'un jugement ne peut être rendu sur ces réponses de plano : le saisissant doit contester la déclaration.—TORRANCE, GILL, LORANGER, 30 NOV. 1885, *Laframboise vs Rolland.* **II,** S. C. **75.**

CITATIONS.—*Grant vs La Banque Fédérale, M. L. R.* 2 *Q. B.* 4.

8. Illegal conversion of partnership's funds.—Where a partner sent a draft for £1,000 out of the partnership funds for the purpose of paying his own separate debt, that the act was an illegal conversion of the funds, and that the other partners were entitled to attach the money in the hands of the person to whom the draft was transmitted and to pre-

vent him from applying it to the payment of the separate debt in accordance with the instructions received by him from his principal. — JOHNSON, J., 28 FEB. 1885, *Hannan vs Evans.* **I, S. C. 193.**

9. Limited partnership—Certificate—False statement—Insufficiency of certificates.—That the contributions of special partners to a partnership en commandite, or limited partnership, must be in cash, paid in at the date of formation of the partnership. (Art. C. C. 1872).

That in order to obtain the privilege of a limited partnership, the formalities of the special laws relating thereto must be strictly complied with, and a statement in the certificate (dated Oct. 30) which persons contracting such a partnership are bound to sign : to the effect that a special partner had brought $1,000 into the capital of the firm whereas this sum was not paid in until Dec. 31 following: was a "false statement" within the meaning of art. 1877 C. C. and rendered the special partners liable for the obligations of the firm in the same manner as ordinary partners.

That a certificate which does not mention the period at which the limited partnership is to terminate, is insufficient, and the partners are liable as ordinary partners.—DAVIDSON, J., 28 JUNE 1889, *Davidson vs Fréchette.* **V, S. C. 282.**

CITATIONS.—*Deloyson, Sociétés Commerciale, p.* 257—*Troubat,* 85.

10. Loan to partner—Promissory note representing loan—Action against firm—Evidence—Entries in books.—In an action against a firm composed of Caldwell and Henry J. Shaw, for the amount of loans alleged by the plaintiff to have been made by him to the firm, but which was represented by notes signed by Henry J. Shaw alone: HELD—That the presumption arising from entries in the books of the firm, purporting to show that the loans were made to the firm, was completely rebutted by the evidence that these entries were made by the plaintiff's sons, then cashier of the firm, and were subsequently rectified by the firm; and further by the letter of the plaintiff himself to Henry J. Shaw, which contained an acknowledgement that the loans were made to Henry J. Shaw individually.

A partnership will not be held liable under art. 1867 C. C., for the amount of a loan made to one of the partners, although the money was applied by such partner to the use of the partnership, if it appear that the lender, though he was aware of the existence of the partnership, gave credit to the borrower personally, accepted his promissory notes for the debt, and looked to him as his debtor. — TESSIER, CROSS, CHURCH, DOHERTY, JJ., 24 NOV. 1888, *Caldwell & Shaw.* (Affirmed by Supreme Court, 12 L. N. 221; 17 S. C. R. 357). **IV,** Q. B. **246.**

CITATIONS.—*Pothier (Ed. Paris* 1821) *Société* § 101, *p.* 489—*Story, Partnership, 6th edit. par.* 135, 137, 140, *note I—Pont, Société vol.* 7, *No,* 652—*Maguire & Scott,* 7 *L. C. R.* 451.

11. Loan of money—Participation in profits.—Une convention par laquelle une des parties prête à l'autre une somme d'argent pour l'exploitation d'une entreprise commerciale, avec stipulation de participer dans les profits, ne constitue pas nécessairement un acte de société entre les parties contractantes.

Quoique, d'après les termes de l'art. 1831 C. C. et la jurisprudence, une telle convention entraine avec elle la responsabilité de toutes les parties contractantes comme associé envers les tiers, néanmoins, si les droits des tiers ne sont pas en jeu, l'intention des parties doit déterminer si elles ont fait un contrat de prêt ou de société.

Un acte rédigé dans les termes cités plus bas constitue un prêt et non un acte de société, et le prêteur a le droit d'exiger le remboursement de son argent prêté, dans une action solutoire tendant à faire annuler la convention.—TASCHEREAU, J., 5 MAI 1890, *Rinfret vs May.* **VI,** S. C. **437.**

CITATIONS.—*Davie & Sylvestre, M. J. R.* 5 *Q. B.* 143—*Laviolette vs Bossé, M. L. R.* 1 *S. C.* 429

12. Misappropriation by partner of other money to use of firm—Liability of firm—Limited partnership—Special partner. —Where one of the partners of a firm misappropriated moneys beloging to certain building society, of which he was the secretary-treasurer, and applied them to the uses of his firm, entering them in the books as "loans" not from himself but from others, that these moneys, although ob-

tained by him tortiously without the privity of his co-partners, having gone into the business of the firm, the members of the firm were jointly and severally responsible to the original owners for the amount thereof, to the same extent as if the loan had been made legitimately.

Where the $15,000 capital originally put into a firm by a special partner had become impaired, and was reduced to less than $9,000 at the time a new firm was formed that the declaration then made, that the capital put in by the special partner was $15,000, was a false statement within the meaning of art. 1877 C. C. and entailed upon the special partner the liability of a special partner.

That the omission to use the name of one or more of the general partners in the partnership name makes a special partner liable as a general partner, under att. 1880 C. C.—DORION, TESSIER, CROSS, BABY, JJ., 7 APRIL 1888, *Commercial Building Society & Sutherland.* **IV, Q. B. 52.**

13. Participation in profits.—The appellant lent $3,000 to P., to start him in business, which was carried on under the name of P. & Co. By the agreement appellant was to have six per cent interest on the amount of the loan, and P. was to draw $800 per annum for living expenses. At the expiration of seven years, or on death of P. before that time, the appellant was to get back the amount of his loan, and the net profits of the business were to be equally divided between appellant and P.

HELD:—That a partnership was created, and appellant became liable for the debts of the business.—TESSIER, CROSS, BABY, CHURCH, BOSSÉ, JJ., 23 SEPT, 1889, *Davie & Sylvestre.* **V, Q. B. 143.**

CITATIONS.—*Singleton & Cook*, 13 *Q. L. R.* 70 *et* 14 *Q. L. R.* 30 *et* 257.

(Following Davie & Sylvestre, M. L. R. 5 Q. B. 143) That an agreement by which M. was to advance money to N. for the purposes of his business, and M. was to be manager at a monthly salary, and also to receive one half of the net profits of the business, constituted a partnership between N. and M. as regards third parties.—TESSIER, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 22 SEPT. 1890, *McFarland & Fatt.* **VI, Q. B. 251.**

14. Partnership to build railway—Commercial matters—Prescription.—That a partnership, formed between contractors, for the purpose of according on the business of building railways, is a commercial partnership.

That a claim by one member of a commercial partnership against another after the dissolution of the firm, for a balance of account, or to obtain an account of the result of a commercial contract, executed by the firm, is a claim of a commercial nature within the meaning of art. 2260 C. C. par. 4, and is subject to the prescription of five years.—JOHNSON, TASCHEREAU, TAIT, JJ., 27 JUNE 1891, *McRae vs McFarlane.* **VII,** S. C. **288.**

CITATIONS.—*McKay & Rutherford,* 13 *Eng. Jurist, p.* 17—1 *Pardessus, No.* 36.

15. Payment of debts.—Que lorsqu'à la dissolution d'une société commerciale, l'un des associés assume le paiement de toutes les dettes, l'autre associé, contre lequel les créanciers de la société auraient obtenu des jugements conjointement et solidairement, ne peut obtenir une condamnation personnelle contre celui qui s'est chargé des dites dettes, et faire déclarer que les biens de la société sont son gage et doivent le garantir contre les jugements des créanciers, mais qu'il a seulement contre lui une action en garantie.—MATHIEU, J., 25 JUIN 1885, *Brouillet vs Bogue.* **I,** S. C. **385.**

16. Release of joint and several debtor.—That an ostensible partnership with respect to third persons may exist between traders without being an actual partnership between the parties entitling the one to claim from the other contribution to the partnership debts.

Consequently, in such a case of ostensible partnership, a release given by creditors to the ostensible, but not actual partner does not enure to the benefit of the real partner.—DAVIDSON, J., 29 JUNE 1888, *McIndoe vs Pinkerton.*

IV, S. C. **101.**

CITATIONS.—*Cass:* 16 *Ap.* 1855; *S.* 55. 1. 430—*Bordeaux,* 15 *mai* 1846; *S.* 47. 2 43—*Sendlay, on Partnership, p.* 33.

17. Special partner.—Qu'un associé commanditaire peut être poursuivi par les créanciers de la société en recouvrement de leur créance contre la société, jusqu'à concurrence

de la partie de sa mise sociale non encore payée au temps de l'action.

Que l'endossement des billets d'une société en commandite par un des associés ne peut être considéré comme un paiement de sa mise sociale et ne peut que donner à cet associé, dans le cas où il serait appelé à payer ces billets, une créance ordinaire en sa faveur contre la société.

Qu'un associé commanditaire qui s'immisce dans l'administration de la société, et qui y fait des actes importants de gestion, encourt la responsabilité d'un associé en nom collectif.—CHAGNON, J., 10 JUIN 1885, *Williams vs Beauchemin.*

I, S. C. **455.**

18. Work done by firm.—Where work was executed by a firm of printers, duly registered, composed of three persons, they have a right to recover the value of such work, although the parties entrusting them with the work believed they were dealing with two members only of the firm, who were at the same time carrying on business as a registered firm of publishers, more especially as the two persons composing the publishing firm were parties to the suit, and similar work, previously executed by the printing firm on the order of the same agents, had been paid for on accounts rendered by the printing firm.

An account due to a defendant's attorneys cannot be opposed in compensation of a claim against the client, and evidence of such alleged contra account is inadmissible.—TAIT, J., 30 APRIL 1887, *Fulton vs Darling.*

III, S. C. **475.**

PASSAGE, RIGHT OF

See SERVITUDE.

PASS BOOK

See EVIDENCE.

PATENT

That a patentee, during the pendency of an action instituted by him to restrain the infringement of his patent, is entitled to an interim injunction under 35 Vict. 9d ch. 26 s. 24 on the production of affidavits that his patent is being infringed by the defendant, and further, of a judgment in another case, establishing that he (the plaintiff) had suc-

cessfully maintained an action complaining of a similar infringement.

That the Provincial Injunction Act of 1878, requiring security to be given before an injunction is granted, does not apply to an injunction under the Dominion patent laws. JETTÉ, J., 6 SEPT. 1879, *Baril vs Parizeau.* **II,** S. C. **352.**

CITATIONS.—*Agnew. Law of Patents, p.* 280, 304, 308.

A patent of invention of machinery may be infringed by the use of a machine dissimilar in appearance, if the principle patented be interfered with.

The measure of damages for infringement of a patent of invention, by using a patented machine purchased of a manufacturer of the invention, and not the inventor, is not the profit which the purchaser derived from the use of the patents. The true measure is the loss suffered by the patentee.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 30 JUNE 1886, *Pinkerton & Côté.* **III,** Q. B. **133.**

PAYMENT

Qu'un marchand qui poursuit sur compte pour marchandises vendues et livrées est tenu, comme dans les cas ordinaires, de faire personnellement ou par procureur avant l'action, une demande de paiement au domicile du défendeur que la demande faite par lettre du marchand, par envoi de compte ou par lettre d'avocat est insuffisante.

Que la coutume ou l'usage du commerce ne peut prévaloir contre une disposition formelle de la loi.—JETTÉ, J., 31 MARS 1884, *Smardon vs Lefebvre.* **I,** S. C. **387.**

See OBLIGATION.

PENAL ACTION

1. A reference in the affidavit required for a penal action by 27 & 28 Vict. (Q) cap. 43, to the action mentioned in the præcipe "herewith filed," is not a sufficient identification of the action sworn to with that actually prosecuted as specified in the declaration. — DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 14 NOV. 1884, *Reed & The Sparham Fire Proof Co.* **I,** Q. B. **26.**

2. (*By the whole Court*).—That ch. 65 of the Consolidated Statutes of the Lower Canada, which requires a declaration

of partnership to be filed by the persons associated in partnership in the province, does not apply where none of the members reside in the province; and no penalty for non registration can be recovered in such case.

That where the declaration prescribed by-law has not been filed within sixty days after the formation of a partnership, but has been filed before the institution of an action for a penalty, such action will not be maintained (Johnson J. differing on this point, is of opinion that an action for penalty lies in such case.)—JOHNSON, JETTÉ, LORANGER, JJ., 30 NOV. 1888, *Jely vs Dunscomb.* **IV,** S. C. **404.**

CITATIONS.—*Jeannotte vs Burns, M. L. R.* 1 *S. C.* 354.

3. That in the affidavit required by 27 & 28 Vict. cap 43, the cause of action must be indicated sufficiently to identify the action sworn to with that actually prosecuted as specified in the declaration.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 19 NOV. 1889, *Sipling & Sparham Fireproof.*

I, Q. B. **22.**

See ACTION QUI TAM—ELECTION ACT—EVIDENCE.

PENALTY

See SECRETARY TREASURER.

PEREMPTION D'INSTANCE

See PROCEDURE.

PERJURY

That the fact that a stenographer, who took a deposition in a civil case, on which perjury is assigned, has been sworn, must be proved by the record or proceedings in the case in which the deposition was taken.

That a party summoned to appear in one division of the Superior Court, at Montreal to answer upon faits et articles, and who has appeared and been sworn in another division of the same Court, where he has given his answers, may be convicted of perjury on the answers so given.

QUÆRE:—Whether it is now necessary, under 47 Vict. (Q.) ch. 8 that the notes of the stenographer should, in all

cases, be read to the witnesses.—DORION, J., 15 NOV. 1887, *The Queen vs Downie.* **III,** Q. B. **360.**

CITATIONS.—*Reg. vs Léonard,* 3 *L. N.* 211—2 *Bishop, Criminal Law,* § 1028—*Reg. vs Fletcher, L. R.* 1 *C. C.* 320—*Reg. vs Mason,* 29 *U. C. Q. B.* 431—*Reg. vs Simmons,* 5 *N. S. Jurist,* 548.

PERSONAL INJURIES, PERSONAL WRONGS

Qu'une personne chargée de faire la quête dans une église pendant l'office divin et qui par préméditation néglige de présenter l'escarcelle à un paroissien de manière à attirer l'attention de ceux qui sont dans l'église, se rend coupable vis-à-vis de ce paroissien d'une insulte pour laquelle il est possible de dommages.

Qu'un jugement accordant au demandeur $20.00 de dommages et $20.00 de frais, mais condamnant le dit demandeur à payer au défendeur la différence des frais, c'est-à-dire, tous ses frais moins $40.00 est erroné en autant qu'il détruit virtuellement l'effet du jugement prononcé en faveur du demandeur,—JETTÉ, LORANGER, BROOKS, JJ., 30 JUIN 1885, *Primeau vs Demers.* **III,** S. C. **88.**

That in an action by a father in his quality of tutor, for personal injuries suffered by his minor child, the defendant, before pleading, may obtain an order for an examination of the child, by a physician.—DELORIMIER, J., 1 OCT. 1891, *McCombe vs Philipps.* **VII,** S. C. **384.**

See MARRIED WOMAN.

PHARMACY ACT

That section 8 of 48 Vict. (Q), ch. 36 which says that all persons who, during five years before the coming into force of the Act, were practising as chemists and druggists in partnership with any other person so practising, are entitled to be registered as licentiates of pharmacy, does not apply to a certified apprentice under the Act of 1875 who had formed a partnership with his brother, a licensed druggist, and had carried on business in his brother's name from 1878 to 1885; that such contract of partnership, being in violation of the Act of 1875, was null and void, and the

Act of 1885 did not legalize such partnership.—TORRANCE, GILL, LORANGER, JJ., 31 OCT. 1885, *Brunet vs Association Pharmaceutique.* **I, S. C. 485.**

CITATIONS.—*Pont, Société, No.* 46—*Demolombe, art.* 1128.

(Reversing the judgment in Review M. L. R. 1 S. C. 485). That the appellant, who had, during more than five years before the coming into force of the Act 48 Vict. (Q) ch. 36, practised as a chemist and druggist in partnership with his brother, and in his brother's name, was entitled, under sect. 8 of the Act, to be registered as a licentiate in pharmacy. The section in question must be construed as applying to those who have illegally practised as chemist and druggists and it was immaterial whether the appellant had practised in his own name or in a partnership contrary to law, the illegality in either case being covered by the act. —DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 JAN. 1886, *Brunet vs Association Pharmaceutique.* (Affirmed by Supreme Court 14 S. C. R. 738). **II, Q. B. 362.**

See DRUGGIST—RESPONSIBILITY.

PHYSICIAN

In an action by a physician for professional services to defendant's wife, where it was admitted by the defendant that he had employed the plaintiff previous and up to date of the account sued for, and that he was aware of the attendance subsequently, that the oath of the physician was admissible under art 2260 C. C. as amended by 32 Vict. c 32, s. 1 (R. S. Q. 5851) to make proof as to the nature and duration of the services. Dansereau vs Goulet, 5 L. N. 133, distinguished.—JOHNSON, DOHERTY, JETTÉ, JJ., 29 SEPT. 1888, *Baynes vs Brice.* **IV, S. C. 353.**

That the oath of the physician or surgeon, which, under R. S. Q. 5851, makes proof as to the nature and duration of the services, can only be rebutted by the clearest and most precise testimony, which was not found by the Court in the present case, in which by the evidence of doctors who had not seen the patient before or during the illness, and who

did not speak positively, it was sought to reduce a physician's account, for treating a case of fracture of the collar bone, from $175 to $100.—LACOSTE, BOSSÉ, BLANCHET, WURTELE, TAIT, JJ., 27 NOV. 1891, *Bourgeau & Brodeur.*

VII, Q. B. **171.**

PLEADING

See ACTION — LESSOR AND LESSEE — PROMISSORY NOTE—PROCEDURE.

1. Answer to plea—New allegations of fact.—That the only answer admissible to a negative plea, is a general replication (art. 148 C. C. P.)

That an answer to a plea containing new allegations of fact, which in effect give rise to a new cause of action, will be rejected on motion.—MATHIEU, J., 17 JUNE 1889, *Harwood vs Fowler.* **VII,** S. C. **271.**

2. Article 144 C. P. C.—To an action to recover the value of a mare killed on the defendant's line, the defendants pleaded specially that the fences on each side of their railway were good and sufficient; that there was no negligence; and that they had never been put en demeure with regard to their fences being out of order. This was followed by a defense en fait. In the course of the enquête, there was evidence which indicated that the locality where the accident occured was not on the defendant's railway line, but on that of the Grand Trunk Co. which controls the defendant's line. On defendants offering evidence on this point the Court below maintained the objection to the testimony on

the ground that there was no contestation raised as to the road on which the accident occurred.

HELD:—That the defendants having pleaded specially, without raising any question as to their ownership of the road, the plaintiff was not obliged to prove the truth of an allegation which has not been specially denied, and which must be taken as admitted.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 21 DEC. 1888, *Cie Chemin de Fer M. & C. & Bte Marie.* **IV,** Q. B. **283.**

3. Compensation.—Que l'on ne peut, dans un même plaidoyer nier d'abord la dette, puis alléguer que dans tous les cas elle est compensée par un compte à compte, ces allégations étant contradictoires.

Qu'à une action sur compte pour vente et livraison de certaines marchandises on ne peut opposer en compensation des dommages soufferts par suite de la livraison de marchandises de qualité inférieure, mais en vertu d'un autre contrat que celui sur lequel est basée l'action; dans ce cas il faut procéder par demande incidente.—TASCHEREAU, J., 16 DÉC. 1890, *Lafrenière vs McBean.* **VII,** S. C. **37.**

4. Custom.—That a custom of bankers cannot be put in evidence unless it has been specially pleaded.—TAIT, J., 31 NOV. 1888, *Maritime Bank vs Union Bank.* **IV,** S. C. **244.**

5. Declaration—Mis en cause.—Que si la déclaration ne contient aucune allégation positive contre une partie mise en cause, cette dernière pourra se faire renvoyer des fins de la demande sur défense en droit.—JETTÉ, J., 31 OCT. 1887, *Plante vs Artisans.* **IV,** S. C. **185.**

6. Exception dilatoire.—Que le fait que dans une action en partage toutes les parties intéressées n'ont pas été mises en cause, ne donne pas lieu à une exception à la forme, mais à une exception dilatoire.—GILL, J., 6 JUIN 1887, *Montchamp vs Montchamp.* **III,** S. C. **98.**

7. Exception to the form.—Que l'on ne peut par exception à la forme demander le renvoi d'une action parce que le demandeur au lieu d'une action assumpsit aurait dû en intenter une en reddition de compte; ce moyen devant être

soulevé au fond et non à la forme.—PAGNUELO, J., 10 NOV. 1890, *Kent vs Gravel.* **VII,** S. C. **159.**

8. Foreign judgment.—Que quoique la section 4 du chapitre 14 du statut de Québec 40 Vict., décrète que dans toute poursuite intentée sur un jugement rendu dans une autre province du Canada, toute défense qui aurait pu être faite à la poursuite originaire peut être plaidée, si le défendeur n'a pas été originairement assigné personnellement ou en l'absence d'assignation personnelle si le défendeur n'a pas comparu, néanmoins, les dispositions de ce statut ne peuvent être opposées à un plaidoyer par une réponse en droit, mais la défense faite devra être jugée au mérite, surtout lorsque le demandeur n'a pas allégué dans sa déclaration les causes de sa première action.—MATHIEU, J., 23 MAI 1888, *Green vs Brooks.* **IV,** S. C. **475.**

9. Joinder of plaintiffs.—That the joint interest of plaintiffs is matter of proof.—*Crawford & Protestant Hospital.* **IV,** S. C. **215.**

CITATIONS.—*Carter vs Breaky*, 3 *Q. L. R.* 113—*Bourdon vs Bénard*, 15 *L. C. J.* 16—*Kerr, on Injunction, p.* 167—*Bourgouin vs The Montreal Northern Colonization Ry. Co.* 19 *L. C. J.* 57—*Lang & Temporalities Board, etc.*, 8 *L. N.* 3—*Black & Stoddart*, 4 *L. N.* 282—*N. B. & M. F. & L Ins Co. vs Lambe*, 27 *L. C. J.* 222—*Pigeau, cap.* 3 *s.*—*Carou, Action possessoires vs Denonciation de Nouvel Œuvre.*

10. Misnomer.—A misnomer is ground for an exception à la forme, and cannot form the subject of a plea to the merits, more particularly where the error complained of is trivial and unimportant, e. g. the description of the defendant as "La Corporation des Commissaires d'École d'Hochelaga" instead of Les Commissaires d'École d'Hochelaga. —DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Commissiaires Écoles Hochelaga & Abattoirs.* **III,** Q. B. **116.**

CITATIONS.—*Edmonstone & Chilas*, 2 *L. C. J. p.* 192—*Corporation de St. Jérusalem vs Quinn* 31 *L. C. J.* 234—*Morey v. Gaherty*, 2 *L. N.* 108—*Graham v. Morrisette*, 5 *Q. L R.* 346.

11. Nullity of deed invoked by answer to plea.—A deed attacked as made in fraud of a creditor cannot be annuled by the Court on a pleading e. g. a special answer to a plea, if the conclusions of the pleading do not ask that the nullity of the deed and radiation of the registration be pro-

nounced by the Court.—Taschereau, Mathieu, Davidson, JJ., 30 dec. 1887, *Charlebois vs Sauvé.* **III,** S. C. **312.**

12. Quality of plaintiffs.—Que, dans une action par une veuve, pour dommages soufferts par la mort de son mari à l'emploi du défendeur, il n'est pas nécessaire qu'elle indique la date et l'endroit de son mariage, il suffit qu'elle se décrive comme veuve de son dit époux. — Gill, J., 20 juin 1888, *McMahon vs Ives.* **IV,** S. C. **76.**

PLEDGE

I.—Article 1975 C. C.
II.—Debentures—Value.
III.—Discussion.
IV.—Of goods for pre-existing debt — Transfer of bill of lading.
V.—Rents transferred as security — Discharge of debt by transferee.
VI.—Sale by pledgee.
VII —Sale of effects in possession of third party.
VIII.—Work necessary for preservation of thing pledged.

See BANK — BUILDING SOCIETY — INSOLVENCY — SALE—TRUSTEES.

1. Article 1975 C. C. —In order to have the benefit of art. 1975 C. C.—which provides that "if another debt be contracted after the pledging of the thing and become due before that for which the pledge was given, the creditor is not obliged to restore the thing until both debts are paid" —the creditor must plead this defence specially.—*Pauzé & Senécal.* **V,** Q. B. **461.**

2. Debentures—Value.—Where debentures are deposited with a creditor as security for a specific debt due to him by the depositor, and the debt is tendered to the creditor, the latter is obliged, in default of restoring the thing pledged to pay the value of the debentures at the time the restitution is demanded; and where no prof is made to the contrary, this will be assumed to be their nominal or par valuea.—Dorion, Monk, Tessier, Cross, Baby, JJ., 21 sept. 1886, *Pauzé & Senécal.* (Affirmed by Privy Council 12 L. N. 330). **V,** Q. B. **461.**

3. Discussion.—Qu'une personne qui a une action en dommages contre son débiteur et qui en a reçu un gage, n'est pas tenu de discuter le gage avant de prendre l'action en dommage.—PAGNUELO, J., 21 FÉV. 1890, *Banque d'Epargnes vs Geades* **VI,** S. C. **243.**

4. Of goods for pre-existing debt–Transfer of bill of lading. —That the transfer of goods, then stored in New York, by a debtor apparently solvent, to his creditor, by endorsement of the bill of lading, as security for an antecedent indebtedness as well as for a note at the time discounted by the creditor, is valid, and the creditor may apply the proceeds of the pledge to the antecedent debt, and recover on the note discounted at the time.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 27 NOV. 1890, *Watson & Johnson.*

VII, Q. B, **147.**

CITATIONS.— *Perkins & Ross*, 6 *Q. L. R.* 65 — *Robertson & Lajoie*, 22 *L. C. J.* 169—*Hotte & Currie*, 2 *L. N.* 348.

5. Rents transferred as security — Discharge of debt by transferee. — D. bought certain real property for which he agreed to pay an annual sum during the lifetime of the vendor, and as security for the payment of this annual sum the vendor reserved the right to collect the rents of the property, the purchaser undertaking to make up any deficiency which might occur. By his last will the vendor discharged D. from all debts which he might owe him (the testator) at the time of his death.

That the rents of the property were merely pledged to the vendor for the payment of the annual sum above mentioned, and that D. remained the owner of the rents. Hence, although it appeared that he was indebted to the vendor on account of the annual payments at the time of the vendor's death, yet, being discharged from this debt by the will, he was entitled to the rent due by the tenant of the property at the time of the vendor's death ; and the vendor's executors, who had collected this rent, were ordered to refund it to D. — DORION, CROSS, BABY, BOSSÉ, JJ., 20 MARCH 1890, *Jetté & Dorion.* **VI,** Q. B. **438.**

6. Sale by pledgee.—An obligation having been trans-

ferred merely by way of collateral security for a debt the pledgee sold the obligation so transferred to the defendant who, with knowledge of all the facts, collected the full amount thereof from the debtor :

That the sale by the pledgee was a nullity under C. C. 1487 and that the pledgor might maintain an action against the defendant to recover the amount received by him in excess of the debt secured by the pledge.

Under the circumstances of the case, it was not essential to allege that the pledgee had been paid the debt secured by the pledge. — JOHNSON, PAPINEAU, LORANGER, JJ., 31 MAY 1886, *Leduc vs Girouard.* **II,** S. C. **470.**

7. Sale of effects in possession of third party.—Que d'après les règles d'interprétation, un acte par lequel un débiteur vend à son créancier des meubles qui sont en la possession d'un tiers avec stipulation que s'il ne paie pas ce qu'il doit à son créancier dans un certain temps, le créancier deviendra propriétaire des meubles, doit être considéré, s'il ne paraît intention contraire, comme conférant au créancier un droit de gage sur ces meubles.

Que la possession que le tiers avait déjà, suffit pour satisfaire aux exigences de la loi (C. C. 1970) s'il consent à retenir ces meubles sujet aux droits du créancier. — JOHNSON, DOHERTY, MATHIEU, JJ., 30 JAN. 1886, *Paquette vs Rainville.* **II,** S. C. **123.**

CITATIONS. — 28 *Laurent*, 476 — 7 *Toullier*, 89—7 *Boileux*, 129 — *Lefebvre vs Bruneau*, 14 *L. C. J.* 268.

8. Work necessary for preservation of thing pledged. — That the possession of the trustees of the South Eastern Railway Company as representing the bond holders, is that of pledgees, and they are liable to third parties for all work performed for the road, where it appears that such work was necessary for the maintenance of the road in running order, though the work was executed before the road passed into the hands of the trustees. — JETTÉ, J., 19 NOV. 1887, *Wallbridge vs Farwell.* **III,** S. C. **238.**

By the Act 43-44 Vict. (Q) ch. 49, the South Eastern Railway Company were authorized to issue mortgage bonds

to a certain amount and to convey the railway franchise, rights and interest to trustees representing the bond holders. The trustees were empowered to take possession of the road in the event of default by the company to pay the bonds, or interest thereon for 90 days. It was also provided (by sec. 10) that neither the company nor the trustees should have power to cease running any portion of the road. The respondent furnished supplies necessary for operating the road, after the execution of a trust deed in conformity with the statute above mentioned, but before the trustees took possession of the road for default by the company to pay interest on the bonds. The respondent first sued the company for the amount of his claim, and obtained judgment, and then brought the present action for the same causes against the trustees.

(Reversing the judgment of Jetté, J. M. L. R. 3 S. C. 238). That the effect of the act above mentioned, and of the deed executed in conformity therewith, was not to convey the possession of the road to the trustees from the date of such deed so as to constitute them pledgees; and the trustees were not liable even for supplies necessary for operating the road, furnished before the time necessary for operating the road, furnished before the time they assumed possession

That although the supplies for which payment was claimed in this case were furnished at a time when the railway company were in default to pay interest on bonds, and when the trustees might have taken possession under the terms of the Act, but neglected to do so, the company were not thereby constituted negotiorum gestor of the trustees, so as to render the latter liable for supplies necessary for the operation of the road, obtained by the company before the trustees took possession. — Tessier, Cross, Church, Bossé, Doherty, JJ., 28 may 1889, *Farwell et al. & Wallbridge.*

VI, Q. B. 77.

POLICE

Qu'un officier de justice lorsqu'il arrête légalement un prisonnier peut repousser la force par la force, mais qu'il

n'a pas le droit d'employer une plus grande violence qu'il est nécessaire.

Que s'il frappe un prisonnier sans nécessité ou plus qu'il n'est nécessaire, il commet un assaut injustifiable. — PAGNUELO, J., 16 FEV. 1891, *Courcelles vs Montréal.*

VII, S. C. **154.**

See MUNICIPAL CORPORATIONS.

POLICY

See INSURANCE (LIFE).

POLLUTION OF STREAM

See NUISANCE.

POOL TABLES

Qu'une table de pool n'est rien autre chose qu'un billard, et qu'un règlement de la Cité de Montréal imposant une taxe de $100 sur les billards comprend également les tables de pool. — LORANGER, J., 2 FEV. 1885, *Vincelette vs deMontigny.* **I,** S. C. **381.**

CITATIONS.—1 *Abbott, on Corporations, pp.* 139, 495, 514, 515, 487, 414, 512, 513.

POSSESSION

Qu'en l'absence de fraude ou de collusion, un tiers propriétaire de meubles qui ont été saisis et vendus judiciairement, n'a aucun droit en revendication contre l'adjudicataire qui en a payé le prix, son recours est sur le produit, s'il n'est pas encore distribué, ou s'il l'est, contre le saisissant pour la valeur du meuble. — MATHIEU, J., 25 JUIN 1885, *MacKie vs Vigeant.* **I,** S. C. **382.**

Joint use of a thing, where one of the parties enjoys the use under a title obliging him to pay an annual sum for such use, cannot confer a right of co-ownership, however long such joint use may have lasted. — TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 23 JAN. 1889, *Archambeault vs Poitras.*

V, Q. B. **167.**

See ACTION EN DENONCIATION DE NOUVEL ŒUVRE—LAND—PLEDGE—RAILWAY.

POST CARD

See LIBEL AND SLANDER.

POWDER MAGAZINE

That a powder manufactory where a quantity of powder exceeding 25 lbs is kept, is a powder magazine within the meaning of 41 Vict. (Q.) cap. 3 sec. 170. — DORION, MONK, RAMSAY, CROSS, JJ., 23 NOV. 1885, *Hamilton Powder Co. & Lambe.* **I,** Q. B. **460.**

PRACTICE

See PROCEDURE.

PRESCRIPTION

I.—ACTION.
II.—ARTICLE 2261 C. C.
III.—BOARD.
IV.—C. S. C. c. 85 s. 3.
V.—CIVIL FRUITS.
VI.—DAMAGES.
VII.—DELIT.
VIII.—HYPOTECARY ACTION.
IX.—INCORPORATED CITY—DAMAGES RESULTING FROM NEGLECT TO MAINTAIN ROAD—LIMITATION OF THREE MONTHS NEED NOT BE PLEADED.
X.—INJURY RESULTING IN DEATH—CLAIM OF THE WIDOW.
XI.—INTEREST.
XII.—INTERRUPTION.
XIII.—INTERVENTION.
XIV—JUDGMENT ON PROMISSORY NOTE.
VX.—NON JURIDICAL DAY.
XVI.—SPECIAL TAXES.

See COMPANY—COMMUNITY—INSOLVENT ACT—INSURANCE—MONTREAL—RAILWAY—SUBSTITUTION—TUTOR AND MINOR.

1. Action.—1. *Based on pleading.* — Prescription of any right of action, which may arise out of a pleading does not run from its date, but from its disposal by the Court — DAVIDSON, J., 15 NOV. 1887, *Bury vs Corriveau Silk Mills.* **III,** S. C. **218.**

CITATIONS.—*The Mayor of Montreal vs Hall,* 12 *S. C. R.* 75.

2. *By principal against agent.*—An action by the prinpal for the reimbursement of the money, is not a claim for damages resulting from an offence or quasi offence, and is not prescribed by two years.—TESSIER, CROSS, BABY, BOSSÉ, DOHERTY, 19 JUNE 1890, *Moodie & Jones.* (Confirmed by Supreme Court 19 S. C. R. 266). **VI,** Q. B. **354.**

3. *Of shareholders against directors.* — Que l'action en dommage que les actionnaires d'une compagnie incorporée peuvent prendre contre les directeurs, pour mauvaise administration, paiement de dividendes fictifs pris à même le capital, etc., ne se prescrit que par trente ans.—PAGNUELO, J., 24 FEV. 1890, *Banque d'Epargnes vs Geddes.* **VI,** S. C. **243.**

2. Article 2261 C.C.—That a claim for the value of wood wrongfully cut and carried away from plaintiff's land, is not prescribed by two years, the prescription of C. C. 2261 par. 2 not being applicable to such claim. — DORION, MONK, TESSIER, CROSS, BABY, JJ., 9 DEC 1884, *Eaton & Murphy.* **IV,** Q. B. **337.**

3. Board.—Que lorsqu'une personne pensionne pendant plusieurs années chez une autre sans ne lui rien payer, mais dans son testament met un legs de $6 par mois pour sa pension, déclarant d'ailleurs qu'il n'entend payer sa pension qu'à sa mort, les héritiers de ce pensionnaire défunt ne peuvent plaider prescription à une action en recouvrement de cette pension. — PAPINEAU, J., 17 OCT. 1887, *Mayer vs Leveillé.* **III,** S. C. **190.**

4. C. S. C. c. 85 s. 3. — That the prescription of three months under C. S. C. ch. 85 s. 3 is not applicable where the injury is sustained without the limits of the city or town, though the road be made and maintained by the corporation of the city or town. — DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 22 JAN. 1890, *Laforce & Sorel.* **VI,** Q. B. **149.**

CITATIONS.—*Corporation de Québec & Howe,* 13 *Q. L. R.* 315—*Corporation de Sherbrooke & Dufort M. L. R.* 5 *Q. B* 266.

5. Civil fruits.—Municipal assesments are included under the term civil fruits "which are prescribed after five years

C. C. 2250."—TORRANCE, J., 10 NOV. 1886, *Montreal vs Robinson.* **II,** S. C. **429.**

6. Damages.—Que l'action par laquelle le demandeur réclame du défendeur des dommages intérêts pour arrestation illégale et emprisonnement en vertu d'un capias se prescrit par deux ans.

Que cette prescription n'est pas interrompue seulement par l'émanation de l'action mais par signification effective de l'action avant l'expiration des deux ans qui suivent la date du jugement rejetant le capias. — JETTÉ, J., 18 OCT. 1886, *Mansfield vs Dodd.* **II,** S. C. **324.**

Qu'une action en dommage par un ouvrier contre son maître pour injures corporelles reçues pendant qu'il travaillait pour lui, et dû à la négligence du maître, ne se prescrit que par deux ans. — MATHIEU, J., 24 NOV. 1887, *Caron vs Abbott.* **III,** S. C. **375.**

7. Delit.—Que la prescription de deux ans pour délit (C. C. art. 2261) ne s'applique pas à une action en recouvrement d'une certaine somme payée sous certaines conditions et que le déposant répète lorsque ces conditions n'ont pas été remplies.—JETTÉ, J., 17 SEPT. 1886, *Jones vs Moodie.* **IV,** S. C. **58.**

8. Hypothecary action.—Que l'action hypothècaire n'interrompt pas la prescription à l'égard du débiteur personnel qui peut intervenir dans cette action et plaider la prescription acquise depuis la signification au tiers détenteur.—TASCHEREAU, J., 13 MARS 1886, *Montréal vs Murphy.* **III,** S. C. **161.**

9, Incorporated city — Damages resulting from neglect to maintain road—Limitation of three months need not be pleaded.—Section 3 of C. S. C., ch. 85 (R. S. Q. 4616, par. 3) applies to the city of Sherbrooke and no action of damages thereunder can be maitained unless brought within three months after the same have been sustained.

The Court is obliged to apply the prescription though not pleaded by the defendant. — DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 20 NOV. 1889, *Sherbrooke & Dufort.* **V,** Q. B. **266.**

CITATIONS.—*Corporation of Quebec & Howe*, 13 *Q. L. R.* 315—*Art.* 2188 *C. C.*

10. Injury resulting in death.— The husband of the plaintiff was injured while engaged in his duties as defendant's employee, and the accident resulted in his death about fifteen months afterwards No action for indemnity was instituted during his lifetime. In an action for compensation brought by his widow within one year after his death.

(Wurtele, J. diss.) That the action of the widow and relations under art. 1056 C. C., in a case where the person injured has died in consequence of his injuries without having obtained indemnity or satisfaction, is prescribed only by the lapse of a year from the date of death; and the action lies even supposing that the date of the death the injured person's action was prescribed by the expiration of one year from the date of injury the fact that prescription had been acquired against the injured party not being equivalent to his "obtaining indemnity of satisfaction" within the meaning of art. 1056.

(Taschereau, J. diss.) That the prescription of one year under art. 2262 C. C. applies to all actions for bodily injuries.

(Wurtele, J. diss.) That it was necessary to plead prescription in this case, the prescription invoked by the defendants at the argument not being one against the plaintiff's action, and not falling under the provisions of art. 2267 C. C, but being the consequence of another prescription acquired against a third party, whose legal representatives the plaintiff was not. Further, that the defendants had waived any pretension they might have to invoke prescription by their failure to raise the point during a protracted litigation of five years.—TASCHEREAU, WURTELE, DAVIDSON, JJ., 31 JAN. 1889, *Robinson vs C. P. R.* **V, S. C. 225.**

CITATIONS.—*Morrison v. Mullins, Morrissette v. Catudal*, 16 *R. L.* 114, 486 *Denisart vo Injure—Underhill, on the Law of Torts, p.* 174.—*Saunders, on the Law of Negligence*, 229—*Grenier vs City of Montreal*, 21 *L. C. J. p.* 215 — *Smith, on the law of Negligence*, 171—*Endlich, on Statutes, No.* 468.

The husband of the respondent was injured while engaged in his duties as appellant's employee, and the injury resulted in his death about fifteen months afterwards. No action

for indemnity was instituted by him during his lifetime. In an action for compensation brought by his widow (under art. 1056 C. C.) within one year after his death, the jury found negligence on the part of appellants and awarded the respondent damages.

(Affirming the judgment of the Court of Review M. L. R. 5 S. C. 225). That the action of the widow and relation under art. 1056 C. C., in a case where the person injured has died in consequence of his injuries without having obtained indemnity or satisfaction, is a right distinct from that of the injured person, and is prescribed only by the lapse of a year after the date of death.

That the action under art. 1056 C. C., exists, even supposing that at the date of death the injured person's action was precribed by the expiration of one year from the date of the injury, the fact that the claim of deceased was extinguished by prescription at the time of his death not being equivalent to his "having obtained indemnity or satisfaction" within the meaning of art. 1056 C. C. — DORION, CROSS, BABY, BOSSÉ, DOHERTY, JJ, 19 JUNE 1890, *C. P. R. vs Robinson*. (Reversed by Supreme Court 14 S. C. R. 105). **VI,** Q. B. **118.**

CITATIONS.—*Carows v. Abbott, M. L. R.* 3 *S. C.* 375.

11. Interest. — 1. *Before and after the Code.* — Que, en vertu des arts. 2250, 2270 du code civil, les intérêts échus avant le premier août 1866, date de la mise en force du code ne se prescrivent que par 30 ans et que ceux échus depuis cette date dont la prescription n'a commencé à courir que depuis la mise en force du code, se prescrivent par 5 ans.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 26 MAI 1885, *Dorion & Dorion*. **I,** Q. B. **483.**

That art. 2250 C. C. which declares that, with the exception of what is due to the Crown, all arrears of interst are prescribed by five years, applies to a judicial condemnation.—LORANGER, WURTELE, DAVIDSON, JJ., 31 MARCH 1890, *Jetté vs Crevier*. (Confirmed in appeal 1 R. O. Q. B. 281). **VI,** S. C. **48.**

CITATIONS.—*Nantel v. Binette*, 12 *L. N.* 348—*Almour v. Harris, M. L. R.* 2 *Q. B.* 439—*Chapman v. Gordon*, 85, 196—1 *Néron, Repertoire, vo. Code Michaud*, 782—2 *Merlin, Rep. Jur.*, 73—16 *Isambert*, 233—2 *Troplong*, (*Prescription*) 502

—7 *Rolland de Villargues, vo. Prescription, p.* 267, *No.* 108—*Marcadé, Prescription p.* 225—3 *Mourlon, p.* 898—2 *Vazeilles, No.* 612—32 *Laurent, Nos.* 435, 448, 463—3 *Baudry, Lacantinerie, No.* 1723—8 *Aubry v. Rau,* 436, *No.* 774—21 *Duranton,* 682—1 *Proud'hon, Usufruit, No.* 234. *p* 284—3 *Devilleneuve and Gilbert Jur. du* 19*th S. vo. Interêts, Nos.* 218, 219, 220 *and vo. Prescription,* 269, 270.—*Lortie vs Stevenson,* 1 *R. de L.* 190—*Vinet vs Gauvin,* 1 *R. de L.* 237—*Sinjohn vs Ross,* 8 *L. C. R.* 509.

12. Interruption of.—That the mention of a debt by a debtor, in the inventory of the succession of his *auteur*, is an acknowledgment of the debt which has the effect of interrupting prescription.—DOHERTY, PAPINEAU, LORANGER, JJ., 30 JAN. 1886, *Christin vs Archambault.* **II,** S. C. **391.**

CITATIONS.—*Pothier, oblig. No.* 692—2 *Aubry et Rau,* 355–32 *v Laurent, No.* 120.

That a judgment obtained in a foreign country upon a promissory note made therein has the effect of interrupting prescription.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 FEB. 1884, *Almour & Harris.* **II,** Q. B **439.**

CITATIONS.—*C. C. art* 2224—*C. N. art.* 2244—2 *Bourjon,* 571—*Dalloz,* 1835, 2*e P., p.* 127—33 *Laurent, p.* 175—*C. C. art.* 2265—*King v. Demers,* 15 *L. C. J.* 129—10 *Toullier, Nos.* 76, 77, *No.* 113.

Le fait d'offrir en règlement d'un billet une somme moindre que le montant de ce billet constitue une interruption de prescription à l'égard de ce billet.

La reconnaissance par un débiteur que la capital d'une créance est dû ne constitue pas une interruption de prescription quant aux intérêts de cette dette.—PAGNUELO, J., 3 NOV. 1890, *Farrell vs Brand.* **VII,** S. C. **402.**

That a plea of compensation to an action on promissory notes due for more than five years, in which the defendant invokes credits which he claims, should be allowed in deduction of the notes sued upon, operates an interruption of prescription.—JOHNSON, LORANGER, WURTELE, JJ., 17 MARCH 1890, *Brodeur vs Collette.* **VII,** S. C. **461.**

CITATIONS.—*Fuches vs Légaré,* 3 *Q. L. R.* 11—*Caron vs Cloutier* 3 *Q. L. R.* 230—*Walker vs Sweet,* 20 *L. C. J.* 29—*Bowker & Fenn* 10 *L. C. J.* 120.

13. Intervention.—Where an action was instituted before the expiration of the delay fixed by a statute for contesting assessment rolls the right of an intervenant taking the same conclusions as those of the original action was not barred though the delay had expired before the filing of the intervention.—RAMSAY, TESSIER, BABY, DOHERTY, CARAN, JJ., 24 NOV. 1884, *Hubert vs Montreal.* **I,** Q. B. **237.**

14. Judgment on promissory note.—Que, dans une action pour rendre éxécutoire un jugement rendu sur billet promissoire dans un pays étranger, le défendeur ne peut opposer la prescription de cinq ans.—JETTÉ, J., 27 JUIN 1887, *Dunbar & Almour.* **III,** S. C. **142.**

15. Non juridical day.—That Art. 3 C. C. P. which say that "if the day on which anything ought to be done in pursuance of the law is a non juridical day, such thing may be done with like effect on the next following juridical day", does not apply to matters of prescription and déchéance de droit.—DELORIMIER, J., 21 NOV. 1890, *Dechene vs Montreal.* (Confirmed in appeal 1 R. O. Q. B. 206). **VII,** S. C. **447.**

16. Special taxes.—Que les taxes municipales spéciales imposées pour la construction d'égout dans la cité de Montréal ne sont pas des taxes ordinaires et n'entrent pas dans la catégorie des fruits civils échéant jour par jour et que par suite, elles ne sont sujettes à aucune prescription particulière et ne peuvent se prescrire que par trente ans.—LORANGER, J., 30 NOV. 1887, *Montréal vs Cuvillier.* **III,** S. C. **265.**

PRINCIPAL AND AGENT

I.—ACCOUNT SALES RENDERED DURING SERIES OF YEARS—ACQUIESCENCE—PROOF.

II.—ACQUIESCENCE AND RATIFICATION.

III.—AGENT.

(1) Exceeding authority.

(2) Not disclosing principal.

(3) Sued personnally.

(4) Acting within scope of his apparent authority.

IV.—AUTHORITY OF AGENT.

V.—COMPOSITION—AUTHORITY TO ACCEPT—CLERK—NOVATION.

VI.—CONSIGNEE TAKING GOODS AT FIXED PRICES, PROFITS OVER TO BE HIS—RIGHTS OF CONSIGNOR.

VII.—DIVERSION OF MONEY ENTRUSTED TO AGENT FOR A SPECIFIC TRANSACTION.

VIII.—GENERAL AGENT—PERSON HELD OUT TO THE PUBLIC AS—AUTHORITY TO DRAW BILL.

IX.—INSOLVENCY.

X.—MANDATARY SUBSCRIBING FOR SHARES IN HIS OWN NAME.

XI.—MONEY DEPOSITED BY TENDER WITH NOTARY—RESPONSIBILITY FOR DEFAULT OF NOTARY.

XII.—RESPONSIBILITY.

(1) Of principal.

(2) Of agent.
(3) For acts of person managing business.

XIII.—Revocation of agency—Agent's right to indemnity—Prospective profits.

XIV.—Rights of mandator against third parties.

XV.—Sale—Agent—Quantum meruit—Commission.

See ACCOUNT—EVIDENCE—EXECUTOR—BANKS AND BANKING—GAMING CONTRACT—INSURANCE (FIRE)—FRAUD AND FALSE REPRESENTATIONS—TRUST.

1. Account sales rendered during series of years—Acquiescence—Proof.—The respondents, consignees at Montreal, under a written agreement, of appellants in Belfast, Ireland, accounted from time to time for the goods consigned to them but never made any return for the price of the cases in which the goods were packed. These cases were always charged in the appellants' accounts but the only reference made by the appellants to the omission to account for the packing cases, was contained in a letter in which they merely said :—" We observe you do not make any return for the cases." The written agreement did not make any mention of the cases. Three years later the account was closed without any reservation as to the packing cases. The appellants afterwards brought an action in assumpsit for the price of the cases.

That the action could not be maintained seeing that the appellants had notice during three years, through the respondents' accounts, that the packing cases were not being allowed for.

That parol evidence was inadmissible to vary the terms of the written agreement by proving that there was an understanding that the cases should be paid for—Tessier, Cross, Baby, Church, JJ., 17 sept. 1887, *The Ulster Spinning & Foster.* **III, Q. B. 396.**

Citations.—*Dudley & Darling, M. L. R.* 2 *Q. B.* 458.

2. Acquiescence and ratification.—Appellant and respondent are banks,—the former a savings bank and the latter an ordinary banking institution. On the 13th Sept., 1873, C., respondent's cashier, obtained a loan in his own name from appellant, on the security of shares of the respondent bank,

standing also in his own name. These shares declining in value, C. substituted therefor notes the property of respondent, intimating that the loan was made to respondent, and not to himself personnally. On the 23rd July, 1875, the transaction was entered on the books of respondent as being a transaction of respondent and not of C. personnally, and on the 29th July, 1875, the pass-book between appellant and respondent was altered in accordance with the same pretension.

That a principal may, by subsequent ratification, or even by tacit acquiescence, render himself responsible to a third party fot the act of his agent in excess of his authority; and that in this case the respondent, being well aware of appellant's pretension, and having acquiesced in it until 5th August, 1876, and obtained further loans from the appellant, must be held to have ratified the act of its agent C., and became bound thereby.—DORION, RAMSAY, CROSS, BABY, JJ., 25 JAN. 1886, *Banque d'Epargnes & Banque Jacques-Cartier.* (Reversed by privy council 11 L. N. 66).

II, Q. B. **64.**

3. Agent.—1. *Exceeding authority.*—Qu'une procuration générale dans les termes suivants: " Je vous autorise à conclure tous contrats que vous jugerez à propos avec les cultivateurs pour la culture, cette année, de la betterave à sucre et aussi les travaux pour sa culture " n'autorisait pas le mandataire d'acheter des cultivateurs des betteraves à sucre, et ne pouvait lier le mandant vis-à-vis des tiers pour le prix d'achat de ces betteraves.—MOUSSEAU, J., 13 JUIN 1885, *Jarry vs Sénécal.* **I,** S. C. **400.**

That an agent who has only a limited authority, and who, by going beyond his authority, even while acting in good faith, causes his principal to suffer a loss, is obliged to pay the loss. And so, where a person instructed a bank clerk to give a cheque for the amount of a certain account, and the clerk, late at night gave the party the money instead, thereby preventing his principal from rectifying an error which existed in the account, it was held that the clerk could not recover from his principal the amount paid in excess of what was really due. — DORION, CROSS, BABY, CHURCH, JJ., 17 SEPT. 1887, *Shea & Prendergast.*

III, Q. B. **439.**

2. *Not disclosing principal.*—Qu'un mandataire qui achète pour son mandant sans déclarer sa qualité, est responsable personnellement.

Que lorsque le mandant fait affaires sous le nom du mandataire, le fait que ce dernier, après avoir acheté aurait signé des billets du nom de la société et les aurait donnés au vendeur en paiement, n'est pas une déclaration suffisante de sa qualité pour dégager sa responsabilité personnelle.—MATHIEU, J., 25 JUIN 1885, *Pratte vs Maurice.*

I, S. C. **364.**

3. *Sued personally.*—Que lorsqu'une action est basée sur un écrit du défendeur, ce dernier, s'il prétend n'avoir alors agi que comme l'agent d'un tiers, doit prouver légalement que le demandeur connaissait, lors de la signature de l'écrit, que le défendeur agissait comme agent seulement. — DOHERTY, GILL, LORANGER, JJ., 31 JAN. 1887, *Menard vs Leroux.*

III, S. C. **70.**

4. *Acting within scope of his apparent authority.*—Where wines were ordered by the secretary-treasurer of a club, who had apparent authority to purchase supplies for the club, and the wines were invoiced and consigned to the club, that the latter were liable for the price. To establish a defence in such case it would be necessary to show not only that the act of the agent was unauthorized, but that the party dealing with the agent had notice thereof. — WURTELE, J., 26 NOV. 1890, *Gould vs Fish and Game Club.*

VI, S. C. **480.**

4. Authority of agent.— The purchaser of a carload of barley paid the price thereof to the vendor's agent from whom he received the grain, and who was, moreover, named in the bill of lading as the consignee.

That the bill of lading constituted a written authority to the consignee to control the consignment, and having delivered it to receive the price; and his receipt was a valid discharge to the purchaser.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Lambert & Scott.* **II,** Q. B. **340.**

CITATIONS.—*Clark vs Lamer,* 4 *L. C. J.* 30—*Johnson & Lamer,* 6 *L. C. J.* 77—*Crane & Nolan,* 19 *L. C. J.* 309—*Whitehead & Cusiels,* 21 *L. C. J.* 1.

5, Composition—Authority to accept—Clerk—Novation.—That the authority of a clerk to bind his employer to agree to a composition with a debtor must be of an express and unequivocal character. A clerk attending a meeting of creditors on behalf of his employer will not be assumed to possess such power.

The assent of a creditor at a meeting of creditors, to a composition, even if proved, would not bind him to accept the terms of a deed of composition and discharge by which the original claims of the creditors are novated and replaced by composition notes.—DAVIDSON, J., 28 JUNE 1888, *Vineberg vs Beaulieu.* **IV,** S. C. **328.**

6. Consignee taking goods at fixed prices, profits on these to be his—Rights of consignor.—The fact that an agent to whom goods are consigned for sale is to have for himself all that he can get over a schedule price, does not make him the owner of the goods, and the price, when collected by his assignee after his insolvency, does not fall in his estate, except such portion thereof as represents the agent's profit. And so, where an agent took over a stock on consignment, under an agreement in writing by which he was to account for goods sold as per price list supplied to him by the consignor, the profits over this price to belong to the agent, it was held that the consignor was entitled to be paid in full, per price list, for goods sold by the agent before his insolvency, but the price of which was collected by his assignee subsequently.—DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 17 SEP. 1887, *Sehlbach & Stevenson.* **III,** Q. B. **391.**

7. Diversion of money entrusted to agent for a specific transaction.—An agent who is entrusted by his principal with a sum of money, to be invested or employed in a particular transaction, is bound to comply with the instructions received, and if he employs the sum otherwise, he is liable to repay the same to his principal. — TESSIER, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Moodie & Jones.* **VI,** Q. B. **354.**

8. General agent—Person held out to the public as — Authority to draw bill.—The appellants W. F. L. and J. L. L.,

who were carrying on an ordinary business in Montreal under the firm of W. F. L. & Co., also appointed one J. H. Wilkins as their agent and manager to carry on a business on their account under the name of J. H. Wilkins & Co. It was proved that Wilkins was in the habit of endorsing bills receivable with the name of the firm, and that sometimes drew bills on customers. The respondent discounted one of these bills in good faith, in the same manner as he had discounted similar bills previously.

HELD.—That the fact of Wilkins' name being given to the business and its being conducted by him, whether he was a partner or not, was sufficient to hold him out to the word as a general agent; and appellants were liable to the respondent for the amount of the draft so discounted, whatever might be the use to which Wilkins, without respondent's knowledge, applied the proceeds. (See also Lewis & Osborne, M. L. R. 2 Q. B 353).—DORION, CROSS, CHURCH, BOSSÉ, JJ., 21 DEC. 1888, *Lewis et al & Walters.*

IV, Q. B. **257.**

9. Insolvency.—Que la dissolution et la liquidation d'une société commerciale met fin aux contrats intervenus entre elle et ses agents, et ces derniers peuvent être forcés de rendre leur compte.—DOHERTY, PAPINEAU, LORANGER, JJ., 31 MAI 1887, *Gay vs Denard* **III,** S. C. **125.**

10. Mandatary subscribing for shares in his own name.—That under art. 1716 C. C. a mandatary who subscribes stock in a company in his own name, is liable to creditors of the company as a shareholder, without prejudice to the creditors' rights against the mandator also.—PAGNUELO, J., 3 FEB. 1890, *Molson Bank vs Stoddart.* **VI,** S. C. **18.**

CITATIONS.—*Hudon Cotton Co. vs Canada Shipping Co.* 13 *S. C. R.* 409.

11. Money deposited by tender with notary—Responsibility for default of notary.—Where the amount of a loan was deposited by the lender with her notary, with instructions to hold it until the obligation to be given for it was executed and registered, that the responsibility for the default of the notary to pay over a portion of the money, must fall upon the lender; and it made LO difference whether the

notary was to pay over the amount to the borrower, or (as in the present case) was to apply it to the discharge of certain debts in accordance with a list furnished to him by the borrower. — DORION, MONK, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Webster & Dufresne.* **III.** Q. B. **43.**

12. Responsibility.—1. *Of principal.*—Que lorsqu'un marchand vend de bonne foi, à des personnes se présentant comme mandataires d'une société incorporée, des marchandises qu'il livre à cette dernière et que celle-ci accepte, et que deplus par son silence et par ses actes, elle donne des motifs raisonnables de croire que ces susdites personnes étaient réellement ses mandataires, ce marchand peut poursuivre directement la corporation pour le prix des choses vendues. — TASCHEREAU, J., 1 JUIN 1889, *Cassidy vs Montreal Fish and Game Club.* **II,** S. C. **229.**

2. *Of agent.*—Que le mandataire qui agit dans les limites de son mandat et au nom de son mandat n'est pas responsable personnellement.—MATHIEU, J., 17 FEV. 1886, *Picard vs Cie Ass. B. N. A.* **II,** S. C. **117.**

3. *For acts of person managing business.*—The appellants set up a firm of "J. H. Wilkins & Co." which was in reality their own business, with J. H. Wilkins as manager, but to the public the business was that of "J. H. Wilkins & Co." This firm bought goods from respondent, the price of which was claimed by the present action.

That the appellants were liable for the obligations of the firm of J. H. Wilkins & Co., and for the acts of J. H. Wilkins who was entrusted with the management. — MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Lewis & Osborn.* **II,** Q. B. **353.**

13. Revocation of agency — Agent's right to indemnity — Prospective profits. — That while a mandate for which no term has been stipulated is revocable at will, even if the agent be remunerated by a fixed commission, yet the revocation in such case is subject to the obligation on the part of the principal to indemnify the agent for any loss actually suffered by him in consequence of the revocation of his

mandate, and that may be seen to have been contemplated at the time the appointment was made.

The agent's claim to indemnity however, cannot be extended so as to include loss of profits in future after the revocation of his agency, but only such expenditure as he may have made to provide for carrying on the business.

In the present case, no proof was made of such expenditure.— JOHNSON, J., 28 MAY 1886, *Cantlie vs Coaticook Cotton Co.* **III,** S. C. **9.**

The appellants, commission agents, obtained the selling agency for the product of the respondent's cotton mill. As the condition of receiving the agency they were required to subscribe $10,000 in the capital stock of the company, respondents. No term was fixed, and after the lapse of a year and some months the agency was withdrawn from the appellants. In an action for indemnity by the agents :

HELD :—(Affirming the decision of Johnson, M L. R 3 S. C 9). That a mandate for which no term has been stipulated is revocable at will, even where the agent has given a consideration for the agency.

The revocation, however, is subject to the obligation on the part of the principal to indemnify the agent for any actual loss suffered by him by reason of the revocation of the mandate. The agent's claim to indemnity cannot be extended so as to include loss of profits which he would have made if the agency had been continued, but merely such expenses as he incurred to carry on the business, and which, in the particular circumstances of the case, may be seen to have been contemplated at the time the appointment was made. — DORION, TESSIER, BABY, CHURCH, JJ., 28 MAY 1887, *Cantlie et al & The Coaticook Cotton Co.*

IV, Q. B. **444.**

14. Rights of mandator against third parties. – Que le mandataire qui a agi en son propre nom est responsable envers les tiers avec qui il contracte, sans préjudice aux droits de ce dernier contre le mandant qui est responsable envers eux pour tous les actes de son mandataire faits dans l'exécution et les limites de son mandat.

Que tout ce qu'un agent fait dans les limites de son mandat avec des tiers même en son nom propre, il le fait pour son mandant, et ce dernier a le droit d'être subrogé dans ses droits contre les tiers.

Que toutefois le tiers qui a contracté avec un agent personnellement, sans dénonciation du principal, a doit de se protéger jusqu'à ce qu'il soit déchargé d'une obligation contractée envers l'agent par la subrogation du principal aux droits de l'agent.—TELLIER, J, 29 DÉC. 1888, *Wilson vs Benjamin.* **I,** S. C. **18.**

CITATIONS.—2 *S. C. R.* 21 — *S. C. Dig.* 456 *No.* 12—2 *Q. B. R* (*Dor.*) *p.* 356—2 *L. C. J.* 161—4 *R. L.* 530—17 *L. C. J.* 19—3 *R. R.* 34—3 *L. N* 22, 170, 240, 414—19 *L. C. J.* 309—2 *L. N.* 270, 370—1 *Q. B. R.* 201—4 *L. N.* 76, 301, 370—3 *Q. L. R.* 104—11 *R. L.* 323—7 *L. N.* 213—2 *Q. B. R.* 359—5 *Pothier* 192, 193, 207.

15. Sale — Agent — Quantum meruit — Commission. —The appellant charged the respondent with the sale in his behalf of certain real property, and it was agreed that he should have three months to effect a sale. A few days before the expiration of the three months the appellant exchanged the property for another, owned by his brother in law, receiving $4200 to boot, and his brother in law sold the same property for $10700.

That the property having been alienated by the appellant before the expiration of the three months, the respondent was entitled to the usual commission of 2½ per cent on the value obtained, although it did not appear that he had done anything to facilitate the disposal of the property.

That the exchange being an alienation equivalent to sale, the respondent was entitled to his commission upon the whole value, $10700, and not merely upon the $4200 received to boot.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ, 19 JAN. 1889, *Carle & Parent.* **V,** Q. B. **451.**

PRIVILEGES AND HYPOTHECS

I.—ATTORNEY'S COSTS.
II.—BUILDER.
III.—COMMERCIAL TRAVELLER.
IV.—CROWN.
V.—CUSTOMARY DOWER.

VI.—IMMOVABLE BY DESTINATION.
VII.—IMPROVEMENTS.
VIII.—LIEN OF LANDLORD—PLAINTIFF'S PRIVILEGE FOR COSTS OF SUIT.
IX.—UNPAID VENDOR.

See ADVOCATE — COSTS — INSOLVENCY — LIEN — LESSOR AND LESSEE — PROCEDURE — REGISTRATION — SALE — SHIPPING — TITHES.

1. Attorney's costs.—That the only privilege which exists in respect to counsel fees and attorney's costs is the one which relates to costs and expenses incurred in the interest of the mass of the creditors, either to enable them generally to obtain payment of their claims, or for the preservation of their common pledge ; and that costs incurred in the exclusive interest of one individual, and with the object of withdrawing certain revenues of this person from the reach of his creditors, are not entitled to the privilege created by arts. 1994-1996 C. C.—WURTELE, J., 13 MAY 1889, *Barnard vs Molson.* **V,** S. C. **374.**

CITATIONS.—*Troplong, Priviléges, art.* 2101, *No.* 121—*Pont, Priviléges, art.* 2101, *No.* 67—29 *Laurent,* 322—3 *Aubry et Rau,* 114 — 24 *Laurent, No* 293, 296.

(Reversing the judgment of Wurtele J. M. L. R. 5 S. C. 374, Dorion ch. J. & Church J., diss.) In law costs (frais de justice) are included all costs incurred for the common interest of the creditors, whether it be in recovering property from being carried away, diminished or lost.

Under art. 2009 C. C. costs incurred for the common interest of the creditors, and declared privileged by this article, are not necessarily costs incurred in a suit; it is sufficient if they are expenses incurred for the common interest.

Counsel fees and disbursements incurred in saving for the *grevé* a sum of money of a substitution may constitute a privileged claim upon such money under art. 2009 C. C., and a saisie conservatoire may be made of such money.—DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 23 MAY 1890, *Barnard & Molson.* (Affirmed by Supreme Court 15 S. C. R. 716). **VI,** Q. B. **201.**

2. Builder.—Que le constructeur d'un chemin de fer n'a aucun droit de rétention sur les travaux par lui exécutés, à moins qu'il n'ait acquis et conservé le privilège que lui accorde l'art. 2013 C. C. sur la plus value qu'il a donné aux immeubles.—RAINVILLE, J., 1er JUIN 1882, *La Banque d'Hochelaga vs The Montreal, Portland & Boston Railway Company & Raymond.* **I,** S. C. **146.**

Qu'en vertu de l'art 2013 du code civil, le constructeur qui a observé les formalités requises par cet article n'a de privilège que sur la plus value donnée à l'héritage par les construction qu'il y a faites, et qu'il n'a aucun privilège sur le fonds même de l'héritage.

Que l'enregistrement du procès-verbal requis par l'art. 2013 C. C. pour la préservation du dit héritage ne crée pas sur l'immeuble une hypothèque tacite en faveur du constructeur.— *Séminaire St-Hyacinthe & Banque St-Hyacinthe.* **I,** Q. B. **396.**

CITATIONS.—*Troplong, Priv. et Hyp*, vol 1, *No.* 80.

Qu'il n'y a que l'entrepreneur principal qui puisse acquérir le privilège du constructeur, et que l'entrepreneur en sous ordre n'a pas ce droit.

Qu'un entrepreneur en sous ordre qui aura fait inscrire un prétendu privilège sur un immeuble, sera condamné à en faire faire la radiation à ses frais et dépens.—WURTELE, J., 31 MARS 1887, *Moisan vs Thériault.* **III,** S. C. **73.**

3. Commercial traveller.—That the word "clerk" in Article 2006 C. C, includes a commercial traveller whose services were required in the store of his employer containing the goods on which the privilege is claimed.—TORRANCE, J., 2 MARCH 1885, *Harris vs Hyneman.* **I,** S. C. **191.**

CITATIONS.—1 *Pont, on art.* 2101 *C. N. No.* 84

The privilege of a commercial traveller for wages, under C. C. 2006, which was maintained by the court below (M. L. R. 1 S C. 191) not determined by the Court of Appeal but doubted.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 188[illegible], *Heyneman & Harris.* **II,** Q. B. **466.**

4. Crown.—(Following Monk & Atty general, 19 L. C. J. 71), that the privilege of the crown for its claims over

those of private competing creditors, is to be governed by the civil law of the Province of Quebec, derived from France, and not by the law of England.

That under C. C. P. 611, in the absence of any special privilege, the crown has a preference over chirography creditors for deposits due to it by a bank in liquidation.

The holders of notes of the insolvent bank, being accorded by statute a special privilege, (43 V. ch. 22, s. 12) take precedence of the Crown — DORION, MONK, RAMSAY, BABY, JJ., 2 APRIL 1885, *The Queen vs Exchange Bank.* (Reversed by Privy Council 9 L. N. 130). **I,** Q. B. **302.**

CITATIONS.—*Monk v. Ouimet*, 19 *L. C. J.* 71—*Ouimet & Marchand*, 5 *R. L.* 361—*Nouveau Denisart vo Comptable* § 3, *No.* 11— *The Attorney General & Black*, *S. R.* 324—*Ross & de Levy*, 6 *L. N.* 407— *Carter v. Molson*, 1 *L. N.* 189.

5. Customary dower.—Que lorsqu'un douaire coutumier a été enregistré sur un immeuble, une créance ayant la priorité de date et d'origine, mais enregistrée sur le même immeuble subséquemment au dit douaire, ne constitue pas "une créance antérieure ou préférable," purgeant le douaire coutumier dans le sens de l'article 710 C. P. C. qui n'a trait qu'à l'antériorité de rang et à la préférence à raison d'un privilège en vertu des lois réglant les privilèges, les hypothèques et l'enregistrement des droits sur les immeubles.

Qu'un adjudicataire qui connait personnellement qu'au moment de l'adjudication l'immeuble par lui acheté est affecté d'un douaire, ne peut subséquemment demander la nullité du décret et de son contrat d'acquisition, à raison de cette cause d'éviction éventuelle qu'il connaissait. — TORRANCE, PAPINEAU, JETTÉ, JJ., 30 DEC. 1889, *Lizotte vs Dechesneaux.* **I,** S. C. **402.**

CITATIONS.—10 *Pothier* (*Bugnet*) *p.* 286 — *Jobin & Shuter* 21 *L. C. J. p.* 67 — *Thomas v. Murphy*, 8 *R. L.* 231 — *Sirey Recueil Gen. Tabl. vo Adjudicataire*, *Nos.* 157, 159—43 *Dalloz. Jur. Gen. Rept. vo "vente" No.s* 800, 802, 868, 867, 873 —*vo "Vente Publique" No.* 2122—2 *Do. vo Acquiescement*, *No.* 1, 457, 458, 491, 502, 503, 504, 506, 23, 787.

6. Immovables by destination.—Que le privilège sur les meubles ne porte pas sur les meubles immobilisés par destination ou par la loi.

Que le conducteur (foreman) d'une manufacture de chaussures n'a pas, pour son salaire de préférence sur le produit

de la vente de la manufacture. — JOHNSON, DOHERTY, GILL, JJ., 30 JAN. 1886, *Rocher vs Chevalier.* **II,** S. C. **139.**

7. Improvements.—Que la clause d'un contrat de vente à l'encan, par laquelle le vendeur stipule que son acquéreur parachèvera les ouvrages en voie de construction sur l immeuble vendu, ne fait pas obstacle à ce que cet acquéreur poursuivi sur action hypothécaire, reclame un privilège pour ses dépenses.—SICOTTE, J., 30 OCT. 1889, *Leprohon vs Debellefeuille.* **I,** S. C. **156.**

8. Lien of landlord—Plaintiff's privilege for costs of suit.—That the plaintiff's privilege for the costs of suit under C. C. P. art. 606, par. 8 includes the costs incurred up to final judgment in appeal; and so, where the plaintiff obtained judgment in the Superior Court against three defendants jointly and severally, and the judgment was reversed by the Court of Queen's Bench, sitting in appeal and on appeal to the Privy Council the original judgment was restored, it was held that the plaintiff was entitled to be collocated by privilege on the proceeds of the movables of the defendants for all costs up to and including the final judgment of the Privy Council.—TORRANCE, LORANGER, CIMON, JJ., 30 SEPT. 1885, *Elliot vs Lord.* **I,** S. C. **443.**

CITATIONS.—*The Eastern Townships Bank vs Pacaud,* 17 *L. C. R.* 126 — *Bruneau & Gagnon,* 4 *Q. L. R.* 316—*Tansey & Bethune,* 7 *L. N.* 133.

(Reversing the judgment of the Court of Review M. L, R. 1 S. C. 443). That the plaintiff's privilege for the costs of suit under C. C. 1994 and C. C. R. 606, par. 8, as amended by 33 Vict. (Q.) ch. 17 s. 2, extends only to the costs incurred in the Court of first instance; and so, where the plaintiff obtained judgment in the Superior Court against three defendants jointly and severally, and the judgment was reversed by the Court of Queen's Bench, sitting in Appeal, and on appeal to the Privy Council, the original judgment was restored, it was held that the plaintiff was entitled to be collocated by privilege on the proceeds of defendant's movables only for the costs incurred in the Superior Court.

(Affirming the judgment in Review). That the plaintiff's privilege for the costs of suit, where the suit has been with a firm, has priority even as regards the personal effects of the individual members of the firm over the lien of the landlord for rent of premises leased to such members.—DORION, TESSIER, CROSS, BABY, JJ., 18 MARCH 1887, *Beaudry & Dunlop.* **III,** Q. B. **278.**

CITATIONS.—*Tansey v, Bethune, M. L.* 1 *R.* 1 *Q. B.* 28—*Buck v. Burlinghame* 13 *Gray*, 307.

9. Unpaid vendor.— The privilege of bailleur de fonds does not give the unpaid vendor the right of opposing the seizure and sale of the immovable subject to it.—LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 27 NOV. 1891, *McNaughton & Exchange National Bank.* **VII,** Q. B. **180.**

PRIVILEGED COMMUNICATIONS

See LIBEL AND SLANDER—MERCANTILE AGENCY.

PRIVILEGED HEARING

See PROCEDURE.

PRIVITY OF CONTRACT

See DAMAGES—INSURANCE (LIFE)—PLEDGE.

PROBABLE CAUSE

I.—DAMAGES FOR ISSUE OF INJUNCTION—PRÊTE-NOM—ANNUAL REPORT OF COMPANY MISLEADING.
II.—FALSE STATEMENT IN DEED.
III.—ILLEGAL ARREST.
IV.—MALICIOUS ARREST.
V.—MALICIOUS SEIZURE.
VI.—PARTNER OBTAINING MONEY BY FALSE REPRESENTATIONS IN NAME OF FIRM FOR HIS OWN PURPOSES.

See DAMAGES—FALSE ARREST—ILLEGAL ARREST—JUSTICE OF THE PEACE—MALICIOUS PROSECUTION.

1. Damages for issue of injunction — Prête-nom — Annual report of company misleading.—There is no right of action for damages resulting from the issue of an injunction or other civil suit, unless the suit were instituted without probable cause.

The fact that an injunction was taken by a prête-nom is not evidence of want of probable cause.

Where the annual report of a company was misleading, and seemed to show that the assets had been reduced, by a large amount, there was probable cause for the issue of an injunction to restrain the company from declaring a dividend more particularly as the company failed to disclose their true position when they got notice before the writ issued.—JOHNSON, J., 10 NOV. 1887, *M. S. R. Co. vs Ritchie.* (Confirmed in Appeal V. Q. B. M. L. R. 77.) (Confirmed by Supreme Court 16 S. C. R. 622), **III,** S. C. **232.**

CITATIONS.—*Brissette vs Boucher,* 31 *L. C. J.* 104.

2. False statement in deed.—Appellant, a jeweller, desiring to increase his business, obtained advances from respondent, a wholesale delar, and gave as security a hypothec on his property on which he declared there were mortgages, but he only specified one of a certain amount. There was really another. Shortly afterwards, the appellant became insolvent, and the respondent arrested him on the charge of obtaining property on false pretences.

That there was probable cause for the arrest, though it appeared that the appellant did not intend fraudulently to conceal the mortgage —DORION, RAMSAY, CROSS, BABY, JJ., 16 JAN. 1886, **III,** Q. B. **208.**

3. Illegal arrest.—Qu'il y a lieu à accorder des dommages exemplaires lorsqu'une personne a fait arrêter une autre pour tenir une maison de désordre et que cette dernière est acquittée de cette accusation, lorsque le plaignant avait cause probable de porter la plainte, mais que sans nécessité il demande spécialement l'arrestation du défendeur et son incarcération, ce fait indiquant malice de sa part.

Que néanmoins lorsqu'il y a cause probable de porter la plainte aucun dommage résultant du procès ne saura accordé. —WURTELE, J., 12 DEC. 1890, *Labelle vs Versailles.*

VII, S. C. **112.**

4. Malicious arrest.—Where articles missing are found in the possession of a servant or other person in a position to take them, and are not reasonably accounted for, there is

probable cause for arrest on a charge of larceny of the person in whose possession the property is found. The subsequent acquittal of the accused raises no presumption of absence of probable cause.—JOHNSON, PAPINEAU, TASCHEREAU, JJ., 30 JUNE. 1887, *Pinsoneault vs Sebastier.* **III,** S. C. **446.**

5. Malicious seizure.—Where the stock and machinery of a firm were already under seizure at the instance of another creditor, upon an affidavit charging insolvency and fraudulent secretion, and one of the partners had declared himself insolvent, and had attempted to make an assignment in the name of the firm, that the defendants, overdue creditors and unpaid vendors, had reasonable and probable cause for making a seizure in revendication of their own goods.

The allegations of the declaration (quoted in the judgment) make the action one of damages for malicious proceedings and not for libel or slander.—DAVIDSON, J., 15 NOV. 1887, *Bury vs Corriveau Silk Mills Co.* **III,** S. C. **218.**

CITATIONS.—*Brissette vs Boucher,* 31 *L. C. J.* 104— *Montreal Street Railway vs Ritchie, M. L. R.* 3 *S. C.* 232

6. Partner obtaining money by false representations in name of firm for his own purposes.—The plaintiff, who was in partnership with the defendant, obtained a loan of one hundred dollars from E. for which he gave the bon of the firm, pretending that the money was required to meet a note of the firm, and that his partner was out of town, which statements were both untrue, the money being obtained for his private use and his partner being then in town. E. deposed to these facts before the police magistrate.

In an action of damages for malicious criminal prosecution, that the defendant had reasonable and probable cause for having the plaintiff arrested on the charge of obtaining money by his false pretences.—TAIT, J., 31 OCT. 1887, *Cloran vs McCrory.* **III,** S. C. **464.**

PROCEDURE

I.—ACQUIESCENCE OF PROCEEDINGS.
II.—ACTION.
III.—AFFIDAVIT FOR CAPIAS.

IV.—Allegations of new facts in replication to answer.

V.—Amendments.

VI.—Appeal.

VII.—Appearance.

VIII.—Appointment of a single expert.

IX.—Arbitrators and amiables compositeurs.

X.—Articulations of facts.

XI.—Attachment before judgment.

XII.—Attorney—Costs—Distraction—Saisie arret.

XIII.—Bill of particulars.

XIV.—Calling in real plaintiff.

XV.—Capias.

XVI.—Certificate of stenographer—Reading of deposition to witness—Presumption in favor of due execution of official act in absence of proof to the contrary—Corrupt act.

XVII.—Certiorari—Judgment of inferior jurisdiction—Mens rea—Commissioners Court.

XVIII.—Commissioners Court.

XIX.—Continuance of suit in name of curator to abandonment.

XX.—Contrainte.

XXI.—Costs.

XXII.—Declaration of tiers saisi—Contestation.

XXIII.—Defective service of inscription.

XXIV.—Demurrer.

XXV.—Deposition—Erasures and marginal notes.

XXVI.—Desistement.

XXVII.—Distribution of monies before the Court.

XXVIII.—Evocation.

XXIX.—Exception a la forme.

XXX.—Exception dilatoire.

XXXI.—Execution.

XXXII.—Expertise.

XXXIII.—Experts.

XXXIV.—False arrest.

XXXV.—Firm of attorneys ad litem—Death of the partners.

XXXVI.—Folle enchère.

XXXVII.—Foreclosure.

XXXVIII.—Foreign corporation—Action against—Service—Cause of action.

XXXIX.—Hearing by privilege—Exception.

XL.—Husband and wife—Wife erroneously described as separated as to property—Exception to the form—Amendment—Husband summoned to authorize his wife—Cannot be made a party personally upon motion to amend.

XLI.—INCIDENTAL DEMAND.
XLII.—INCONSISTENT PLEADING.
XLIII.—INSCRIPTION.
XLIV.—INTERDICTION OF PARTY FOR PRODIGALITY DURING PENDENCY OF SUIT—CONTINUATION OF PROCEEDINGS—COSTS.
XLV.—INTERLOCUTORY JUDGMENT.
XLVI.—INTERROGATORIES ON FAITS ET ARTICLES.
XLVII.—INTERVENTION.
XLVIII.—INVENTORY—CHOICE OF NOTARY.
XLIX.—IRREGULARITIES IN COURT BELOW.
L.—JOINDER OF CAUSES.
LI.—JUDGMENT EX PARTE—INSCRIPTION.
LII.—JUDGMENT OF DISTRIBUTION.
LIII.—JUDICIAL COUNSEL.
LIV.—JURY TRIAL.
LV.—LICITATION—CAHIER DES CHARGES.
LVI.—LIQUIDATOR OF INSOLVENT COMPANY.
LVII.—MONEY DEPOSITED IN COURT.
LVIII.—MOTION.
LIX.—NEW TRIAL.
LX.—NOTARY—INVENTORY.
LXI.—NOTES TAKEN BY STENOGRAPHER—CORRECTIONS OF ERROR.
LXII.—NOTICE.
LXIII.—OPPOSITION.
LXIV.—PEREMPTION D'INSTANCE.
LXV.—PLEADING.
LXVI.—POWER OF ATTORNEY.
LXVII.—PROCEEDINGS IN FORMA PAUPERIS.
LXVIII.—PRODUCTION OF EXHIBITS.
LXIX.—PROHIBITION, WRIT OF—INDIAN ACT.
LXX.—PROVISIONAL EXECUTION.
LXXI.—PUBLIC OFFICER—NOTICE OF ACTION.
LXXII.—PUTTING HUSBAND OF DEFENDANT IN CAUSE.
LXXIII.—RAILWAY COMPANY — RESIDENCE — SECURITY FOR COSTS.
LXXIV.—REAL ESTATE—SEIZURE UNDER $40.00.
LXXV.—REPLICATION TO ANSWER IN LAW.
LXXVI.—REPORT OF EXPERTS.
LXXVII.—REPRISE D'INSTANCE.
LXXVIII.—REQUETE CIVILE.
LXXIX.—REVIEW.
LXXX.—REVISION OF DECISION OF PROTHONOTARY.
LXXXI.—REVOCATION OF RIGHT TO SUE IN FORMA PAUPERIS.
LXXXII.—RIGHT TO PLEAD DE NOVO.
LXXXIII.—SAISIE ARRET.
LXXXIV.—SAISIE REVENDICATION.
LXXXV.—SECURITY—APPEAL TO SUPREME COURT.
LXXXVI.—SECURITY FOR COSTS.

LXXXVII.—Séparation de corps.
LXXXVIII.—Serment suppletoire
LXXXIX.—Sequestre.
XC.—Service.
XCI.—Sheriff's sale—Petition en nullité de décret.
XCII.—Stamps.
XCIII.—Substitution of attorney.
XCIV.—Summary causes.
XCV.—Summons.
XCVI.—Taxation of costs—Notice to adverse party—Execution for part of debt.
XCVII.—Tender with special answer.
XCVIII.—Tierce opposition—Saisie arret.
XC X.—Union of causes—Transmission of record to another district.
C—Venditioni exponas.
CI—Writ of prohibition.

See ACTION—APPEAL—ATTORNEY—CAPIAS—CORPORATION—COSTS—DAMAGES—ELECTION ACT—EVOCATION—EXTRADITION—HUSBAND AND WIFE—INDIAN ACT—INSOLVENT COMPANY—INSOLVENCY—INSURANCE—JUDGMENT—JUDICIAL SALE OF MOVABLES—JURISDICTION—JURY TRIAL—LESSOR AND LESSEE—LICENSE ACT—MINOR—PLEADING—PRESCRIPTION—RAILWAY—SAISIE-ARRET—SEPARATION DE CORPS—SEQUESTRE—SHERIFF'S SALE—SUCCESSION—TARIFF OF FEES—TUTOR—WAREHOUSE RECEIPT.

1. Acquiescence of proceedings.—That the opposant against whom a judgment by default had been obtained in term after being regularly foreclosed from pleading, not having objected within the ordinary delay to the filing of a contestation in law of his opposition to judgment, but on the contrary having appeared and been heard on said contestation, could not object afterwards (and more especially when the case was before the Court of Review) that the contestation had been filed too late. C. C. P. 140.—Johnson, Papineau, Gill, JJ., 30 Nov. 1886, *Letourneux vs St. Jean.*

II, S. C. **362.**

2. Action.—1. *En reddition de compte—Answering plea instead of filing débats de compte.*—Que quoique la procedure

à suivre suivant la loi, dans une action en reddition de compte, est que sur la production du compte par le rendant compte, le demandeur, devenant oyant compte doit, s'il n'accepte pas le compte, produire des débats du compte, néanmoins lorsqu'au lieu de produire tels débats le demandeur aura répondu au plaidoyer et aura nié ses allégués et conclu à son rejet, et que de consentement les parties auront procédé à la preuve pour et contre le compte, la Cour procédera à rendre un jugement et à établir le compte entre les parties comme s'ils avaient procédé régulièrement. — WURTELE, J., 24 OCT. 1889, *Thomas vs Cowie.* **VI,** S. C. **175.**

2. *For taxes due under lease — Exception déclinatoire on the ground that the action was improperly taken under summary procedure.*—Following the dicta in Chrétien vs Crowley 5 L N. 269 and Lusignan vs Rielle M. L. R. 4 Q. B. 264, that the question was improperly raised by declinatory exception, the Superior Court having jurisdiction over the matter, and the question raised refering only to delays in procedure which can be raised by exception to the form only.

That a letter in which the defendant acknowledges to owe and promise to pay the taxes, without specifying any amount, did not constitute an acknowledgement of debt sufficient to make the action summary under section 2 of article 887 C. C. P. this clause referring to commercial paper only.—PAGNUELO, J., 18 MAY 1891, *Inglis vs Drechsel.*
VI, S. C. **205.**

3. *Not returned on the original return day.* — Que lorsque le demandeur ne rapporte pas son action le jour du retour et qu'il est en conséquence forcé de prendre un nouveau bref, ce dernier ne peut être considéré comme un alias, et le montant des timbres judiciaires qui doit y être mis lors de son émanation et de son retour est le même que sur le premier.

Que le bref de sommation n'a de forme légale et met le défendeur en demeure de comparaître en Cour, qu'en autant que le montant des timbres judiciaires fixé par la loi y a été apposé lors de son émanation et de son retour ; que

l'informalité résultant du défaut des dits timbres rend l'action nulle et elle peut être déboutée sauf recours sur exception à la forme. — CHAGNON, J., 15 AVRIL 1885, *Riendeau vs Casey.* **I, S. C. 391.**

4. *Qui tam-affidavit.*—Que l'absence, la nullité ou l'insuffisance de l'affidavit requis pour intenter une action qui tam sont des matières d'ordre public et peuvent être invoquées en tout état de cause, sans être plaidés, le juge devant, s'il était nécessaire, en prendre connaissance ex officio.

Que l'affidavit nécessaire pour l'émanation du bref dans une action qui tam doit faire apparaître la cause de l'action, il ne suffit pas de référer au chapitre du statut. — TASCHEREAU, J., 5 MARS 1885, *Matte vs Davis.* **I. S. C. 218.**

CITATIONS. — *Sipling v, Sparham, Fireproof Roofing Co. M. L. R.* 1 *Q. B.* 22—*Reed v. Idem, M. L. R.* 1 *Q. B.* 26—*Lavoie vs Racine, No.* 5 *Q. L. R.* 319—*Gagnon vs St. Denis,* 12 *L. C. J.* 279—*Leclerc v Blanchard,* 12 *L. C J.* 236.

5. *To account.*—Que lorsqu'un défendeur poursuivi pour un état de compte de la gestion d'un immeuble et pour une somme réclamée sur la vente de cet immeuble en vertu d'une convention spéciale, plaide au premier chef de l'action qu'il n'a jamais été mis en demeure de rendre compte mais, qu'il a toujours été prêt à le faire, et produit son compte avec le plaidoyer et plaide au second chef de l'action, qu'il ne doit rien au demandeur en vertu de la convention alléguée ; le compte accompagnant le plaidoyer ne sera pas rejeté sur motion comme ayant été produit irrégulièrement et prématurément.

Qu'un tel compte ne peut pas être rejeté sur motion avant l'enquête parce que le chapitre des dépenses contient des items qui ne paraissent avoir aucune connexité avec la gestion de la propriété dont on demande compte ; cette question ne pouvant être discutée et décidée que sur un débat de compte — DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 26 NOV. 1884, *Dorion & Dorion.* **I, Q. B. 65.**

3. Affidavit for capias.—Qu'un défendeur arrêté en vhrtu d'un capias émané sur un affidavit qui allègue que le défendeur "est sur le point de quitter immédiatement la province de Québec etc." sera mis en liberté sur requête préliminaire

comme ayant été arrêté irrégulièrement et illégalement, l'affidavit étant insuffisant en autant qu'il aurait dû mentionner la "province du Canada" au lieu de la "province de Québec."—JOHNSON, J., 10 JAN. 1882, *Maury vs Durand.*
I, S. C. **347.**

Que l'allégation dans la déposition pour capias "que le défendeur a caché, soustrait et recelé ses biens, et est sur le point de cacher ou soustraire et receler ses biens avec l'intention de frauder ses créanciers en général ou le demandeur en particulier" est suffisante.

Qu'il n'y a pas non plus d'incertitude dans l'allégation "que le défendeur est sur le point de quitter immédiatement la Province du Canada comprenant les Provinces de Québec et d'Ontario, avec l'intention de frauder ses créanciers en général ou le demandeur en particulier," et que cette allégation est aussi suffisante.—JETTÉ, J , 28 FEV. 1885, *Senécal vs Hart.* **I,** S. C. **371.**

CITATIONS.—*Talbot v. Donelly*, 11 *L. C. R.* 5 — *Ostell v. Pelquin*, 20 *L. C. J.* 48 —*MacMaster v. Robertson*, 21 *L. C. J.* 161—*Molson Bank v. McMinn* 24 *L. C. J.* 241—*Plante v. Carrière*, 5 *R. J. de Q.* 350—*Vineberg v. Horrowitch*, 12 *R. L.* 648 —*Arcand v. Flanagan*, 7 *R. J. de Q* 256—*Montgomery v. Leyster*, 8 *R J. de Q.* 375.

4. Allegation of new facts in replication to answer.—Qu'un demandeur qui a produit une contestation à une opposition, peut alléguer par une réplique spéciale à la réponse de l'opposant, un jugement intervenu dans une autre cause entre l'opposant et le débiteur du contestant, qui règle le litige entre l'opposant et le contestant, lorsque ce jugement a été rendu depuis la production de la contestation ; surtout si dans la contestation et la réponse il a été fait allusion à cette autre cause et que l'opposant ne se soit pas plaint en cour inférieure de l'irrégularité de la réplique en en demandant le rejet ou autrement par la procédure écrite —DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 NOV. 1886, *Bouchard & Lajoie.*
II, Q. B. **450.**

5. Amendment. — Que l'on ne peut par amendement à un bref de sommation substituer un défendeur non décrit au bref à un de ceux qui s'y trouvent déjà.—LORANGER, J., 19 NOV. 1884, *Chisolm vs Langlois.* **I,** S. C. **190.**

Que le demandeur, après avoir inscrit sa cause pour enquête et fait entendre plusieurs témoins, ne peut être admis à suppléer, par amendement à ses réponses ou répliques, à l'insuffisance des allégués de sa déclaration, en offrant de compenser certaines réclamations contenues dans le plaidoyer du défendeur et offertes en compensation par un compte additionnel. — LORANGER, J , 18 NOV. 1884, *Lalonde vs Rochon.* **I,** S. C. **435.**

Que lorsqu'un tribunal accorde une demande d'amendement important il doit toujours donner à l'autre partie la faculté d'y répondre, et dans le cas où un amendement n'est permis que par le jugement final. ce jugement pour la raison susdite est erroné et peut être cassé en Révision.— SICOTTE, MATHIEU, LORANGER, JJ., 31 MARS, 1884, *Pauzé vs Senécal.* **I,** S. C. **465.**

6. Appeal.—1. *Acquiescence.*—That a letter written by one of the defendants in an hypothecary action to the plaintiff's attorney after the rendering of the judgment which condemned them as joint undivide owners of an immovable to abandon it or pay the plaintiff's claims, and before the institution of the appeal, asking for delay until said defendant could get his garants to pay the claim and promising to settle with the plaintiff if the garant did not, constitued an acquiescence in the judgment a quo on the part of said defendant, and that his appeal would be dismissed on motion.

That the other defendant was not bound by this acquiescence as it dit not appear that any partnership existed between him and his co-defendant (beyond the joint ownership of the immovable in question) or that he had authorized the writing of the said letter. — DORION, MONK, RAMSAY, CROSS, JJ., 24 SEPT. 1885, *Archibald & Dixon.*

I, Q B. **373.**

CITATIONS.—*C. C. P. art.* 1130, § 4 — *Guyot, Rép. vo Acquiescement— Pothier, Proc. Civ. No.* 335, § 2—*Jousse, vol.* 2, *p.* 441—*Merlin, Rep. vo Acquiescement — Carré et Chauveau, vol.* 2, *quest.* 664– *Talandier, Traité de l'appel, p.* 76—10 *Toullier, No.* 106—*Charbonneau & Davis,* 20 *L. C. J.* 167.

2. *Bond.*—That a bond given as security for debt, interest and costs, on an appeal by a defendant to the Court

of Queen's Bench, to the effect. that the bondsman will pay the condemnation money in case the judgment be confirmed, is a conditional bond and becomes terminated, null and void, if the judgment in appeal reverses the judgment of the Court below and dismisses the plaintiff's action.—JETTÉ, J., 30 NOV. 1885, *Lowrey vs Routh.* (In appeal III Q. B. M. L. R. 364). **II,** S C. **58.**

3. *From an interlocutory judgment*—Que l'appel du jugement final de la Cour Supérieure soulève de nouveau tous les jugements interlocutoires rendus en cette cause, et que le défaut par un défendeur d'exciper ou d'appeler d'un jugement interlocutoire renvoyant son exception à la forme, ne l'empêche pas de discuter ce jugement sur l'appel du jugement final, l interlocutoire n'étant pas chose jugée sur les questions soulevées par son exception à la forme.—DORION. MONK, TESSIER, CROSS, BABY, JJ., 27 MAI 1885, *Metras & Trudeau.* **I,** Q B. **347.**

Que la cour n'accordera pas la permission d'appeler d'un jugement interlocutoire ordonnant preuve avant faire droit lorsqu'à une action, où procès par jury doit avoir lieu, défense en droit est faite à une partie de la déclaration alléguant des faits généralement nécessaires à la demande, quoique le développement de ces faits sur certains points serait peut-être inutile.—TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ , 17 NOV. 1887, *Rasconi Woolen Mills & Lancashire Ins Co.* **III,** Q. B. **317.**

Que, lorsque l'appelant d'un jugement final veut aussi interjeter appel des jugements interlocutoires rendus dans la cause, il faut les mentionner dans le bref et les griefs d'appel, à moins que la décision contenue dans l'interlocutoire se trouve aussi comprise dans le jugement final —DORION, TESSIER, CROSS, BABY, DOHERTY, JJ., 19 JAN. 1889, *Stefani & Monbleau.* **V,** Q. B. **23.**

4. *Involving costs only—Transfer of debt.*—(Reversing the judgment of the Court below). That service of action is not equivalent to signification of the transfer on which the action is based, and which is alleged in the declaration ; and

that a transferee has no right of action against the debtor before signification of a transfer not accepted by him.

That where the Court below enunciates an erroneous principle in the adjudication of costs, the Court of Appeal will reverse the decision though the appeal involves costs only. —DORION, CROSS, CHURCH, BOSSÉ, JJ., 23 JAN. 1889, *Prowse & Nicholson.* **V,** Q. B. **151.**

CITATIONS.—*Charlebois v. Forsyth*, 14 *L. C. J.* 135—*O'Halloran v. Sweet*, 16 *L. C. J.* 318—*McDonald v. Molleur*, 13 *L. C. J. p.* 188.

5. *From judgment in review.*—Que lorsqu'il y a changement substantiel dans le jugement de la Cour de première instance par la Cour de Révision, il y a lieu à l'appel quoique le jugement a quo condamne la partie qui a inscrit en révision.—TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 16 NOV. 1887, *Fraser vs Brunet.* **III,** Q. B. **310.**

6. *Order of judge in chambers*—That an appeal does not lie directly to the Court of Queen's Bench sitting in appeal from the decision of a judge in chambers revising an order of the prothonotary in a matter coming within the provisions contained in the third part of the Code of Procedure. —DORION, RAMSAY, CROSS, BABY, JJ., 25 JAN. 1886, *Ross & Ross.* **II,** Q. B. **1.**

CITATIONS.—*Clément & Francis*, 5 *L. N.* 301—*McCraken & Logue*, 6 *L. N.* 326 —*Bélivcau & Chevrefils*, 1 *Q. L. R.* 209.

7. *To Supreme Court.*—That no appeal lies to the Supreme Court from a judgment in appeal confirming a judgment of the Superior Court granting an injunction, but reserving to adjudicate as to the amount of damages until after an account had been rendered—DORION, J., 15 OCT. 1885, *Whitehead & White.* **I,** Q. B. **482.**

That a question of servitude is a question involving future rights within the meaning of sect. 8 of the Supreme Court Amendment Act. of 1879

That on an appeal to the Supreme Court of Canada personal security is sufficient.—CROSS, J., 1 JAN. 1886, *Wheeler & Black.* **II,** Q. B. **159.**

Que le délai du statut passé, lorsque permission est demandée d'appeler à la Cour Suprême, elle sera refusée si il

n'est pas démontré que des circonstances spéciales ont retardé l'appel S. R. C. ch. 135 ss. 40 et 42.—Tessier, Cross, Baby, Church, Doherty, JJ., 22 nov. 1887, *Massue & Corporation St-Aimé* **III,** Q. B. **319.**

8. *To Privy Council.*—Que le dossier doit être remis à la Cour Supérieure pour l'exécution du jugement lorsque l'appel n'a pas été logé au Conseil Privé dans les six mois suivant la date du jugement de la Cour du Banc de la Reine accordant l'appel. C. P. C. 1181.—Tessier, Cross, Baby, Church, Doherty, JJ., 22 nov. 1887, *Allan & Pratt.* **III,** Q. B. **322.**

7. Appearance.—Qu'une comparution dont le demandeur n'a pas reçu copie ou qui ne lui a pas été signifiée est irrégulière et qu'il sera permis au demandeur, sur motion, de procéder par défaut, nonobstant la production d'une semblable comparution.—Mathieu, J., 1 oct. 1884, *Pipe vs Crevier.* **I,** S. C. **230.**

8. Appointment of a single expert.—That where the court has appointed one expert only, and the expert has proceeded to act without protest or objection by the parties, they will be presumed to have acquiesced, and the report will not be set aside on the ground urged subsequently that the Court should have appointed three experts.—Dorion, Monk, Ramsay, Cross, JJ., 27 nov. 1885, *Malbœuf & Larandeau.* **II,** Q. B. **56.**

9. Arbitrators and amiables compositeurs.—Que la Cour peut, sur motion, ordonner à des arbitres et amiables compositeurs de compléter leur rapport, en y ajoutant le récit des formalités qu'ils ont remplies, d'expliquer davantage la nature de certaines parties de leur rapport, et d'y annexer le certificat de leur assermentation et autres documents.—Loranger, J., 18 mars 1889, *Dubé vs Corestine.* **V,** S. C. **132.**

10. Articulations of facts.—Que des articulations de faits en termes généraux comme les suivants " N'est-il pas vrai que toutes les allégations du plaidoyer du défendeur sont fausse?" sont illégales et peuvent être rejetées sur motion. —Mathieu, J., 24 mars 1887, *Leggatt vs Larose.* **III,** S. C. **47.**

Qu'une partie qui ne produit pas ses articulations de fait devra payer les frais de sa propre enquête si la partie adverse en fait la demande.—MATHIEU, J., 15 JUIN 1887, *Kimball vs Montréal.* **III,** S. C. **131.**

That an articulation of facts which does not set up specific facts in the interrogatories, does not comply with the requirements of art. 208 C. C. P. and will be rejected from the record.—WURTELE, J., 8 MAY 1891, *Williams vs Labine.* **VII,** S. C. **237.**

11. Attachment before judgment-affidavit.—That the allegation, in affidavit for simple attachment, of an intent on the part of the defendant "to defraud his creditors or plaintiff in particular" and the allegation that the plaintiff will "sustain damage or lose his debt" are not uncertain or incompatible.

That the allegation that the defendant "is secreting or is about to secrete his property" is uncertain and incompatible, and therefore insufficient to justify the issue of a writ of attachment.—WURTELE, J., 17 APRIL 1890, *McGowan vs Guay.* **VI,** S. C. **93.**

While the affidavit for attachment before judgment must state the cause of the debt with sufficient certainty to enable the court to decide whether an indebtedness exists, it need not necessarily state when or at what place the debt was contracted.

Departure from the province, unaccompanied by any circumstance to indicate fraud does not give rise to the right of attachment before judgment.—JOHNSON, JETTÉ, MATHIEU, JJ., 28 FEB. 1891, *Lanktree vs Grey.* **VII,** S. C. **453.**

Qu'un débiteur qui gaspille son argent à boire et dans des maisons de mauvaise réputation au lieu de payer ses dettes, ne commet pas toutefois l'acte de recel que la loi exige pour la saisie arrêt avant jugement —GILL, MATHIEU, WURTELE, JJ., 30 MARS 1889, *Mallette vs Ethier.* **VII,** S. C. **151.**

12. Attorneys costs—Distraction—Saisie arret.—That distraction of costs granted to a party's attorney vests the attorney alone with the right to claim such costs, as long as

the client has not obtained from the attorney a transfer followed by service on the adverse party.

That an execution taken in the name of the attorney distrayant's client, against the adverse party, is null, even if it has been issued upon the fiat of the attorney distrayant, if such execution was not preceded by the transfer and notice above mentioned.

That the claim for costs of the attorney distrayant, due by the adverse party is subject to the same laws as apply to ordinary debts with regard to transfer service and subrogation.

That when an attachment by garnishment, *saisie arrêt*, has been served upon the judgment debtor for costs, by a creditor of the attorney distrayant, the attorney distrayant's client cannot, by alleging payment by him to his attorney, or transfer by his attorney to him of said costs, claim the same in his own name, to the prejudice of the attorney's seizing creditor, if notice of such payment and transfer has not been served upon the judgment debtor before the attachment by garnishment was issued.

That in such a case the judgment debtor is not obliged, before judgment is rendered upon the attachment by garnishment of the attorney's creditor, to deposit in Court, to be paid to whom it may appertain, the amount of such costs but on the contrary must retain the same in his own hands, as he is ordered to do by the writ of attachment by garnishment, until the Court may decide thereon.—DORION, TESSIER, CHURCH, DOHERTY, JJ., 26 FEB 1889, *Millette & Gibson.* **V,** Q. B. **239.**

CITATIONS.—*Beauchène v. Pacaud*, 15 *L. C. R.*, *p.* 193—1 *Pigeau*, *p.* 419—*Bioche*, *pp.* 98, 99, *No.* 202—*Lewis v McGinley*, 6 *Q. L. R.* 61—*Samuel v. Houliston*, *M. L. R.* 1 *S. C.* 505.

13. Bill of particulars.—Que dans une action pour dommages, causés par un cheval qui avait pris le mors aux dents, le défendeur propriétaire du cheval a le droit, avant de plaider, d'exiger du demandeur le détail des dommages réels qu'il réclame, bill of particulars.—MATHIEU, J., 8 AVRIL 1885, *Lemieux vs Phelips.* **I,** S. C. **305.**

14. Calling in real plaintiff.—Que lorsqu'il appert au dossier que le demandeur a cédé ses droits et n'est que le prête-nom du cessionnaire, le défendeur pourra sur motion faire suspendre tous les procédés jusqu'à ce que le cessonnaire, véritable demandeur, ait été mis en cause.—DOHERTY, J., 10 JAN. 1885, *Bondy vs Valois.* **I,** S. C. **236.**

15. Capias.—1. *Action in Circuit Court.* — Que lorsqu'un demandeur, dans une cause pendante devant la Cour de Circuit fait émaner en Cour Supérieure un bref de capias dans la même cause, il ne lui suffit pas d'alléguer et de prouver qu'il a intenté une action contre le défendeur en Cour de Circuit et qu'elle y est pendante, mais il faut qu'il demande une condamnation contre ce même défendeur en Cour Supérieure et qu'il y prouve contre lui une créance suffisante pour justifier l'émission d'un bref de capias ad respondendum. —TASCHEREAU, J., 15 NOV. 1885, *Chevalier vs King.* **II,** S. C. **185.**

2 *Affidavit* —Qu'un seul affidavit contenant les allégations requises suffit pour l'émission, dans la même cause, d'un bref de capias et d'un bref de saisie-arrêt avant jugement ; et que des mots rayés et des renvois non déclarés ne rendent pas nul cet affidavit.

Que lorsque par sa déclaration sur la saisie-arrêt, le demandeur ne conclut à aucune condamnation nouvelle, et qu'il requiert simplement que cette demande soit jointe à l'action principale, le défendeur ne peut produire deux défenses, et la dernière sera rejetée sur motion avec dépens.— JETTÉ, J., 12 JUIN 1885, *St. Michel vs Vidler.* **I,** S. C. **163.**

3. *Declaration.*—Que les délais pour faire une exception à la forme à un bref de capias et aux procédés faits sur icelui, doivent compter seulement du jour du rapport fixé dans le bref, et non pas du jour où le bref est rapporté au greffe sur un ordre du juge.—JOHNSON, PAPINEAU, JETTÉ, JJ., 31, MAI 1884, *Morandat vs Varet.* **I,** S. C. **109.**

4. *Delay.*—Que, même dans le cas où le demandeur a déjà pris une saisie-arrêt avant jugement, accompagnée d'une déclaration, le capias émané dans la même cause, pour les

mêmes raisons, doit aussi être accompagné d'une déclaration. —*Morandat vs Varet.* **I,** S. C. **109.**

5. *Founded in part on judgment.*—Qu'en faisant émaner le capias en cette cause tant pour le montant d'un jugement déjà rendu en faveur du demandeur, que pour une autre créance dont il était porteur, le dit demandeur n'a en rien violé la loi, le capias ayant valablement été émis comme procédure distincte et séparée du jugement en question.—JETTÉ, J., 28 FEV. 1885, *Senécal vs Hart.* **I,** S. C. **371.**

16. **Certificate of stenographer—Reading of deposition to witness—Presumption in favor of due execution of official duty in absence of proof to the contrary—Corrupt act.**—That the trial judge exercised a proper discretion in permitting the stenographer to append his certificate to depositions transcribed from short hand notes, which had been filed without being certified correct.

That depositions which have not been read over to the witnesses deposing, are not legal evidence; but where the record does not show whether the depositions were or were not read over to the witness by the stenographer the presumption is that the officer of the Court properly performed the duty incumbent on him, the principle applicable being "omnia præsumuntur rite et solemniter acta donec probetur in contrarium." — JOHNSON, LORANGER, TAIT, JJ., 20 DEC. 1887, *McQuillen vs Spencer.* **III,** S. C. **247.**

CITATIONS.—*Rolland & Cassidy, M. L. R. 2 Q. B.* 238.

17. **Certiorari—Judgment of inferior jurisdiction—Mens rea — Commissioners Court.**—Where a magistrate dismisses a charge of selling intoxicting liquors to minors, on the ground that the complainant had not proved that the defendant knew the persons to be minors; that this was not a case for the issue of a writ of certiorari under par. 1 or 3 of art. 1221 C. C. P., there being neither want or excess of jurisdiction, nor any gross irregularity in the proceedings.—TAIT, J., 27 FEB. 1889, *Hamilton & Dugas.* **V,** S. C. **330.**

18. **Commissioners Court.**—The opposant of a seizure is not bound to proceed on the day of the return of the opposition in the Commissioner's Court; and the dismisal of the

opposition on the day of return, for default by the opposant to proceed, is an excess of power, which is ground for the issue of a certiorari. — PAGNUELO, J., 14 NOV. 1885, *Ex Parte Sénécal.* **V,** S. C. **412.**

19. Continuance of suit in name of curator to abandonment. —That the permission to exercise the actions of a debtor or of the mass of his creditors is a judicial authorization which is required in the interest of the mass of the creditors of a debtor who has abandoned his property for their benefit, and not in the interest of the adverse party. The latter cannot ask that the proceedings adopted without such authorization be rejected, but only that the proceedings be stayed until the proper authorization has been obtained, or for a sufficient time to enable the curator to apply for it.— WURTELE, J., 12 NOV. 1889, *Chisolm vs Gallery.*

VII, S. C. **302.**

CITATIONS.— 5 *Laurent, No.* 84 — 1 *Aubry & Rau, p.* 465 — 7 *Demolombe, No.* 715.

20. Contrainte.—That an order for coercive imprisonment may be granted in an action for separation from bed and board.—TORRANCE, JJ., 18 APRIL 1886, *Gravel vs Lahoulière.*

II, S. C. **294.**

CITATIONS.—*Ex parte Pillet,* 7 *L. N.*

That the service of a rule for contrainte upon a person while he is in custody and restrained of his liberty under a previous order of the Court, in the same cause, and not made by personal services, between the wickets as required C. C. P. 70 is null and of no effect.—TORRANCE, TASCHEREAU, JJ., 30 NOV. 1886, *Lamoureux vs Gilmour.* **II,** S. C. **437.**

CITATIONS.—*Hamel v Coté,* 11 *L. C. R.* 479—*Hingston v. McKenly,* 12 *L. C. J.* 25.

21. Costs.—Qu'un tiers qui intervient dans cette saisie-revendication pour reclamer la propriété de certains effets, n'a droit à aucun frais contre le demandeur qui admet son intervention excepté quant aux frais; le défendeur devra payer les frais de l'intervention et les intervenants ceux de contestation.—TORRANCE, BUCHANAN, LORANGER, J J., 30 DEC. 1884, *Dupaul vs Wheeler.* **I,** S. C. **147.**

Qu'une licence pour vente de boissons enivrantes n'étant que la preuve écrite d'un droit confié à une personne par l'autorité compétente, et la loi ayant pourvu à un mode spécial de transporter le droit lui-même, le créancier ne peut la saisir en exécution d'un jugement comme il peut le faire pour les titres mentionnés aux arts. 557 et 565 C. P. C.— TASCHEREAU, J., 5 MARS 1885, *Van de Vliet vs Feniou.*

I, S. C. **216.**

Que la distraction des frais en faveur des procureurs n'empêche pas la partie qu'ils représentent d'être créancière de la partie condamnée aux dépens, et d'agir contre cette dernière si les procureurs ne le font pas, surtout lorsque ceux-ci ont été préalablement payés par le créancier. — TASCHEREAU, J., 5 MARS 1885, *Bissonnette vs Dunn.* **I,** S. C. **235.**

CITATIONS. — *Beauchêne vs Pacaud,* 15 *L. C. R.* 193 — *Dalloz, Rep. vs Frais et Dépens, No.* 123 — 7 *Sirey, 2e par. p.* 747 — 1 *Carré et Chauveau, Question* 569 *bi et suppl. p.* 156.

Jugement réformé quant aux frais, excepté ceux de factum, qui a été rejeté du dossier parce qu'il contenait des observations irrespectueuses à l'égard du juge de première instance. — JETTÉ, BUCHANAN, LORANGER, JJ., 30 DEC 1884, *Nadeau vs St-Jacques.* **I,** S. C. **302.**

Que lorsqu'une action a été déboutée sur des moyens de forme et qu'une nouvelle action est intentée, le défendeur ne peut par motion demander à ce que l'action soit suspendue jusqu'à ce que les frais de la première action soient payés.—MATHIEU, J., 23 OCT. 1886, *Vallée vs Leroux.*

II, S. C. **359.**

Que les articles 450 et 453 du C. P. C. qui déclare que toute partie peut se désister de sa demande à la condition de payer les frais et qu'elle ne peut recommencer avant d'avoir préalablement payé les frais encourus par la partie adverse sur la demande abandonnée, s'applique également et même avec plus de raison à une action déboutée qu'à une action discontinuée.

Que dans ce cas le défendeur a une exception dilatoire pour faire suspendre les procédés sur la deuxième action

jusqu'à ce que les frais de la première soient payés.—RAINVILLE, J., 31 JAN. 1880, *Sauriol vs Lupien.* **II,** S. C. **495.**

CITATIONS.—*Dalton v. Doran,* 1 *L. N.* 220 – *Gobier v. Perkins,* 4 *L. N.* 299—*Laferrière v. Provost,* 10 *R. L.* 26—*Dunlop v. Jones,* 11 *L. C. J.* 316—*Moisan v. Bourgeois,* 11 *R. L.* 120—*Vallée v. Leroux, M. L. R.* 2 *S. C.* 359.

That plaintiff having sued for $1000 and obtained $200, he would be award the costs of an action of $200 and be condemned to pay defendant difference between the costs of an action of $1000 and one of $200, the court ordering compensation pro tanto.—MATHIEU, J., 21 APRIL 1888, *Guenette vs Montreal.* **IV,** S. C. **69.**

That where no principle of law is involved, the Court of Review will not interfere with the discretion as to costs exercised by the Court below, under art. 478 C. P. C.; and it is not necessary that the judgment of Court below should set forth the "special reasons" for which the losing party is exempted from the payment of costs.—JOHNSON, TASCHEREAU, MATHIEU, JJ., 31 OCT. 1888, *Andrews vs Wulff.* **IV,** S. C. **392.**

(Mathieu J., diss.) In an action for damages, for personal injuries sustained, where the plaintiff obtains judgment for only a portion of the amount demanded, he will not, where the defendant made no tender, or an insufficient tender be condemned to pay the difference between the costs of the contestation of an action for the amount recovered and of the action as brought.—JOHNSON, TASCHEREAU, MATHIEU, JJ., 31 OCT. 1888, *Charron vs Paroisse St. Hubert.* **IV,** S. C. **431.**

Qu'il faut assimiler une procédure renvoyée ou annulée, sauf recours, à une procédure abandonnée, et que dans ce cas, suivant la disposition de l'art. 453 du C. P. C., la partie qui recommence doit préalablement payer les frais des premières procédures. — GILL, J., 30 NOV. 1888, *Lusignan vs Rielle.* **IV,** S. C. **467.**

That a fee paid to counsel for examining witnesses under an open commission issued from the Superior Court to a foreign country, cannot be taxed against the losing party as costs in the cause. The only fee established by the

tariff as regards the examination of witnesses on Commission rogatoire is fixed by No. 80, and allows $2 to the attorneys of record for the examination and cross examination of each witness.—DELORIMIER, J., 15 OCT. 1889, *Young vs Accident Ins. Co.* **V,** S. C. **223.**

That where the parties consent to the substitution of an open commission for the examination of witnesses at distance, in lieu of a commission in the ordinary form, the fees of the counsel conducting the enquête before the commissioner will be taxed as costs in the case.—JETTÉ, J., 14 DEC. 1889, *Pictou Bank vs Anderson.* **V,** S. C. **260.**

That where a commission rogatoire issues to a foreign country, reasonable fee to the commissioner appointed to execute the commission will be taxed as costs in the cause. —PAGNUELO, J., 30 OCT. 1889, *Blandy vs Parker.* **VI,** S. C. **1.**

A judgment will be revised and reformed by the Court of Review on a question of costs, where the court below, in adjudicating on the costs, acted upon a wrong principle.

(Reversing the judgment of Mathieu J.) Where the action is brought to recover a claim not composed of distinct parts, or where the plaintiff cannot with some exactitude foresee the amount for which he can obtain judgment (as in actions of damages and cases of like nature) and the plaintiff's right of action is maintained, but the Court awards him less than the amount demanded, it is error for the Court to condemn him to pay the defendant (who has made no tender) the difference of costs of contestation, between an action of the amount recovered and the action as brought, and such an award of costs is not within the discretion allowed the Court by art. 478 C. P. C. and will be reversed on appeal to the Court of Review —JOHNSON, LORANGER, WURTELE, JJ., 29 MARCH 1889, *Clermont vs McLeod.* **VI,** S. C. **36.**

CITATIONS.—2 *Jousse, p.* 130 *No* 5, 2*e al.*—1 *Delisporte,* 139—1 *Boitard, p.* 233, *No.* 279— *Merlin, dépens, No.* 2, 2*e et* 3*e al.*—*McCartney & Linsley, M. L. R.* 5 *Q. B.* 455.

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(En confirmation de la décision du protonotaire). Que la partie qui conteste le droit d'un intervenant d'intervenir dans la cause, à droit aux mêmes frais que sur la demande originaire.—WURTELE, J., 1 AVRIL 1890, *St-Cyr vs Mathon.* **VI,** S. C. **100.**

Que dans tous les cas, les frais doivent être taxés après avis donné à la partie adverse.

Qu'une exécution émanée sans que les frais aient été taxés contradictoirement ou avis donné à la partie adverse est entièrement nulle, et ne peut être exécutée même pour la dette, sans renoncer aux frais ou en donner crédit.—JETTÉ, TASCHEREAU, TAIT, JJ., 30 AVRIL 1890, *Frères St-Vincent vs Raymond.* **VI,** S. C. **142.**

CITATIONS —*Scott vs McCaffrey, M. L. R. 5 S. C.* 202—*Lewis vs McGinley,* 6 *Q. L. R.* 61—*Audet vs Asselin,* 15 *L. C. R.* 272.

Que le non paiement des frais incidents, même d'appel, dans une cause ne peut pas suspendre la continuation de cette même cause, lorsque le tribunal qui a condamné aux frais n'a pas imposé le paiement comme préalable à la continuation.—TESSIER, CROSS, CHURCH, DOHERTY, JJ., 19 SEPT. 1888, *Robinson vs C. P. R.* **IV,** Q. B. **344.**

CITATIONS.—*Cutting & Jordan.* 19 *L. C. J.* 139.

Where the defendant called his wife into the cause, and after the dismissal of the principal action, the suit was continued between the husband and wife, and carried to the Court of Appeal, notwithstanding that the pecuniary interest was extremely small, and the litigation appeared to be prolonged for the gratification of mutual ill feeling, the Court has a discretion under art. 478 C. C. P., to compensate the costs, and put the parties hors de cour, each paying his own costs.—CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 23 MAY 1889, *Mainville vs Corbeil.* **V,** Q. B. **90.**

CITATIONS.—1 *Pigeau,* 417—*Pothier, Procédure, No* 409— *Carré & Chauveau, Question* 557 *et seq.*

Where the plaintiff sued for $774. and the defendant tendered $334, but without costs, and the tender was held sufficient as to the principal, but the plaintiff proceeded with the suit for the whole amount, the plaintiff should be condemned to pay all costs after filing plea, including costs of enquete.

A judgment which condemns a plaintiff who succeeds for part of the amount sued for and the amount recovered, is erroneous in principle, and such an adjudication as to costs is not within the discretion allowed the Court by art. 478 C. C. P.—DORION, CROSS, BABY, CHURCH, JJ., 25 FEB. 1888, *McCartney vs Linsley.* **V,** Q. B. **455.**

Death of one or more plaintiffs during pendency of suit.

The death of several of the plaintiffs, during the pendency of the suit does not render a judgment pronounced in their name absolutely null; the nullity being only relative and such as can be invoked only by the legal representatives of the deceased on the ground that their rights have been prejudiced by the judgment. JETTÉ, J., 30 NOV. 1885, *Lowrey vs Routh.* **II,** S. C. **58.**

22. Declaration of tiers saisi—Contestation.—Where the garnishee has declared that he owes the defendants nothing, but in answer to questions put by the judgment creditor, under C. C. P. 619, has made admissions which apparently show that he has a sum in his hands belonging to the de-

fendant, that the proper course is to contest the declaration, and not to inscribe for judgment ex-parte on such statement.—DORION, MONK, CROSS, BABY, JJ., 25 NOV. 1885, *Grant & Federal Bank.* **II,** Q. B. **4.**

23. Defective service of inscription.—Que lorsqu'une partie a comparu par procureur ad litem, les pièces de procédure doivent être signifiés à ses avocats; un jugement obtenu par défaut sur une inscription signifiée à la partie même, et non à ses procureurs ad litem, sera renversé en révision.—JOHNSON, PAPINEAU, TASCHEREAU, JJ , 24 SEPT. 1887, *Dumouchel vs C. P. R.* **III,** S. C. **217.**

24. Demurrer.—A demurrer to part of a plea should indicate the particular paragraphs or portions demurred to and a judgment maintaining such demurrer should specify the portion strucked out.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 29 MAY 1883, *Graham vs McLesh.*

V, Q B. **475.**

CITATIONS.—*Cooper, Law of Libel*, 31—*Dareau, Des Injures, ch* 1, *sec.* 1, *No.* 5.

Que l'on ne peut, dans une réponse à une défense en droit, alléguer des questions de fait.

Que l'on ne peut aussi dans une réponse à une défense en droit, faire des allégations qui tendent a expliquer et compléter la déclaration de manière à rendre sans effet la défense en droit.

Que ce qu'il y a d'illégal, dans une pareille réponse pourra être rejeté sur motion.—MATHIEU, J., 8 OCT. 1889, *Bourbonnais vs Dufresne.* **VI,** S. C. **287.**

25. Deposition—Erasures and marginal notes.—Que des mots rayés et des renvois non constatés au bas d'une déposition, ne rendent pas, dans les circonstances ordinaires, cette déposition nulle.—MATHIEU, J., 23 MARS 1887, *Lord vs Glasgow and London Ins. Co.* **III,** S. C. **88.**

26. Desistement.—Qu'un défendeur pour prendre avantage d'un désistement de l'action signé par le demandeur, ne peut obtenir de la Cour la permission de plaider de nouveau, mais doit simplement produire le désistement dans la cause, lequel aura tout l'effet qu'il peut avoir.—JETTÉ, J., 6 JUIN 1887, *Brunet vs Brunet.* **III,** S. C. **216.**

Where the plaintiff desisted from the latter part of the judgment above mentioned, and obtained acte of désistement, pending an appeal by the defendant from the judgment, that the respondent should he held only for the costs of the appeal up to the time when he obtained acte of désistement as aforesaid, and that the appellant having failed on the other grounds of appeal, should be condemned to pay the costs of the appeal from the date when acte was obtained.—LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 26 SEPT. 1891, *Stephens & Gillespie.* **VII,** Q. B. **289.**

CITATIONS.—*Prefontaine as Brown,* 1 *Q. L. R.* 60.

27. Distribution of monies before the Court.—When money is before the Court for distribution, the real question is as to the party entitled to it—and not the regularity of the proceedings by which it was procured.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 28 NOV. 1882, *St. Ann's Building Society & Watson.* **IV,** Q. B. **328.**

28. Evocation.—Que dans une cause de la Cour de Circuit évoquée à la Cour Supérieure et jugée finalement au mérite, on ne peut, dans les huit jours du jugement final au mérite inscrire la cause en révision tant sur le jugement au mérite que sur le jugement décidant la validité de l'évocation, mais que ce dernier jugement, qui est un jugement final, doit être inscrit en révision dans les huit jours qu'il a été rendu.—DOHERTY, LORANGER, TAIT, JJ., 31 MARS 1887, *Seers vs Boursier.* **III.** S. C. **85.**

CITATIONS.—*St. Aubin vs Leclerc, M. L. R.* 2 *S. C.* 15.

Where a railway company was sued for ninety dollars, being the amount of penalties for nine days, under a by-law of a town enacting a penalty of ten dollars per day in the event of the company's making default to erect gates at the intersection of the railway with certain streets, that rights in future within the meaning of art. 1048 C. C. P. were affected and the defendant might evoke the action to the Superior Court. — DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 21 DEC. 1888, *G. T. R Co. vs Corporation St. Jean.* **IV,** Q. B. **271.**

CITATIONS.—*Coursol vs Syndics de Ste. Cunégonde, M. L. R.* 1 *S. C.* 214 — *Lambe & Molson, M. L. R.* 2 *Q. B.* 402.

29. Exception à la forme.– Que dans les causes de la Cour Supérieure, depuis $100 à $200, le dépôt qui doit accompagner une exception à la forme est de $4 seulement. — MATHIEU, J., 20 AVRIL 1887, *Bruchesi vs Denis.* **III,** S. C. **92.**

That vague and indefinite allegations in an exception to the form may be rejected on motion of the adverse party.

That the allegation of a pleading must be sufficiently clear and distinct to enable the opposite party to reply thereto. And so where an exception to the form alleged that the Act incorporating the plaintiffs was ultra vires because the persons incorporated were incapable of exercising any civil rights in the province by reason of the vows which they had taken without specifying the vows and because the objects of their Society were the promulgations of doctrines contrary to Imperial Statutes, set forth in certain works filed as exhibits without specifying the doctrines objected to, these and other like allegations were rejected as vague and lacking precision.—LORANGER, J., 14 MAY 1889, *Cie de Jésus vs Mail Printing.* **V,** S. C. **306.**

That vague and indefinite allegations in an exception to the form may be rejected on motion of the adverse party.

The allegations of a pleading must be sufficiently clear and distinct to enable the opposite party to reply thereto. So, where the defendants by an exception to the form alleged that the act incorporating the plaintiff, La Compagnie de Jésus, was ultra vires, because the persons incorporated were incapable of exercising any civil rights in the province by reason of the vows which they had taken without specifying the vows and because the object of their society was the promulgation of doctrines contrary to Imperial Statutes, set forth in certain works filed as exhibits without specifying the doctrines objected to these and other like allegations were rejected as vague and lacking precision.—DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 27 NOV. 1889, *Mail Printing vs Cie de Jésus.* **VII,** Q. B **471.**

CITATIONS.—*Parent vs Corporation de St. Sauveur,* 2 *Q. L. R.* 258.

30. Exception dilatoire.—Qu'un plaidoyer de discussion préalable d'un gage doit ,se faire par exception dilatoire

indiquant les biens à discuter et accompagnée d'une somme suffisante pour parvenir à cette discussion. — PAGNUELO, J., 24 FEV. 1893, *Banque d'Epargnes vs Geddes* **VI,** S. C. **243.**

31. Execution.—1. *Attorney—Distraction of costs—Saisie-arrêt* —Where the plaintiff had obtained judgment for the amount of his claim with costs distraits in favor of his attorneys, and had given the defendant a discharge for the debt, that he still retained sufficient interest in the suit to entitle him to take proceedings in execution of the judgment of distraction in favor of his attorneys (more especially when the attorneys signed the fiat for the writ) and a saisie-arrêt après jugement for the costs, issued in the plaintiff's name was maintained. — JOHNSON, PAPINEAU, JETTÉ, JJ., 30 NOV. 1886, *Morin vs Roy.* **II,** S. C. **400.**

CITATIONS.—2 *Pothier, Mandat, No.* 136—*Nouveau Denizart, vol* 6 *p.* 543, *No.* 1 — *Rep. Journal du Palais, vo Frais et dépens, Nos.* 297, 298, 340, 341, 342, 351, 352, 353—*Ferrière vo Distraction de Frais—Pigeau, Procéd., p.* 418 *à* 421.

2. *Effect of inscription in review—Delay.*—Where a delay has been fixed by a judgment for the specific performance of an obligation, and the case is inscribed in review, the delay runs only of the final judgment confirming that of the Court below.

That a delay allowed by a judgment for the execution of a contract is a delay in procedure within the meaning of C. C. P. 24 and where such delay expires on sunday, the debtor may execute the obligation on the following day. And so, where the final judgment was rendered January 30, and February 14 and 28 were both sundays, it was held that the execution of the obligation on Febrary 15 and March 1 was within the delays of fifteen days and one month allowed for the execution of the obligation in Montreal and London respectively.—JOHNSON, TASCHEREAU, MATHIEU, JJ., 30 SEPT. 1887, *Dyson vs Sweanor.* **III.** S. C. **365.**

3. *Exemption from seizure.*—Que par l'article 556 du Code Procédure Civile, les outils et instruments ordinairement employés pour le métier du débiteur ne sont pas déclarés insaisissables, mais que le dit article déclare seulement qu'il devront être laissés au débiteur à son choix.

Que le débiteur doit faire ce choix lors de la saisie et que s'il ne le fait pas l'huissier peut et doit saisir la totalité des effets moins ceux expressément déclarés insaisissables.

Que si subséquemment le débiteur veut exercer son droit, il devra le faire à ses frais. — TASCHEREAU, J., 8 OCT. 1886, *Ross vs Lemieux.* **II,** S. C. **272.**

CITATIONS.—*Noël vs Laverdure*, 7 *Q. L. R.* 367.

That the amount of a judgment obtained as damages for libel is not exempt from seizure by garnishment.—TORRANCE, J., 20 NOV. 1886, *Lalonde vs Archambault.* (Confirmed in Appeal 3 M. L. R. Q. B. 486). **II,** S. C. **410.**

CITATIONS.—*Chef v Léonard*, 6 *L. C. J.* 305 — *Maurice v. Desrosier*, 7 *L. N.* — 1 *Pigeau*, 423-4.

4. *Fees of guardian.*—Que le gardien d'office a seul droit à rémunération et salaire ainsi qu'à la taxe mentionnée en l'article 600 du Code de Procédure Civile.—TASCHEREAU, J., 13 MARS 1888, *Longpré vs Cardinal.* **IV,** S. C. **441.**

5. *Garnishee* — Que la Cour ne peut sous les circonstances ordinaires, ordonner à un tiers-saisi, de déposer en Cour le montant qu'elle a déclaré devoir sous une saisie-arrêt avant jugement.—GILL, J., 7 NOV. 1888, *Naud vs Lavoie.* **IV,** S. C. **423.**

6. *Guardian.—Procès-verbal of seizure.*—Que le fait que le procès-verbal de saisie ne contient pas de nomination de gardien ni d'indication que les meubles aient été enlevés ou sont sous la garde de quelqu'un n'est pas suffisant pour autoriser une opposition afin d'annuler de la part du défendeur, et telle opposition sera renvoyée sur motion comme futile et évidemment mal fondée.—MAILHOT, J., 4 NOV. 1888, *Thibaudeau vs Degrandpré.* **IV,** S. C. **422.**

7. *Notice of sale.*—Que dans une saisie exécution les avis de vente et les annonces qui contiennent un numéro qui n'est pas celui du domicile ou place d'affaires de la partie défenderesse, sont irréguliers et que l'on peut se pourvoir contre telle irrégularité au moyen d'une opposition afin d'annuler.

Qu'en ce cas cependant, l'opposition n'aura pour effet que de forcer le demandeur à donner de nouveaux avis régu-

lièrement et ne saurait entrainer l'annulation de la saisie.—RAINVILLE, J., 28 JAN. 1884, *Dorion vs Diette.* **I,** S. C. **31.**

8. *Of judgment of Court of Queen's Bench in Appeal — Registration—Taxation of costs.*—That a judgment rendered by the Court of Queen's Bench sitting in appeal, is executory without the formality of registration in the office of the Court from which the appeal was taken.

Where the taxation of costs in appeal is regular on its face, and there is no proof of alleged want of notice to the adverse party, such taxation will be maintained.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 27 NOV. 1890, *Wells vs Burroughs.* **VII,** Q B. **451.**

9. *Procès verbal.*—Qu'en principe les officiers de justice sont présumés avoir obéi aux prescriptions de la loi et qu'on ne peut induire du silence d'un procès verbal de saisie exécution qui mentionne la saisie d'un poêle, qu'il n'en a pas été laissé un autre au débiteur.

Que l'interpellation au débiteur saisi de signer le procès verbal ne constitue pas une formalité essentielle, dont le défaut entraine la nullité de la saisie.—JETTÉ, J., 10 DEC. 1886, *Sexton vs Beaugrand.* **II,** S. C. **413.**

10. *Rights of unpaid creditor.*—An unpaid creditor can raise the question as to the real owner of the property sold in execution, and can claim the proceeds, although the real owner be silent.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 28 NOV 1882, *St. Ann's Building Soc. & Watson.* **IV,** Q. B. **328.**

11. *Salary of teacher.*—Que les dispositions du chap. 12 de la 38e Vict., pour rendre une partie du salaire des employés publics saisissables ne s'appliquent pas au traitement des instituteurs sous le contrôle des commissaires d écoles d'enseignement primaire;

Que leur salaire est insaisissable aux termes de l'art. 628 C. C. P. lequel n'a pas été abrogé par le dit acte. — LORANGER, J., 28 NOV. 1884, *Lovejoy vs. Campbell & The Protestant Board of School Commissioners.* **I,** S. C. **77.**

12. *Sale of defendant's effects.*—That where a judgment creditor has caused the seizure and sale of a portion of the

defendant's effects, sufficient to cover his claim as stated in the writ of execution, he cannot subsequently, upon a mere allegation that defendant is insolvent and that oppositions afin de conserver have been filed by other creditors obtain an order for an alias writ of execution, for the purpose of seizing and selling the remainder of the defendant's effects. —DORION, MONK, RAMSAY, CROSS, BABY, JJ., 24 MARCH 1885, *Bury & Samuels.* **I,** Q. B. **436.**

13. *Sale of movables.*—Que la vente judiciaire des biens meubles saisis ne peut se faire après le jour fixé pour le rapport du bref et qu'une opposition afin d'annuler basée sur ce grief est bien fondée.—DELORIMIER, J., 2 OCT 1889, *Brodeur vs Leblanc.* **VI,** S. C. **236.**

Que lorsque le shérif a saisi les meubles d'un défendeur, et que l'épouse de ce dernier a fait une opposition afin de distraire, réclamant les meubles comme sa propriété, en vertu de son contrat de mariage, rien n'empêche le dit shérif de saisir et de procéder à la vente des immeubles du défendeur nonobstant l'article 554 C. P. C.—MATHIEU, J., 23 MAI 1890, *Parsons vs Berthelet.* **VI,** S. C. **340.**

14 *Tavern keeper.* — Qu'un créancier est justifiable de contester une opposition faite par une femme mariée qui fait le commerce sous le nom de son mari, à une saisie pratiquée contre ce dernier ; et que, dans le cas où l'opposition serait maintenue, chaque partie devra payer ses frais, le créancier ayant pu être trompé et croire à la fraude.—TASCHEREAU, J., 5 MARS 1885, *Van Devliet vs Filion.* **I,** S. C. **216.**

32. Expertise.—The plaintiffs moved that an expertise, ordered by an interlocutory judgment, be referred to experts in England, on the ground that competent experts could not be obtained in Canada or the United States.

That apart from the inconvenience and expense of such a reference, the requirements of articles 325, 333 and 334 C. C. P. appear to place insuperable difficulties in the way of executing an expertise abroad.—DAVIDSON, J., 28 JUNE 1889, *Muir vs Providence Ins. Co.* **V,** S. C. **158.**

CITATIONS.—*Pothier, Proc. Civ., No.* 140—*Bioche, Dict. de Proc. Civ. vol.* 3 *p.* 743, *vo. Expert, No.* 61—*Skead vs McDonnell*, 3 *R. C.* 43.

33. Experts.—Que dans une action de cette nature, le défendeur, avant de plaider, peut obtenir de la Cour la nomination d'un ou de plusieurs médecins, pour constater la gravité des blessures reçues et quels dommages il en résultera à la demanderesse.—MATHIEU, J., 8 AVRIL 1885, *Lemieux vs Phelps.* **I,** S. C. **305.**

Que dans une instance ou les deux parties sont en contestation sur la limite respective de leurs propriétés limitrophes, l'une d'elle réclamant de l'autre des dommages pour empiétement, la Cour ne peut nommer des experts, avant l'enquête, pour visiter les lieux, examiner les titres des parties, entendre des témoins, évaluer les dommages et faire rapport.—TELLIER, J., 17 FÉV 1891, *Deseve vs Deseve.* **VII,** S. C. **157.**

34. False arrest.—Que dans une action en dommages pour arrestation illégale, le défendeur ayant fait arrêter le demandeur et ayant ensuite discontinué sa poursuite, le défendeur ne peut plaider, pour justifier cette arrestation, d'autres faits que ceux dont il s'est plaint dans la dénonciation.—TORRANCE, J., 3 JUIN 1885, *Bogue vs Brouillet.* **I,** S. C. **470.**

35. Firm of attorneys ad litem—Death of one of the partners.—Where a party to a suit is represented by a firm of attorneys, he continues to be legally represented by the remaining members, after the death or promotion to the bench of one of the firm.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 26 FEB. 1889, *Stearns & Ross.* **V,** Q. B. **1.**

CITATIONS.—*deBeaujeu v. Rodrigue*, 7 *L. C. J.* 43—*Terrill v. Haldane* 15 *L. C. J.* 245—*Labossière v. Ethier*, 2 *R. L.* 104—*Johnson v. Rimner*, 13 *L. C. J.* 131—*Brunelle v. McGreevy*, 12 *Q. L. R. p.* 85.

36. Folle enchère.—Que la description de l'immeuble dont la vente est demandée par folle enchère n'a pas besoin d'être donnée dans la requête pour obtenir la folle enchère.

Qu'un créancier hypothécaire colloqué comme tel au jugement de distribution a le droit de demander la folle enchère,

malgré qu'il ne soit pas partie en la cause.—MOUSSEAU, J., 28 DÉC. 1885, *Vincent vs Roy*. **II,** S. C. **84.**

37. Foreclosure.—Que lorsqu'un défendeur est forclos de plaider et laisse le demandeur procéder exparte à sa preuve, sur le principe qu'un des exhibits de la demande n'est pas produit, il ne peut obtenir dans le cas où cet exhibit n'est pas une pièce au soutien de la demande, mais qu'un état détaillé, la permission de plaider qu'en payant tous les frais encourus par son défaut, et la preuve faite pourra servir au demandeur.—TASCHEREAU, J., 16 OCT. 1885, *Lavallée vs Letourneux*. **I,** S. C. **492.**

38. Foreign company—Action against—Service—Cause of action.—That a corporation whose principal place of business is in a foreign country may be served with process at any place in the Province of Quebec where it has an office for the transaction of business. So, where a foreign corporation had an office at Montreal, for the sale of sleeping car tickets, and the plaintiff who had bought a ticket from the defendant at New York, for a sleeping car berth from that city to Montreal, brought an action of damages, alleging that he had been unlawfully expelled from the sleeping car, it was held that the service of his action at the office of the Company in Montreal, was a sufficient service to give the Court at Montreal jurisdiction. Further, that although the expulsion took place beyond the province line, yet as it continued until the plaintiff reached Montreal, he being forced to ride in a first class car, the cause of action arose in this province.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MAY 1882, *N. Y. C. S. C. Co. & Donovan*.
IV, Q. B. **392.**

39. Hearing by privilege.—Qu'un appel d'un jugement de la Cour Supérieure, jugeant préalablement de la validité d'une évocation de la Cour de Circuit à la Cour Supérieure, peut être entendu par privilège, la règle étant que toute cause qui doit être jugée sommairement en Cour Supérieure peut l'être également en appel.—DORION, MONK, RAMSAY, CROSS, JJ., 15 SEPT. 1885, *Coursol & Syndics Ste-Cunégonde*.
I, Q. B. **394.**

40. Husband and wife — Wife erroneously described as separated as to property — Exception to the form — Amendment — Husband summoned to authorize his wife — Cannot be made a party personally on motion to amend. — The fact that the wife has assumed the quality of separated as to property, in a deed of lease to her, does not debar her, in an action against her in that quality, from pleading by exception to the form, and proving, that she is common as to property with her husband.

The plaintiff, under such circumstances, will be allowed to amend the writ and declaration by describing the wife as common to the property.

Where the husband has been summoned merely for the purpose of authorizing his wife (defendant) the plaintiff will not be allowed, on a motion to amend the original writ and declaration, to make the husband a party to the action personally, without summoning him in his personal capacity. —LACOSTE, BOSSÉ, BLANCHET, WURTELE, TAIT, JJ., 27 NOV. 1891, *O'Connor vs Inglis.* **VII,** Q. B. **218.**

CITATIONS.—*Huntingdon vs Fond,* 22 *L. C. J.* 279—*Chisholm vs Longlois, M. L. R.* 1 *S. C.* 190—*Style v. Myler,* 11 *L. N.* 357—*Eastern Townships Bank & Morrill* 1 *L. N.* 30—*Hudon vs Renaud,* 6 *L. N.* 107.

41. Incidental demand.—Qu'une demande incidente est suffisamment libellée lorsque faite par le demandeur immédiatement après sa réponse spéciale au plaidoyer, elle ne mentionne pas les raisons sur lesquelles elle est basée, mais réfère généralement à la dite réponse spéciale.—MATHIEU, J., 22 JUIN 1885, *Laflamme vs Mail Printing.* **I,** S. C. **359.**

Qu'une demande incidente réclamant des dommages additionnels ne peut être basée sur des faits postérieurs à l'action principale ; que pareille demande incidente sera renvoyée sur réponse en droit.—CARON, J., 5 FÉV. 1886, *Jordan vs Gagnon.* **II,** S. C. **184.**

42. Inconsistent pleading.—Que l'on ne peut par réponse en droit faire rejeter comme irrégulier un plaidoyer renferment une exception de compensation et de litispendance. — TORRANCE, J., 22 JUIN 1885, *Picard vs Bérard.*

I, S. C. **454.**

43. Inscription.—Que lorsque le défendeur a plaidé une exception à la forme puis une défense en droit, le demandeur ne peut inscrire en droit avant que l'exception à la forme ait été jugée.

Que l'on ne peut sur une exception à la forme produire des articulations de faits.—LORANGER, J., 4 JUIN 1884, *Lachambre vs Normandin.* **I,** S. C. **241.**

That is not competent to any party, in a cause to inscribe for the adduction of evidence at length without the consent of all the parties.

SEMBLE that any party may insist upon proceeding at enquete and merits at the same time.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MARCH 1884, *Exchange Bank vs Craig.* **I,** Q. B. **39.**

CITATIONS.—*Queen vs Martin*, 21 *L. C. J.* 156.

An inscription upon the roll des enquêtes for enquete without the consent of the opposite party, is regular.—DORION, RAMSAY, CROSS, BABY, JJ., 25 MAY 1885, *Normor vs Farquhar.* (Exchange Bank & Craig 1 M. L. R. Q. B. 39 distinguished). **II,** Q. B. **110.**

CITATIONS.—*Gregory vs The Canada Improvement Co.*, 4 *L. N.* 390.

Qu'une inscription pour enquête doit s'entendre de l'enquête au long et que cette inscription ne peut se faire que du consentement des parties; qu'une autre inscription pour enquête et mérite produite par l'autre partie doit prévaloir. —LORANGER, J., 19 OCT. 1888, *Green vs Brooks.*

IV, S. C. **476.**

Que dans une cause où il y a une demande incidente, jugée en même temps que la demande principale par le jugement porté en révision, il faut deux dépôts.—TORRANCE, BUCHANAN, MATHIEU, JJ., 22 MAI 1886, *Allaire vs Allaire.*

II, S. C. **252.**

44. Interdiction of party for prodigality during pendency of suit—Continuation of proceedings—Costs.—Where a party to a suit is interdicted for prodigality pendente lite, he ceases to be capable of any further proceeding in the cause, and the instance must be taken up in his behalf by the curator appointed to him.

An intervention in the suit by the curator, for the purpose of assisting the interdict, is of no effect; and an appeal by the interdict, so assisted by the curator, will be rejected.

Where the opposite party has only raised the objection to the irregularity of the proceedings by his factum and argument on the appeal, no costs will be allowed to him on the dismissal of the appeal.—DORION, CROSS, BOSSÉ, DOHERTY, JJ., 20 MAY 1889, *Greene & Mappin.* **V,** Q. B. **108.**

45. Interlocutory judgment.—That an interlocutory judgment dismissing a plea on an answer in law cannot be revised by the Court by the final judgment, the only remedy being an appeal; and therefore proof of such plea cannot be admitted when the case is being tried on an inscription for proof and final hearing.—TAIT, J., 31 OCT. 1887, *Kelly vs Warren.* **III,** S. C. **457.**

46. Interrogatories on faits et articles. — That a judge in vacation has discretionary powers to compel a defendant to answer interrogatories sur faits et articles at the Prothonotary's office during vacation.

The order thereof may be served in Ontario.—JETTÉ, J., 27 SEPT. 1886, *Stanton vs C. A. R. Co.* **II,** S. C. **322.**

47. Intervention.—Where an action had been brought by one of several persons assessed for the cost of a special improvement, to set aside the assessment roll, that any other person assessed for the cost of same improvement had an interest which entitled him to intervene if the original plaintiff abandoned the case.—RAMSAY, TESSIER, BABY, DOHERTY, CARON, JJ., 24 NOV. 1884, *Hubert vs Montreal.* **I,** Q. B. **237.**

Que les parties intéressées ne peuvent être tenues de contester une intervention aussi longtemps que les moyens d'intervention n'ont pas été produits même lorsque l'intervention contient les moyens, il faut que l'intervenant en produise d'autres dans le délai ou déclare qu'il n'en a pas d'autres à produire.—JOHNSON, JETTÉ, TASCHEREAU, JJ., 9 JUIN 1888, *Lusignan vs Rielle.* **IV,** S. C. **465.**

48. Inventory—Choice of notary.—Que celui qui est tenu de faire inventaire a le choix du notaire instrumentaire, mais

que les autres parties ont le droit d'y mettre un second notaire.—MATHIEU, J., 5 MARS 1886, *Labelle vs Labelle.*

II, S. C. **166.**

49. Irregularities in Court below.—In an action on a promissory note for value received, the Court of Appeal will not be disposed, unless for some substantial reason, to send the case back to enquête. And so where the defendant was in default to proceed, and, finally, after the case had been taken en délibéré, wished to examine some witnesses, and the Court below rejected the application, the Court of Appeal refused to send the case back, on the ground that the defendant had not shown any substantial grievance.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *McGreevy & Senécal.* **II,** Q. B. **471.**

50. Joinder of actions.—Where several non-appealable actions in the circuit court are consolidated with one that is appealable as involving the same question, the whole will be adjudicated, on an appeal in the principal case.—DORION, MONK, RAMSAY, TESSIER, BABY, JJ., 24 NOV. 1889, *Chemin de Fer M. & S. & Vincent.* **IV,** Q. B. **404.**

CITATIONS.—*Carré et Chauveau, vol.* 1, *p.* 142, *note* 14*e.*

Que l'union d'une cause avec une autre cause entre les mêmes parties ne peut être accordée lorsqu'elle aurait l'effet de compliquer inutilement la procédure et de retarder l'instruction.—PAGNUELO, J., 12 NOV. 1889, *Evans vs Evans.*

V, S. C. **414.**

51. Judgment ex-parte—Inscription.—Que pour les jugements rendus ex-parte par le protonotaire, en vertu des articles 89, 90 et 91 du Code de Procédure Civile, il n'est pas nécessaire de donner avis au défendeur de l'inscription pour jugement.—JOHNSON, RAINVILLE, LAFRAMBOISE, JJ., 29 NOV. 1879, *Dalbec vs Dugas.* **III,** S. C. **271.**

52. Judgment of distribution.—That a party, whose claim against an immovable seized and sold by the sheriff, appears in the registrar's certificate, but has not been collocated in the report of distribution, and who has failed either to contest the report of distribution or to appeal from the judgment

homologating the same, or to present a requête civile or an opposition against such judgment, as required by art. 761 of the Code of C. P., cannot by direct action, recover the amount of his said claim from the party collocated in such report to his prejudice.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 FEB. 1881, *McDonell & Buntin.* **I,** Q. B. **1.**

Que l'article 751 du Code de Procédure Civile, qui permet de contester un jugement de distribution même après son homologation, doit être interprété strictement; qu'il ne s'applique qu'au cas où la somme colloquée n'est pas due, mais non à celui où des questions seulement de privilège ou de droit de préférence peuvent être soulevées.—JETTÉ, J., 14 MARS 1885, *Petit vs Crevier.* **I,** S. C. **313.**

53. Judicial counsel.—Notice of the appointment of a judicial adviser to a party in the cause should be given to the opposite party.—TORRANCE, GILL, MATHIEU, JJ., 30 NOV. 1886, *Forgues vs Brosseau.* **II,** S. C. **376.**

54. Jury trial. — 1. *Affidavit of juror.*—The affidavit of a juror as to the motives which influenced either him or his fellow jurors cannot be received. (C. C. P. 428).—JOHNSON, DOHERTY, TASCHEREAU, JJ., 31 MARCH 1886, *Laflamme vs Mail Printing.* **II,** S. C. **146.**

2. *Assignment of facts.*—The object of the assignment of facts is that the jury may determine all the finite facts in dispute between the parties, and respecting which the court requires to be informed, in order to decide the question of law in issue between them. It must be so framed as to be sufficiently comprehensive and, at the same time, carefully exclude any evidence from which the jury may draw an inference; and the assignment of facts in this case conformed to this rule.—DORION, TESSIER, CROSS, BABY, CHURCH, JJ., 17 SEPT. 1887, *McRae vs C. P. R.* **IV,** Q. B. **140.**

CITATIONS.—*Adams, Treatise on Trial per Jury, pp.* 381, 385, 387 *et* 397.

3. *Judgment non obstante veredicto.* — That when the verdict of the jury is upon matters of fact in accordance with the allegation of the plaintiff's declaration, but against the evidence, the Court cannot render judgment in favor of the other party, if the allegations of the plaintiff are sufficient

in law to sustain his pretentions. It can only order a new trial.—DOHERTY, WURTELE, DAVIDSON, JJ., 5 MAY 1888, *Mac-Kay vs G. & L. Ins. Co.* **IV.** S. C. **124.**

CITATIONS—*Ferguson vs Gilmour*, 1 *L. C. J.* 131—*Higginson vs Lyman*, 4 *L. C. J.* 229—*Clark vs Murphy*, 11 *L. C. R.* 105—*Gugy vs Brown*, 10 *L. C. J.* 225—*Ansell vs Bank of Toronto*, 7 *R. L.* 262.

4. *Motion for judgment on verdict.*—The delay of four days in term mentioned in art. 421 C. C. P. means four days of a term of a Court of Review.

As motions for new trial or for judgment non obstante veredicto need not be made till the second day of the next term of the Court of Review following the ten days of the rendering of the verdict, the party who has the right to make such motions, can have the motion for judgment on the verdict continued till the last day of the aforesaid delay if he demands it. — JOHNSON, GILL, WURTELE, JJ., 23 OCT. 1889, *Roy vs C. P. R. Co* **VI,** S. C. **421.**

5. *Neglect*—Qu'à défaut par la partie qui a demandé le jury de procéder sur cette demande, la partie adverse a droit d obtenir la permission d'inscrire la cause pour enquête en la manière ordinaire 371 C. P. C.

Qu'une motion signifiée mais non présentée à la Cour n'a aucun effet.—TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 16 NOV. 1887. *McLeish vs Dougall.* **III,** Q. B. **313.**

Insufficiency of damages is not a proper ground for ordering a new trial. More particularly in action of slander or libel, where it does not appear the jury were improperly influenced or led into error.—JOHNSON, DOHERTY, GILL, JJ., 31 OCT. 1885, *Dixon vs The Mail Printing.* **I,** S. C. **480.**

6. *Time for fixing facts for jury—Acquiescence—Libel—Error in name of defendant—Amendment by final judgment.* —The rule of C. C. P. 352 which says that no trial is fixed until the facts to be inquired into by the jury have been assigned is one to be strictly followed, and where a motion by plaintiff to reform the assignment of facts was granted after the day for the trial was fixed, this was an irregularity which the defendants were entitled to urge unless it appeared that no injustice had been caused to them by the error.

But, in the present case, the defendants had waived their right to object by acquiescing in proceeding to trial and by consenting that a bystander should serve on the jury when it appeared that sufficient jurors were not present to form a jury.

Where the publisher of a libel was served and ordered (but by a wrong name) to appear and he appeared in that wrong name and without disclosing his correct name, pleaded not guilty, such plea put in issue only the fact of publication and the innuendos, and verdict rendered by the jury cannot be set aside on the ground that it was founded upon evidence of what was done by another person.

The judges of the Superior Court sitting in Review may by the final judgment grant the plaintiff's motion to insert the correct name.

Misdirection refers to matters of law, and it is not misdirection where the judge presiding at the trial charges the jury to find affirmatively or negatively on a matter of fact.

It is not misdirection for the judge to charge the jury that by law they should find the article to have been published falsely and maliciously unless the defendants pleaded and proved the truth of it — SICOTTE. JOHNSON, CIMON, JJ., 30 APRIL 1885, *Canada Shipping Co. vs Mail Printing.*

III. S. C. **23.**

(Affirming the judgment of the Court of Review M L. R. 3 S. C. 23). The rule contained in art. 352 C. C. P., which says that no trial is fixed until the facts to be inquired into by the jury have been assigned, is one to be strictly followed; and where a motion by plaintiff to reform the assignment of facts was granted after the day for the trial was fixed, this was an irregularity which the defendants were entitled to urge, unless it appears that they had suffered no injustice by the error. But, in the present case, the defendants had waived their right to object by acquiescing in proceeding to trial and by consenting that a bystander should serve on the jury, when it appeared that sufficient jurors were not present to form a jury.

Where the publisher of a libel was summoned by a wrong name and he appears in that name, and, without disclosing

his correct name, pleaded not guilty, such plea put in issue only the fact of publication and the innuendos, and the verdict rendered against him by the jury could not be set aside on the ground that it was founded upon evidence of what was done by another person.

The judges of the Superior Court sitting in Review, were right in granting, at the final judgment, the plaintiff's motion to insert the correct name.

It was not misdirection for the judge to charge the jury, that by law they should find the article to have been published falsely and maliciously, inasmuch as the defendants did not plead and prove the truth of it. — DORION, TESSIER, BABY, CHURCH, JJ., 26 MARCH 1887, *Mail Printing & Canada Shipping.* **IV,** Q. B. **225.**

7. *Verdict—Arrest of judgment—Railway.*—The assignments of facts submitted to the jury contained questions relating not only to the expulsion of the plaintiff from defendant's trains on two dates specially alleged in the declaration, but also to his being prevented from travelling on their trains subsequently, which, in the opinion of the Court was not complained of at all in the declaration. The verdict awarded damages generally.

That the defendants had a right to move in arrest of judgment, it being impossible to divide the amount and say how much the jury intended to give for what the plaintiff complained of, and how much for what he did not complain of.

SEMBLE: A railway company, which has not yet opened its line for the public conveyance of passengers, is not subject to the obligations which attach to common carriers, though it may have occasionally carried passengers for hire for the special accommodation of persons applying for passage.—JOHNSON, GILL, DAVIDSON, JJ., 31 MARCH 1888, *McRae vs C. P. R.* (In appeal M. L. R. 4 Q. B. 140).

IV, S. C. **186.**

55. Licitation—Cahier des charges.—Que dans une vente d'immeubles par licitation ordonnée par la Cour, une opposition afin d'annuler basée sur le fait que la copie du cahier des charges signifiée à l'opposant est irrégulière et non con-

forme à l'original, ne peut être maintenue lorsque le cahier des charges a été antérieurement confirmé et homologué.—MATHIEU, J., 12 OCT. 1886, *Barrette vs Scheffer*.
II, S. C. **308.**

56. Liquidator of insolvent company.—Que nonobstant la prohibition contenue dans la sec. 33 du ch. 23 de la 45e Vict. (1882, fédéral), le liquidateur d'une compagnie insolvable peut faire des procédures valides en son nom personnel avec sa qualité ajoutée, aussi bien qu'en sa seule qualité de liquidateur de la compagnie.—JETTÉ, J., 27 OCT. 1884, *Banque d'Hochelaga vs Masson*. **I,** S. C. **62.**

57. Money deposited in court.—That moneys attached by garnishment and deposited in court under an order of the court to abide the result of a suit, and subsequently declared the property of one of the parties are not moneys levied within the meaning of art. 753 C. C. P. and cannot be claimed by an opposition en sous ordre.—MATHIEU, J., 20 JAN. 1886, *Carter vs Molson*. **II,** S. C. **143.**

58. Motion.—1. *By garnishee in appeal for leave to make a new declaration*.—Where the contestation by intervenants of a garnishee's declaration has been dismissed, and the judgment dismissing it has been appealed from, the court of appeal will not entertain an application by the garnishee to be permitted to set aside the former declaration and make a new one.—DORION, TESSIER, CROSS, BABY, JJ., 26 MARCH 1888, *Fairbanks vs O'Halloran*. **IV,** Q. B. **163.**

2. *For security for costs*.—Qu'un avis de motion pour cautionnement judicatum solvi donné d'une manière irrégulière et nulle, mais dans le délai voulu par la loi, et renouvelé par l'ordre de la Cour à un jour ultérieur en dehors du dit délai, est suffisant.—MATHIEU, J., 18 SEPT. 1888, *Morrison vs Miller*. **IV,** S. C. **471.**

3. *That usufructuary gives security*.—Que lorsque le demandeur dans son action demande entr'autres choses à ce que le défendeur soit condamné à donner un cautionnement qu'il jouira de son usufruit en bon père de famille et que le défendeur déclare dans ses plaidoiries qu'il est prêt à se soumettre à cette demande, ce cautionnement néanmoins ne

pourra être exigé par le demandeur pendant l'action, au moyen d'une motion, mais devra être adjugé par le jugement final.—TASCHEREAU, J., 16 AVRIL 1886, *Lajeunesse vs David.* **II,** S. C. **178.**

4. *To strike out allegations of plea.*—Que dans une action en dommages pour libelle, une motion demandant le rejet du plaidoyer de certaines allégations trop vagues et insuffisamment libellées, est de la nature d'une exception à la forme, et doit être faite dans un délai raisonnable.—MATHIEU, J., 16 MAI 1887, *Chapleau vs Trudel.* **III,** S. C. **167.**

59. New trial.—In considering whether a new trial should be granted on the ground that the verdict was rendered without evidence, or contrary to evidence, it is not enough that the judge who tried the case, or the judges in the Court where the new trial is moved for, might have come to a different conclusion from the jury, but there must be such a preponderance of evidence, assuming there is evidence on both sides to go to the jury, as to make it unreasonable that the jury should return such a verdict.—JOHNSON, TASCHEREAU, GILL, JJ., 31 MARCH 1887, *Goodhue vs G. T. R. Co.* **III,** S. C. **114.**

Where the parties go to trial without objections to the questions settled for the jury, and without appeal from the interlocutory judgment, defining them, they cannot afterwards urge the vagueness or insufficiency of the questions as brought for a new trial.

If no objection has been made to the judge's charge and the charge has not been put in writing, misdirection cannot afterwards be invoked by either party.

The fact that the deposition of a witness who had been previously examined by consent of the parties, was read to the jury in his absence, is not ground for a new trial, where no injustice appears to have been suffered by the party complaining.

Where the questions to the jury was whether a statement of the assured was "untrue to his knowledge", and the answer "untrue" the answer must be taken to mean "untrue to his knowledge."

Where a motion was made and granted, that the word "wilfully" should be inserted before the word "withheld," in one of the questions for the jury, but the amendment was not inserted in the printed list of questions handed to the jury, the omission was held to be immaterial, where it appeared that the attention of the jury was, as a matter of fact, directed to the effect of the amendment; and in any case, the proper recourse would have been, not by motion for a new trial, but for an arrest of judgment.—JOHNSON, TASCHEREAU, TAIT, JJ., 30 JUNE 1887, *Brossard vs Canada Life.* **III,** S. C. **388.**

60. Notary—Inventory.—The petition of heirs for the appointment of a notary to make the inventory of the estate should be made in the name of the parties themselves, and not by attorney.

The judge is not bound to appoint the notary chosen by the majority of the heirs but may, in his discretion, name another where he considers that the choice of the majority is not the most advantageous.—DOHERTY, LORANGER, TAIT, JJ., 31 MARCH 1887, *Ex Parte Paré.* **III,** S. C. **76.**

61. Notes taken by stenographer—Correction of error.—That the transcribed notes of evidence taken by a stenographer under the direction of the judge, in the manner provided by 47 Vict. (Q) c. 8, s. 4, are like notes taken by the judge himself, and it is not necessary that they should be read to the witnesses. Where errors are found to exist in such notes, the judge who heard the evidence, upon application by the party interested, may order the errors to be corrected, in the manner he may deem proper.—JOHNSON, GILL, LORANGER, JJ., 31 JAN. 1888, *Guimond vs Leblanc.* **IV,** S. C. **426.**

62. Notice.—1. *Of action.*—Que les art. 22 et 36 du Code de Procédure Civile ne s'appliquent pas à cette action en dommages.—TORRANCE, PAPINEAU, TASCHEREAU, JJ., 21 JUIN 1886, *Michon vs Venne.* **II,** S. C. **367.**

2. *Of motion.*—Qu'un avis de motion signifié le 11 du mois pour le 12. est insuffisant; mais si la motion est continuée à un jour ultérieur, le but de la loi qui est de donner

un délai raisonnable, est atteint, et la motion devient régulière.—JETTÉ, J., 27 OCT. 1884, *Banque d'Hochelaga vs Masson.* **I,** S. C. **62.**

3. *Of taxation.*—That under art. 479 of the Code of C. P., where the prothonotary or his deputy has taxed the costs without previous notice to the attorney of the parties in the case, an opposition afin d'annuler, on the ground only of want of notice will not be maintained, unless the opposant shows that he has been prejudiced by the want of notice.—MATHIEU, J., 20 NOV. 1885, *Samuel vs Houliston.*

I, S. C. **505.**

CITATIONS.—*Audd & Asselin*, 15 *L. C. R.* 273—*Lewis vs McGinley*, 6 *Q. L. R.* 61.

63. Opposition.—1. *En sous-ordre.*—(Affirming the judgment of Mathieu J. M. L. R. 2 S. C. 143 but resting the decision on other grounds.) That where moneys have been attached by garnishment and deposited in the hands of the prothonotary to abide the result of a contestation, and subsequently by a final judgment, the said moneys have been declared to be the property of the contestant, and the prothonotary by a judgment of the court, has been ordered to pay the same on the contestant, such moneys cannot be claimed by an opposition en sous-ordre, there being no longer any suit pending in which such opposition could be made; and the claimant's recourse should be by saisie-arrêt founded upon affidavit as required by law.—DORION, CROSS, BABY, CHURCH, JJ., 17 SEPT. 1887, *Barnard & Molson.* (Affirmed by Supreme Court 15 S. C. R. 716). **III,** Q. B. **348.**

CITATIONS.—*Stirling v. Darling*, 1 *L. C. J.* 161 — *Banque Jacques-Cartier vs O'Gilvie*, 19 *L. C. J.* 100—29 *Laurent, No.* 272.

2. *To judgment.*—An opposition to judgment by default must be supported by affidavit that the defendant has a good defence to the action which defence shall be set out in the opposition, and that he has been prevented from filing his defence by surprise, fraud, or other just and sufficient causes.

Where the defendant has been regularly foreclosed from pleading, and does not complain of such foreclosure, he is not entitled to file an opposition to judgment (which is

equivalent to a plea to the action) without asking to be relieved from such foreclosure.—JOHNSON, PAPINEAU, GILL, JJ., 30 NOV. 1886, *Letourneux vs St. Jean.* **II,** S. C **362.**

That under 46 Vict. (Q.) ch. 26 s. 4, amending C. C. P. 484, an opposition to a judgment by default must be supported by an affidavit setting forth that the opposant has a good defence to the action, and that he has been prevented from filing his defence by surprise, fraud, or other just and sufficient causes.—JETTÉ, J., 20 SEPT. 1886, *Ross vs Dawson.* **II,** S. C. **361.**

A deposition filed in a case in order to obtain judgment by default will not avail to prove the plaintiff's case on his contestation of the opposition to judgment made by defendant.—PAPINEAU, J., 20 DEC. 1886, *McLachlan vs Baxter.* **II,** S. C. **434.**

Que le statut de 1883 (46 Vict. ch. 26) qui permet de faire une opposition à jugement dans les causes par défaut ou ex-parte obtenu soit en terme soit en vacance, ne s'applique qu'aux jugements rendus en vertu des articles 89, 90 et 91 du Code de Procédure Civile.—JETTÉ, J , 6 JANV. 1887, *Ross vs Leprohon.* **III,** S. C. **137.**

Qu'une opposition à jugement, admise sur l'ordre d'un juge, est de la nature d'un plaidoyer, et ne peut être renvoyée sur une simple motion alléguant des moyens à la forme, et présentée en dehors des delais voulus pour la production des exceptions préliminaires.—JOHNSON, PAPINEAU, LORANGER, JJ., 30 DÉC. 1887, *Devin vs Ollivon.* **III,** S. C. **382.**

CITATIONS.—*Canadian Bank of Commerce v. Brown,* 23 *L. C. J.* 181—*Leprohon v. Crebassa,* 14 *L. C. J.* 159.

En conformité avec la jurisprudence de la Cour d'Appel que l'opposition à jugement ne peut avoir lieu que lorsqu'il s'agit d'un jugement par défaut ou ex-parte rendu en vertu des articles 89, 90 et 91 du Code de Procédure Civile.—JETTÉ, J., 25 JAN. 1888, *Lachapelle vs Gagnier.* **IV,** S. C. **72.**

Qu'aucun délai n'est assigné pour faire une opposition à jugement, dans le cas de jugement rendu conformément aux dispositions de l'art. 89 du Code P. C., cette opposition pou-

vant être faite en tout temps avant la vente.—LORANGER, J., 17 MAI 1889, *Lowensohn vs Cardinal.* **V,** S. C **57.**

3. *To seizure.* — An action having been dismissed with costs, one of the defendants, in order to recover his costs, cause an execution to issue and seize the movables in plaintiff's domicile. The plaintiff's wife filed an opposition claiming the effects as her property, and asked costs against the defendant seizing.

That the opposant was not entitled to ask costs against the creditor seizing (here the defendant) but only (C. C. P. 586) against the judgment debtor (here the plaintiff) and a mere notice in writing of her claim to the effects, transmitted to the seizing party, did not entitle her to costs against him. —TORRANCE, J., 30 NOV. 1886, *Brown vs Ross.*

II, S. C. **372.**

Que dans un affidavit au soutien d'une opposition afin d'annuler, le déposant doit jurer d'après sa connaissance personnelle, et non suivant les informations qu'il a reçues; qu'ainsi lorsque le déposant dépose que les faits "sont vrais, en observant toutefois qu'il n'a été informé des faits suivants, mentionnés dans l'opposition ci-dessus que d'après les déclarations de son avocat", l'affidavit est illégal et irégulier et l'opposition pourra être renvoyée sur motion.—MATHIEU, J., 27 JUIN 1887, *Morin vs Morin.* **III,** S. C. **165.**

(Infirmant M. L. R. 3 S. C. 16). La déposition au sujet d'une opposition sur saisie n'est requise que pour l'obtention de l'ordre de sursis et que l'insuffisance de telle déposition ne justifie que la révocation du sursis et non le renvoi de l'opposition. — JOHNSON, JETTÉ, TASCHEREAU, JJ., 31 OCT. 1887, *Morin vs Morin.* **IV,** S. C. **183.**

Que l'on ne peut répondre par des questions de fait à une défense en droit en contestation d'une opposition, et que semblable réponse pourra être renvoyée sur motion. — MATHIEU, J., 29 MAI 1891, *Ewart vs Wyatt.* **VI,** S. C. **328.**

Que même dans une cause ou le défendeur n'a pas comparu, la Cour ne peut adjuger sur une opposition sans que toutes les parties en cause aient été préalablement mises en

demeure d'admettre ou de contester l'opposition. — WURTELE, J., 13 JUIN 1890, *Lang Mfg. Co. vs Cocker.*

VI, S. C. **323.**

64. Péremption d'instance.—Que lorsqu'il y a, dans une cause, des propositions d'arrangement, des pourparlers entre les procureurs à la fin, que vu l'identité de la cause avec une autre, la preuve dans l'une servirait dans l'autre, et que la décision d'une cause déciderait de l'autre, il y a suspension et interruption de la péremption.—GILL, J., 13 JUIN 1888, *Ouellette vs C. P. R. Co.* **IV,** S. C. **86.**

65. Pleading. — 1. *Demurrer.* — Qu'une défense en droit doit être jugée sur son propre mérite en droit, et qu'il ne peut y avoir de défense en droit à une autre défense en droit.—TORRANCE, J , 15 JUIN 1885, *Crédit Foncier vs Lemire.*

I, S. C. **464.**

CITATIONS.— 1 *Chitty, on Pleading,* 666 — *Stephens, on Pleading, 4th edit.* — *Wotherspoon, on C. C. P.*

Where the plantiff claimed a certain capital sum, and also computed compound interest as well as interest thereon, and alleged as in the total amount "which said last mentioned sum the said defendant had often admitted to owe and promised to pay to the said plaintiff, but always neglected to do so" that the allegations of the declaration justified a conclusion for the whole amount, and that it was not necessary to allege specially that the defendant had promised to pay compound interest. — LACOSTE, BOSSÉ, BLANCHET, WURTELE, TAIT. JJ., 27 NOV. 1891, *McVey & McVey.* **VII,** Q. B. **305.**

2. *Vagueness of allegations—Exception to the form.*—Where the right of action is not denied by the defendant, but he complains of the vagueness and insufficiency of the allegations of the declaration, it is a matter for an exception to the form, and not for a demurrer, or for a motion for particulars. — DORION, BABY, BOSSÉ, DOHERTY, CIMON, JJ., 23 MAY 1891, *McGreevy & Beaucage.* **VII,** Q. B. **89.**

CITATIONS.—*Wagner v. Farran,* 3 *R. de L.* 196 — *Boucher v. Fraser,* 9 *R. L.* 718—*Walker v. Mayor,* 5 *R. L.* 66—*Birch v. Desjardins,* 11 *R. L.* 468

66. Power of attorney. — That a non resident plaintiff, contesting the collocation of a third party in a report of distribution, is obliged to furnish a power of attorney and give security for costs.—TASCHEREAU, J., 16 APRIL 1887, *Bornais vs Arpin.* **III,** S. C. **84.**

CITATIONS —*Webster v. Philbrich*, 15 *L. C. J.* 243 —*Société Anonyme des Glaces & Gilerton*, 26 *L. C. J.* 246—*Park v. Rivard, M. L. R.* 1 *S. C.* 291.

Qu'un procureur ad litem qui intente au nom d'un absent une action en destitution d'une charge d'exécuteur testamentaire et de légataire en fidéicommis (in trust) est tenu, s'il en est requis, de produire une procuration l'autorisant à intenter spécialement cette action.—PAPINEAU, J., 13 NOV. 1880, *Howard vs Yule.* **IV,** S. C. **420.**

67. Proceedings in forma pauperis. — That even where a party is permitted to proceed in forma pauperis before the Court of Review, such permission does not exempt him from making the usual deposit.—JOHNSON, GILL, LORANGER, JJ., 30 SEPT. 1890, *Dion vs Gervan.* **VII,** S. C. **450.**

68. Production of exhibits.—Que quoique par l'art. 103 du C. P C. il est décrété que jusqu'à ce que les pièces aient été produites, le demandeur ne peut procéder sur sa demande, néanmoins, le défendeur peut également produire une exception dilatoire pour arrêter la poursuite jusqu'à la production des pièces nécessaires.—MATHIEU, J., 2 MAI 1890, *Stewart vs Molson's Bank.* **VI,** S. C. **324.**

69. Prohibition, writ of—Indian Act.—A writ of prohibition can be issued from the Superior Court to an inferior tribunal, only when the inferior tribunal is exceeding its jurisdiction, or is acting without jurisdiction.

A Commissioners' Court has jurisdiction to hear and determine a cause against an Indian, and to issue a writ of execution upon the judgment rendered in such cause; and the fact that goods have been seized which are by law declared to be exempt from seizure does not justify the issue of a writ of prohibition to the Court from which the execution issued.

The proper proceeding in such circumstances is an oppo-

sition afin d'annuler.—DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 26 FEB. 1889, *Cherrier & Terihonkow.*

V, Q. B. **33.**

CITATIONS —*Molson & Lambe*, 11 *L. N.* 291.

70. Provisional execution.—Que lorsque dans une saisie revendication, le demandeur a obtenu jugement d'un des juges de la Cour Supérieure, lui accordant la possession des effets saisis pendant l'instance, et qu'une autre des parties dans la cause porte ce jugement en Appel, le demandeur peut obtenir l'exécution de ce jugement par provision, nonobstant l'appel.—PAPINEAU, J., 12 JUILLET 1884, *Whitehead vs Kieffer.* (Reformed in Appeal 4 M. L. R. Q. B. 239).

I, S. C. **287.**

71. Public officer—Notice of action.—Que lorsqu'un avis d'action sous l'article 22 du C. P. C. a été donné à un officier public, et que l'action subséquemment intentée a été discontinuée, il est nécessaire de renouveler l'avis pour intenter une nouvelle action. — MOUSSEAU. J., 6 FEV. 1886, *Demers vs McCarthy.* **II,** S. C. **128.**

72. Putting husband of defendant in the cause.—Where the plaintiff was ordered, by a judgment of the Court, to bring the husband of the female defendant personally into the cause, that the service of a new writ and declaration setting forth the demand in full, upon both husband and wife, was sufficient.—DORION, CROSS, BABY, CHURCH, JJ., 25 FEB. 1888, *Myler & Styles.* **IV,** Q. B. **116.**

73. Railway company — Residence — Security for costs.—A railway company, being a corporation, can have only one residence, and that its Head Office. Such company having its head office outside of the Province of Quebec, must give security for costs.

The defendants, although residing in the United States, may ask that the plaintiff be ordered to give security, without the defendants being themselves liable to furnish security. — GLOBENSKY, J., 7 SEPT. 1888, *C. A. R. Co. vs Stanton.* **IV,** S. C. **160.**

CITATIONS.—*Singer Mfg. Co. vs Beaucage*, 8 *Q. L. R.* 354—*The Niagara &c Co. vs Mullin*, 21 *L. C. J.* 324—*The Globe Mutual &c vs Sun Mutual &c*, 1 *L. N.* 139

—*Goldie &c vs Rasdoni*, 31 *L. C. J.* 166 — *Connecticut & Pass. R. R. Co. vs South Eastern R. R. Co.*, *M. L. R.* 2 *Q. B.* 105—*Gravelle vs Mallette*, 21 *L. C. J.* 162—*Jones & Vaneliet*, 3 *L. N.* 184.

74. Real estate, seizure under $40.00.—That the costs of suit cannot be added to the principal, in order to form the sum of $40 required to seize real estate, the costs belonging to the attorney of the successful party and being determined only by taxation subsequently to the judgment.—MATHIEU, WURTELE, TELLIER, JJ., 30 MAY 1891, *Jenckes Machine Co. vs Hood.* **VII,** S. C. **203.**

CITATIONS.—*Morency v. Fournier*, 7 *Q. L. R. p.* 9—*Milette & Gibson*, *M. L. R.* 5 *Q. B.* 239—*Fournier v. Cannon*, 6 *Q. L. R.* 228—*Bury v. Corriveau, Silk Mills Co. M. L. R.* 3 *S. C.* 218—*Kilgour v. Logan*, 3 *Q. B. Rep.* 336—2 *Pigeau* 297.

75. Replication to answer in law.—That facts cannot be alleged in replication to a answer in law and allegations of facts contained in such replication may be struck out on motion.—TASCHEREAU, J., 7 APRIL 1886, *Lockie vs Multin.* **II,** S. C. **262.**

76. Report of experts.—Que les tribunaux doivent autant que possible accueillir favorablement les rapports d'experts, et ne les rejeter qu'en autant qu'il y a eu des irrégularités et des illégalités de nature à porter préjudice aux parties.—RAINVILLE, J., 23 JANV. 1884, *Connavan vs Bryson.* **I,** S. C. **221.**

Que lorsque le jurat constatant l'assermentation préalable de l'expert n'a pas été annexé à son rapport et qu'il est perdu, le rapport peut être amendé avec la permission du tribunal de manière à permettre à l'expert d'y ajouter son affidavit établissant qu'il a été dûment assermenté avant d'agir. —MATHIEU, J., 23 FÉV. 1885, *Silcot vs Papineau.* **I,** S. C. **297.**

77. Reprise d'instance.—Qu'une reprise d'instance peut se faire par motion aussi bien que par requête.—JETTÉ, J., 27 OCT. 1884, *Banque d'Hochelaga vs Masson.* **I,** S. C. **62.**

78. Requête civile.—Qu'il n'y a pas lieu à la requête civile pour des irrégularités de peu d'importance lorsqu'il paraît constant que le jugement qui serait rendu après le maintien

de la requête civile devrait être le même que celui déjà rendu.—JOHNSON, DOHERTY, TASCHEREAU, JJ., 25 FÉV. 1886, *Trudel vs St-Cyr.* **II,** S. C. **169.**

79. Review.—A review may be had upon every judgment or order rendered by a judge in summary matters under the provisions contained in the third part of the Code of Procedure.—DOHERTY, LORANGER, TAIT, JJ., 31 MARCH 1887, *Paré vs Paré.* **III,** S. C. **76.**

Qu'il n'y a pas d'appel à la Cour de Révision d'un jugement de la Cour Supérieure annulant sur requête une élection d'un échevin de la cité de Montréal.—JOHNSON, TASCHEREAU, GILL, JJ., 22 SEPT. 1887, *Girard vs Rousseau.* **III,** S. C. **297.**

Several defendants may inscribe in review by one inscription though they pleaded separately in the Court of first instance.

In such case, they are only obliged to make a simple deposit in Review.

If the defendants have pleaded separately, and the plaintiff inscribes in Review, he is obliged to make a separated deposit for each contestation unless the defendants have united in a single appearance before the Court of Review, in which case only one deposit is necessary.

In a petitory action a deposit of forty dollars is required, whatever may be the amount sought to be recovered.—JETTÉ, WURTELE, DAVIDSON, JJ., 23 APRIL 1889, *British American Land Co. vs Yates.* **V,** S. C. **194.**

CITATIONS.—*Dionne v. Ross,* 3 *L. N.* 299—*Pednaud v. Perron,* 7 *Q. L. R.* 319 *Villeneuve v. Coudé and Pelletier v. Bouchard,* 15 *Q. L. R.* 8—*Clément v. Blouin,* 16 *L. C. J.* 156—*Morrison v. Wilson,* 16 *L. C. J.* 196—*Allaire v. Allaire, M. L. R.* 2 *S. C.* 252—*Leavitt vs Moss,* 16 *L. C. J.* 156—*Lacombe v. Ste-Marie* 15 *L. C. J.* 268—*McNamee v. Jones,* 4 *L. N* 102.

That a judgment of the Superior Court, under the Town Corporations General Clauses Act, 40 Vict. c. 29, s. 200 (R. S. 4376) upon a petition to set aside a resolution of a County Council on the ground of illegality, is a judgment respecting municipal matters and is not susceptible of revision before three judges. (R. S. 4614).—JOHNSON, DAVIDSON,

DELORIMIER, JJ., 22 JUNE 1889, *McConnel vs Corporation Lachute.* **V,** S. C. **274.**

That where it appears to the Court sitting in Review of a judgment of the Superior Court, that the defendants, in the special circumstances of the case, should have been examined on oath in the cause in the court below, it may reverse the judgment, and order the transmission of the record to the court below, in order that such examination may take place.—DOHERTY, PAPINEAU, LORANGER, JJ., 12 JUNE 1886, *Miller vs Lepitre.* **V,** S. C. **345.**

Qu'un jugement de la Cour Supérieure ne peut être revisé par la même cour; il ne peut être modifié que par un tribunal supérieur.

Qu'ainsi lorsque la Cour Supérieure a jugé et admis la validité d'une évocation de la Cour de Circuit, elle ne peut, par un jugement subséquent, déclarer qu'il n'y avait pas lieu à évoquer la cause et ordonner que le jugement soit remis à la Cour de Circuit.—JETTÉ, MATHIEU, LORANGER, JJ., 31 JAN. 1881, *St-Aubin vs Leclaire.* **II,** S. C. **15.**

Que lorsqu'une des parties succombe sur tous les faits qui ont fait la matière de l'enquête, quoiqu'elle puisse réussir, d'ailleurs, à obtenir jugement, les frais d'enquête doivent être mis à sa charge.—DOHERTY, PAPINEAU, GILL, JJ., 31 OCT. 1884, *Filiatrault vs Elie* **I,** S. C. **66.**

80. Revision of decision of prothonotary.—Que les décisions du protonotaire dans les matières renfermées dans la 3e partie du Code de Procédure Civile peuvent être revisées sur simple requête à un juge ou à la Cour Supérieure sans bref d'assignation et ce, à la demande de tout intéressé quelconque;

Qu'il n'est pas nécessaire de mentionner dans cette requête les noms, qualité, occupation et résidence des défendeurs, il suffit d'un avis aux parties intéressées;

Que le délai d'assignation sur la requête n'est que d'un jour intermédiaire;

Qu'il n'est pas nécessaire que la date du jugement dont on demande la révision, se trouve dans les conclusions de la requête.—MATHIEU, J., 30 AVRIL 1886, *Dubreuil vs Durocher et al.* **II,** S. C. **194.**

81. Revocation of right to sue in forma pauperis.—Que le droit de procéder in forma pauperis peut être révoqué par le tribunal sur motion, lorsqu'il appert que la partie qui a obtenu ce privilège a des moyens suffisants pour lui permettre de payer les déboursés nécessaires.

Que sur la négligence ou le refus de la part de cette partie d'apposer sur les pièces judiciaires de son dossier les timbres requis, dans le délai fixé par le jugement révoquant le privilège, la partie adverse pourra demander le renvoi de l'action.—TASCHEREAU, J., 10 AVRIL 1886, *Laurin vs Loranger.* **II,** S. C. **253.**

82. Right to plead de novo.—Que lorsqu'un demandeur intente une action contre deux personnes faisant affaires en société, et ensuite se désiste de son action et déclare ne la poursuivre que contre l'un deux personnellement, le défendeur pourra sur motion obtenir la permission de plaider de novo, et l'instance sera suspendue jusqu'à ce que le demandeur ait payé les frais taxés sur le désistement.—DOHERTY, J., 10 JAN. 1885, *Chisolm vs Langlois.* **I,** S. C. **192.**

83. Saisie arrêt.—Qu'une tierce opposition ne suspend pas l'exécution d'un jugement et qu'un tiers saisi, la tierce opposition étant pendante, ne peut déposer en Cour le montant qu'il a été condamné à payer, mais qu'il doit la remettre au demandeur.—JETTÉ, J., 16 FÉV. 1885, *Debellefeuille vs Ross.* **I,** S. C. **318.**

Que si la déconfiture est suffisamment constatée par la preuve, le tribunal pourra de plano ordonner au tiers saisi, qui a en mains une certaine somme d'argent appartenant au défendeur, de la rapporter en Cour, pour là y être distribuée suivant que de droit. (Art. 602 C. P. C.)—JOHNSON, BOURGEOIS, GILL, JJ., 31 OCT. 1885, *Quesnel vs Barrette.* **II,** S. C. **13.**

That a clerk or employee is not a third party within the meaning of Art. 612 C. C. P. His possession of his employer's is not distinct from that of his master and such moneys cannot be seized in the hands of the clerk by garnishment.

The fact that the clerk may have deposited such moneys

in a bank in his own name "in trust" does not affect the case.—JOHNSON, PAPINEAU, LORANGER, JJ., 31 MARCH 1886, *Ontario Car vs Q. C. R. Co.* **II,** S. C. **287.**

Dans une contestation de saisie arrêt avant jugement, lorsque le contestant dans ses réponses aux articulations de faits a, pour éviter à frais, admis qu'il devait au demandeur plus de $5, le demandeur peut néanmoins faire la preuve de sa créance.—MATHIEU, J., 18 SEPT. 1890, *Mallette vs Ethier.* **VI,** S. C. **383.**

84. Saisie revendication.—Que quoiqu'un gardien volontaire ait consenti à laisser le défendeur en possession des effets saisis, il peut néanmoins réclamer les dits effets par voie de saisie revendication lorsqu'il a de justes raisons de craindre que les biens soient en danger de disparaître et que le défendeur refuse de les lui remettre.—TORRANCE, BUCHANAN, LORANGER, JJ., 30 DÉC. 1884, *Dupaul vs Wheeler.* **I,** S. C. **147.**

Que lorsque dans une saisie revendication, la Cour, sur requête, aura accordé au demandeur la possession des effets saisis, l'enlèvement de ces effets par le défendeur ou par un intervenant dans la cause, forcément et contre la volonté du demandeur, constitue ces derniers en mépris de Cour et ils pourront être contraints par corps d'en remettre la possession au demandeur.

Que la Cour n'a aucune juridiction pour accorder la possession des meubles saisis à un intervenant, dans une saisie revendication, lorsque le jugement final, maintenant l'intervention a été porté en appel où la saisie est pendante.—TASCHEREAU, J., 11 JAN. 1885, *Whitehead vs Kieffer.* (Reformed in appeal 4 M. L. R. Q B 239). **I,** S. C. **288.**

Que dans une saisie revendication, le demandeur peut régulièrement, avec la permission de la Cour obtenue sur requête, amender la description des effets saisis même avant le retour de l'action, en en donnant avis aux autres parties. —JETTÉ, J., 4 FÉV. 1885, *Legru vs Dufresne.* **I,** S. C. **315.**

85. Security—Appeal to Supreme Court.—On an appeal to the Supreme Court of Canada, personal security is sufficient. —CROSS, J., 17 JAN. 1886, *Wheeler & Black.* **II,** Q. B. **159.**

86. Security for costs. — Que c'est seulement celui qui porte, intente ou poursuit une instance ou procès qui est tenu de fournir le cautionnement judicatum solvi, et tel est un opposant à fin de distraire; que la partie qui conteste une opposition, ne faisant qu'exercer les droits de son débiteur pour résister à l'opposition, se trouve dans le cas du défendeur dans une saisie revendication, et, par conséquent, ne doit pas le dit cautionnement;

DEFINITION: L'instance est la série des actes d'une procédure judiciaire ayant pour objet de saisir le tribunal d'une contestation, d'instruire la cause et d'obtenir finalement le jugement qui doit vider le débat.—SICOTTE, PAPINEAU, MATHIEU, JJ., 31 MARS 1885, *Park vs Rivard.*

I, S. C. 291.

CITATIONS.—*Webster v. Philbrick*, 15 *L. C. J.* 243—*Brigham v McDonnell*, 10 *L C.R.* 452—*Morrill v. MacDonald*, 6 *L C.J.* 40—*Gravel v. Mallette*, 21 *L.C J.* 162—*Bonacina v. Bonacina*, 4 *L. C. J.* 148—*Wadleigh vs Painchaud*, 3 *L. N.* 218—*Miller vs Dechêne*, 8 *Q. L. R.* 18—*Dupré v. Cantara*, 1 *R. L.* 39—*La Sté. v. Giberton*, 26 *L. C. J.* 287—*Mahoney v. Tomkins*, 9 *L. C. R.* 72—*Church v. Bothwick*, *A. D.* 1852—*McAdams v. Stuart*, 1 *Rap. Jud. de Q.* 354.

(Following Bowker Fertilizer Co. vs Cameron, 7 L. N. 214). That a motion for security for costs may be presented after the expiration of four days from the return of the writ, if notice of the motion has been given within the four days.

A non-resident defendant is entitled to ask for security for costs, from a non-resident plaintiff.

Where a non-resident defendant has been summoned by advertisement, under C. C. P. 68 the four days run from the expiration of the two months within which he is ordered to appear, and if such delay expires in vacation, the delay runs from Sept. 1.

Where a defendant, after giving notice of motion for security for costs, pleads without reserve of his rights, he waives his right to security.—DORION, RAMSAY, CROSS, BABY, JJ., 23 NOV. 1885, *Connecticut & Passumpsic R. R. Co. & S. E. R. Co.* **II, Q. B 105.**

That an opposant who is absent from the country, even if he is a defendant opposant afin d'annuler, is bound to

give the security for costs.—DORION, CROSS, BABY, CHURCH, JJ., 20 SEPT. 1887, *Beckett & La Banque Nationale.*

III, Q. B. **274.**

CITATIONS.—*Miller & Deschène,* 8 *Q. L. R.* 18 — *Bonacina vs Bonacina,* 4 *L. C. J.* 148.

Lorsque la partie ayant droit au cautionnement pour frais a en sa possession des biens appartenant à la partie adverse, suffisants pour garantir ses frais, que cette possession doit tenir lieu du cautionnement.

Que la question de la suffisance de cette garantie des frais est dans la discrétion du tribunal comme toute question de frais.

SEMBLE que lorsqu'une partie en cause meurt après avoir donné cautionnement pour frais, son héritier, quoique résidant à l'étranger, peut reprendre l'instance sans fournir un nouveau cautionnement.—TESSIER, CROSS, BABY, CHURCH, DOHERTY, JJ., 17 NOV. 1887, *Boxer vs Judah.*

III, Q B. **320.**

Que dans le cas où il y a plusieurs demandeurs dont les uns ont leur domicile dans la province de Québec et les autres en dehors de la province, le défendeur a droit d'obtenir le cautionnement judicatum solvi, et de faire suspendre tous les procédés jusqu'à ce que ce cautionnement ait été fourni. —PAPINEAU, J., 13 NOV 1880, *Howard vs Yule.*

IV, S C. **420.**

Qu'une société commerciale faisant des affaires à Montréal, dont un membre est absent du Canada et n'y a pas de domicile, peut poursuivre sans être tenue de fournir un cautionnement.—TASCHEREAU, J., 5 MAI 1890, *Beaudoin vs Desmarais.* **VI,** S. C. **278.**

87. Separation de corps.—Qu'il est nécessaire de donner dans les journaux et dans la Gazette Officille l'avis requis par l'article 974 du Code de Procédure Civile, lorsque dans une action en séparation de corps la partie demanderesse demande distinctement la séparation de biens —JETTÉ, J., 7 DÉC 1887, *Pilon vs Vinet.* **III,** S. C. **269.**

88. Serment suppletoire.—Where a demand is made for damages caused by an accident through defendant's negli-

gence, and there is no evidence as to the cause of the accident, it is not a proper case for submitting the serment supplétoire.—DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Sherbrooke & Short.* **III,** Q. B. **50.**

89. Séquestre.—Qu'il n'est pas nécessaire qu'un jugement nommant un séquestre soit signifié à aucune des parties dans la cause.

Qu'un jugement nommant un séquestre après que le jugement final a été rendu dans la cause, n'est pas un jugement interlocutoire pouvant être revisé par un seul juge de la Cour Supérieure. — PAPINEAU, J., 4 MAI 1881, *Howard vs Yule.* **V,** S. C. **22.**

90. Service.—1. *Of action in the Province of Ontario.*— Where service is authorised to be made in Ontario, a personal service in accordance with the law of that province as proved in the cause is valid.—LORANGER, J., 29 DEC. 1888, *Pinsonneault vs Comee.* **IV,** S. C. **252.**

CITATIONS.—*C. C. P. art.* 51 — *Sirey Code de Proced. annoté, art.* 1537 — *Bioche, Dict. de Proc. vo Exploit, I Carré et Chauveau, quest.* 330—*Fœlix, Droit International, p.* 83.

2. *In Court House.*—Que la signification d'un bref de sommation ou de toute autre pièce de procédure peut être faite dans aucune des chambres du Palais de Justice, pourvu qu'au moment de la signification, la Cour ne siège pas.—LORANGER, J., 14 NOV. 1884, *Hus vs Charland.* **I,** S. C. **126.**

3. *Of judgment.*—That when a judgment orders the delivery of certain goods within 15 days from the rendering of the judgment, and, in default of so doing, to pay a specified sum of money, service of the judgment is not necessary, the party condemned being put in default by the mere lapse of the 15 days.—MATHIEU, J., 20 NOV. 1885, *Samuel vs Houliston.* **I,** S. C. **505.**

CITATIONS.—*Audet vs Asselin,* 15 *L. C. J.* 272—*Lewis vs McGinley,* 6 *Q. L. R.* 61.

4. *Of petition by prisoner for alimentary allowance.*— Que la requête, faite par un prisonnier incarcéré en matière civile, par laquelle il demande une pension alimentaire en vertu de

de l'art. 790 du C. P. C., est une instance nouvelle et que la requête doit être signifiée au créancier ; la signification à son procureur ad litem n'est pas suffisante. — GILL, J., 11 DÉC. 1890, *Bastien vs Charbonneau.* **VII,** S. C. **42.**

5. *Of summons.*—That where it is shown that a defendant locks his doors to evade service of a writ of summons an order will be granted authorizing the bailiff to use force to open them to effect such service, or to serve the writ after seven o'clock.—GILL, J., 13 APRIL 1889, *Maclaren vs Maclaren.* **V,** S. C. **416.**

91. Sheriff's sale.—Que l'article 716 du Code de Procédure Civile, qui prescrit que la requête en nullité de décret de la part du saisi doit être présentée dans les mêmes délais que ceux prescrits pour l'appel du jugement de la Cour Supérieure, s'applique également à une demande d'amendement de la requête en nullité de décret déjà présentée, lequel amendement ne peut être permis après les susdits délais.—MATHIEU, J., 23 AVRIL 1888, *Bolduc vs Lefuntun.* **VI,** S. C. **52.**

That when a mere chirographary creditor who has filed an opposition in the hands of the sheriff, becomes purchaser of the immovable sold, he is not entitled to retain the purchase money to the extent of his claim art. 688 C. C. P. refering only to the seizing creditor and to the hypothecary creditors. —LORANGER, J., 28 NOV. 1884, *Fairbanks vs Barlow.* **IV,** S. C. **180.**

92. Stamps.—Qu'un document judiciaire non revêtu de timbres judiciaires requis par la loi, est frappé d'une nullité radicale et absolue ; et que cette nullité ne peut être couverte par l'apposition des timbres aprés le jugement rendu. — JOHNSON, JETTÉ, TASCHEREAU, JJ., 9 JUIN 1888, *Lusignan vs Rielle.* **IV,** S. C. **465.**

Qu'une opposition qui n'est pas revêtue des timbres judiciaires voulus par la loi est nulle et sera rejetée sur motion. —LORANGER, J., 23 MAI 1889, *Lacaille vs Boucher.* **V,** S. C. **64.**

93. Substitution of attorney. — Qu'aucune substitution d'avocat ne peut avoir lieu dans une cause sans la permission du tribunal ou d'un juge en vacance.

Qu'une procédure présentée par un avocat qui aurait été substitué à un autre sans la permission du tribunal ou du Juge en vacance, ne sera pas reçue.—TORRANCE, J., 23 JUIN 1885, *Ross vs Kerby*. **VI,** S. C. **101.**

94. Summary causes.—Que les causes de la Cour Supérieure, intentées sous " l'acte concernant la procédure quant à certaines matières commerciales et autres requérant célérité " appelées communément " causes sommaires " n'ont pas de préséance devant la Cour de Révision. — TASCHEREAU, WURTELE, TAIT, JJ., 19 DÉC. 1888, *McIntyre vs Armstrong* **IV,** S. C. **251.**

Qu'une action en recouvrement du montant d'une obligation hypothécaire n'est pas une cause sommaire, sous l'article 387 du Code de Procédure Civile. — WURTELE, J., 22 MAI 1890, *Delorme vs Smart*. **VI,** S. C. **240.**

That by art. 897a C. C. P., as amended by section 2 of 53 Vict. ch. 61, a notice of five clear days to the adverse party is required of an inscription for proof and for hearing immediately after proof in contested cases, in summary matters.—WURTELE, J., 13 MARCH 1891, *Conroy vs Mount*. **VII,** S. C. **143.**

Que dans les causes sommaires où la loi exige un avis de cinq jours de l'inscription pour preuve et audition en même temps, l'inscription elle-même doit être produite au greffe au moins cinq jours avant le jour fixé pour l'audition de la cause.—JETTÉ, J., 4 JUIN 1891, *Bleau vs Brissette*. **VII,** S. C. **206.**

95. Summons.—Que dans une action de la Cour Supérieure, de $100 à $200, le délai d'assignation est de dix jours, sinon l'action peut être renvoyée sur exception à la forme sans à se pourvoir. — MATHIEU, J., 20 AVRIL 1887, *Bruchesi vs Denis*. **III,** S. C. **92.**

That leave to serve a writ of summons in Ontario under Art. 69 C. C. P. is sufficient if annexed to the writ on a

separate sheet, without being endorsed in writing upon the writ. — JOHNSON, RAINVILLE, JETTÉ, JJ., 30 DEC. 1880, *Kilburn vs Ward.* **III,** S. C. **176.**

A writ of summons was issued in the district of Saint Francis, and directed to any bailiff of that district. The writ was served personally upon the defendant in the district of Beauce by a bailiff appointed for the district of Beauce.

That a Superior Court writ cannot be validly served by any other than one of the bailiffs to whom it is directed; and that the writ in question having been directed to any bailiff of the district of Saint Francis, the service of such writ by a bailiff of the district of Beauce, was null and void.

That the plaintiffs having obtained judgment by default, under art. 89 C. P. C., defendants had properly proceeded against said judgment, and all other proceeding subsequent to the issue of the writ, by an opposition styled an opposition afin d'annuler, and that defendants were entitled, by means of such opposition, to have the said judgment and other proceedings set aside on account of the nullity of the service.

That in such case, neither the opposition, nor the affidavit accompanying the same need comply with the provisions of 46 Vict. c. 26 s. 4, the said statute applying only to suits in which the defendants have been validly served.

That the opposition need not be accompanied with the deposit required with an exception to the form. — JETTÉ, TASCHEREAU, MATHIEU, JJ., 30 JUNE 1887, *E. T. Bank vs Wright.* **III,** S. C. **206.**

CITATIONS.—*Jubinville vs B. of B. N. A.* 18 *L. C. J.* 237 — *Reeves v. Archambault,* 15 *L. C. J.* 83—*Kellond & Reed,* 18 *L. C. J.* 309.

Qu'un bref doit être exécuté par l'huissier auquel il est adressé; qu'ainsi un bref adressé à aucun des huissiers du district de Joleitte, ne peut être exécuté par un huissier du district de Montréal, à Joliette, district de Joliette. — MATHIEU, J., 29 MAI 1890, *Laforce vs Landry.* **VI,** S. C. **342.**

Que dans un quo warranto le défendeur, étant désigné comme "conseiller de la municipalite de....." sans que

son domicile ou sa résidence fût autrement indiqué, cette description est suffisante.

Que lorsque l'ordre du juge ordonne au défendeur de comparaître devant un juge de la Cour Supérieure et que le bref commande de comparaître devant la Cour Supérieure, cette irrégularité, n'est pas assez matérielle pour faire annuler le bref.—DAVIDSON, J., 6 JUIN 1890, *Gaudry vs Martel.*

VI, S. C **207.**

That in an action under 887, 888 C. C. P. for rescission of a lease or for ejectment, to which the plaintiff joins as an accessory a demand for balance of rent and an attachment for rent, the service must be made in the usual manner by serving a copy of the declaration with the writ, art. 804 and 874 C. C. P. not being applicable in such case.—WURTELE, J., 20 MAY 1890, *Maguire vs Watkins.*

VI, S. C. **135.**

Dans une cause non sommaire, qu'il suffit que le bref de sommation ordonne au défendeur de comparaître à jour fixe, et qu'il n'est pas nécessaire que le bref contienne les mots "ou le jour juridique suivant" l'article 83 du Code de Procédure Civile étant une autorisation suffisante.—MATHIEU, J., 16 NOV. 1890, *Dessaules vs Stanley.* **VII,** S. C. **153.**

96. **Taxation of costs—Notice to adverse party—Execution for part of debt.**—That the practice under the ordinance of 1667, tit 33 requiring notice to the adverse party of taxation of costs, was not affected by the passing of 20 Vict. c. 44, 90 (C. S. L. C. c. 83, s. 151) reproduced in art. 479 C. C. P. and such notice is still required.

That an execution must be issued for the whole debt due under the judgment, and when it is illegaly issued for part, it is bad for the whole: and so where an execution issued for debt, interest and costs, and it appeared that the costs had not been legally taxed, the execution was annuled on opposition afin d'annuler.—JOHNSON, TASCHEREAU, WURTELE, JJ., 29 DEC. 1888, *Scott vs McCaffrey.* **V,** S. C. **202.**

CITATIONS.—*Lewis v. McGinley,* 6 *Q. L. R.* 61 — *Audet v. Asselin,* 15 *L. C. R.* 272—*Langevin v. Martin,* 3 *R. L.* 447.

97. Tender with special answer.—Que des offres réelles suivies de consignation, faites avec une réponse spéciale à un plaidoyer, n'ont aucun effet et ne peuvent être prises en considération par la Cour, lorsque cette réponse spéciale a été renvoyée sur réplique en droit.—CIMON, J. 8 AVRIL 1885, *Brosseau vs Brosseau.* **I,** S. C. **307.**

98. Tierce opposition—Saisie arrêt—That a tierce opposition unless accompanied by an order of a Court or Judge, does not suspend the execution of a judgment, and that a tiers saisi, paying in good faith that amount of the final judgment, will be discharged notwithstanding the prior service upon him of a tierce opposition, without order of suspension.—CIMON, J., 13 JAN. 1887, *Mullen vs Pearl.* **III,** S. C. **52.**

99. Union of causes—Transmission of record to another district.—That the Superior Court sitting in one district has no authority to order that the record of a cause pending in such district be transmitted to another district, to be joined to the record of a cause therein pending.—WURTELE, J., 6 APRIL 1891, *Chemin de Fer Baie des Chaleurs vs MacFarlane.* **VII,** S. C. **272.**

100. Venditioni exponas.—Qu'un bref de venditioni exponas émané sans l'autorisation préalable de la Cour ou du juge est nul.—JETTÉ, J., 6 JUIN 1887, *Trust and Loan vs Monbleau.* **III,** S. C. **135.**

101. Writ of prohibition.—Qu'il y a ouverture à l'émanation d'un bref de prohibition aussitôt après la signification de l'action et avant de plaider, lorsqu'à la face même des procédures, il y a défaut absolu de juridiction, quoique en général le principe soit que le bref de prohibition ne peut être pris sans avoir au préalable opposé devant la Cour à laquelle on objecte son défaut de juridiction.—GILL, J., 20 DEC. 1888, *Gaumond vs Cour du Magistrat Montréal.* **IV,** S. C. **444.**

PROCÈS VERBAL

See MUNICIPAL LAW.

PROHIBITION, WRIT OF

1. Circuit Court—Jurisdiction.—That a writ of prohibition will not lie to the Circuit Court, it not being a Court of inferior jurisdiction, within the meaning of art. 1031 C. C. P.

That the Circuit Court, having jurisdiction under R. S. Q. 6218 (4) to hear appeals from decisions of local municipal councils, respecting valuation rolls, there was not excess of jurisdiction in the circumstances.—GILL, 21 NOV. 1889, *Corporation Ste-Geneviève vs Cour de Circuit.* **V,** S. C. **417.**

CITATIONS.—*Boileau vs Corporation Ste. Geneviève,* 13 *L. N.* 26.

(Affirming the judgment of Gill J., M. L. R. 5 S. C. 417.) Where there has been no plea to the jurisdiction and no demand has been made for a writ of prohibition while the case was pending before the Court which rendered the judgment complained of, the Superior Court, or a judge thereof, has discretionary power to grant or refuse a writ of prohibition to prevent the execution of the judgment; and a Court of Appeal will not interfere with the exercise of this discretion unless the absence of jurisdiction be apparent on the face of the proceedings.—*Corporation Ste-Geneviève vs Cour de Circuit.* **VI,** Q. B. **461.**

2. Defect of jurisdiction.—The appellants cause a writ of prohibition to be issued out of the Superior Court enjoigning the Court of Special Sessions of the Peace from further proceeding with a summons and complaint issued by M. C. Desnoyers, Police Magistrate, against the appellant Ryan, upon the complaint of respondent, inspector of Licenses, charging Ryan with having sold intoxicating liquors without a license.

Ryan was a drayman employed to deliver and sell beer by Molson & Bros, the other appellants, who were duly, licensed as brewers under the Dominion Inland Revenue Act. 1880, 43 Vict. ch. 19.

(Overruling the decision of Loranger, J. M. L. R. 1 S. C. 264). That a writ of prohibition lies to bring up before the Superior Court a defect of jurisdiction of the justices of the Peace, which is only apparent on proof being made of the allegations of the plea containing matter showing such want

of jurisdiction e. g. that the party prosecuted is the mere agent of a person not open to prosecution.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 27 NOV. 1886, *Molson et al & Lambe Esqual.* (Affirmed by Supreme Court 15 S. C. R. 253). **II,** Q. B. **381.**

CITATIONS.—*Severn & Queen*, 2 *S. C. R.* 70—*Côté & Paradis*, 1 *Déc. C. & ap.* 374—*Audet v. Doyon*, 10 *Q. L. R.*—*Hodge v. The Queen*, 8 *L. N.* 18—*Angers v. The Queen Ins. Co.* 410—*Lambe v. The Powder Co.*, *M. L. R.* 1 *Q. B.* 460—*Russell & The Queen*, 5 *L. N.* 234—*Sulte & Three Rivers*, 5 *L. N.* 330—*Colonial Building and Invest. Ass. & The Attorney General*, 7 *L. N.* 10—*Bennett & Pharmaceutical Ass. of Quebec*, 1 *Dec. Cour v. ap.* 336—*Cartwright* 414.

3. Evidence.—Que la Cour du Recorder de la cité de Montréal à juridiction sur les matières et offenses consistant à tenir une maison malfamée et une maison de désordre dans la cité de Montréal.

Qu'un bref de prohibition peut émaner avant conviction.

Que la preuve testimoniale peut être légalement faite sur un bref de prohibition émané avant la conviction.—TASCHEREAU, J., 31 MARS 1887, *McKeown vs Cour du Recorder.* **III,** S. C. **54.**

CITATIONS.—*Simard v. Montmorency*, 4 *Q. L. R.* 208—*Bergeron v. Rouleau*, 23 *L. C. J.* 179—*Poulin vs Quebec*, 9 *S. C. R.* 185—*Hangel vs Coté*, 11 *L. C. R.* 479—*High* § 803—*Hingston v. McKenty*, 12 *L. C. J.* 25—2 *Taschereau, J.*, 59—*Ex parte Garner*, 4 *L. C. L. J.* 59—*Walker vs La Cité*, 4 *L. N.* 215—*Ex parte Lefebvre*, 7 *L. N.* 258—*Blain vs Granby*, 5 *R. L.* 188—*Beaudry vs Recorder*, 5 *R. L.* 223—*Barrette vs Montreal*, 11 *R. L.* 500—*Audet v. Doyon*, 102 *L. R.* 20—*Mayor of Sorel v. Armstrong*, 20 *L. C. J.* 171—*Bergeron vs Rouleau*, 23 *L. C. J.* 179—*Ex parte Cherrier*, 5 *L. N.* 343—*Ex parte Cherel*, 4 *L. N.* 303—*Roscoe, Criminal Evidence*, p. 796—*High*, 762, 661, 772

PROMISE OF SALE

See MUNICIPAL LAW—SALE.

PROMISSORY NOTE

I.—ACTION ON "BON"—CONSIDERATION.
II.—ALIMENTARY DEBT—EXECUTION OF JUDGMENT ON NOTE—PLEADING—ANSWER TO CONTESTATION.
III.—CONSIDERATION.
IV.—ENDORSER—AGREEMENT BETWEEN THE PARTIES.
V.—EVIDENCE.
VI.—FRAUD AND WANT OF CONSIDERATION—HOLDER IN GOOD FAITH.

VII.—Given by wife for debt of husband—Absolute nullity—Bank discounting note in good faith.
VIII.—Illegal consideration.
IX.—Loss of—Negotiable instrument filed as exhibit.
X.—Mutual Insurance Company—Note signed by president in settlement of valid claim against company.
XI.—Note given as collateral security—Mutilation.
XII.—Note given to creditor to induce him to sign agreement of composition—Illegal consideration.
XIII.—Protest—Delay.
XIV.—Signature in blank—Responsibility of the maker.
XV.—Signature obtained by fraud.
XVI.—Transfer without endorsement.
XVII.—When note matures—Demand of payment—Presentation.

See BILS AND NOTES—CHEQUE—ELECTION LAW—EVIDENCE — INSOLVENT ESTATE — IMPUTATION OF PAYMENTS — JURISDICTION — PRESCRIPTION—WARRANTY.

1. Action on "bon"—Consideration.—Held:—Where a *bon* made to represent the value of a share in a business, purchased by the plaintiff, was endorsed and transferred to the plaintiff by the vendor, that plaintiff could not sue the vendor on the *bon*, while at the same time he retained the share acquired by him in the business, which was represented by the *bon*.—Dorion, Monk, Ramsay, Tessier, Cross, JJ., 20 Nov. 1886, *Cridiford & Bulmer.* **IV,** Q. B. **293.**

2. Alimentary debt — Execution of judgment on note — Pleading—Answer to contestation.—Where, in execution of a judgment obtained for the amount of a promissory note an alimentary allowance payable to the defendant is seized by garnishment, and the defendant contests the seizure on the ground that an alimentary allowance is not seizable, the plaintiff may, by his answer, plead that the consideration for the note was an alimentary debt, and that the claim was within the exception of C. C. P. 558; but that plaintiff in this case had failed to prove the truth of the answer.—Tait, J., 30 April 1887, *Downie vs Francis.*

III, S. C. **371.**

3. Consideration.—That in the absence of legislature enactments prohibiting the same, and in default of an Insolvent Act, whereby the majority of the creditors would bind the remainder to the conditions of a composition and discharge, nothing invalidates, as between the debtor and his creditor, an agreement by which the debtor undertakes to pay such creditor more than the amount of said composition and discharge, and a promissory note given to cover such excess is valid.—GILL, J., 7 NOV. 1890, *Racine vs Champoux.* **VI,** S. C. **478.**

Que la remise par concordat de partie d'une créance tout en affranchissant le débiteur de l'obligation civile, laisse néanmoins subsister l'obligation naturelle, pour la partie ainsi remise, et que cette dette naturelle peut ensuite être la cause et considération valable d'une nouvelle obligation civile consentie par le débiteur.—JETTÉ, J., 22 DÉC. 1890, *Lockerby vs O'Hara.* **VII,** S. C. **35.**

4. Endorser—Agreement between the parties—Evidence.—In an action between parties to a promissory note, that the true intention and agreement of the parties should be carried into effect, the facts and circumstances at the time of the transaction may be established by parol evidence, and it may be shown that an endorser, whose name appears below that of the payee really endorsed before the latter, as surety for the maker to the payee, although the name of the payee appears on the note as the first endorser.—TORRANCE, J., 24 NOV. 1886, *Deschamps vs Leger.* **III,** S. C. **1.**

CITATIONS.—*Scott vs Turnbull*, 6 *L. N.* 397.

5. Evidence.—In a suit founded on promissory notes or bills of exchange, in the investigation of facts recourse must be had to the laws of England in force on 30th may 1849 (C. C. 2341).

According to the laws of England parol evidence is admissible to establish the real relationship of the parties to a bill of exchange or promissory note and the circumstances under which it was endorsed.—WURTELE, J., 26 MARCH 1891, *Northfield vs Lawrance.* **VII,** S. C. **148.**

CITATIONS.—*Story, on Promissory Notes, No.* 479—*Chalmers, on Bills of Exchange, p.* 206—*MacDonald & Whitfield*, 8 *Ap. Cases, P. C.* 733.

6. Fraud and want of consideration—Holder in good faith. —That where a promissory note. has been obtained by fraud, and without any consideration received by the maker thereof such note is absolutely void, and a third party who has become the holder in good faith, is not entitled to recover the amount thereof from the maker. Moreover, in the present case, the note being received as collateral security, the holder was not entitled to recover without proof that his claims against the endorser was still in existence.—DELORIMIER, J., 8 MARCH 1890, *Banque Jacques Cartier vs Leblanc.* (Reversed in appeal 1 R. O. Q. B. 128).

VI, S. C. **217.**

CITATIONS.—*Dumas & Baxter,* 14 *R. L.* 496.

7. Given by wife for debt of husband—Absolute nullity—Bank discounting note in good faith.—That a promissory note made by a married woman, separated as to property, in favor of a creditor of her husband, in payment of a debt of her husband, is absolutely null; and no action can be maintained thereon by a Bank which has discounted the same in good faith before maturity, in ignorance of the cause of nullity.—WURTELE, J., 4 FEB. 1891, *Banque Nationale vs Gay.* **VII,** S. C. **144.**

8. Illegal consideration.—That a note given by an insolvent, or by a third person, to induce the payee to consent to the insolvent's discharge, or to sign a deed of composition, is null and void; and where money is paid for the same purpose, it may be recovered from the creditor receiving it. The fact that the maker of the note is the insolvent's father does not constitute a valid consideration for such a note; for a benefit to another is a good consideration only where the benefit can be had lawfully.—JOHNSON, J., 18 NOV. 1887, *Leclaire vs Casgrain.* **III,** S. C. **355.**

CITATIONS.—*Prevost v. Peckle,* 14 *L. C. J.* 220—*Decelles v. Bertrand,* 21 *L. C. J.* 291.

That there is no right of action for the recovery of the amount of a promissory note given by the proprietor office, what is commonly termed a "bucket shop" to a customer in settlement of speculative transactions between them, i. e. speculations on the rise and fall of prices of goods in stocks,

without delivery of the things bought and sold.—LORANGER, J., 19 FEB. 1889, *Dalgish vs Bond.* **VII,** S. C. **400.**

9. Loss of–Negotiable instrument filed as exhibit.—Where the bill of exchange on which the action was based, by the plaintiff, as exhibit, disappeared from the protonotary's office, the plaintiff was entitled to judgment for the amount, notwithstanding the loss of the instrument, on giving security to the parties liable, as provided by C. C. 2316.—DORION, CROSS, CHURCH, BOSSÉ, JJ., 21 DEC. 1888, *Lewis & Waters.* **IV,** Q. B. **257.**

10. Mutual Insurance Company—Note signed by president in settlement of valid claim against company.—The by-laws of a mutual insurance company gave the president the management of its concern and funds, with power to act in his own discretion and judgment in the absence of specific directors; and it was also his duty to sign all notes authorized by the Board or by virtue of the by-laws. The president was both president and treasurer and was also acting as secretary.

That the plaintiff, who was the transferee for value given before maturity of a note signed in behalf of the company by the president as president and treasurer and given to the payee in settlement of valid claim against the company was entitled to recover the amount of said note from the company.—TASCHEREAU, MATHIEU, DAVIDSON, JJ., 5 NOV. 1887, *Jones vs E. T. Mutual Ins. Co.* **III,** S. C. **413.**

11. Note given as collateral security—Mutilation.—Where the appellant gave his promissory note to respondent as collateral security for a hypothecary debt due by his (appellant's) father, and on the same piece of paper wrote a letter stating that the note was so given as collateral, upon condition that respondent should delay proceedings on the mortgage until the note was due, that the respondent was entitled to sue the appellant on the note when due, without putting the principal debtor en demeure; and the appellant not having demanded that the principal debtor be discussed, or proved that the mortgage was paid, was rightly held liable for the amount of such note.

The severance of the note from the letter written above it, was not a mutilation that could affect the validity of the instrument.—TESSIER, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Palliser & Lyndsay.* **VI, Q. B. 311.**

12. Note given to creditor to induce him to sign agreement of composition — Illegal consideration. — That a promissory note given by an insolvent to a creditor, to induce the creditor to sign an agreement of composition, is null and void; and no action can be maintained thereon by a person to whom the note is transferred after maturity.—WURTELE, J., 13 MARCH 1890, *Gervais vs Dubé.* **VI, S. C. 91.**

13. Protest—Delay.—Qu'un notaire qui est un des endosseurs sur un billet promissoire n'a pas le droit d'instrumenter comme notaire, pour protester le billet, quand même étant porteur de ce billet, il aurait effacé son nom et l'aurait transporté à un prête-nom à la réquisition duquel se ferait le dit protêt; un pareil protêt est nul, et les endosseurs sont déchargés.

Qu'en loi, un endosseur porteur d'un billet, qui accorde du délai au faiseur, sans le consentement des autres endosseurs, perd son recours contre ces endosseurs, lesquels se trouvent déchargés.—OUIMET, J., 30 MAI 1890, *Pelletier vs Brosseau.* **VI, S. C. 331.**

CITATIONS.—*Story, on Promissory Notes, p.* 416, *No.* 314—*C. C.* 2328—2 *Stephens Dig. vo Bills of Exchange,* § 85—*Lemay & Boissinot,* 10 *Q. L. R.* 90—*Biron v. Brossard, M. L. R.* 2 *S. C* 105—*Lagueux v. Joncas,* 13 *Q. L. R.* 268—*Smith v. Parteous,* 8 *L. C. J.* 116—*Bourassa vs Roy,* 9 *R. L.* 553—*Desrosiers v. Guérin,* 21 *L. C. J.* 96—*St. Aubin vs Fortin,* 3 *R. de L.* 293.

14. Signature in blank—Responsibility of the maker.—Qu'une personne qui donne à une autre personne un billet signé en blanc, avec l'entente que cette dernière le remplira pour une somme déterminé est responsable vis-à-vis du tiers, du plein montant qui apparaît à la face du billet, quand même il serait plus élevé que celui convenu; le signataire du billet ne fait alors que subir les conséquences de sa propre néglifience.—PAGNUELO, J., 9 OCT. 1889, *Bank of N. S. vs Lepage.* **VI, S. C. 321.**

15. Signature obtained by fraud.—Where the defendant's signature to a promissory note was obtained by fraud under

circumstances which, in the opinion of the Court, was matter of public notoriety at the time the note was transferred to B. (for whom the plaintiff was prête-nom) that it was incumbent on the plaintiff to prove that B. gave consideration for the note. — DORION, TESSIER, CROSS, BABY, JJ., 22 FEV. 1887, *Exchange Bank & Carle.* **III,** Q. B. **61.**

16. Transfer without endorsement.—Where it is shown by the evidence that the endorsers of a promissory note became warrantors of the maker, before "the Bills of Exchange Act, 1890," absence of protest did not relieve them from liability."

The holder of a promissory note payable to order has an action against the person who transferred the note to him, and who accidentally omitted to endorse it to compel him to do so; but in a suit on a note by the holder against the maker, transferor, legal proof of the transfer is sufficient and a judgment ordering the transferor to endorse the note would be superfluous. — WURTELE, J., 23 MARCH 1891, *Coutu vs Rafferty.* **VII,** S. C. **146.**

Where a note of a third party is transferred for valuable security, being given in payment of goods purchased, and the note is not endorsed by the transferor, a warranty is implied that the maker is not insolvent to the knowledge of the transferor.

If it be proved that the maker of the note was insolvent to the knowledge of the transferor, the party who received it is entitled to offer it back and claim the amount from the transferor, without asking for the rescission of the contract in toto.

Art. 1530 C. C. does not apply to such a case, and there being no time fixed by law for offering back such note, it is in the discretion of the Court to determine whether there was laches, and whether the transferor was prejudiced by the delay.—DORION, MONK, TASCHEREAU, RAMSAY, SANBORN, JJ., 17 JUNE 1875, *Lewis & Jefferey.* **VII,** Q. B. **141.**

CITATIONS.—*Clough v. North-Western R. Co., L. R.* 7 *Exch.* 26—*Morrison v. Universal Ins. Co., L. R.* 8 *Exch.*

17. When note matures — Demand of payment — Presentation.—Que pour un billet promissoire fait à quinze jours de vue, le délai de paiement ne commence à courir qu'au jour de la présentation du billet.

Qu'une demande de paiement seule ne suffit pas, qu'il faut qu'elle soit accompagnée de la présentation du billet.—LORANGER, J., 30 MAI 1888, *Cousineau vs Lecours.*

IV, S. C. **249.**

CITATIONS.—*Smallwood v. Allaire*, 21 *L. C. J.* 106—*Mallette & Hudon*, 21 *L. C. J.* 199—*Marcotte & Falardeau*, 6 *Q. L. R.* 296—*Stry Promissoires Notes, p.* 278, *No.* 257, *et pp.* 281 *et* 292—*Chitty, on Bills ch.* 9 *p.* 373.

PROPER

See HUSBAND AND WIFE.

PROPRIETOR

See LESSOR AND LESSEE.

PROPRIETORS PAR INDIVIS

See LESSOR AND LESSEE.

PROTHONOTARY

That the summary jurisdiction of the courts over the officers of justice is exercised only when an officer is guilty of contempt or wilful neglect of duty.

That where a record disappears, or is lost, without any evidence of wilful neglect against the prothonotary, the latter is not punishable for contempt, the proper remedy of the party aggrieved by such lost being an action of damages.—WURTELE, J., 19 JUNE 1890, *Bossière vs Bickerdike.*

VI, S. C. **186.**

See PROCEDURE.

PROVINCIAL JURISDICTION

See CONSTITUTIONAL LAW.

PROXIES

See CORPORATION.

PROXIMATE CAUSE

See INSURANCE—RESPONSIBILITY.

PUBLIC DOCUMENT

See REGISTRAR—EVIDENCE

PUBLIC MEETINGS

See LIBEL AND SLANDER.

PUBLIC OFFICER

Qu'un officier public n'a droit à un avis d'action d'un mois que lorsqu'il est poursuivi à raison d'un acte fait par lui dans l'exercice de ses fonctions, et non à cause de l'omission de remplir un devoir que la loi lui imposait.

Que le défaut de tel avis ne peut faire la matière d'une défense en droit, mais doit être plaidé au mérite, afin d'établir la bonne ou mauvaise foi de l'officier public dans l'exercice de ses fonctions. — TASCHEREAU, J., 5 MARS 1885, *Jodoin vs Archambault.* **I,** S. C. **323.**

(Affirming the decision of Taschereau, J. M. L. R. 1 S. C. 323). A public officer is not entitled to notice of action under C. C. P. 22 where the action is for a penalty for failing or omitting to do what the law requires him to do.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 23 NOV. 1886, *Jodoin & Archambault.* **III,** Q. B. **1.**

See PROCEDURE.

PUBLIC ROAD

See ROAD.

PUBLIC STREET

See MONTREAL.

QUALIFICATION OF COUNCILOR

See MUNICIPAL LAW.

QUANTUM MERUIT

That the Court, in taxing the remuneration of a liquidator to an insolvent company, will take into consideration the

nature of the services rendered ; and where it appeared that the services for the most part were such as might have been performed by any ordinary competent book keeper, it was held that $7.00 per day was an adequate remuneration.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 27 NOV. 1888, *Plender & Fitzgerald.* **V,** Q. B. **446.**

See APPEAL — ARBITRATION — PRINCIPAL AND AGENT.

QUI TAM ACTION

See ACTION—PENAL ACTION.

QUO WARRANTO

See PROCEDURE — USURPATION OF CORPORATE OFFICE.

RAILWAY—RAILWAY ACT—RAILWAY COMPANY

I.—ACCIDENT CAUSED BY THE BREAKING OF A RAIL.

II.—ANIMAL STRAYING ON THE TRACK—RESPONSIBILITY OF RAILWAY COMPANY—CATTLE GUARDS.

III.—APPOINTMENT OF ARBITRATOR—AUTHORITY OF COURT.

IV.—AWARD OF ARBITRATOR—PROLONGATION OF DELAY FOR MAKING AWARD.

V.—BILL OF LADING—CONDITION—GOODS TRANSFERRED TO ANOTHER COMPANY.

VI.—CARRIER.

VII.—CONDITION ON TICKET.

VIII.—CONSOLIDATED RAILWAY ACT, 1897—EXPROPRIATION—INTEREST.

IX.—DAMAGES.

X.—DELAY IN TRANSPORTING GOODS.

XI.—EXECUTION—SEIZURE OF PART.

XII.—EXPROPRIATION.

XIII.—FARM CROSSINGS—DAMAGES.

XIV.—GATES AT FARM CROSSINGS.

XV.—HIGHWAY CROSSINGS—NEGLIGENCE—VERDICT AGAINST EVIDENCE—NEW TRIAL.

XVI.—JURISDICTION OF RAILWAY COMMITTEE—COMPLAINT OF EXPRESS COMPANY AGAINST RAILWAY COMPANY—MANDAMUS.

XVII.—LANDS NECESSARY FOR CONSTRUCTION.

XVIII.—LOSS OF BAGGAGE—MEASURE OF DAMAGES—COSTS.

XIX.—LUMBER PLACED WITHOUT PERMISSION ON PROPERTY OF RAILWAY COMPANY—DESTRUCTION OF.

XX.—Passanger jumping from train in motion.
XXI.—Payment of award.
XXII.—Person injured on track.
XXIII.—Possession.
XXIV.—Prescription.
XXV.—Railway bridge and railway track—Injunction—Extension of town limits to middle of navigable river.
XXVI.—Resignation of arbitrator.
XXVII.—Responsibility for damages caused by sparks.
XXVIII.—Responsibility—Imprudence of passengers.
XXIX.—Risk incidental to employment—Release and discharge.

See ARBITRATION—CARRIER — PLEADING — PRIVILEGES AND HYPOTHECS — PROCEDURE — PLEDGE.

1. Accident caused by the breaking of rail.— Que de la même manière une compagnie de chemin de fer est responsable envers les voyageurs sur la ligne, des dommages à eux causés par suite d'un déraillement causé par la rupture d'un rail de sa voie, même s'il est prouvé que ce rail était d'une bonne qualité, avait subi les épreuves nécessaires et que cette rupture n'est due qu'à un changement subit de température.—Mathieu, J., 12 mars 1886, *Chalifoux vs C. P. R. Co.* **II,** S. C. **171.**

(Cross, J. diss) Que lorsqu'un accident sur un chemin de fer est arrivé par la suite de la rupture d'un rail, c'est à la compagnie à prouver que cette rupture est due à un cas de force majeure et sans sa faute, autrement il y aura présomption de négligence et elle sera responsable des dommages qui en sont résultés.—Dorion, Tessier, Cross, Baby, JJ., 24 sept. 1887, *C. P. R. & Chalifoux.* **III,** Q. B. **324.**

2. Animal straying on the track—Responsibility of railway company—Cattle guards.—That when the employees in charge of the trains of a railway company discover animals upon the track, they are bound to exercise proper care and prudence to prevent injury to them, and a mere slackening of speed will not be considered sufficient to relieve them from responsibility.

That no requisition or writing was necessary to put defendants in default for non compliance with Consolidated

Railway Act 1879, sec. 16, as amended by 46 Vict., cap. 24 sec. 9.

That a railway company is liable for animals and cattle killed or injured by getting on the track of the railway in consequence of the absence of cattle guards, without reference to whether such animals were, as between their owners and the public, lawfully, on the highway.—DORION, TESSIER, CROSS, BABY, DOHERTY, JJ., 22 SEPT. 1888, *P. P. J, R. Co. & Brady.* **IV,** Q. B. **346.**

CITATIONS.—*Jasmin vs C. P. R*, 6 *L. N.* 163—*Roux vs. G. T. R.*, 14 *L. C. R.* 146—*Redfield, on Railway, p.* 464.

3. Appointment of arbitrator — Authority of Court. — That under the railway act, a judge of the Superior Court has no power to appoint an arbitrator for either of the parties, or to replace an arbitrator who has resigned.—JETTÉ, J., 10 JULY 1888, *O & Q. R. Co. & Latour.* **IV,** S. C. **84.**

4. Award of arbitrators—Prolongation of delay for making award.—Under the Railway Act of 1879, 42 Vict. ch. 9, that where the arbitrators appointed to fix the compensation for a property, adjourned to a day subsequent to that originally fixed for making the award, without stating in their minutes that such adjournment was for the purpose of making an award, and at their subsequent meeting the three arbitrators and counsel for the parties were present, and no objection was made to the irregularity of the meeting such absence of objection constituted a tacit ratification of the proceedings up to that time.

That an adjournment to enable one of the arbitrators to visit the property without any date being fixed for the next meeting, did not terminate the arbitration; and that an award made on a subsequent day, the three arbitrators being present, was a valid award.

That a notarial award is not necessary in the case of an arbitration under the Railway Act of 1879; that the entering of the amount awarded in the minutes constituted the actual award; and the fact that on a subsequent day the award was made out in notarial form and signed by two of the arbitrators, the other arbitrator not being present, did

not invalidate the award as previously made and entered in the minutes.—Cross, Baby, Bossé, Doherty, Cimon, JJ., 25 June 1891, *O. & Q. R. Co. & Curé Ste. Anne.*

VII, Q. B. **110.**

Citations.—*North-Shore R. Co. & Beaudet*, 11 *Q. L. R.* 241—*Blanchette & Charand*, 4 *L. C. J.* 8—*Brown & Smith*, 6 *L. C. J.* 112—*Carré & Chauveau, Question* 3282, 3284 *bis*—*Rolland & Cassidy*, *M. L. R.* 2 *Q. B.* 238—*Oakes & City of Halifax*, 4 *S. C. R.* 640—*S. E. R. Co. & Guevremant*, 15 *R. L.* 258—*Cie Chemin de Fer du Nord & Hopital Sacré-Cœur*, 15 *R. L.* 599— *Mills & A. & N. W. Ry. Co.*, *M. L. R.* 4 *S. C.* 302.

5. Bill of lading—Condition—Goods transferred to another company.—That it is competent for a railway company which undertakes to carry goods over their line destined for a point beyond their own line, and receives the freight for the whole distance, to stipulate by an express condition of the bill of lading, that they will not be responsible for any loss or damage to the goods other than that which may occur while the goods are being carried on their line; and where such condition exists and the defendants prove that the goods were carried safely over their line and delivered in good order to the connecting company, they will be relieved from responsibility for any damage sustained thereafter.—Dorion, Tessier, Cross, Bossé, Doherty, JJ., 23 May 1890, *C. P. R. & Charbonneau.* **VI,** Q. B. **287.**

Citations.—*Muschamp v. Lancaster & Preston Ry. Co*, 8 *M. & W.* 425—*Scotthorn v. South Stafford Railway*, 22 *L. J. Ex.* 121—*Webber v. G. W. Ry. Co.*, 33 *L. J. Ex.* 170—*Kent v. Midland Ry. Co. L. R.* 10 *Q. B.* 1—*Torrance v. Allan*, *L. C. J.* 190—*Chartier vs G. T. R.*, 17 *L. C. J.* 26—*Livingstone vs G. T. R.*, 21 *L. C. J.* 13—*Cunningham v. G. T. R.* 14 *L. C. J.* 107—*Pratt vs G. T. R.*, 1 *L. N.* 69—*Robichaud v. C. P. R.*, 8 *L. N.* 314.—*Dionne vs C. P. R.*, *M. L. R.* 1 *S. C.* 168—*Beaumont v. C. P. R.*, *M. L. R.*, 5 *S. C.* 255—*G. T. R Co. v. McMillan*, 11 *S. C. R.* 543.

6. Carrier.—1. *Bill of lading—Condition.*—That the condition on the back of a through bill of lading, relieving a railway company from responsibility as soon as the goods entrusted to them for carriage have been delivered to the next succeeding carrier at the extremity of the line of the railway company issuing said bill of lading, is a legal and reasonable condition and is binding on the shipper who either has, or from the circumstances is presumed to have, knowledge thereof, and to have accepted the contract subject to

that condition.—JETTÉ J., 29 OCT. 1889, *Beaumont vs C. P. R. Co.* **V,** S. C. **255.**

CITATIONS.—*Chartier vs G. T. R.*, L. C. J. 26—*Pratt vs G. T. R.*, 1 *L. N.* 69—*Robichaud vs C. P. R.*, 8 *L. N.* 314—*Dionne vs C. P. R.*, *M. L. R.* 1 *S. C.* 168—*Hutchison, on Carrier*, §§ 225-7, 229, 137-8, 240-1, 265.

2. *Responsibility—Person conveyed contrary to company's regulations—Collision—Damages.*—That where a person by giving a tip or bribe to the conductor of a train not intended for the conveyance of ordinary passengers, as he had reason to know, induces the conductor of such train to permit him to travel on the train contrary to the regulations of the railway company, he travels at his own risks; and if, while so travelling, he is injured by a collision, he is not entitled to be indemnified by the company for any damage to person or property sustained by him.—DORION, CROSS, BABY, BOSSÉ, JJ., 20 MARCH 1890, *C. P. R. & Johnson.* **VI,** Q. B. **213.**

7. Condition on ticket.— Que lorsqu'une compagnie de chemin de fer émane certains billets de passage à bon marché et qu'elle met sur ces billets qu'en considération de ce privilège, elle ne sera pas responsable du dommage causé aux marchandises et effets que ceux qui se servent de ces billets portent avec eux, elle n'est pas responsable des échantillons de marchandises qu'un commis voyageur aura fait entrer comme son bagage qui seront perdus en route d'autant plus que pour ces marchandises contrôlés (checked) comme bagage, le passager n'avait payé aucun fret.—GILL, J, 31 MAI 1889, *Packard vs C. P. R. Co.* **V,** S. C. **64.**

8. Consolidated Railway Act, 1879 — Expropriation—Interest.—Qu'une compagnie de chemin de fer qui prend possession d'un terrain durant les procédés de l'expropriation, doit au propriétaire les intérêts sur le prix qui lui sera adjugé par l'arbitrage à dater du moment qu'il aura été dépossédé de son terrain.—MATHIEU, J., 17 NOV. 1885, *A. & N. W. R. vs Prud'homme.* **II,** S. C. **21.**

9. Damages.—1. *Sustained by reason of railway—Limitation of action.*—That injury sustained by a workman employed in the construction of a railway, while being moved on a gravel train, is injury sustained "by reason of the rail-

way" and the action for indemnity is prescribed by six months under 42 Vict. c. 9, s. 27, 2 R. S. (Can.) ch. 109, s. 27.—JOHNSON, J., 17 OCT. 1888, *Marcheterre vs O & Q. R. Co.* **IV,** S. C. **397.**

CITATIONS.—*Marshall vs G. T. R.*, 1 *L. C. J.* 6.—*Boucherville vs G. T. R.*, 1 *L. C. J.* 179.

2. *Caused by sparks from locomotive—Responsibility of company—Prescription—Joint action by insurer and owner of buildings destroyed.*—That a railway company is responsible for damages caused by sparks from its locomotive, notwithstanding the fact that the company has complied with all the requirements of the law and has used the most approved appliances to prevent the escape of sparks.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 26 MAY 1885, *G. T. R. Co. & Meagan.* **I,** Q. B. **364.**

(Following Grand Trunk Railway Co. & Meagan M. L. R. 1 Q. B. 364). That a railway company is responsible for damage caused by sparks escaping from its locomotives even in a case where a company has complied with all the requirements of the law and has used the most approved appliances to prevent the escape of sparks.

The insurers who have paid a part of the loss, and are subrogated pro tanto, and the owner of the buildings destroyed, may sue jointly for damages for their respective claims.

The prescription of one year under 43, 44 Vict. (Q.) c. 24 s. 6 applicable to claims for damages against provincial railways, applies where the damages was caused by a train of a company under provincial control, though the train was running at the time on a portion of the line of a federal railway company over which the former had running rights.

The same prescription applies though the provincial railway, before the accident occurred, had been transferred by 46 Vict. (D.) c. 9 s. 27 to Dominion control.—DORION, TESSIER, CROSS, CHURCH, BOSSÉ, JJ., 26 FEB. 1889, *North-Shore R. & Mc Willie.* **V,** Q. B. **122.**

CITATIONS.—*Fordyce & Kearns*, 15 *L. C. J.* 80—*Lamothe & Bissonnette*, 14 *R. L.* 129—*Domat, liv.* 2, *tit.* 8, *sec.* 4, *No.* 9—11 *Toullier, No.* 155—*Dufaux & Roy*, 14 *R. L.* 511—*Quebec Fire Ins. Co. vs Molson*, 1 *L. C. R.* 222—*Légaré vs Queen Ins. Co.*, 18 *L. C. J.* 135—*Tetu vs Garneau*, 1 *Q. L. R.* 355.

10. Delay in transporting goods.—Qu'une compagnie de transport (voiturière) est responsable des dommages qu'elle cause par le fait qu'elle ne transporte pas dans un délai raisonnable, au lieu de leur destination, les choses à elle confiées.—PAPINEAU, J., 31 MARS 1887, *Pontbriand vs G. T. R.* **III,** S. C. **61.**

11. Execution—Seizure of part.—That a railway cannot be seized and sold in part, even on a judgment by bondholders except in accordance with the dispositions of the special statute, authorizing the creation of the mortgage or hypothec. A railway is an indivisible thing, and can only be sold as a whole.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 SEPT. 1886, *Stephen & Banque Hochelaga.*

II, Q. B. **491.**

CITATIONS.—*Drummond vs S. E. R. Co.*, 24 *L. C. J.* 276.

12. Expropriation.—1. *Award of arbitrators—Nullity of award.*—An appeal by which the court is called upon to modify an award of arbitrators in an expropriation under the Railway Act of Canada, by either increasing or diminishing the amount allowed by the arbitrators, can only be taken when a valid award exists.

By sect. 152 of the Railway Act, no valid award can be made except at a meeting of the arbitrators of which any absent arbitrator had two clear days' notice or to which a meeting at which he was present had been adjourned — WURTELE, J., 2 DEC. 1890, *Denis vs M. & O. R. Co.*

VI, S. C. **484.**

2. *Expropriation.*—Where land has been taken by a railway company without observing the formalities prescribed by the Railway Acts for the expropriation of lands for the use of the railway, that the owner is entitled to oppose the sale of such land under an execution against the railway company, and to claim its withdrawal from seizure by an opposition afin de distraire. — DORION, TESSIER, CROSS, BABY, JJ., 19 JAN. 1887, *Brewster & Mongeon.*

III, Q. B. **20.**

CITATIONS.—*Cie Chemin de Fer Central v. Legendre*, 11 *Q. L. R.* 106.

3. *Award—Appeal—Proceedings of arbitrators.*—Sect. 161 of 51 Vict. (C) ch. 29, provides: "Whenever the award exceeds $400, any party to the arbitration may, within one month after receiving a written notice from any one of the arbitrators, or the sole arbitrator, as the case may be, of the making of the award, appeal therefrom upon any question of law or fact to a Superior Court of the province in which such lands are situate; and upon the hearing of the appeal the Court shall, if the same is a question of fact, decide the same upon the evidence taken before the arbitrators, as in a case of original jurisdiction." This Act was assented to on the 22 May, 1888. The award in question was rendered 18 May, 1888, and served on the appellants 26th June, 1888.

That an award has the force of chose jugée between the parties only from the date of service thereof, and that the award in question having been served upon the appellants after the enactment of 51 Vict. ch. 29, they were entitled to the benefit of the appeal provided by that Act.

The arbitrators having proceeded under the Act then in force, which did not require that the evidence should be taken in writing, and there being no evidence of record, the Court was not in a position to revise the valuation made by the arbitrators.

The fact that the arbitrators and the witnesses were sworn may be established by the declaration in the award itself, setting forth that they were sworn more particularly where no objection was made at the time by the arbitrator who represented the party objecting to the validity of the award.

The majority of the arbitrators having the right to make an award, the absence of the dissentient arbitrator at the time the award was signed before notary is not a ground of nullity.—Loranger, J., 30 oct. 1888, *Mills & A. & N. W. R. Co.* **IV,** S. C. **302.**

4. *Award—Litispendance.*—Que la contestation d'une requête demandant à être payé du montant d'une sentence arbitrale à même le dépôt fait par une compagnie en expropriation par cette dernière, n'empêche pas la compagnie de prendre une action en nullité de la dite sentence et d'y allé-

guer les mêmes moyens ; qu'il n'y a pas alors litispendance.

Que d'après l'acte refondu des chemins de fer (42 Vict. c. 9) les arbitres ont le droit de prolonger eux-mêmes le délai fixé pour rendre leur sentence.

Que l'on ne peut faire mettre de côté une sentence arbitrale parce que le montant accordé serait excessif ou le résultat d'une appréciation fausse ou reposant sur une fausse base.—TASCHEREAU J., 18 MARS 1889, *O. & Q. R. Co. vs Curé, etc. Ste-Thérèse.* **V,** S. C. **51.**

5. *Indemnity to proprietor.*—The amount awarded for the right of way for a railway is compensation under sections 146, 147 and 152 of the Railway Act, 51 Vict. (D) ch. 29, not only for the land taken by the railway, but also for the damage likely to be occasioned to the proprietor during the construction of the railway.

Railway companies have the right under paragraph (e) of section 90 of the Railway Act, to fell and remove trees which stand within six rods of the railway and the damage which may result from the exercise of this right forms part of the damages to be covered by the compensation awarded to the person whose land is expropriated ; and he has no action to recover any additional amount for the value of trees within this limit which may be cut down and removed by the railway company.—WURTELE, J., 1 SEPT. 1890.

VI, S. C. **493.**

6. *Injunction.*—That the Court not only has jurisdiction to interfere to restrain a company from affecting a man's land by deviating from the exact limits prescribed by the statute which gives them authority, but is almost bound to interfere, and will, as a matter of course, interfere, unless the damage is so slight that no injury has arisen, or is likely to arise, or unless the injury, if any has arisen, is so small as to be hardly capable of being appreciated by damages, or unless the remedy by action of damages is adequate and sufficient, or is, under the circumstances of the case, the proper remedy, or unless the trespass is one merely of a temporary nature. So where a railway company commenced works on the lands of a person without obtaining a warrant

of possession under the statute HELD that it was a proper case for an injunction.—TORRANCE, J., 4 AUGUST 1886, *Evans vs N. W. R. Co.* **II, S. C. 290.**

CITATIONS.—*Kerr, on Injunctions, pp.* 121 *et* 122.

7. *Interest.*—That where a railway company obtained possession of land on making a deposit and the arbitrators subsequently made an award of a sum of money for the value of the land and "in full payment and satisfaction of all damages resulting from the taking and using of the said piece of land for the purposes of said railway" the company is liable for interest on the amount of the award only from the date thereof, and not from the date when the company obtained possession of the land. It will be presumed that the arbitrators included in their award compensation for the company's occupation of the land prior to the date of the award.—TAIT, J., 28 JUNE 1889, *Reburn vs O. & Q. R. Co.* **V, S. C. 211.**

(Affirming the judgment of Tait, J., M. L. R. 5 S. C. 211). That where a railway company obtains possession of land on making a deposit, and the arbitrators subsequently make an award of a sum of money for the value of the land, and "in full payment and satisfaction of all damages resulting from the taking and using of the said piece of land for the purposes of said railway," the company is liable for interest on the amount of the award only from the date thereof and not from the date when the company obtained possession of the land. It will be presumed that the arbitrators included in their award compensation for the company's occupation of the land prior to the date of the award.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 22 NOV. 1890, *Reburn vs O. & Q. R. Co.* **VI, Q B. 381.**

CITATIONS.—6 *Toullier, s.* 269—3 *Toullier, s.* 276—*De Peyronny & Delamarre, Lois d'Expropriation, p.* 565, *s.* 684—*Atlantic & N. W. R. Co. v. Prud'homme, M. L. R.* 2 *S. C.* 21.

8 *Under Railway Act—Requirements of arbitrator's award—Inadequate compensation amounting to fraud—Objection to arbitrators.*—The Railway Act (cap. 100 R. S. C.) only requires that the award in expropriation proceedings should

state clearly the sum awarded and the property for which such is to be the compensation; it does not require that the award should mention the person to whom the award is to be paid, nor what amount is to be paid for land, and what amount for buildings to be taken, nor what amount has been deducted for increased value to be given to the remnant of the property.

The Act in question does not require that the award should show on its face that a day had been fixed on or before which the award had to be made, or that it was made within the time so fixed; it is sufficient that it should be proved that as matter of fact such time was fixed and that the award was made within the delay.

When the arbitrators in record of their proceedings make a minute of the sum to be awarded as compensation, and agree that the award shall be in notarial from, and such award is afterwards drawn by a notary and signed by all three arbitrators, and duly served on the parties, such notarial award is the true award and is valid.

The party exporpriated cannot object to the arbitrator named by the company on the ground of his relationship to the surveyor whose certificate accompanies offer made by the company, nor on the ground of alleged inexperience, especially when these facts were known to the proprietors before the appointment of the third arbitrator.

The fact that the third arbitrator in the expropriation proceeding has, since the award, represented the company in other similar proceedings, from no legal ground of objection to such third arbitrator.

When all the requirements of the law have been observed, the award made by the arbitrators, or any two of them, is final and conclusive; and the compensation awarded is entirely within the discretion of the arbitrators, in the absence of fraud on their part and is not in such case subject to review by the courts.

Inadequacy in the sum awarded may be such as in itself to constitute proof of fraud on the part of the arbitrators, and in such a case the Court may annul and set aside such award by reason of such fraud; but to justify such action

by the Court, the sum awarded must be so grossly and scandalously inadequate as to shock one's sense of justice which was not the case in this instance the arbitrators having acted in good faith and with proper discrimination.

The principle to be followed by arbitrators in making such an award is that the proprietor shall be left in the same position, financially, as he was before his property was expropriated, without allowing any *prix d'affection;* and therefore when, as in this case, the evidence of the proprietor's witnesses proves that the value of the remnant of the property, added to the sum awarded as compensation, is greater than the price for which the proprietors were willing to sell the whole property before the expropriation, the award must be held to be reasonable and adequate.—WURTELE J., 22 JUNE 1889, *Benning vs A. & N. W. R. Co.* **V,** S. C. **136.**

(Affirming the judgment of Wurtele, J, M. L. R. 5 S. C. 136). The Railway Act (cap. 109 R. S. C.) only requires that the award in arbitration proceedings should state clearly the sum awarded and the property for which such sum is to be the compensation, it does not require that the award should mention the person to whom the award is to be paid, nor what amount is to be paid for land, and what amount for buildings to be taken, nor what amount has been deducted for increased value to be given to the remnant of the property.

The Act in question does not require that the award should show on its face that a day had been fixed on or before which the award had to be made or that it was made within the time so fixed; it is sufficient that it should be proved that as a matter of fact such time was fixed, and that the award was made within the delay.

When the arbitrators in the record of their proceedings make a minute of the sum to be awarded as compensation, and agree that the sum shall be in notarial form, and such award is afterwards drawn by a notary and signed by all three arbitrators, and duly served on the parties, such notarial award is the true award and is valid.

The party expropriated cannot object to the arbitrator named by the company on the ground of his relationship

to the surveyor whose certificate accompanies the offer made by the company, nor the ground of alleged inexperience, especially when these facts were known to the proprietors before the appointment of the third arbitrator.

The fact that the third arbitrator in the expropriation proceedings has since the award, represented the company in other similar proceedings, forms no legal ground of objection to such third arbitrator.

When all the requirements of the law have been observed, the award made by the arbitrators, or any two of them, is final and conclusive; and the compensation awarded is entirely within the discretion of the arbitrators in the absence of fraud on their part, and is not in such case subject to review by the courts

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The principle to be followed by the arbitrators in making such an award is that the proprietor shall be left in the same position financially as he was before his property was expropriated, without allowing any prix d'affection; and therefore, when, as in this case, the evidence of the proprietor's witnesses proves that the value of the remnant of the property added to the sum awarded as compensation, is greater than the price for which the proprietors were willing to sell the whole property before the expropriation the award must be held to be reasonable and adequate —Dorion, Baby, Bossé, Doherty, JJ., 22 nov. 1890, *Benning & A. & N. W. R. Co.* (Confirmed by Supreme Court 20 S. C. R. 177). **VI, Q. B. 385.**

13. Farm crossings—Damages.—The defendants, a railway company subject to the provisions of the Dominion Railway Act (R. S. C., cap. 109), purchased a strip of land running through the center of a farm leased by the proprietor to the

plaintiffs. The plaintiffs were indemnified for loss of this strip during the unexpired term of their lease and on receiving this indemnity released the company "of all claims that they might have against the said company for the loss of occupation of the premises in question, and generally of all rights and privileges resulting in their favour from the said lease, with respect to the portion of said farm required by said company for their railway." The company shortly after proceeded to construct the railroad, and in so doing made a deep cutting along the strip so acquired, preventing access from one part of the farm to the other. No bridge or crossing was made to connect the severed portions of the farm for nearly two years during which the construction of the road went on.

That the railway company were bound to furnish the lessees with the proper bridges or crossings even during the progress of the work and that in default of so doing they would be liable in damages.

That the defendants were not absolved from this obligation by the terms of the dead of release above cited, as these only covered indemnity for the loss of strip taken by the railway.

That as the damages in this case were continuous, and as the action had been commenced within six months from the cessation there of, the claim was not prescribed under section 27 of the Railway Act.

That such damages were not limited to the period of six months next preceding the institution of the action.

That as the plaintiffs had not been totally deprived of access to the severed portion of their farm, but could communicate therewith by using their neighbours' bridges and crossings, moderate damages would be allowed, representing the loss of time and extra labour and expense incurred by such difficulty of access.—JETTÉ, J., 22 JUNE 1889, *Smith & A. & N. W. R. Co.* **V, S. C. 148.**

CITATIONS—*McGillivray v. Great Western R. Co.* 25 *U. C. Q. B.* 69—*Pigeon v. City of Montreal*, 9 *L. C. R.* 334—*C, S. C. cap.* 36 *sec* 83.

14. Gates at farm crossings.—That the defendants are bound, under the provisions of 46 Vict. (D) c. 24 s. 16 to

make and maintain at farm crossings, gates with proper fastenings and that the construction of slide gates (des barrières à coulisse) which are merely supported and held in position by their own weight, is not a compliance with the Statute.—DOHERTY, GILL, TASCHEREAU, JJ., 31 MARCH 1886, *Vernon vs G. T. R. Co.* **II,** S. C. **181.**

CITATIONS.—*The Champlain & St. Lawrence Ry. Co. & Simard*, 14 *L. C. R.* 406 —*Lambert vs G. T. R.* 7 *L. N.* 4.

15. Highway crossings—Negligence—Verdict against evidence.—The husband of plaintiff was struck by an outgoing train and killed, while attempting to cross the tracks where the highway was intersected by the railway. The evidence was to the effect that he persisted in crossing notwithstanding the warning of the guardian; the gate was closed; there was daylight; the bell of the engine was ringing; and the approaching train could be seen for three quarters of a mile from the place of the accident. The jury found for the plaintiff.

That the verdict was against evidence, it being clearly proved that the deceased had not exercised ordinary care; and a new trial was ordered —LORANGER, WURTELE, DAVIDSON, 6 JUNE 1889, *Curran vs G. T R Co.* **V,** S. C. **251.**

CITATIONS.—5 *Larombière p.* 706, *No.* 28—1 *Sourdat, No.* 660—20 *Laurent*, 517 *Moffette v G. T. R.* 16 *L. C. R.* 231—*Weir vs C. P. R.* 12 *L. N.* 17.

16. Jurisdiction of Railway Committee—Complaint of express company against railway company—Mandamus.—That the railway committee of the Privy Council, created by sect. 8 of the Railway Act, has jurisdiction to inquire into a complaint of an express company against a railway company that the latter has not granted it equal privileges with other express companies.

That an adequate remedy being thus provided, a mandamus does not lie in such cases.—WURTELE, J., 17 JULY 1891, *Ontario Express Co. vs G. T. R. Co.* **VII,** S. C. **308.**

CITATIONS —*High, Extraordinary Legal Remedies, par.* 15, 16, 17—1 *Redfield, on Railways*, 693.

17. Lands necessary for construction.—Que d'après l'acte des chemins de fer de Québec, les compagnies acquièrent la propriété des terrains nécessaires pour faire leur chemin de

fer, en les marquant sur les plans prescrits par la loi et en payant l'indemnité fixée à l'amiable ou par arbitrage, et qu'il n'est pas loisible aux propriétaires de refuser de céder leur propriété.—TORRANCE, PAPINEAU, LORANGER, JJ., 30 NOV. 1882, *Banque d'Hochelaga vs M. P. & B. R. Co.*

I, S. C. **150.**

18. Loss of baggages—Measure of damages—Costs.—That a railway company is not liable for damage caused to the owner of baggage lost or delayed on the railway nor for expenses incurred by him in looking after the baggage, the measure of damage being the value of goods lost.

Where baggage has been found after suit has been issued and has been accepted by the owner, the railway company is only responsible for the taxable cost incurred up to date of delivery.—WURTELE, J., 16 JAN. 1889, *Provencher vs C. P. R. Co.* **V,** S. C. **9.**

19. Lumber placed without permission on property of railway company—Destruction.—The burning of lumber placed on the property of a railway company close to their track, without any permission express or implied, gives the owner no right of action against the company.—JOHNSON, TASCHEREAU, GILL, JJ., 31 MARCH 1887, *Goodhue vs G. T. R. Co.* **III,** S. C. **114.**

20. Passenger jumping from train in motion.—That even where a railway company is in fault for not stopping its train at a station to which it has contracted to carry a passenger, nevertheless an action of damages will not be maintained against the company for injuries recived by the passenger in jumping from a train in motion, such damages being the result solely of the passenger's imprudence.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MAY 1886, *C. V. R. Co. & Lareau.* **II,** Q. B. **258.**

21. Payment of award.—Que d'après l'acte des chemins de fer de Québec, un propriétaire exproprié de son terrain a droit, après que la sentence arbitrale a été signifiée, de s'en faire payer le montant à même le dépôt fait par la compagnie quand même cette dernière aurait exercé quelque recours contre la sentence arbitrale et notamment qu'elle aurait intenté une action pour la faire annuler.

Que lorsque les délai dans lequel devait se rendre la sentence arbitrale, sous l'acte susdit, a été prolongé, du consentement des arbitres et des parties, aucune des parties ne peut se plaindre que la sentence a été rendue après le délai originairement fixé.—TASCHEREAU, J., 16 JUILLET 1887, *Q. & O. R. Co. vs Lescure.* **III,** S. C. **154.**

22. Person injured on track.—That no presumption of fault arises against a railway company from a person being injured on the track; on the contrary, it is for the person injured to show that he had a lawful right to be there; and to enable him to claim damages be must also show that the company were guilty of some fault, neglect or imprudence whereby the injury was caused. So, where the plaintiff injured by a train at a street crossing, and it appeared that there was a sign board indicating the crossing, and that the bell was rung, and the whistle sounded to warn passers of the approching train, it was held that the plaintiff could not claim damages from the company.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 26 MAY 1885, *Roy & G. T. R. Co.* **I,** Q. B. **353.**

CITATIONS.—*Lovest vs G. T. R. Co.*, 3 *L. N.* 98.

23. Possession.—Que lorsqu'un entrepreneur de chemin de fer convient avec une compagnie de construire un chemin, et d'acheter à cette fin, au nom de la compagnie, les terrains nécessaires, la possession qu'il acquiert ainsi n'est pas propre à lui-même, mais est celle de la compagnie.—TORRANCE, PAPINEAU, LORANGER, JJ., 30 NOV. 1882, *Banque d Hochelaga vs M. P. & B. R. Co.* **I,** S. C. **150.**

Que lorsqu'un propriétaire d'immeuble laisse une compagnie de chemin de fer s'emparer de son terrain, y établir et exploiter un chemin de fer, il ne peut ensuite empêcher par opposition la vente judiciaire de son immeuble par un créancier de la compagnie, sur le principe que cette dernière n'avait pas rempli toutes les formalités exigées par la loi de ces compagnies avant qu'elles puissent s'emparer des terrains d'autrui pour les fins de leur exploitation; la possession qu'elle aurait eue sans trouble équivaut à une vente de la propriété —LORANGER, J., 21 OCT. 1885, *Mongeon vs M. & S. R. Co.* **II,** S. C. **7.**

24. Prescription.—That the prescription of six months enacted in sect. 27 of the Railway Act, R. S. C. 109 is applicable to cases were damages is caused to land through a preliminary survey made with the object of locating the railway line over the land where the line so surveyed was subsequently abandoned and a new location adopted.—TAIT, J., 20 APRIL 1889, *Ravary vs O. & Q. R. Co.*

V, S. C. **54.**

25. Railway bridge and railway track—Injunction—Extension of town limits to middle of navigable river.—That the portion of the Railway bridge built over the Richelieu River and the railway track of the company appellants, within the limits of the town of St. Johns, so above defined, are subject to taxation by the municipality as well as the land on which the bridge and track are constructed.—DORION, MONK, RAMSAY, CROSS, BABY, 27 MARCH 1886, *C. V. R. Co. & St. Johns.* (Reversed by Supreme Court 14 S. C. R. 288). (Jt. of Supreme Court affid by Privy Council 12 L. N. 290).

IV, Q. B **466.**

CITATIONS.—*Dillon, on Municipal Corporation, vol. I, p.* 89—*Ville Longueuil vs Cie. Navigation Longueuil,* 6 *L. N.* 291.

26. Resignation of arbitrators.—That, following art. 1348 C. C. P., a submission to arbitration becomes inoperative upon the resignation of one of the arbitrators, named by either of the parties, if no provision is made in the submission for the replacement of such arbitrator.—JETTÉ, J., 10 JULY 1888, *O. & Q. R. Co. vs Latour.* **IV,** S. C. **84.**

27. Responsibility for damages caused dy sparks.—Qu'une compagnie de chemin de fer est responsable des dommages qu'elle cause, lorsque les étincelles qui sortent d'une des locomotives qu'elle emploie pour faire tirer ses wagons mettent le feu à un batiment près duquel il passe, et cela quand même la compagnie aurait pris toutes les mesures de garantie fournie par la science actuelle.—MATHIEU, J., 27 OCT. 1883, *Jodoin vs Cie Sud Est.* **I,** S. C. **316.**

28. Responsibility — Imprudence of passenger.—Qu'une compagnie de chemin de fer qui vend un billet de passage d'un endroit à un autre sur sa ligne, et qui collecte ce billet

du passager dans un de ses chars, est tenu d'arrêter ce train à l'endroit indiqué sur le dit billet et sera tenue responsable des dommages qu'elle cause si elle ne le fait pas.

Qu'en pareil cas, si le passager saute en bas du train lorsqu'il est en mouvement et se fait des blessures graves, ce fait constitue une imprudence de sa part que la Cour doit prendre en considération pour diminuer les dommages à être accordés à cette personne.—GILL, J., 11 MAI 1885, *Lareau vs C. V. R. Co.* (Reversed in appeal 2 M. L. R. Q. B. 258). **I,** S. C. **433.**

29. Risk incidental to employment—Release and discharge. —A railway company is not responsible for injury sustained by an employee, whose foot was caught in a frog, where it appears that there was no negligence or fault on the part of the defendants, and the accident was owing to a risk incidental to the plaintiff's employment as a brakesman.

Where the plaintiff, as a member of an insurance society in connection with the defendant company, received a sum of money from the society, in compensation of injuries, and in consideration of such payment signed a release and discharge of defendants "from all claims for damages, indemnity or other form of compensation, on account of said accident," that he was precluded from asking for any further compensation.—TASCHEREAU, J., 29 OCT. 1887, *Bourgeault vs G. T. R. Co.* **V,** S. C. **249.**

RAILWAY BONDS

Upon the facts of the case, the Court was of opinion (confirming the judgment of the court below) that the defendant (appellant) was bound to return certain railway bonds which had been placed in his hands by the plaintiff assignor.

(Reforming the judgment of the court below, 6 L. N. 220) that the condemnation against the defendant in default of returning the bonds, should be to pay the actual value thereof, as established in evidence and not the pair or nominal value.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 4 DEC. 1884, *Senécal vs Hatton.* **I,** Q. B. **112.**

RAILWAY (STREET)

That the Act 45 Vict. (Q.) ch. 22, which imposed an annual tax of $50 on City Passenger Railway Companies, for each mile of railway or tramway worked, refers to the distances between terminal points, and does not include the length of double, switch and yard tracks.—DAVIDSON, J., 28 JUNE 1888, *Lambe vs M. S. R. Co.* **IV,** S. C. **162.**

Que dans une action en dommage contre une compagnie voiturière pour expulsion illégale par un conducteur, toute allégation dans la plaidoirie se rapportant au caractère et à la conduite du demandeur dans un autre temps que la circonstance en question dans la cause, est étrangère à la contestation et sera rejetée sur réponse en droit.—MATHIEU, J., 29 DEC. 1888, *Brouillet vs The Montreal Street Railway Co.* **IV,** S. C. **379.**

See NEGLIGENCE—MONTREAL.

RECEIPT

See CRIMINAL LAW—ERROR.

RECEPTION OF THING NOT DUE

See ACTION.

RECORD

See JUDGMENT—PROTHONOTARY.

RECORDER'S COURT

Que la Cour du Recorder de la Cité de Montréal a juridiction sur les matières et offenses consistant à tenir une maison malfamée et une maison de désordre dans la Cité de Montréal.

Qu'un bref de prohibition peut émaner avant la conviction.

Que la preuve testimoniale peut être légalement faite sur un bref de prohibition émané avant la conviction.—TASCHEREAU, J., 31 MARS 1887, *McKeown vs Cour du Recordeur.* **III,** S. C. **54.**

CITATIONS.—*Simard vs Montmorency*, 24 *Q. L. R.* 208—*Bergevin v. Rouleau*, 23 *L. C. J.* 179—*Poulin vs Québec*, 9 *S. C. R.* 185—*Hangel v. Côté*, 11 *L. C. R.* 479 *High* § 803—*Hingston vs McKenty*, 12 *L. C. J.* 25—2 *Taschereau, J.* 59—*Exparte Garner*, 4 *L. C J.* 49—*Walker vs La Cité*, 4 *L. N.* 215—*Exparte Lefebvre*, 7 *L. N.* 258—*Blain vs Granby*, 5 *R. L.* 188—*Beaudry vs Recorder's Court*, 5 *R. L.* 323—*Barrette v. Montreal*, 11 *R. L.* 500—*Audet v. Dayon*, 10 *Q. L. R.* 20—*Sorel vs Armstrong*, 20 *L. C. J.* 71—*Bergeron vs Rouleau*, 23 *L. C. J* 179—*Exparte Cherrer*, 5 *L. N.* 343—*Exparte Cherel*, 4 *L. N.* 303—*Roscœ, Criminal Evidence, p.* 796—*High*, 762, 771, 772 *et seq.*

See CERTIORARI.

REDEMPTION, RIGHT OF

See TENDER AND CONSIGNATION.

REGISTRAR

1. Certificate.—That in the case of the seizure and sale of several lots of land, the Registrar is bound to embody all the entries respecting such lots in one certificate.

That the Registrar has no right to include in such certificate and charge for entries respecting hypothecs which appear by his books to have been discharged.—TASCHEREAU, J., 7 DEC. 1885, *Debellefeuille vs Gauthier.* **II,** S. C. **103.**

Que le régistrateur qui donne un certificat doit y mentionner toutes les hypothèques affectant la propriété pour laquelle on demande tel certificat, mais qu'il ne doit pas y inclure les hypothèques qui ont été payées ; et qu'il pourra être condamné à remettre les honoraires qu'il se sera fait payer pour ces dernières entrées.—MATHIEU, 28 JUIN 1887, *Marchand vs Marchand.* **III,** S. C. **261.**

2. Production of document.—Qu'un régistrateur est un fonctionnaire public, dépositaire et gardien de documents d'une nature publique.

Qu'il ne peut être tenu de produire en cour les documents, archives ou titres enregistrés ou en usage dans son bureau, à moins que ce ne soit dans une instance spéciale se rapportant à la forme ou à l'authenticité même de tels documents.—DELORIMIER, J., 8 FEV. 1891, *Schiller vs C. P. R.* **VII,** S. C. **174.**

CITATIONS.—2060 *C. N.*—9 *Marcadé, p.* 417 *No.* 809—6 *Merlin vo copie, p.* 445—11 *Carré et Chauveau, No.* 852 *p.* 42—1 *Greenleaf, Evidence* § 484—1 *Phillips on Evid. ch.* 6 *p.* 424—*Workman v. Montreal*, 20 *L. C. J.* 217.

3. Tariff.—That a registrar, when furnishing to a sheriff a certificate as to several lots of land sold, is not entitled to make separate certificates for each lot sold when but one requisition covering all has been filed with him by the sheriff.—MATHIEU, J., 11 JUNE 1885, *Morris vs Canadian Iron and Steel.* **I,** S. C. **426.**

REGISTRATION

I.—BY OWNER OF IMPROVEMENTS—COSTS OF.
II.—DESCRIPTION FOR PURPOSE OF.
III.—ERRONEOUS ENTRY MADE BY REGISTRAR.
IV.—IN WHAT CASES RENEWAL IN NECESSARY.
V.—RENEWAL OF REAL RIGHTS.
VI.—TRANSFER OF PRIX DE VENTE.

See DONATION—MARRIED WOMAN—SALE—SERVITUDE—SUBSTITUTION—SURETYSHIP.

1. By owner of improvements — Costs of. — Que, lorsque d'après les termes d'un contrat contenant une clause résolutoire, le défaut de paiement résout absolument le contrat, le tribunal ne peut intervenir.

Que les frais d'enregistrement d'un contrat de vente sont compris dans ceux que l'acheteur est tenu de payer.

Que pour être valable les offres réelles et la consignation doivent être telles qu'il soit loisible à la partie d'accepter purement et simplement sans aucune condition.—PLAMONDON, BOURGEOIS, LORANGER, JJ., 21 DEC. 1885, *Prud'homme vs Scott.* **II,** S. C. **63.**

CITATION.—1, *Troplong* 164—*Carter & Forbes* 4, *L. N.* 77—*Pigeau* 434.

2. Description for purpose of.—Que la description d'un immeuble pour les fins d'enregistrement d'un droit hypothécaire est complète aux yeux de la loi, en mentionnant le lot et le rang, ou partie du lot et le rang.

Que dans l'espèce l'erreur commise dans l'acte constitutif d'hypothèque, par suite d'une erreur de clerc, quant au numéro de la subdivision du lot, n'affecte point la validité de l'hypothèque, attendu que l'identité de l'immeuble est bien établie et qu'il n'en est résulté aucun préjudice au défendeur.

Que, dans l'espèce, le débiteur personnel qui a constitué l'hypothèque étant aussi l'auteur du défendeur, ce dernier se trouverait sans titre à l'immeuble, si celui de son auteur étant illégal, insuffisant ou irrégulier, ce qui ne saurait être puisque le défendeur lui-même invoque le titre de son auteur comme parfait.

Que dans l'espèce, le défendeur a reconnu lui-même la validité de l'hypothèque et a même gardé entre ses mains, sur le prix de son achat, une somme suffisante pour payer la dite hypothèque au demandeur à l'acquit de son auteur et que, partant, sa défense est entachée de mauvaise foi, attendu qu'il a invoqué une prétendue irrégularité dont il n'a souffert aucun préjudice et qu'il n'a effectivement couverte par sa conduite et ses promesses.—JETTÉ, MATHIEU, TASCHEREAU, JJ., 30 JUIN 1887, *Boisvert vs Johnson.*

III, S. C. **182.**

CITATIONS.—*Troplong, Priviléges et Hypothèques,* 200 §36—31 *Laurent, Nos.* 93, 95.

3. Erroneous entry made by registrar.—That where subrogation is given by the terms of a deed, the erroneous noting of the deed by the Registrar as a discharge, and the granting by him of erroneous certificate, cannot prejudice the party subrogated.—DORION, TESSIER, CROSS, CHURCH, JJ., 7 APRIL 1888, *Desrosiers & Lamb.* **IV,** Q. B. **45.**

CITATION.—*Carnes vs Boucher,* 6, *Q. L. R.* 282.

4. In what cases renewal is necessary.—Que le renouvellement de l'enregistrement d'un titre, dans les délais prescrits, là où le cadastre devient en force, n'est nécessaire que pour les droits réels consentis sur un immeuble, c'est-à-dire, les hypothèques ou autres charges constituant le jus ad rem ; et qu'il n'est pas nécessaire pour les droits dans la propriété, jus in re.

Que, lorsque ce renouvellement est nécessaire, s'il est fait, il valide tous les titres qui decoulent du titre enregistré, même ceux antérieurs au renouvellement, lesquels conservent leur rang. — TASCHEREAU, J., 17 JUIN. 1885, *Surprenant vs Surprenant.* **I,** S. C. **242.**

CITATION.—*Banque du Peuple vs Laporte* 19, *L. C. J.* 66,—*Pacaud vs Constant* 4, *Q. L. R.* 84,—*Chrétien vs Poitras,* 7, *Q. L. R.* 81,—*Racine vs Délisle,* 8, *Q. L. R.* 135.

5. Renewal of real rights.—(Approving la Banque du Peuple & Laporte, 19 L. C. J. 66). That the renewal of registration of any real right, required by art. 2172 of the Civil Code has no reference to a right in the property itself, such as a sérvitude of drain through a property established by deed in favor of a neighbouring property.—DORION, MONK, RAMSAY, CROSS, JJ., 27 NOV. 1885, *Wheeler & Black*.

II, Q. B. **139.**

6. Transfer of prix de vente.—D. transporte par acte authentique à B. un prix de vente d'immeuble non enregistré dû par C. à qui le transport est signifié, mais lequel n'était pas enregistré. Plus tard le prix de vente est enregistré, sans mention du transport. Subséquemment à tout cela G. qui a un jugement contre D. fait signifier une saisie arrêt à C. qui déclare ne rien devoir à D. Alors G. fait enregistrer une copie du bref de saisie-arrêt et du procès-verbal de sa signification, et en donne avis à C. en lui faisant signifier les certificats d'enregistrement. Postérieurement, le transport de D. à B. est enregistré et il est de nouveau signifié avec certificat d'enregistrement à C. Vient maintenant une contestation par G. de la déclaration du tiers saisi.

Que l'enregistrement du bref de saisie arrêt ne vaut rien et qu'il n'a pas fait voir au bureau d'enregistrement quelle créance il saisissait.

Que D. n'étant pas un cessionnaire ne peut se prévaloir du défaut d'enregistrement du transport.

Que ce transport, même non enregistré, signifié avant la saisie arrêt l'emportera sur cette dernière. TORRANCE, LORANGER, CIMON, JJ., 30 JUIN 1885, *Goyette vs Dupré*.

II, S. C. **29.**

REGISTRATION OF DECLARATION OF PARTNERSHIP

See PENAL ACTION.

RELEASE AND DISCHARGE

See RAILWAY.

RELIGIOUS BELIEF

See WITNESS.

REMÉRÉ

See SALE.

RENTE CONSTITUÉE

See HYPOTHEC.

REPLICATION

See PROCEDURE.

REPRISE D'INSTANCE

See PROCEDURE.

REQUÊTE CIVILE

See PROCEDURE.

RES ADJUDICATA

See CHOSE JUGÉE.

RESERVED CASE

See CRIMINAL LAW.

RESPONSIBILITY

I.—Accident caused by dogs barking at horses—Damages.
II.—Chemists.
III.—Fall of awning.
IV.—Fall of wall—Caused by defect of construction.
V.—Force majeure.
VI.—Illegal seizure by bailiff.
VII.—Injury to mare at time of connection.
VIII.—Mare put to pasture.
IX.—Negligence causing fright.
X.—Of owner of horse.

See BAILIFF—BUILDER — CARRIER — LIBEL AND SLANDER — MASTER AND SERVANT — MONTREAL — NEGLIGENCE — NOTARY — RAILWAY—MUNICIPAL CORPORATION.

1. **Accidents caused by dogs barking at horses.**—The plaintiff was driving along the highway after dark, with two horses led by a halter, the end of which he held round his

hands. The led horses, being startled by the barking of dogs which ran out from a farm house, jerked the rope suddenly, and the plaintiff's hands were seriously injured.

That a dog, although a domestic animal, brings his owner no special privileges of exemption; and the defendant, being guilty of negligence in allowing his dogs to be at large upon a public road, was responsible under art. 1055 C. C. for the injury to the plaintiff.—DAVIDSON, J., 21 NOV. 1888, *Vital vs Tetrault.* **IV,** S. C. **204.**

CITATION.—*Dandurand vs Pinsonnaault* 7 *L. C. J.* 131.

The plaintiff was driving along the public highway after dark, with two horses led by a long halter, the end of which he held twisted round his thumbs. The led horses, being started by the barking of defendant's dogs which ran out from the farm house, jerked the rope suddenly and plaintiff's thumbs were seriously injured.

(Reversing the judgment of Davidson, J. M. L. R. 4 S. C. 204, Wurtele, J., diss.) that the immediate cause of the injury being the negligence of the plaintiff in having the halter twisted round his thumbs, he was not entitled to recover damages from the owner of the dogs. — JETTÉ, LORANGER, WURTELE, JJ., 28 JUNE 1889, *Vital vs Theriault.* **VI,** S. C. **501.**

2. Chemists.—Where a chemist leaves his shop in charge of an appentice, not qualified under The Quebec Pharmacy Act 1885, sec. 22 to mix prescriptions, he is guilty of *faute* and is liable in damages towards a person injured by an explosion of chemicals during his absence, such explosion resulting from the act of the apprentice.—DAVIDSON, J., 17 FEB. 1888, *Laskey vs Lyons.* **IV,** S. C. **4.**

(Confirming the decision of Davidson, J M. L. R. 4 S. C. 4). A chemist who leaves his shop in charge of an apprentice not qualified under the Quebec Pharmacy Act to mix prescriptions, is guilty of *faute* and an explosion of chemicals occurring during his absence, the presumption is against him, and he will be liable in damages therefor unless he rebuts the presumption. — TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 26 FEB. 1889, *Lyons & Laskey.* **V,** Q. B. **5.**

CITATION —20 *Laurent, Nos* 487, 547, 552,—5 *Marcadé, p.* 283,—*Wilscam vs Montreal Street Railway, M. L. R.* 4 *S. C.* 193,—*Pollock, on Torts pp.* 64, 407,—*C. P. R. vs* Cadieux *M. L. R.* 3 *Q. B.* 315.

3. Fall of awning.—Que l'occupant qui place un auvent sur le devant du magasin qu'il occupe, est responsable de sa chute et des dommages qu'elle occasionne au passant, quand même cet occupant ne serait pas propriétaire de la maison.—DAVIDSON, J., 5 JUIN 1888, *Brisson vs Renaud.*

IV, S. C. **88.**

CITATION —*Lulham vs Cité de Montréal* 6, *L. N.* 93,—20 *Laurent,* 478, *No* 451.

4. Fall of wall-Caused by defect of construction.—Where one of the walls of a burned building falls, not solely as a consequence of the fire, but because of an original defect in its construction, the owner is responsible for the damage caused by its ruin.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 26 FEB. 1889, *Evans vs Lemieux.* **V,** Q. B. **112.**

5. Force majeure.—Que celui qui plaide la force majeure ne peut être exempt de toute responsabilité, qu'en autant que l'accident n'a pas été précédé ni accompagné d'une faute qui lui soit imputable.

Que dans le cas actuel l'incendie a été la cause première de l'accident ; que les prémisses incendiées étaient non seulement la propriété du défendeur Nordheimer, mais elles étaient occupées par lui au moment de l'incendie, et qu'il lui incombait de prouver que cet incendie n'a pas été occasonné par son fait ni par le fait d'aucune personne sous son contrôle ou à son emploi.

Qu'en l'absence de toute preuve quant à l'état des prémisses au moment où l'incendie s'est déclaré et d'explications sur l'origine de l'incendie, il y a présomption d'incurie et manque de soin de la part du dit Nordheimer, comme dans le cas du locataire ; et il est non recevable à invoquer la force majeure résultant d'un incendie dont la cause peut lui être attribuable.—LORANGER, J., 31 OCT. 1887, *Alexander vs Hutchinson & Nordheimer.* **III,** S. C. **283.**

Affirming the judgment of Loranger J., M. L. R. 3 S. C. 283). That where a person pleads inevitable accident in answer to an action of damages, he is not relieved from his

reponsibility if it appear that the accident was preceded by negligence or fault imputable to him, which conducted to the accident. And so where the damage complained of was caused by the fall of a wall during a high wind, seven days after a fire by which a building of defendant was destroyed and the wall in question left standing, and the defendant had taken no precautions to prevent the accident by pulling down the wall, although there had been ample time to do so, and he had been notified of the danger, it was held that it was not a case of inevitable accident, and that the defendant was liable.—DORION, TESSIER, CROSS, BABY, BOSSÉ, JJ., 26 JUNE 1889, *Nordheimer & Alexander.* (Confirmed by Supreme Court 19 S. C. R. 248). **VI,** Q. B. **402.**

6. Illegal seizure by bailiff.—Qu'une personne dont les meubles sont saisis erronément en vertu d'un bref d'exécution, l'huissier ayant pris une personne de même nom pour une autre, a droit à des dommages exemplaires, fixés dans l'espèce à $15 ; le saisissant étant dans ce cas responsable de l'erreur de l'huissier.—TASCHEREAU, J., 3 AVRIL 1888, *Lalonde vs Bessette.* **IV,** S. C. **39.**

7. Injury to mare at time of connection.—That the proprietor of a stallion is not responsible for the death of a mare where the death is a result of an error *de voie*, committed by the stallion at the time of the connection unless it be proved that the error had for its cause some fault on the part of the owner of the stallion or of the servant of the owner.—TORRANCE, BUCHANAN, MATHIEU, JJ., 30 JULY 1886, *Brouillette vs Côté.* **III,** S. C. **164.**

8. Mare put to pasture.—That a farmer who takes an animal to pasture on his farm, at a rate agreed upon, is only bound to exercice the care of a *bon père de famille ;* and if the animal is killed or lost without any fault or negligence on his part, he is not responsible to the owner.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 20 MARCH 1890, *Robin & Brière.* **VII,** Q. B **361.**

9. Negligence causing fright.—That damage caused by fright or nervous excitement unaccompanied by impact or any actual physical injury, is too remote to be recovered.

And so, where a miscarriage resulted from a fright caused to the plaintiff by the fall of a bundle of laths (which occured through the defendant's negligence) near where the plaintiff was standing, it was held that she could not recover damages.—DAVIDSON, J., 18 MAY 1888, *Rock vs Denis.* **IV,** S. C. **134.**

CITATIONS.—*Ramsay vs M. S. R. Co.* 11 *L. N.* 2— *Coulton v. Victoria Railway, Commiss.* 11 *L. N.* 246—*Sneesbky v. Lancashire & York R. Co. L. R.* 1, *Q. B.* 42.

(Affirming the decision of Davidson J., ant. emp. 134). That damage resulting from fright or nervous shoch unaccompanied by impact or any actual injury, is too remote to be recovered. And so, where a miscarriage resulted from a nervous shock caused to the plaintiff by the fall of a bundle of laths (which occured through the defendant's negligence) near the spot where the plaintiff was standing, it was held that the damage was too remote to be recovered.—JOHNSON, TASCHEREAU, MATHIEU, JJ., 22 DEC. 1888, *Rock vs Denis.* **IV,** S. C. **356.**

10. Of owner of horse.—That a hotel keeper, from whom a guest hires a horse and vehicle for the purpose of taking a drive is not responsible for the negligence of his guest while driving.—DUVAL, CARON, DRUMMOND, BADGLEY, MONK, JJ., 20 DEC. 1872, *Beliveau & Martineau.* **II,** Q. B. **133.**

CITATIONS.—2 *Sourdat, Responsabilité, Nos,* 886, 887—10 *Pandec Français p.* 398—*Story, Agency, No.* 453—2 *Hilliard, on Torts p.* 447—5 *Larombière Oblig p.* 785—3 *Zachariæ, p.* 203, *No.* 4—4 *Dalloz, Dict. vo Responsabilité, p.* 242 § 608—*Sirey* 1837, 2, 508—*Shearman & Redfield, on Negligence, s.* 67, *No.* 60—*Chitty, on Carriers, p.* 366—2 *Sourdat, p.* 103, *No.* 782—2 *Toullier, p.* 400, *Nos.* 296 *et* 297—2 *Favard, p.* 42—4 *Merlin, p.* 24—1 *Domat, p.* 474—4 *Domat,* 196.

REVENDICATION

See JUDICIAL SALE—SALE.

REVIEW

1. Judgment not final.—That a judgment rendered in an action of revendication, granting a petition of plaintiff, under C. C. P. 869, to have delivery of the goods in giving securities, is not a final judgment subject to be reviewed. —TORRANCE, PAPINEAU, GILL, JJ., 31 OCT. 1884, *Whitehead vs Kieffer.* **I,** S. C. **141.**

2. Upon questions of costs.—Que, quoiqu'en Révision, comme en Appel, la question de frais soit secondaire, cependant, lorsqu'elle implique la violation d'un principe, les tribunaux ne doivent pas l'écarter, et, dans ce cas, un jugement pourra être réformé sur ce point seul.—JOHNSON, PAPINEAU, LORANGER, 29 FEV. 1884, *Lamarche vs Banque Ville-Marie.* **I,** S. C. **203.**

3. Contestation of municipal election. — Qu'un jugement final rendu par la Cour Supérieure sur une enquête en contestation d'élection municipale ne peut être inscrit en Révision, ce jugement n'étant pas susceptible d'appel; et une inscription ainsi faite en Révision sera rejetée sur motion.—DOHERTY, LORANGER, CIMON, JJ., 30 MAI 1885, *Beauchemin vs Hus.* **I,** S. C. **413.**

See PROCEDURE.

REVISED STATUTES QUEBEC

See ACTION QUI TAM.

RIGHT OF WAY

See SERVITUDE.

RIPARIAN OWNER

That a proprietor whose lands extends to the beach of the River St. Lawrence, within the limits of the Harbour of Montreal, has not such distinct and independent right of easement or servitude in the river frontage as is susceptible of being valued separately and apart from the compensation awarded for the property itself when being excluded from easy access to the river, is merely an element to be considered by the arbitrators when estimating the indemnity to be awarded for the property expropriated.

That even if the riparian proprietor expropriated possessed such easement or servitude, the functions of the arbitrators would not extend to the valuation of such right, unless it were included in the notice or demand of expropriation.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 26 MAY 1885, *Starnes & Molson.* **I,** Q. B. **425.**

See SERVITUDE—WATER COURSE.

ROAD

Que quelque soit le temps dont un chemin est à l'usage du public, s'il apparaît par des actes du propriétaire que celui-ci entend en conserver la propriété, par exemple, en entretenant lui-même le chemin, en y plaçant des barrières, en faisant payer un droit de passage aux passants, etc., ce chemin reste simple chemin de tolérance.

Que les propriétaires d'un chemin de tolérance peuvent toujours le fermer et le retirer de l'usage du public.

Que les propriétaires d'un chemin de tolérance ne peuvent être forcés de l'entretenir ou de continuer de laisser le public s'en servir. — WURTELE, J., 5 JUIN 1891, *McGinnis vs Letourneau.* **VII,** S. C. **278.**

See MUNICIPAL LAW.

ROBBERY

See CRIMINAL LAW.

ROYAL COMMISSION

See CONSTITUTIONAL LAW.

SAISIE-ARRET

1. Attachment in hands of creditor.—Dans une action en reddition de compte une saisie-arrêt avant jugement fut émise pour saisir et retenir entre les mains du demandeur le montant d'un jugement que le défendeur avait obtenu contre lui. Trois ans avant l'institution de cette action, le défendeur avait recélé certains de ses effets pendant 15 jours pour se mettre à l'abri d'un jugement obtenu contre lui par le défendeur, lequel jugement fut subséquemment renversé. A la même époque le défendeur avait aussi transporté des immeubles à son neveu, sous une condition résolutoire avant l'institution de la présente action.

Qu'un créancier peut saisir avant jugement entre ses propres mains;

Que dans une action en reddition de compte il n'y a pas lieu a une saisie-arrêt avant jugement.

Que pour les fins d'une saisie-arrêt avant jugement, il faut que le défendeur recèle présentement lors de la date de l'affidavit ou qu'il soit sur le point de recéler. — DORION, TESSIER, CROSS, BABY, JJ., 17 SEPT. 1887, *Dorion & Dorion.* **III,** Q. B. **155.**

2. Attachment of amount for which debtor is collocated.—Qu'un créancier peut saisir par saisie-arrêt une créance pour laquelle son débiteur est colloqué quand même ce dernier se serait fait illégalement transporter cette créance, laquelle appartiendrait réellement à un tiers, le recours de ce tiers est contre le débiteur.—MATHIEU, J., 5 FÉV. 1886, *Senécal vs Exchange Bank.* **II,** S. C. **108.**

3. Declaration of garnishee.—The answer of tiers-saisi to questions which may be put to him by the plaintiff seizing do not form a part of his declaration, and a jugment cannot be rendered on such answers de plano: the seizing creditor must contest the declaration.—TORRANCE, GILL, LORANGER, JJ., 30 NOV. 1885, *Laframboise vs Rolland.* **II,** S. C. **75.**

CITATIONS—*Grant vs Banque Fédérale, M. L. R.* 2 *Q. B.* 4.

4. Effect of.—Que la signification d'un bref de saisie-arrêt n'a pas opéré une cession judiciaire et que le jugement seul ordonnant au tiers-saisi de payer, opère cette cession.—TORRANCE, LORANGER, CIMON, JJ., 30 JUIN 1885, *Goyette vs Dupré.* **II,** S. C. **29.**

SAISIE-ARRÊT BEFORE JUDGMENT

See COMPENSATION—SAISIE-ARRÊT.

SAISIE CONSERVATOIRE

See PRIVILEGE FOR COSTS.

SAISIE GAGERIE

See DAMAGES—LESSOR AND LESSEE.

SAISISSABILITÉ

See ALIMENTARY PROVISION—LIBEL AND SLANDER.

SALE

I.—Action by purchaser to enforce sale of real estate—Putting vendor in default.

II.—A rémére.

III.—By sheriff.

IV.—By prete-nom.

V.—Completion of contract.

VI.—Contract—Sale of goods—Date of shipment specified—Performance.

VII.—Contract in fraud of creditors.

VIII.—Deceit—False and fraudulent representations—Exaggeration—Failure of purchaser to complain within a reasonable time.

IX.—Delay in delivery—Diligence.

X.—Delivery.

XI.—Description of property—West side of river—Change of course.

XII.—Error as to accessory of thing sold.

XIII.—Fear of disturbance.

XIV.—Goods consigned as samples to test market—What constitutes acceptance.

XV.—Hypothec—Clause of franc et quitte.

XVI.—Inferiority of quality—When goods cease to be at risk of vendor.

XVII.—Jus disponendi.

XVIII.—Latent defect.

XIX.—Misrepresentation.

XX.—Of.

(1) Book debts.
(2) Building materials.
(3) Claims not yet matured.
(4) Goods.
(5) Real estate free and clear.

XXI.—Petitory action—Promise of sale—Commencement of proof.

XXII.—Pourparlers—Remedy of vendor—Folle enchère.

XXIII.—Price payable by instalments—Title to remain in the vendor until full payment—Right to revendicate.

XXIV.—Promise of sale—Acceptance—Lapse of time.

XXV.—Property of hypothecary claim by purchaser.

XXVI.—Refusal of purchaser to accept.

XXVII.—Registration of sale by donor to third party before registration of donation—Rights of donee.

XXVIII.—Right of redemption—Refusal to retrocede—Tender not followed by consignation—Right to revenues of property.

XXIX.—Right of unpaid vendor.

XXX.—Sale by correspondance.

XXXI.—Sale for cash—Default to pay price.

XXXII.—Sale with suspensive condition.

XXXIII.—Simulation.

XXXIV.—Time of essence of contract.

XXXV.—Title—Registration.

XXXVI.—Warranty—Soundness of horse.

XXXVII.—Without delivery of possession.

See CAPIAS — COMMUNITY — CORPORATION — EVIDENCE — FRAUD — INSOLVENCY — INTERDICTION — JURISDICTION — JUDICIAL SALE OF MOVABLES—MUNICIPAL LAW—PARTNERSHIP — PLEDGE — PROCEDURE — SUBSTITUTION — TUTOR AND MINOR.

1. Action by purchaser to enforce sale of real estate—Putting vendor in default.—The plaintif agreed, in writing, to purchase a certain property for $11000, of which $3000 was an existing mortgage which he assumed; and of the balance $6000 to be paid on passing the deed, which was to be done in ten day's time and $2000 within two months from the date of the writing. This was accepted and ratified by the vendor, but the deed was not executed. The plaintiff nearly five months afterwards, made a notarial tender of $6000, and also of $2000, less interest accrued on the mortgage, and called upon the vendor to execute a deed in accordance with the writing; and he afterwards brought an action to compel the vendor to execute a deed, but without making any deposit with the protonotary.

That in order to put the vendor legally in default, the plaintiff should have tendered the $6000 within ten days from the day of the writing, and that the tender subsequently was too late. Further, that the plaintiff should have renewed the tender by his action, and brought the money into Court.—Tait, J., 30 Nov. 1888, *Foster vs Fraser.* **IV,** S. C. **436.**

Where by a contract for the sale of real estate the buyer is to pay part of the price in cash within a fixed delay, in order to put the vendor legally in default to execute a deed the buyer must tender the cash payment within the delay; and in a suit to enforce the sale, and asking that the judgment be equivalent to title, he must renew the tender and pay the money into Court.—DORION, TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 21 MAY 1890, *Foster & Fraser.*

VI, Q. B. **405.**

CITATIONS.—*Munro & Dufresne, M. L. R.* 4 *Q. B.* 176—*Perrault v. Arcand,* 4 *L. C. R.* 449—*Pothier, Vente, No.* 480—6 *Marcadé,* 177—*Marcoux v. Nolan,* 9 *Q. L. R.* 263.

2. A remeré.—Que dans le cas d'une vente à réméré, lorsque le délai pour l'exercice du droit de réméré ne doit commencer à courir qu'à partir de l'achèvement par l'acheteur de certaines améliorations sur la propriété vendue, ce dernier est tenu de donner avis au vendeur lorsque les travaux communs sont terminés, et le délai ne compte que de cet avis.—JETTÉ, J., 20 JUIN 1885, *Fournier vs Leger.*

I, S. C. **360.**

Where a property was sold, and the purchaser bounds himself to re-convey it to the vendor within three months from the time he (the purchaser) should have completed a house then in course of constructions thereon, on being paid $3000—that it was the duty of the purchaser to notify the vendor of the completion of the house; and, in default of such notice, the right of redemption might be exercised by the vendor after the expiration of the three months.—DORION, TESSIER, CROSS, BABY, JJ., 31 DEC. 1886, *Leger & Fournier.* **III,** Q. B. **124.**

Que la vente de meubles réelle et de bonne foi par un vendeur solvable peut se faire et être parfaite sans livraison ni déplacement des meubles, mais par le seul consentement des parties, même dans le cas où le vendeur se réserve un droit de réméré.

Que lorsque l'acte mentionne la vente "de tous les meubles garnissant mon hôtel comprenant etc," la vente n'est

pas en bloc et ne comprend que les objets détaillés à l'acte. —BÉLANGER, J., 28 AVRIL 1890, *Bury vs Gagnon.*

VI, S. C. **275.**

Que le créancier peut exercer la faculté de réméré au lieu et place de son débiteur et que s'il intervient un jugement entre ce dernier et l'acquéreur d'un immeuble accordant le réméré et fixant le montant payable à l'acquéreur pour obtenir la rétrocession, le créancier bénéficie de tel jugement et peut exercer les droits et se prévaloir des avantages qu'il assure à son débiteur et les opposer à l'acquéreur ;

Que, sous ces circonstances, si l immeuble a été délaissé par l'acquéreur et vendu en justice et qu'il soit colloqué pour les sommes qu'il a payées, le créancier du vendeur peut faire réduire telle collocation au montant fixé par le jugement accordant le réméré et déterminant la somme que l'acquéreur pouvait exiger avant de parfaire la rétrocession ;

Qu'en pareil cas, si les deniers devant la cour sont suffisants pour acquitter les réclamations de l'acquéreur le créancier n'est pas tenu de lui faire des offres de la somme que le vendeur était tenu de lui payer pour obtenir la rétrocession de l'immeuble.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 NOV. 1886, *Bouchard & Lajoie.* **II,** Q. B. **450.**

3. By sheriff.—1. *Vacated at suit of purchaser—Property charged with dower claim.*—That a purchaser of real estate at a sheriff's sale is not bound to take a deed of the property, but may have the sale vacated, if it appear that the immovable is charged with a claim for dower which is not extinguished by sheriff's sale and this is so, even where the purchaser has knowledge, before the sale, of the existence of the hypothec.—DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Blondin & Lizotte.* **III,** Q. B. **496.**

CITATIONS.—*Ant.* 1511, 1513, 1535, *C. C.*—10 *Pothier* (*Bugnet*) *p.* 286, *Nos.* 636, 640, 661, 662—*Jobin & Shuter*, 21 *L. C. J.* 67—*Thomas v. Murphy*, 8 *R. L.* 231—*Sirey & V—Recueil Gen. Table vo Adjudicataire, Nos.* 157-159—43 *Dalloz, Jur. Gen. Repert vo. Vente, Nos* 800, 802, 873—*do vo. Vente Publique, No.* 2122—2 *do vo. Acquiescement, Nos* 1, 457, 458, 491, 502, 503, 504, 506, 23, 787—16 *Laurent, Nos.* 552 *à* 556—*Rolland de Villargues Diet vo. Douaire, Nos.* 13 *à* 15—*Renusson Douaire Cap.* 10 *No.* 4—*Lacombe, Recueil vo. Decret, p.* 153-4.

2. *Error in description.*—Qu'il y a une erreur suffisamment grave pour faire maintenir une opposition afin d'an-

nuler à une saisie éxécution d'un immeuble, lorsque les annonces du shérif pour la vente judiciaire de cet immeuble, le décrète comme ayant 108 acres de superficie, quand en réalité il en a 195 ;

Que toutefois lorsque le saisi a eu connaissance de cette irrégularité dès le commencement, n'en a pas averti le shérif en temps utile, alors qu'il pouvait le faire mais, au contraire a attendu à la veille de la vente pour faire une opposition il devra payer les frais de la saisie et de l'opposition jusqu'à la date de la contestation de cette dernière par le saisissant.—JETTÉ, J., 27 JUIN 1887, *Exchange Bank vs Lauzon.*

III, S. C. **144.**

3. *Of immovable— Lease.* — That the provisions of art. 1663 C. C. do not apply to sales of immovables by the sheriff, and consequently, that a lessee of immovable property sold at sheriff sale is liable to expulsion by the adjudicataire before the expiration of his lease.

That such expulsion may be effected by summary petition for a writ of possession.

That, in the present case, the adjudication having taken place prior to the first of february, and the consent or non consent of the lessor having ceased to have any effect, the question of tacit reconduction could not arise.—JOHNSON, GILL, LORANGER, JJ., 31 OCT. 1884, *Mowry vs Bowen.*

III, S. C. **417.**

CITATIONS.—*McLaren v. Kirkwood*, 25 *L. C. J.* 107.

4. By prête-nom.—Que quelle que soit l'entente entre le propriétaire de certains meubles et un prête-nom, la vente faite à un tiers de bonne foi par le prête-nom, en son nom personnel, est bonne et valable, et le propriétaire ne pourra l'attaquer quand même l'acheteur aurait connu au temps de la vente, la qualité du prête-nom, celui-ci étant réputé en pareil cas, être le maître absolu de la chose qui fait l'objet de la vente.—TORRANCE, J., 12 FÉV. 1885, *Whitehead vs Kieffer.* **I,** S. C. **284.**

The appellant (plaintiff) sought to recover machinery transfered to one Joseph Kieffer by deed of sale before notary, in the ground that the deed was simulated, and that

the appellant was the real owner of the machinery, Joseph Kieffer being merely his prête nom. One White intervened and alleged a purchase of the machinery by him from Kieffer.

(Affirming the judgment of Torrance, J. M. L. R. 1 S. C. 284). That the sale to Kieffer could not be set aside by any evidence less strong than the deed of sale, and that even the admission by Kieffer that the sale was simulated (if such admission existed, which was not the case) could not affect the rights of the purchaser in good faith from Kieffer. —DORION, MONK, RAMSAY, CROSS, BABY, JJ., 30 JUNE 1886, *Whitehead vs Kieffer.* **IV,** Q. B. **236.**

5. Completion of contract.—The defendant agreed to purchase at 10½ cents per lb., a quantity of cheese then in warehouse in Montreal, with right to reject spoiled cheese. The cheese had to be weighed, in order to ascertain the sum total of the price. He sent men to examine the cheese, and they set apart 1,643 boxes as acceptable, and rejected 33. At his request, the cheese, which was to have been removed on Friday, 16th April, as allowed to remain in the same store a few days longer. On the following day it was damaged to a small extent by a great flood which inundated the warehouse. The defendant then refused to carry out the purchase, and the cheese was resold at a loss, and the present action was brought by the seller to recover the difference.

That the sale was complete on the examination of the boxes, and the cheese was then at the risk of the buyer who must bear the loss.—TORRANCE, J., 14 DEC. 1886, *Ross vs Hannan.* **II,** S. C. **395.**

CITATIONS —20 *Troplong, vente, on* 1585, 6—1 *Duvergier, vente, Nos.* 83, 84 *sec.* 2 *Pardessus, No.* 292 6—*Digest, Liv.* 18 *T. p.* 35 § 5, 6—6 *Marcadé, on art.* 1585, 1586—*Benjamin, on Sales, Amer. edit.*—4 *Delamarre et LePoitvin, Nos.* 118, 125.

(Reversing the judgment of Torrance, J. M. L. R. 2 S. C. 395. Tessier and Bossé, JJ. dissenting). That where goods and merchandises are sold by weight, the contract of sale is not perfect, and the property of the goods remains in the vendor and they are at his risk, until they are weighed, or until the buyer is in default to have them weighed; and

this is so, even where the buyer has made an examination of the goods, and rejected such as were not to his satisfaction.—DORION, TESSIER, CROSS, BOSSÉ, CHURCH, JJ., 23 MAY 1890, *Hannan & Ross.* (Confirmed by Supreme Court 19 S. C. R. 227). **VI,** Q. B. **222.**

6. Contract—Sale of goods—Date of shipment specified—Performance.—K. in St. Louis, Mo. on the 22nd March, sold 1,000 barrels of flour to M. in Montreal "shipment 15th" meaning 15th April. The flour was shipped March 30th, and M. objected to this shipment as prematured. The flour was held in Montreal and tendered again to M. on April 18th.

That this was a good tender under the contract. The proper construction of the contract was not that the flour must be shipped on the 15th, and on no other day, but that the date of shipment was mentioned to fix aproximately the time for delivery. — DAVIDSON, J., 19 MARCH 1890, *Kehlor vs Magor.* (Confirmed in Appeal, 1 R. O. Q. B. 23).

VII, S. C. **387.**

7. Contract in fraud of creditors—Knowledge of insolvent. —One of the defendants sold real estate to the other defendant who was his nephew as well as book keeper of a firm in which the uncle was a partner; and the sale took place at a time when, in the opinion of the court, the insolvency of the uncle was generally known.

That the nephew must be presumed to have had knowledge of the uncle's insolvency, and the sale, under C. C. 1035 was annuled.—TASCHEREAU, LORANGER, OUIMET, JJ., 31 MAY 1887, *Banque Nationale vs Chapman.* (Confirmed, in Appeal, Nov. 27, 1888). **III,** S. C. **201.**

CITATIONS.—*Clarke v. Lortie, Reiner & Bouchard,* 4 *Q. L. R.* 293—7 *L. C. J.* 219 *et* 220—*McGrath & O'Connor,* 14 *L. C. R.* 393.

8. Deceit—Fraud and fraudulent representations—Exaggeration.—That exaggeration by the seller of the value of the thing sold does not constitute a fraud which annuls the contract more particularly where the purchaser did not wholly rely upon the seller's statement, but took advice from disinteressed parties, and make inquiries as to the

value, and did not seek to repudiate the bargain until nine months afterwards.—DAVIDSON, J., 16 JUNE 1888, *Caverhill vs Burland.* **IV,** S. C. **169.**

9. Delay in delivery—Diligence.—The appellants of Chatham, Ont., through brokers at Montreal, on the 6th July, sold a cargo of wheat, to be shipped by sail, as soon as a vessel could be secured and to be delivered at Montreal.

The wheat did not arrive at Montreal until August 15th, when the respondent refused to accept it. The appellants had endeavoured to obtain a vessel at Detroit but it was not until July 21st, that a vessel was finally chartered at Toronto.

That the delay of fifteen days which elapsed before a vessel was chartered, was an unreasonable delay, as it appeared that a vessel might have been obtained sooner at Toronto, if the appellants had been willing to pay a liberal rate of freight; and the appellants not having shown due diligence, the respondent was justified in refusing to accept the wheat.—DORION, RAMSAY, CROSS, BABY, JJ., 30 DEC. 1885, *Northwood & Borrowman.* **II,** Q. B. **285.**

10. Delivery.—Qu'un vendeur qui n'a pas accordé aucun délai a, pour livrer les choses vendues, tout le délai que l'acheteur prend pour le payer et que l'obligation de délivrer ne naît qu'après le paiement.

Que lorsqu'un vendeur n'est pas prêt a livrer la chose vendue dans le délai convenu, l'acheteur ne peut prendre avantage de ce défaut qu'après avoir fait des offres réelles du prix de vente.—MATHIEU, J., 25 FÉV. 1889, *Desève vs Fredette.* **V.** S. C. **48.**

CITATIONS.—*Franchère v. Gordon,* 14 *L. C. J.* 152—*Parsons, on Sale, vol. I, p.* 532.

11. Description of property—West side of river—Change of course.—That where a deed conveyed all the land of lot 10 to be found on "the west side of the river" which runs through the lot, all the land on the west side according to the general direction of the river through the lot was included, although in consequence of a bend in the stream and a change of course from south to north, a portion of

such land lay geographically on the east side of the curve. —DORION, MONK, TESSIER, CROSS, BABY, JJ., 9 DEC. 1884, *Eaton vs Murphy.* **IV,** Q. B. **337.**

12. Error as to accessory of thing sold.—The plaintiff purchased from defendant at public auction, two lots of land, on Bishop street and signed a memorandum of sale in which reference was made to the official plan, on which the street was marked as being 51 feet wide. On the surveyor's plan prepared for the sale, the street was also traced as 51 feet, but by error, this part of the street was represented on the lithograph copies as of uniform width with the upper part of the street which was 60 feet wide. In the advertisement and in the auctionneer's announcement, the street was also described as 60 feet wide. The vendors offered to cancel the sale, if the purchaser had been led into error by the lithograph copies, but the plaintiff shows to adhere to the bargain.

In an action of damages by the purchaser, that the plaintiff having received the full number of square feet bargained for, having refused to relinquish bargain, which was a profitable one for him, having signed a memorandum of sale in which reference was made to the homologated plan showing a street 51 feet wide, and, moreover, no specific damage being proved, this action of damages could not be maintained.—DAVIDSON, J., 5 NOV. 1887, *Inglis vs Philipps.*

III, S. C. **403.**

CITATIONS.—*Brodie v. The Ætna,* 5 *S. C. R.* 1.—*Doutney & Brufère,* 24 *L. C. J.* 17.

The appellant purchased from the respondents at public auction two lots of land on a certain street, and signed a memorandum of sale in which reference was made to the official plan, on which the street was marked as being 51 feet wide at that place. On the surveyor's plan prepared for the sale, the street was also traced as 51 feet in width, but by inadvertence, on the lithographed copies distributed at the auction sale, the part of the street where the lots were situated was represented as of uniform width with the upper part of the street, which was 60 feet wide. In the ad-

vertisements, and in the auctioneer's announcement at the sale, the street was also described generally as 60 feet wide. When the error was discovered the respondents (vendors) offered to cancel the sale if the appellant (purchaser) had been misled by the error on the lithographed copies, but the appellant refused and brought an action of damages

(Affirming the judgment of Davidson, J., M. L. R. 3 S. C. 403). In an action of damages by the appellant (purchaser) that he having received the full number of square feet bargained for, having refused to relinquish the bargain, having signed the memorandum of sale in which reference was made to the homologated plan showing a street 51 feet wide, and, moreover, no specific damages being proved, an action of damages could not be maintained.—Cross, Baby, Bossé, Doherty, JJ., 24 jan. 1891, *Inglis & Philipps.*

VII, Q. B. **36.**

Citations.—*Dobell v. Stevens*, 3 *B & C.* 623—6 *Clark & Finnelly, Atwood v. Small, pp.* 330, 395, 502—*Kerr, Fraud and Mistake, pp.* 324, 326,330, 334, 388, 389.

13. Fear of disturbance.—Que la question de savoir si l'acheteur a juste sujet de craindre d'être troublé et peut demander caution en vertu de l'art. 1535 C. C. est une matière discrétionnaire, dans laquelle cette Cour sera peu disposée à déranger le jugement de la Cour de première instance.

Que lorsque la Cour de première instance a condamné le vendeur à donner caution, sans limiter la durée de tel cautionnement, la Cour d'Appel réformera le jugement à cet effet.—Dorion, Ramsay, Tessier, Cross, Baby, JJ., 27 janv. 1885, *Biron & Trahan.* **I,** Q. B. **247.**

14. Goods consigned as samples to test market — What constitutes acceptance.—That where goods are forwarded without order from the consignee, but along with goods ordered by him, the object of the consignor being to test the market, the evidence necessary to establish acceptance by the consignee must be much clearer and more positive than if the goods had been consigned to order in the usual way. So where two cases of accordeons were consigned without order but amongst other goods ordered; and the

consignee paid the freight bill upon the whole consignment, but complained of the price and quality of the accordeons, and declined to accept unless certain deductions were made for broken articles which offer was not accepted by the consignor, it was held that the payment of freight and the opening of the cases were not sufficient to constitute acceptance of goods not specially ordered.—TASCHEREAU, WURTELE, TAIT, JJ., 22 DEC 1888, *Trester vs Trester.*

V, S. C. **188.**

15. Hypothec—Clause of franc et quitte.—In an action to oblige the vendor to execute a deed of sale of real estate or pay damages, where the vendor's agent wrote to the purchaser as follows:—"I can offer you the house at $4300, on the following terms "$1000 cash, $1000 in about two years; balance $2300, mortgage on ground, can remain as long as buyer requires;" that this was equivalent to the clause of franc et quitte with the exception of the hypothec mentioned in the letter, and that the vendor thereby promised and was bound to give a clear title with the exception only of $2300; and he not having executed such deed and having sold the property to a third party, the judgment which condemned the vendor to pay $300 damages, was confirmed.—DORION, MONK, RAMSAY, TESSIER, CROSS, JJ., 20 JAN. 1883, *Gauthier & Ritchie.* **IV,** Q. B. **422.**

CITATIONS—*Sirey*, 1827, 2, 161—*Talbot v. Belivieau*, 4 *Rap. Jud. de Quebec* 104—24 *Laurent, No.* 325 *p.* 317—1 *Duvergier, No.* 426—10 *Duranton, No.* 437—*S. V.* 8, 2, 411—1 *Larombière, p.* 617—25 *Demolombe, p.* 4—*Rolland de Villargues, vo. Stellionat, No* 11—*Troplong, Contrainte par corps, No.* 68—18 *Duranton, Nos.* 443-444—*S. V.*, 61, 2, 546—*S. V.*, 53, 2, 270—*G. T. R. Co & Brewster*, 6 *L. N.* 34.

16. Inferiority of quality—When goods ceased to be at risk of vendor.—Where flour was sold at Toronto, Ontario, to a purchaser in Sherbrooke, province of Quebec, at $4.85 per barrel, delivered at Sherbrooke and Arthabaskaville, that the flour was at the risk of the vendor until delivered, and that the purchaser (who had paid cash, and who did not examine the flour until a quantity had been sold in small lots to his customers) was entitled to recover from the vendor the difference between flour of the quality ordered

and that which had been received. — DORION, TESSIER, CROSS, BABY, JJ., 22 MARCH 1887, *Taylor & Gendron.*

III, Q. B. **38.**

17. Jus disponendi. — Where a person who sells goods on time, shows by his acts, his purpose to retain the property therein, until the conditions of sale be complied with, as for example by consigning the goods to his own agent, in the city where the purchaser resides, with instructions not to part with the bill of lading until the purchaser shall have accepted a draft for the price, the right of property does not pass to the purchaser and the agent of the vendor may retain the goods in the event of the purchaser refusing to accept a draft for the price payable at the expiration of credit.—JOHNSON, TORRANCE, MATHIEU, JJ, 30 JUNE 1886, *McGillivray vs Watt.* **III,** S. C. **170.**

(Affirming the judgment of the Court of Review M. L. R. 3 S. C. 150). Where a person who sells goods on credit, shows by his acts, his purpose to retain the property therein, until the conditions of sale be complied with, as for example by consigning the goods to his own agent, in the city where the purchaser resides, with instructions not to part with the bill of lading until the purchaser shall have accepted a draft for the price, the right of property in the goods does not pass to the purchaser and an action of revendication by the purchaser who has refused to accept a draft for the price will not be maintained.—DORION, TESSIER, CROSS, CHURCH, JJ., 24 SEPT. 1881, *McGillivray & Watt.* **III,** Q. B. **249.**

CITATIONS.—*Shepevd & Harrison, L. R.* 4 *Q. B.* 23, 197—*Brandt v. Bowlby,* 2 *Brad.* 932—*Sirey & Gilbert, art.* 1585, *Nos.* 20, 24, 25, *art.* 2102, *No.* 175—*Marcadé & Pont, Vente, cap.* 1, *sec.* 1.

18. Latent defect. — Que l'on ne peut considérer comme un défaut caché dont le vendeur est tenu de garantir l'acheteur, la trop grand faiblesse des ressorts d'une voiture que l'acheteur a pu examiner en l'achetant.

Que le vendeur n'est pas tenu des vices de la chose vendue et la vente n'en peut être annulée lorsque l'acheteur les a connus depuis la vente et qu'il a persisté à garder cette

chose vendue, acceptant l'obligation du vendeur de la réparer.—MATHIEU, J., 7 MARS 1887, *Paquet vs Dépocas.*

III, S. C. **48.**

Where horses, at the time of their sale, were suffering from glanders, but the disease was not sufficiently developed to be apparent until about twenty days afterwards, and the purchaser then notified the vendor of the fact, and that they would be destroyed if not removed within three days; that a redhibitory action instituted four weeks after the sale and delivery was brought with reasonable diligence. —DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 22 JAN. 1890, *M. S. R. & Lyndsay.* **VI,** Q. B. **125.**

CITATIONS.—*Bégin v. Dubois,* 1 *Q. L. R.* 381—*Darte v. Kennedy,* 15 *L. C. J.* 280—*Lanthier & Champagne,* 23 *L. C. J.* 254—*Donihee & Murphy,* 2 *L. N.* 94—*Crevier v. Chayer,* 3 *L. N.* 84.

19. Misrepresentation.—The appellant sold to the respondent his assets, stock in trade, machinery patents by an agreement of which the material words are as follows: —"John Tye... hereby agrees to transfer and assign all his rights and interest in the assets and stock—in trade and machinery of the business carried on by him in Toronto and Montreal, under the name of John Tye & Co., otherwise called the Dominion Wire Mattress Company, to Warren T. Fairman, and also the patents used by said Tye in connection with said business... The consideration of this transfer is $4000, of which $2000 are to be paid in cash, $500 in three months, $500 in six months, $500 in nine months and $500 in twelve months from this date, in notes of W. T. Fairman... If, on stock taking, which shall be taken within one week, it is found that $4000 is not the exact valuation of the property transferred, the parties shall regulate the deficiency or excess as follows:—... if less than $4000, then the deficiency shall be deducted from the cash payment of $2000. "And in a postcript it was stated that Tye "transfers to said Fairman the goodwill of said business." On getting possession Fairman found that there was no existing patent in Canada for the process of wire coiling handed over to him by Tye in execution of the agreement, and that no patent could be obtained for it in Canada, in-

asmuch as application had not been made within a year from the date of the patent obtained in the United States. The stock taking showed the value of the machinery and plant to be $1,920.80, leaving $2000 to represent the value of the patents or of the patents and goodwill.

That the sale should be regarded as a sale in bloc, and that there being deception and misrepresentation as regards the patents, which were, in fact, worthless, the purchaser was entitled to damages, the measure of which might be taken as the $2000 allowed for the patents,—the goodwill having been added as a separate memorandum and nothing having been allowed as a consideration therefor.—MONK, TESSIER, CROSS, BABY, JJ., 21 MAY 1885, *Tye & Fairman*
I, Q. B. **504.**

Where an article sold by auction is falsely represented to be the property of a person to whom it did not belong, and to have cost a sum far in excess of its actual cost, the sale is null and void, and an action cannot be maintained against the purchaser.—TORRANCE, J., 6 MARCH 1875, *Shaw vs Lacoste.* **II,** S. C. **249.**

20. OF.—1. *Book debts.*—Que la vente des dettes actives ou "book debts" d'un commerçant en faillite à l'encan public, ne comprend pas les livres de compte eux-mêmes, mais simplement la vente des créances du failli.—JETTÉ, WURTELE, TAIT, JJ., 31 MARS 1887, *Guindon vs Fatt.*
III, S. C. **79.**

2. *Of building materials.* — That the words "building materials" in a contract of sale of materials to be removed from a certain lot of ground, do not include fixtures and appliances contained in the building, for supplying heat, for lighting by gas, and for the distribution of water.—WURTELE, J., 18 JUNE 1891, *Labbé vs Francis.* **VII,** S. C. **305.**

3. *Claims not yet matured.*—Que l'on peut validement transporter des créances non échues et le transport ne fût-il fait que comme sûreté collatérale, les créanciers du cédant ne peuvent demander à être colloqués au marc la livre.—MATHIEU, J., 16 MARS 1885, *DeBellefeuille vs Ross.*
I, S. C. **212.**

CITATIONS.—10 *Pothier, Proced. No* 515—1 *Pigeau, Châtelet, pp.* 647-656—28 *Laurent, No.* 444—4 *Aubry et Rau, p.* 700 § 432 ; *p.* 419 § 359 ; *p.* 700 § 432—*Molsons Bank vs Lionais,* 5 *L. N.* 252—*Dupuy v. Bourdeau,* 6 *L. N.* 12—4 *Carré et Chauveau, Q.* 1972 *p.* 643—9 *Mareadé, art.* 2075.

4. *Goods.*—a. *By samples—Latent defect.*—Wine was sold by sample, and accepted by the buyer without comparison, and paid for, and part of it resold by him.

HELD :—That the buyer was not entitled to tender back the wine, after the lapse of more than a year, on the ground that it was of inferior quality.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MAY 1881, *Guest & Douglass.*

IV, Q. B. **242.**

b. *Latent defect.*—That sourness and unsoundness in salted salmon—defects which were discoverable by smell when the goods were opened and inspected—are not latent defects against which the seller is obliged by law to warrant the buyer.

Where goods are sold without warranty and subject to inspection, the buyer is bound to make an inspection of the goods within a reasonable time after delivery ; and an action brought five months afterwards, complaining of the quality of the goods received by him, is not exercising due diligence.

Where the buyer pretended that the sale was made with warranty, and the agent of the seller immediately wrote that before the sale he has read his principal's letter to the buyer, stating that there would be no warranty this fact, in the absence of any immediate and positive denial by the buyer furnishes a strong presumption of the truth of the agent's statement. — TAIT, J., 29 MAY 1891, *Vipond vs Findlay.* **VII,** S. C. **242.**

CITATIONS.—*Pothier, Vente, No.* 207—4 *Aubry et Rau,* 387—24 *Laurent, No.* 284—*Bedarride, Droit Commercial, No.* 274 *p.* 356—*Benjamin, p.* 649, 650—*Campbell, on Sales* 304—*Lewis v Jeffrey,* 18 *L. C. J.* 132.

c. *On credit.*—Qu'un vendeur qui accorde à l'acheteur un délai pour le paiement d'un prix convenu, ne peut ensuite refuser de livrer les marchandises vendues et exiger des garanties, à moins que l'acheteur ne soit devenu insolvable, de manière à ce que le vendeur soit dans un danger immi-

nent de perdre sa créance ; et un plaidoyer à une action réclamant des dommages pour défaut de livraison, n'alléguant pas cette insolvabilité, est mal fondé en droit et peut être renvoyé sur réponse en droit.—WURTELE, J., 21 MARS 1888, *Collette vs Lewis.* **IV,** S. C. **23.**

Qu'un vendeur qui a accordé un délai pour payer ne peut pas refuser de livrer la marchandise vendue, à moins que l'acheteur ne soit devenu insolvable.

Que s'il refuse d'en faire livraison, sans avoir cette raison, il sera responsable des dommages que l'acheteur en souffrira ; et que ces dommages sont la perte des profits que l'acheteur avait déjà faits ou était de faire sur la vente de ces marchandises, mais qu'ils ne peuvent s'étendre a une prétendue perte de clientèle, plus ou moins certaine, et qui n'a pas été appréciée réellement pécuniairement.—TELLIER, J., 3 MARS 1889, *Collette vs Lewis.* **V,** S C. **107.**

d. *Order obtained by commercial traveller* —In law, and by the custom of trade, the mere taking of an order for goods by a commercial traveller does not complete the contract of sale, so long as the order has not been accepted by the principal. And where the latter refuses to accept the order, and gives notice to the person from whom the order was taken, he is not liable in damages — DORION, BABY, BOSSÉ, DOHERTY, JJ., 27 NOV. 1890, *Brock & Gourley.* **VII,** Q. B. **153.**

CITATIONS.—*Dalloz, P.* 44-2 36, 37—*Do. Dict. vo Mandat sec.* 139—*Massé, Dr. Com. II* § 47—1 *Pardessus, Droit Com.* § 251.

e. *Slight variation from conditions of contract—Sight draft.* —M. sold McB. ten car loads of peas, price payable by drafts at sight, with bills of ladings attached. M. with the first car load, made a draft on demand instead of a sight draft, asking at the same time whether McB. wanted the rest at sight. McB. refused to accept the draft, or to take delivery of the peas, and repudiated the contract.

That the slight difference in the drafts did not constitute a sufficient reason for McB. to repudiate the contract, as he might have accepted the demand drafts on condition that they would be payable only three days after acceptance ;

and moreover it appeared that he had repudiated the contract on a different ground before the drafts were presented. —Baby, Bossé, Doherty, Cimon, JJ., 25 June 1891, *McBean & Marshall* **VII,** Q. B. **277.**

5. *Real estate free and clear.*—That where real estate is sold free and clear, of incumbrances, the purchaser to pay the price in cash to the vendor, and it appears that the property is charged with hypothecs, the purchaser is not bound to execute a deed until the vendor has caused hypothecs to be discharged.

It is not necessary that the acceptance by the vendor of an offer to purchase an immovable be expressed in writing. Acceptance may be shown by acts of the vendor, or his agent, such as a preparation to vacate the property, interviews between parties, etc. — Tait, J., 31 May 1887, *Greene vs Mappin.* **III,** S. C. **393.**

Citation.—*Burroughs & Wells, M. L. R.* 3, *Q. B.* 492,—*Blondin & Lizotte, M. L. R.* 3. *Q. B.* 496.

Where real estate is sold free and clear of incumbrances, the purchaser to pay the price in cash to the vendor, and it appears that the property is charged with hypothecs, the purchaser is not bound to execute a deed unless the vendor within the time fixed for completing the contract, has caused the hypothecs to be discharged —Dorion, Baby, Bossé, Doherty, JJ., 27 Nov. 1890, *Dandurand vs Mappin.* **VII,** Q. B. **443.**

21. Petitory action — Promise of sale — Commencement of proof.—That where real estate is sold free and clear of incumbrances, and it appears that the property is charged with a hypothec, the purchaser is not bound to take a deed until the vendor has caused the hypothec to be discharged. —Dorion, Tessier, Cross, Baby, JJ., 22 Feb. 1887, *Burroughs & Wells.* **III,** Q. B. **492.**

Citations.—*Hogan v. Bernier,* 21 *L. C. J.* 101—*Parker v. Felton,* 21 *L. C. J.* 253—*Blondin v. Madont,* 7 *L. C. J.* 32—*Merrill v. Hallary,* 8 *L. C. J.* 38—*McDonnell & Goundry,* 1 *L. N.* 50—*G. T. R. Co. & Brewster, L. N.* 34—*G. T. R. Co. v. Hall,* 25 *L. C. J.* 22.

Where there has been a sale, or promise of sale, of an immovable accompanied by possession, at a price to be sub-

sequently determined by the parties, and afterwards fixed by a memorandum of the vendor's manager, the vendor is not entitled to bring a petitory action to recover the property, his recourse being an action to compel the purchaser to take a deed.

A promise of sale may be proved by verbal evidence where there is a commencement of proof in writing.

In the present case, a memorandum of figures in the hand writing of appellant's manager, with his statements when examined as a witness, constituted a sufficient commencement of proof.—DORION, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Montreal Loan and Mortgage & Leclair.*

VI, Q. B. **374.**

CITATIONS.—*Nault & Price*, 11 *Q. L. R.* 309—*Price & Nault*, 13 *Q. L. R.* 286—5 *Larombière, p.* 84—*Art.* 1472, 1478, 1493 *C. C.*—*Pothier, Vente, Nos.* 24, 25, 26 *et* 28—5 *Larombière, No.* 30 *p.* 108 *et* 109.

22. Pourparlers — Remedy of vendor — Folle enchère. — Where the conditions of a sale of immovable property have been settled or practically settled by *pourparlers* between the parties, but the interval between the *pourparlers* and the preparation of the deed of sale is so long as to change these conditions, there is no longer the consent necessary to complete the contract of sale.

SEMBLE that a vendor of immovable property, on the refusal of the buyer to carry out the contract, cannot sell the property at the *folle-enchère* of the buyer, and claim the difference of price from such buyer as damages.—DELORIMIER, J., 2 NOV. 1889, *Pepin vs Séguin.* **V,** S. C. **216.**

CITATION.—*Pothier, vente, No* 31 (*Bugnet*)—*Troplong, vente, No* 4, 37 *et* 509,—1 *Marcadé sur arts.* 1562-83, *C. N.*

23. Price payable by instalments—Title to remain in the vendor until full payment—Right to revendicate.—That an agreement by which the title of the thing sold is to remain in the vendor until the promissory notes representing the price (payable by instalments) shall have been fully paid, is valid and effective; and that in the event of the price not being fully paid in accordance with the terms of the agreement the vendor may revendicate the thing sold.—DAVIDSON, J., 10 DEC. 1888, *Gollie vs Rascony.* **IV,** S. C. **313.**

CITATIONS.—*Brown v. Lemieux*, 3 *R. L.* 361—*Goldie v. Bisaillon*, 7 *L. N.* 347—*Bertrand v. Goudreau*, 12 *L. N.* 154—*Richard v. Fabrique Notre-Dame de Québec*, 5 *L. C. R.* 3—*Gray v. Hôpital Sacré-Cœur*, 13 *Q. L. R.* 85—*Grange v. McLennany*, 9 *S. C. R.* 391.

24. Promise of sale—Acceptance — Lapse of time. — The appellant, on the 28th July, by writing, offered certain property to the respondent for $50,000; $8,000 of which to be paid cash on passing deed, "this offer shall remain open to the 10th August next." The respondent sent a letter to the appellant on the 10th August stating that he accepted but did not make any tender, or put the appellant *en demeure* to pass a deed.

That it was the duty of respondent to put the appellant *en demeure* to pass a deed on or before the 10th August, and to tender the $8,000, and this not having been done, the offer or promise of sale became ineffective by lapse of time —DORION, MONK, RAMSAY, SANBORN, TESSIER, JJ., 22 SEPT. 1876, *Munro & Dufresne.* **IV,** Q. B. **176.**

CITATIONS.—1 *Troplong, vente, No.* 18—6 *Toullier, No.* 30—*Perrault v. Arcand*, 4 *L. C. R.* 419.

25. Property of hypothecary claim by purchaser.—M. acquired certain real estate against which a judgment had previously been registered. M. paid off this hypothecary claim. When he did so, the time for reviewing the registration of the judgment claimed against the property had not expired.

That the payment by M. of the hypothecary claim against the property was made en temps utile, and had the effect of extinguishing the hypothec and that M. was entitled to retain the amount so paid out of the price payable to his vendor.—GILL, LORANGER, TAIT, JJ., 30 APRIL 1890, *Kay vs Gibeault.* **VII,** S. C. **465.**

CITATIONS.—*Théberge vs Danjou*, 12 *Q. L. R.* 1.

26. Refusal of purchaser to accept.—Where a person who purchased a bankrupt stock from the assignee, and made a payment on account of the price, subsequently refused to accept the goods or to pay the balance of the price, on a pretence which he failed to prove; that the sale was dissolved, and that the vendor was entitled to resell the goods,

after legal and customary notice, at the risk of the purchaser.—JOHNSON, PLAMONDON BOURGEOIS, JJ., 31 OCT. 1885, *Desmarais vs Picken.* (Judgment of Superior Court M. L. R. 1 S. C. 185 confirmed in review.) **I,** S. C. **476.**

The appellant, at Montreal, on the 26th September 1884, sold tea to arrive ex "Glenorchy" at the port of New York. The tea reached Montreal October 14, 1884, and was then offered to respondents. The latter refused to accept unless the conditions of sale were altered, and the tea was resold at a loss.

That the offer of October 14 was an offer to deliver within a reasonable time, and if the respondents, after refusing to take delivery according to the conditions of sale, wished to retract their refusal, it was incumbent on them to make a distinct offer to the appellant to do so and not to leave him in doubt as to the position they took in the matter.—DORION, RAMSAY, TESSIER, CROSS, JJ., 25 SEPT. 1886, *Cox & Turner.* **II,** Q. B. **278.**

27. Registration of sale by donor to third party before registration of donation—Rights of donee.—The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title has been duly registered except when such title is derived from an insolvent trader; C. C. 2085. The mere fact that the subsequent purchaser was cognizant of the prior unregistered deed, without evidence of fraudulent collusion between him and the vendor, does not affect his rights. And so, where F. made a donation, and (in the opinion of the majority of the Court) there was no fraudulent collusion between F. and S., the second *acquéreur*, it was held that C. could not maintain a petitory action against S. founded upon the deed of donation, though S. had knowledge of the prior deed.—TASCHEREAU, MATHIEU, DAVIDSON, JJ., 30 DEC. 1887, *Charlebois vs Sauvé.*

III, S. C. **312.**

CITATIONS.—*Stuart & Bowman*, 3 *L. C. R.* 309—*Chardon*, 1 *Dal et Fraude*, 56—*Boissonnade*, 30 *Revue Pratique et Droit Français.*—*Farmer v. Devlin*, *Ramsay's*

Appeal Cases, 664—*Kane vs Racine*, 24 *L. C. J.* 216—*Nordheimer v. Duplessis*, 2 *L. C. L. J.*—105 *Blouin v. Langelier*, 3 *Q. L. R.* 272—*Hingston v. Larue*, 7 *Q. L. R.* 301.

28. Right of redemption — Refusal to retrocede — Tender not followed by consignation — Right to revenues of property. —That a vendor, seeking to give effect to a right of redemption, and who merely makes a tender to the purchaser, not followed by consignation, does not thereby acquire a right to the revenues of the property if the purchaser refuses to retrocede. A consignation, to be effective, should be made, *partie appelée*, at a place and time and with a person duly designated to the holder of the property. Moreover, in the present case, the tender was insufficient in amount.—DAVIDSON, J., 7 NOV. 1888, *Fournier vs Léger*. (Confd in appeal 6 Q. B. 448). **IV,** S. C. **233.**

CITATIONS.—3 *Pothier (Bugnet) Vente, No.* 410, 384, 385, 386—3 *Larombière, art.* 1257, *pp.* 442-448—2 *Zachariæ, p.* 385—2 *Domat, paiement p.* 239, *No.* 8—*Rousseau de Lacombe, consignation—Nugent & Mitchell*, 10 *L. N.* 267.

29. Right of unpaid vendor.—Que les provisions de l'art. 1998 C. C. limitant l'exercice du privilège du vendeur aux quinze jours qui suivent la vente dans les cas de faillite, s'appliquent non seulement au cas de faillite sous l'empire d'un acte de faillite, mais au cas d'insolvabilité sous le droit commun, quand un commerçant cesse ses paiements (art. 17 par. 23).

Que lorsque l'acheteur y consent, le vendeur qui est dans les conditions voulues pour revendiquer, peut se faire remettre à l'amiable les marchandises vendues sans avoir besoin de les faire saisir par voie de revendication.

Que l'expression " les quinze jours qui suivent la vente " dans le dit art. 1998 doit s'entendre de la vente parfaite, et partant, si les marchandises sont vendues au poids, au compte et à la mesure et non en bloc (art. 1474 C. C.) le délai pour revendiquer ne commence à courir que du moment où elles auront été pesées, comptées ou mesurées.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 MARS 1885, *Thibaudeau & Mills*. **I,** Q. B. **326.**

Que le recours du vendeur non payé de faire résilier la vente lorsque le débiteur est insolvable, est entièrement dis-

tinct de son droit de faire saisir revendiquer les choses vendues; que le 2e par. de l'art. 1999 du Code Civil qui exige pour la saisie revendication que les choses vendues soient entières et dans le même état ne s'applique pas à la résolution de la vente; que, par suite, le vendeur peut faire résilier la vente même lorsque les marchandises vendues ont été mêlées au stock du débiteur si elles peuvent être identifiées.—CIMON, J., 20 FÉV. 1886, *Brown vs Labelle.* **II,** S. C. **114.**

An unpaid vendor is not entitled at the same time to pray for resiliation of the sale, and also that the goods be sold and that he be paid by privilege from the proceeds; but he is entitled to pray for the resiliation of the sale and the return of the goods without offering the buyer the option of paying the price.

So, where the plaintiff prayed for the resiliation of the sale and also that he be paid the price out of the proceeds of the goods, it was held that such conclusions were incompatible, and that the defendant, under C. C. P. 120 might, by dilatory exception, have called upon him to declare his option; but a demerrer to the action generally, with conclusions to its dismissal, was held bad because the demand for the resiliation of the sale was well founded.—LORANGER, J., 28 NOV. 1884, *Wylie vs Taylor.* **II,** S. C. **374.**

The unpaid vendor is not entitled to ask for the resiliation of the sale of an immovable unless there be a stipulation to that effect in the contract of sale.—LACOSTE, BABY, BOSSÉ, WURTELE, 27 NOV. 1891, *McNaughton vs Exchange Nat. Bank.* **VII,** Q. B. **180.**

30. Sale by correspondence.—Qu'une carte postale adressée a un commerçant, annonçant qu'on a une certaine quantité de marchandises à vendre, à un prix désigné, est une offre de vendre qui, si elle est acceptée de suite rend le contrat de vente parfait.

Que le refus de livrer la marchandise vendue sous les circonstances ci-dessus donne à l'acheteur une action en dommanges contre son vendeur pour les profits qu'il a manqués de faire; et qu'il n'est pas nécessaire pour l'acheteur de mettre le vendeur en demeure d'exécuter son contrat ou de

lui faire des offres réelles avant d'intenter l'action en dommages.—MATHIEU, J., 9 MAI 1889, *Fuller vs Moreau.*

V, S. C. **121.**

31. Sale for cash—Default to pay price.—Que dans une vente pour argent comptant, si l'acheteur refuse de payer comptant et n'offre que des valeurs commerciales, la vente en loi est sans effet.

Que dans le cas où, sous ces circonstances, l'objet vendu a été livré, le vendeur restant propriétaire peut en faire saisir revendiquer.—OUIMET, J., 30 SEPT. 1887, *Pominville vs Delongchamp.* **III,** S. C. **195.**

32. Sale with a suspensive condition.—Where the sale of a movable is made with a suspensive condition, and it is stipulated that the purchaser shall not have any title in the thing sold until the condition shall be performed—as where a subscription is obtained to a book, deliverable in volumes, and the price is payable in monthly instalments as the work is delivered, and it is stipulated that the purchaser shall have no property in the book until the price shall have been wholly paid—the vendor has a right to revendicate the volumes delivered, in default of payment as stipulated, even in the possession of a third party who has acquires the same in good faith and for valuable consideration, unless the circumstances be such as validate the sale of a thing not belonging to the seller.—JOHNSON, WURTELE, DAVIDSON, JJ., 31 MAY 1890, *Canadian Subscription Co. vs Donnelly.*

VI, S. C. **348.**

CITATIONS.—*Goldie vs Bisaillon,* 7 *L. N.* 347—*McLennan vs Grange,* 3 *Dor. Q. B. Rep.* 212.

Where a movable thing is sold with the stipulation that the title shall remain in the vendor until the price shall be entirely paid, and before payment of the price, but more than fifteen days after the delivery of the thing, the purchaser becomes insolvent and makes an assignment; that the vendor is not entitled to be collocated by privilege, for the price of the thing, on the insolvent estate of the purchaser.—DORION, TESSIER, CROSS, BOSSÉ, JJ., 23 MAY 1890, *Irving vs Chapleau.* **VI,** Q. B. **157.**

CITATIONS.—*Gould v. Cowan*, 10 *L. C. J.* 345—*May vs Fournier*, 8 *L. N.* 330—*Mathews v. Sénécal*, 7 *L. C. J.* 222—*Beaudry v. James*, 15 *L. C. J.* 118—*Thomas v. Aylen*, 16 *L. C. J.* 309—*Grange vs McLennan*, 9 *S. C. R.* 391—*Richard vs Fabrique Notre-Dame Québec*, 5 *L. C. J.* 3—*Bertrand vs Gaudreau*, 12 *R. J.* 154—*Gray vs Hopital Sacré-Cœur*, 13 *Q. L. R.* 85—*Noël vs Lacerdière*, 4 *Q. L. R.* 247—*Goldie vs Rasconi*, *M. L. R.* 4 *S. C.* 313—*Troplong, Vente, No.* 182—*Pothier, Traité des Oblig. ch.* 3 *Art.* 1 *No.* 5—4 *Aubry et Rau*, 8 *s.* 302 *p.* 75.

(Following Canadian Subscription Co. vs Donnelly, M. L. R. 6 S. C. 348). Where the sale of a movable is made with a suspensive condition, and it is stipulated that the purchaser shall not have any title in the thing sold until the condition shall be performed—as where a thing is sold and delivered and the price is payable in instalments, and it is stipulated that the purchaser shall not have any property on the thing until the price shall have been wholly paid—the vendor has a right to revendicate the thing, in default of payment as stipulated, in the possession of a third party who has acquired the same in good faith and for valuable consideration, without reimbursing to him the price he has paid for it, unless the circumstances of the sale to such third party be such as validate the sale of a thing not belonging to the seller or unless it be a commercial matter, or the thing be sold under the authority of law (arts. 1488, 1490 C. C.)

The fact that the person in whose possession the thing is revendicated may have been misled, by seeing the name of his vendor inscribed on the thing, does not derogate from the rule above stated; it merely gives rise to a claim on his part against his vendor.—JOHNSON, WURTELE, OUIMET, JJ., 30 DEC. 1890, *Goldie vs Filiatrault.* **VII, S. C. 354.**

33. Simulation.—A manufacturer of farming implements obtained advance to buy machinery, which was placed by him in a building belonging to him. He then made a sale of the machinery to the person who furnished the advances, with right of redemption within two years. He did not exercise this right of redemption within the stipulated time, but remained in possession of the machinery.

Following the decision of the Privy Council, in Cushing vs Dupuis 3 L. N. 171, 24 L. C. J. 151. That the deed did not constitute a real sale, the object of the deed being merely

to pledge the effects to the creditor as collateral security for the advances, which pledge, not being accompanied by delivery, was without effect, and the creditor, therefore, was not entitled to oppose the seizure of such effects at the instance of a judgment creditor.—JOHNSON, TAIT, DELORIMIER, JJ., 28 FEB. 1890, *Chevalier vs Latraverse.* **VI,** S. C. **356.**

CITATIONS.—*Cushing & Dupuy,* 24 *L.* 151—17 *R. L.* 151.

34. Time of essence of contract.—Par contrat sous seing privé en date du 26 octobre 1880, le défendeur s'oblige a livrer au demandeur, dans sa cour, à Montréal, quand il en serait requis (as required), à compter de la date de ce contrat jusqu'au 1er mai 1881, 50 tonnes de foin de première qualité, à $13 la tonne, formant un prix total de $650. Avant le 1er mai 1881, le vendeur ne livra à l'acheteur que 23½ tonnes du foin en question et il restait encore 26½ tonnes non livrées, représentant une balance de $342 pour le prix de cette dernière quantité, le 23 mai 1881, le vendeur fut mis en demeure de livrer à l'acheteur la balance du dit foin, mais ne tint aucun compte du protêt.

JUGE:—Que, aux termes de ce contrat, le défendeur n'était tenu de livrer au demandeur le foin en question "que s'il en était requis avant le 1er mai 1881 et jusqu'à cette époque mais pas plus tard."

Que l'époque fixée par le dit contrat pour la livraison du foin en question, était de "l'essence" du contrat, et que le défendeur n'était pas tenu et ne pouvait valablement être requis de le livrer après cette époque.—TORRANCE, JETTÉ, GILL, JJ., 29 AVRIL 1882, *Larin vs Kerr.* **I,** S. C. **374.**

35. Title—Registration.—Que lorsqu'un vendeur a fourni à son acheteur des titres suffisants de la propriété vendue, à la satisfaction de ce dernier, il n'a pas le droit subséquement, sans le consentement de celui-ci, et sous prétexte de compléter ces titres, de faire enregistrer sur la propriété des actes faisant voir apparemment qu'il était encore le propriétaire de la dite propriété.

Que dans ce cas, l'acheteur a une action pour faire radier ces enregistrements si le vendeur refuse de le faire.—TASCHEREAU, J., 15 AVRIL 1890, *Mallet vs Dolan.*

VI, S. C. **138.**

36. **Warranty—Soundness of horse.**—That a statement in an advertisement of an auction sale, that a pair of horses were "warranted sound" did not constitute a warranty; especially when the conditions of sale announced by the auctionneer, at the time of the sale, expressly stated that no warranty should be given.

That in the present case the horses in question were "sound" notwithstanding one of them was "bent over" or "sprung" in the knees.—DOHERTY, J., 5 MAY 1885, *Allan vs Burland.* **II, S. C. 1.**

CITATIONS.—*Craig v, Miller*, 22 *U. C. C. P.* 348—*Hopkins v. Tanguray*, 23 *L. J. C. P.* 162—*Troplong*, 2 *vente, Nos.* 561, 562, 563—*Benjamin, Sales* § 929 *art.* 1522—2 *Troplong, vente, No.* 550—*Teasel vs Prior*, 12 *L. C. J* 180—*Oliphant, p.* 11—*Surtees, pp.* 7, 8, 9, 10—*Loyseau, Garanties, chap. II*, § 7, 15—*Oliphant on Horses, pp.* 116, 119.

37. **Without delivery of possession.**—B., who was the principal proprietor of a railway company, was in the habit of mingling the moneys of the company with his own. He bought locomotives essential to the business of the railway company, and for several years allowed the company to have possession of the locomotives openly and publicly as though their own property.

That the locomotives must be presumed to be the property of the company, especially as regards creditors who had trusted the company on the faith of their possession of such property.

That the appellants, who claimed the locomotives under a sale from B. not accompanied by delivery, were not entitled to the property as against a bona fide creditor of the company.—MONK, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Fairbanks & Barlow.* (Affirmed by Supreme Court, 14 S. C. R. 217). **II, Q. B. 332.**

CITATIONS.—*Dupuy v. Cusking*, 8 *L. N.* 140.

SALOON KEEPER

That the action, under R. S. Q. 929, against a saloon keeper who, after notification sells intoxicating liquor to a person who has the habit of drinking intoxicating liquor to excess, must be brought in the Superior or Circuit Court

and that the summary jurisdiction of two justices of the peace, the judge of sessions and the Recorder is restricted to actions not exceeding $200 taken for penalties, fines or fees due under the Act. (R. S. Q. 1031).—PAGNUELO, J., 11 JAN. 1890, *Tremblay vs DeMontigny.* **VII,** S. C. **17.**

SALVATION ARMY

See LESSOR AND LESSEE.

ST. JOHNS, P. Q., TOWN OF

That a statutory limitation requiring an action, based upon anything done in execution of the Act, to be brought within four months, cannot be invoked by demurrer, where the declaration expressly alleges that the act complained of was done in violation of the law and with malice. The defendant, in order to have the benefit of the limitation, must prove that he was acting in execution of his office —JOHNSON, PAPINEAU, GILL, JJ., 20 DEC. 1887, *Roy vs Molleur.*

III, S. C. **450.**

See RAILWAY.

SAVINGS BANK

See BANK.

SCHOOL

See MUNICIPAL LAW — SUPERINTENDENT OF EDUCATION.

SCHOOL-MASTER

That, in the exercise of the right of "reasonable and moderate correction" permitted to the school-masters *in loco parentis*, art. 245 C. C., no punishment is justifiable which may result a serious and permanent bodily injury to the pupil; and therefore where a teacher dragged a child of seven years by the ear to compel him to kneel down and the ear was so injured to require medical attendance, during several weeks, the school authorities were condemned to pay $50 damages with costs of an action of $200.—DAVIDSON, J., 9 OCT. 1890, *Lefebvre vs Frères Ste. Marie.*

VI, S. C. **430.**

See PROCEDURE.

SECRETARY TREASURER

See MUNICIPAL LAW.

SECRETION

See PROCEDURE.

SECURITY IN APPEAL

That on an appeal by the defendant from a judgment ordering a Railway Company to call the annual meeting within one month, or to pay a fine of $2,000, security for costs only is insufficient; the security must be to satisfy the sondemnation. — DORION, MONK, RAMSAY, CROSS, BABY, JJ., 19 NOV. 1884, *M. P. & B. R. Co. & Hatton.* **I,** Q. B. **72.**

CITATIONS.—*Rochette & Ouellette,* 9 *Q. L. R.* 361.

SECURITY FOR COSTS

Que lorsque le demandeur pendant l'instance laisse la Province de Québec, le demandeur peut demander le cautionnement *judicatum solvi* et que la motion pour l'obtenir peut être faite en tout temps, même après l'expiration des quatre jours qui suivent la connaissance qu'aurait eu le défendeur du départ du demandeur. Que le délai de quatre jours pour demander le dit cautionnement ne s'applique que lorsque la demande est faite par exception dilatoire et non par motion. MATHIEU, J., 19 SEPT. 1885, *Cyr vs Bryson.* **I,** S. C. **495.**

Que le fait qu'une personne qui réside dans la Province de Québec, et y intente une action, n'est que le prête nom d'une autre personne résidant en dehors de la dite Province n'est pas suffisant pour obliger le demandeur à fournir le cautionnement *judicatum solvi.*—MATHIEU, J., 13 MAI 1885, *Reed vs Rascony.* **I,** S. C. **431.**

Que lorsque durant l'instance le demandeur laisse la Province de Québec, pour aller résider ailleurs, le défendeur a droit au cautionnement *judicatum solvi,* non seulement pour les frais à encourir, mais également pour tous les frais encourus.—MATHIEU, J., 4 NOV. 1885, *Gauthier vs Dupras.* **I,** S. C. **510.**

See PROCEDURE.

SEIGNIORIAL LAW

See SERVITUDE.

SEIGNIORIAL RIGHTS

See WATERS COURS.

SEIGNIORY

1. Cadastre.—That an omission to enter in the *cadastre* a constituted rent to represent the former seigniorial rent, cannot be rectified.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 21 SEPT. 1886, *Corporation Episcopale St. Hyacinthe vs E. T. Bank.* **III,** Q. B. **225.**

2. Droit de commutation—Property sold by sheriff's sale—Legacy or succession.—Que le droit de commutation sur les immeubles qui sont situés dans les seigneuries appartenant au Séminaire de St. Sulpice dans les limites de l'ancienne paroisse de Montréal, devient payable à la première mutation de propriété à n'importe quel titre.

Que lorsque, dans ces seigneuries, la propriété sujette à la commutation est vendue par décret, les seigneurs ont le droit de faire à cette fin, une opposition à fin de conserver, mais ils doivent demander d'abord que la valeur de leurs droits de commutation soit fixée par arbitrage, le montant du décret ne pouvant servir à fixer la base.

Que, dans ces mêmes seigneuries, lorsque le droit s'ouvre par les legs ou successions, il n'est payable qu'à l'expiration de dix ans à compter du décès de la personne de laquelle procède l'immeuble savoir, entre les héritiers et le Séminaire; mais cette loi (S. R. B. C. c. 41 s. 67) ne s'applique pas aux tiers.—LORANGER, J., 31 DÉC. 1883, *DeBellefeuille vs d'Orsonnens.* **I,** S. C. **278.**

SEPARATION DE BIENS

Que la demande en intervention de l'intervenante sera rejetée parce qu'elle n'a pas fait publier en temps utile, la déclaration requise des femmes séparées de biens et n'a pas prouvé que les effets saisis fussent sa propriété.

Qu'une séparation de biens entre mari et femme, obtenue devant les tribunaux de France, vaut ici, comme si elle eut été obtenue devant nos tribunaux.—MATHIEU, J., 28 NOV. 1883, *Gourdon vs Lemonier.* **I,** S. C. **160.**

CITATIONS.—*Domat, livre prel. tit.* 1 *par.* 2, *No.* 20—*Lahaie,* 2—*C. N.* 3—*Bibliothèque, C. C. vol.* 1*er pp.* 112, 117, 120, 127, 128, 145, 146, 147, 149, 150, 153, 154, *et* 156 *à* 161—*Rogers vs Rogers,* 3 *L. C. J.* 64.

See HUSBAND AND WIFE—ACTION QUI TAM.

SEPARATION DE CORPS

Que lorsqu'une femme est autorisée en justice à poursuivre son mari en séparation de corps, elle a le droit, si elle n'a pas les moyens de faire elle-même les déboursés et que son mari peut les faire, d'obtenir une ordonnance de la Cour contre le mari lui enjoignant de payer les déboursés.—MATHIEU, J., 24 DÉC. 1887, *Desoliers vs Lynch.*

III, S. C. **275.**

That where the judgment maintains a demand for separation from bed and board, based on a desertion of the husband and his refusal to support his wife, the infidelity of the wife does not deprive her of the right to an alimentary allowance.—TAIT, J., 28 JUNE 1887, *Desmarais vs Gagnon.*

III, S. C. **377.**

CITATIONS.—2 *Pigeau,* 234.

That the right of the wife to demand separation from bed and board on the ground of her husband's adultery, is absolute only when he keeps his concubine in the common habitation. When the husband is not guilty of this, his adultery is ground for separation only when by its publicity and other attendant circumstances, it constitutes a grievous insult to the wife. The adultery of the husband when committed only after the wife has abandoned the conjugal domicile, has not the gravity which would attach to the act if committed while his wife is living with him. So, where the wife did not prove any act of adultery before she left the common habitation, and his acts of adultery committed subsequently were not attended with notoriety or such circumstances as constituted a grievous insult to his wife, her

demand for separation was refused. — TASCHEREAU, J., 14 APRIL 1888, *Tudor vs Hart.* **IV,** S. C. **348.**

Que dans une action en séparation de corps pour cause d'adultère, la défenderesse accusée de ce délit peut obtenir, par motion, que le demandeur lui fasse connaître les endroits, les circonstances des adultères et les noms de ceux qui les auraient commis avec elle.—MATHIEU, J., 4 JNIN 1889, *Lapierre vs Granger.* **V,** S. C. **154.**

See ALIMENTARY ALLOWANCE — EVIDENCE — HUSBAND AND WIFE—PROCEDURE.

SEQUESTRATION

See PROCEDURE.

SERVANT

Que le conducteur (foreman) d'une manufacture de chaussures n'a pas, pour son salaire, de préférence sur le produit de la vente de la manufacture. — JOHNSON, DOHERTY, GILL, JJ., 30 JAN. 1886, *Rocher vs Chevalier.* **II,** S. C. **139.**

SERVICE IN COURT HOUSE

See PROCEDURE.

SERVICE IN ONTARIO

See PROCEDURE.

SERVITUDE

XII.—WATER COURSE—RIGHTS OF PROPRIETOR OF HIGHER LANDS —AGGRAVATION.

See MUNICIPAL LAW—RIPARIAN PROPRIETOR.

1. Action to enforce.—The proprietor of the servient land can do nothing which tends to render the exercise of the servitude less convenient than it was at the date of its creation and so, where the owner of the servient land constructed a barn over the drain running through his land, and, in the opinion of the majority of the court, it was proved that repairs to the drain were necessary, it was held that the person to whom the servitude was due was entitled to ask that the barn be demolished to sufficient extent to permit repairs to the drain to be made whenever necessary.

The action to enforce such servitude does not lie against a person who has ceased to be owner of the servient land before the action is instituted, but he may be condemned personally in damages if he participates in the act of obstruction.—*Wheeler & Black.* (Affirmed by Supreme Court, 14 S. C. R. 242). **II, Q. B. 139.**

CITATIONS.—*Traité des Actions Possessoires, sec. III; No. 65, pp. 290 et 291 and No. 82, p. 337*—3 *Toullier, No. 543*—*Pardessus, Servitudes, Tome I, p. 136*—12 *Demolombe, No. 691*—*Lalaure, 477, 827.*

2. Destination made by proprietor.—As regards servitudes the destination made by the proprietor is equivalent to a title, only when it is in writing, and the nature, the extent and the situation of the servitude are specified, C. C. 551.

The use and extent of a servitude are determined according to the title which constitutes it; so, where E. acquired four houses "with the servitude of hidden drains underneath the yard," and it appeared that a drain had been constructed to conduct the sewage of the four houses in question, as well of the adjoining corner house, to the street drain, it was held that the deed did not give any right of servitude in the portion of the drain under the yard of the adjoining corner house this not being mentionned in the deed, and not being included in the description given therein.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 25 SEPT. 1885, *Fisher & Evans.* **I, Q. B. 415.**

3. Droit de passage.—Qu'un propriétaire qui donne ou vend un droit de passage en ces termes : "auront le droit de s'en servir et d'en faire usage, soit en voiture ou autrement," n'est pas pour cela empêché de bâtir au-dessus pourvu qu'il laisse le passage libre, aéré et éclairé suffisamment pour permettre l'usage commode au dit passage.—CIMON, J., 7 DÉC. 1886, *Desjardins vs Cléroux.* **III,** S. C. **45.**

4. Establishment of—Right of way—Non use—Revival of servitude.—That a servitude of a right of way or passage may be validly established by the deed of partition of property between the heirs or legatees entitled to such property. All that is necessary to meet the requirements of the law, as to the nature, extent, and situation of a servitude, is that the terms of the deed establishing it be sufficiently clear to disclose the nature of the servitude, and the property that is to bear and that which is to profit by the servitude, and to enable its extent to be fixed; and as regards the servitude of a right of way or passage, the choice and use of a situation for such way or passage may supplement an exact or definite description and fix the extent thereof. Although the owner of the land to which it is due may have ceased to exercise it, it may be revived at any time until extinguished by non-user during thirty years; and until such extinction an action, by the proprietor of the land which owes it, praying that it be declared that no servitude exists, will be dismissed. So, where it was declared and stipulated in a deed of partition, that a right would exist in favor of one property to communicate thereto by a passage sufficient for that purpose, to be taken on the adjoining property, and from the date of the partition until the expropriation and demolition of the houses on the properties, a passage existed and was used through a gateway about nine feet wide and eight feet high it was held that a servitude was validly and sufficiently established, and could not be declared extinct, although after the expropriation the owner of the property to which it was due erected his buildings in such a manner that he could no longer exercise the servitude.—WURTELE, J., 4 FEB. 1891, *Brunet vs Rastoul.*
VII, S. C. **179.**

5. Land enclavé.—Que pour qu'un terrain soit considéré enclavé dans le sens de l'article 540 du Code Civil, il faut qu'il n'ait aucune issue quelconque sur la voie publique et qu'un simple chemin de tolérance non contesté est suffisant pour empêcher le propriétaire du terrain de réclamer un passage de ses voisins.—SICOTTE, TORRANCE, PAPINEAU, JJ., 31 MARS 1885, *Mainville vs Lebeau.* **I, S. C. 295.**

CITATIONS.—*Gavini de Campile. T. II, Servitude p.* 766, *No.* 961—2 *Demolombe, Servitude p.* 99, *No.* 612—*Par.lessus I, Servit. No.* 218, *p.* 492—2 *Boileux, Com., pp.*, 884, 885—12 *Demolombe*, 83, 89—2 *Fournel, Du Voisinage pp.* 404 *et* 405—3 *Toullier, Nos.* 551-552—2 *Demolombe, Des Servitudes p.* 103—*Parent vs. Daigle*, 14 *L. C. R.*

6. Moulin banal—Obligation of riparian owner.—The *droit de banalité* under the old law was a servitude which imposed on riparian owners the obligation of permitting on their lands the construction of dam (*chaussée*) necessary for the working of a *moulin banal* of the seigniory and when the seigniorial tenure was abolished, the seignior remained sole owner of the mill and the dam.

While every riparian owner has the right to use the water of a stream adjoining his land, on condition of returning it to the stream at its exit from the land, he is not entitled to draw off water from a dam belonging to another, for irrigation or manufacturing purposes.

The right of the owner of the saw mill in the present case was limited to the use of the surplus water not required for the operation of the *moulin banal;* but the plaintiff having wholly denied his right to use the water, the action was dimisses, the Court reserving to plaintiff the right to establish the limitation.—TESSIER, CROSS, BOSSÉ, DOHERTY, JJ., 23 JAN. 1889, *Archambault & Poitras.* **V, Q. B. 167.**

7. Registration — Servitude of passage. — In default of renewal of registration of the deed by which it was originally constitued as provided by arts. 2172 et seq C. C., a conventional servitude of right of passage which is not continuous or apparent has no effect as regards to third party who has subsequently acquired a property on which such servitude of passage existed, under a title deed duly registered.

Renewal of registration of the deed by which the servitude was orginally constituted is not rendered unnecessary by the fact that the servitude is referred to in a deed (duly registered subsequent to 44-45 Vict. ch. 16) to the *auteur* of the party who pretends that the servitude is extinct.

Where a right of way over an adjoining lot has never been localized in any title deed, as regards the part of the lot over which the right is exercised the servitude is not apparent and therefore requires to be registered under 44-45 Vict. ch. 16.—GILL, LORANGER, DAVIDSON, JJ., 28 FEB. 1891, *Mathews vs Brignon.* **VII,** S. C. **425.**

CITATIONS.—*Duvergier Dict. de droit, vo. Servitude*—*Laloure, Servitudes Reelles, p.* 100—*Vannier, Questions sur les Servitudes p.* 7—*C. C.* 548.

8. Right of passage—Aggravation.—Le propriétaire d'un fonds en culture en vendant deux lots détachés de ce fonds avait établi une servitude de passage à pied et en voiture en faveur de ces lots sur une autre partie du dit fonds, avec stipulation portant que les barrières fussent tenues fermées. Sur l'un des lots ainsi cédés une raffinerie d'huile a charbon, et sur l'autre un abattoir furent subséquemment érigés et pour l'exploitation de ces deux industries les propriétaires des fonds dominants firent passer journellement un grand nombre de bestiaux et de voitures par le dit passage, de telle sorte que les barrières étaient toujours ouvertes.

(Ramsay & Cross J. J. Diss.) Que dans les circonstances il y avait aggravation de la servitude aux termes de l'art. 558 C. C. et que le propriétaire du fonds servant était bien fondé à demander des dommages pour l'abus du droit de passage, et une défense pour l'avenir de s'en servir pour l'exploitation des dites industries.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 20 MAI 1885, *McMillan & Hedge.* (Affirmed by Supreme Court 14 S. C. R. 736). **I,** Q. B. **376.**

CITATIONS.—3 *Toullier, No.* 550—3 *Aubry et Rau,* 28—*I Pardessus* 236—8 *Laurent, Nos.* 261 *à* 264, *et Nos.* 230, 231, 232, 234.

9. Seigniorial act—Personal obligation.—Par acte de partage passé en 1811 entre les propriétaires indivis d'une seigneurie il fut stipulé que les copartageants ne batiraient aucun moulin à farine ou à scie pour leur compte particulier sur leurs portions respectives, à une lieue à la ronde des

moulins existants alors sur la dite seigneurie. Par acte de vente passé en 1850, un morceau de terre formant partie de la même seigneurie fut vendu par le représentant d'un des copartageants, avec une stipulation portant que les acquéreurs et leurs représentants ne pourraient, en aucun temps, construire ou laisser construire sur le dit lot aucun moulin à farine ou à moudre le grain ; que tel moulin fût mû par eau, vapeur, ou aucun autre pouvoir moteur

Que l'acte de 1811 a créé une servitude réciproque, en faveur de chaque portion de la seigneurie divisée par le partage.

Que si cette servitude était de sa nature une servitude seigneuriale, elle a été abolie par l'Acte Seigneurial de 1854, soit que l'on considère cette servitude comme un droit principal ou accessoire du privilège de banalité.

Que si la dite servitude n'était pas seigneuriale, elle a été constituée en faveur d'une seigneurie et a disparu par la concession de l'immeuble en faveur duquel elle avait été créée.

Que l'acte de vente de 1850 n'a pas créé une servitude réelle, mais seulement une obligation personnelle, attendu qu'il n'indique aucun héritage dominant.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 20 NOV. 1882, *Mondelet & Roy.*

I, Q. B. **9.**

CITATIONS.—*Art.* 499, *C. C—Demolombe, Servitudes, No.* 681—3 *Toullier*, 242 —*Daviel, Cours d'eau, Tome* 2 *No.* 607—*Dorion & Rivet*, 7 *L. C. R.* 257—*Minor v. Gilmour*, 9 *L. C. R.* 115—*Hamilton & Wall*, 24 *L. C. J.* 49—*Lefebvre v. Gosselin*, 9 *L. C. J.* 95.

10. Streets — Homologated line. — Que dans la Cité de Montréal, un vendeur d'un lot de terre sur lequel la Cité de Montréal a un droit de servitude en vertu de sa charte, c'est-à-dire, le droit d'empêcher les propriétaires de construire en dehors de la ligne fixée par le plan homologué de la Cité, dans les rues qui doivent être élargies ou ouvertes, est tenu de garantir l'acheteur contre cette servitude, à moins de convention contraire, et l'acheteur menacé d'éviction peut faire résilier la vente.

Que dans ce cas l'acheteur a droit de se faire rembourser par le vendeur toutes les dépenses et améliorations qu'il aura faites sur ce lot.—MATHIEU, J., 9 FÉV. 1888, *Ménard vs Rambeau*

IV, S. C. **25.**

11. Tolerance.—Que bien qu'un voisin n'ait pas le droit de pratiquer des vues dans son mur du côté de son voisin en dedans de la distance voulue par la loi, néanmoins celui qui souffre et tolère cette servitude sans se plaindre, ni protester durant plusieurs années, ne sera pas reçu ensuite à réclamer des dommages si ce n'est une somme nominale, pour violation de droit que la Cour dans l'espèce a fixé à $5.00. —TELLIER, J., 12 NOV. 1889, *Langevin & Bourbonnais.*

VI, S. C. **317.**

12. Water course—Rights of proprietor of higher lands—Aggravation.—The proprietor of the higher land constructed a water course or french drain which served the purpose of carrying off the water from the yards of his property. The plaintiff, owner of the lower land, complained that the construction of the water course was such that the water escaped therefrom and penetrated to the foundation wall of his house.

That the proprietor of the higher land has a right to make any modification in the flow of water which is necessary to the full enjoyment of his property so long as he does not increase the quantity of water which would naturally flow from his land upon the lower land; and that, as the evidence in this case did not establish that the natural flow was increased, the construction of the french drain was not an aggravation of the servitude within the meaning of art. 501 C. C.—MATHIEU, J., 20 JUNE 1887, *Hampson vs Wineberg.* **III,** S. C. **434.**

SEWERS

See NORMAL.

SHAREHOLDER

See COMPANY—CORPORATION.

SHERBROOKE

1. Action for damages.—That notice of action was sufficiently given under M. C., art. 793, and that the ordinary tribunals have jurisdiction, neither party having under the provisions of 39 Vict. (Q) cap. 50 s. 32 ss. 25 claimed the right to have the damages assessed by arbitrators.

(By the Court of Review) that in the case submitted the plaintiff was not entitled to damages by reason of the raising of the level of the sidewalk, in the city of Sherbrooke, no damage having been suffered in consequence of the change.—JOHNSON, DOHERTY, GILL, JJ., 31 JAN. 1886, *Boudreau vs Sherbrooke.* **II,** S. C. **188.**

CITATIONS.—*Grenier vs Montreal*, 3 *L. N.* 51—*Drummond vs Montreal*, 22 *L. C. J.* 1—*Joseph vs Montreal*, 21 *L. C. J.* 232.

2. Meeting of city council—Notice of.—That public notice must be given of every special meeting of the city council of the city of Sherbrooke, as required by sect. 11 of the city charter (39Vict. Q. ch. 50), whether such meeting be called by the mayor or not; and the absence of such notice vitiates the proceedings at such meeting.

A service of notice of meeting on a councillor, at his place of business after the hours fixed by law, is void.—JETTÉ, MATHIEU, WURTELE, JJ., 30 SEPT. 1891, *McManamy vs Corporation Sherbrooke.* **VII,** S. C. **360.**

3. Telephone company. — (Affirming the judgment of Brooks, J., 12 L. N. 354). That letters patent issued by the lieutenant governor in council, incorporating a telephone company, with power to carry on business in the province under the provisions of sect. 8 of 31 Vict ch. 25 (now R. S. Q. 4705) to wit, to construct and operate a line or lines of telephone through, under or along the sides of and across streets and highways of towns, cities, etc., in the province provided that passage or traffic in said streets or highways shall not be impeded or interfered with by the location of the poles and wires of the company, do not confer on the telephone company the power to plant poles and carry wires along and across the streets of a city, without first having obtained the permission of the city corporation, in whom by arts. 752, 757, M. C., the ownership of the streets is vested.—DORION, TESSIER, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Sherbrooke Telephone & Sherbrooke City.*

VI, Q. B. **100.**

SHERIFF'S SALE

I.—Description of property.
II.—Sale of railway shares en bloc.
III.—Subdivision of lots.
IV.—Tariff.
V.—Usufruct.

See PROCEDURE SALE.

1. Description of property.—Que pour la vente judiciaire d'un immeuble portant un numéro officiel, il est nécessaire dans les annonces d'indiquer les tenants et aboutissants (art. 2168 C. C.)—Caron, J., 31 jan. 1881, *Montreal vs Lionais.* **I,** S. C. **511.**

2. Sale of railway shares en bloc.—Where a number of shares of railway stock were seized and advertized to be sold in one lot, and neither the defendant nor any one interested in the sale requested the sheriff to sell the shares separately, and it did not appear that there was any intention to defraud, or that any loss had been sustained in consequence of the shares being sold in one lot, but, on the contrary, that such mode of sale was advantageous to the creditors, the sale was held good and valid, although the amount realized thereby was far in excess of the judgment debt which the property was taken in execution.—Dorion, Ramsay, Tessier, Cross, JJ., 25 sept. 1886, *Morris vs C. & P. R. RR. Co.* **II,** Q. B. **303.**

3. Subdivision of lots.—That although a block of land may have been subdivided on the official plan, the sheriff is not bound to sell the official subdivisional lots separately, if they have not been defined on the ground and if the land is used as a whole.

That the sheriff may be ordered by a Judge in Chamber to seize and sell the land as a whole.—Mathieu, J., 26 dec. 1884, *Gale vs Canadian Iron.* **I,** S. C. **441.**

Citations.—*Montreal Loan Co. & M. Co'y & Fauteux,* 3 *S. C. R.* 441.

4. Tariff.—That if a block of land composed of several subdivisional lots is seized and sold as one, the sheriff is not entitled to charge the 50 cents per extra lot provided for

by the tariff for extra lot.—MATHIEU, J., 26 DEC. 1884, *Gale vs Canadian Iron.* **I,** S. C. **442.**

5. Usufruct.—A sheriff having seized on one defendant the usufruct of an immovable and on the other defendants, the nue propriété, and advertised the sale in the form quoted in the report.

That under the advertisement, the sheriff was bound to sell the property as a whole, the usufruct and nue propriété combined; and that a sale of these rights separately made by the sheriff having resulted in surprise and prejudice to defendant, it would be set aside, on petition en nullité de décret by defendants.

That usufruct is incorporeal right (droit incorporel) which, under C. P. C. 638, should have been set forth in the procès verbal of seizure and also in the advertisement (C. P. C. 648) by mention of title under which it is due.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 27 MARCH 1886, *Cheney & Brunet.* **II,** Q. B. **298.**

CITATIONS.—*Pothier, Cout. d'Or: T.* 21, *No* 2, *p.* 688, (*Bugnet*)—*Héricourt Vente d'Immeubles, p.* 225, *No.* 14.

See PRIVILEGES AND HYPOTHECS.

SHIPPING

I.—ACTION FOR DEMURRAGE.
II.—CHARTER PARTY.
III.—DISBURSEMENTS — ANTECEDENT DEBT — ASSIGNMENT OF FREIGHT—RIGHTS OF MORTGAGEE.
IV.—RIGHT TO FREIGHT COMING ALONGSIDE TO LATE—USAGE OF TRADE

See CARRIER.

1. Action for demurrage.—That the master of a vessel has no right as master to sue for demurrage, unless there be an express or implied contract to pay him the same.—TASCHEREAU, J., 13 FEB. 1886, *Chandler vs Sydney and Louisiana Coal Co.* **II,** S. C. **319.**

2. Charter party.—The appellant, in January 1869, agreed to charter a steamship, for the carriage of live cattle to

England, and the conditions of the charter party were that the steamship should proceed to Montreal with all convenient speed to arrive there "between" the opening of navigation in 1879, and thereafter to run regularly between Montreal and London, and to be dispatched from Montreal in regular rotation with other steamers to be chartered up to 1st October, 1879. Navigation opened at Montreal about 1st May, but the steamship did not arrive there until 5th June when the appellant refused to load.

That there was not a substantial compliance with the contract on the part of the ship, and that the appellant was entitled to throw up the charter party.—DORION, RAMSAY, TESSIER, CROSS, BABY, JJ., 27 MAY 1884, *McShane & Henderson.* **I,** Q. B. **264.**

The charter party provided that the ship was to be loaded "as fast as can be received in fine weather, and ten days demurrage over and above the said lying days, at forty pounds per day. The ship to have an absolute lien on the cargo for all freight, dead freight, and demurrage due under this charter party, but charterers, responsibility to cease upon shipment of the cargo, provided the cargo be worth the freight, demurrage, etc., on arrival at the port of discharge. Should ice set in during loading so as to endanger the shipmaster to be at liberty to sail with part of cargo and to have leave to fill up at any open port on the way homeward for ship's benefit."

(Cross, J. diss.) That notwithstanding the clause as to ship having loaded full up at other ports on the homeward voyage, the ship owner was entitled to dead freight owing to the setting in of ice, having occasionned the departure of the vessel before the loading was completed, the completion of the loading having been prevented by the fault of the charterer.—DORION, MONK, TESSIER, CROSS, BABY, JJ., 2 APRIL 1885, *Lord & Davidson.* **I,** Q. B. **445.**

The appellant, in January, 1879, agreed to charter a steamship, for the carriage of live cattle to England, and the conditions of the charter party were that the ship should proceed to Montreal with all convenient speed, to arrive

there "between" the opening of navigation of 1879, and thereafter to run regularly between Montreal and London, and to be dispatched from Montreal in regular rotation with other steamers under charter of the same charterer, to be chartered up to 1st October 1879. Navigation opened at Montreal about 1st May, but the steamers did not arrive there until 18th May, when the appellant refused to load.

(Following McShane & Henderson, M. L. R. 1 Q. B. 264). That there was not substantial compliance with the contract on the part of the ship, and the appellant was entitled to throw up the charter party.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 25 SEPT. 1885, *McShane, & Hall et al.*

II, Q. B. 42.

CITATIONS.—*McShane & Henderson, M. L. R. 1 Q. B. 264.*

The charter party described the voyage in writing as being from Havana, Cuba "to Montreal, direct, via The River St. Lawrence." A printed clause declared that the steamship should have liberty to tow and be towed, and to assist vessels in all situations, also to call at any port or ports for coals or other supplies."

(Reversing the judgment of the Court below). That the fact that the steamship called at the port of Sydney, C. B. for coal in the course of the voyage, was not a deviation therefrom other than permitted by the charter party, and that the increased premium of insurance paid by the charterers in consequence of the vessel calling at Sydney could not be deducted from the freight.—DORION, MONK, RAMSAY, CROSS, 20 NOV. 1886, *Peters & The Canada Sugar.*

II, Q. B. 420.

CITATIONS.—*Emerigon, Ass. vol. I, ch. 2, s. 3, p. 34—May, Ins. sec. 177—1 Greenleaf, sec. 278—Taylor, Evidence, sec. 1033—Abbott, Shipping, p. 210.*

3. Disbursements–Antecedent debt–Assignment of freight —Rights of mortgagee.—That the master (in this case also principal owner) of a vessel has no right to apply a sum of money received by him from the consignees on account of freight, to the payment of an antecedent debt due by himself and for which there was no mortgage on the vessel; and where the creditor receiving such payment had also a

claim against the ship for necessary disbursements, the payment must be applied in extinction of the latter claim.

That the master of a vessel could not, by giving a personal creditor a draft upon the consignees which the latter refused to accept operate an assignment of freight not yet due.

That a mortgagee who has taken possession of a vessel under his mortgage is entitled to the freight, and his claim takes precedence of a debt due personally by the master and co-owner for supplies.—LORANGER, J., 28 JAN. 1887, *Pickford vs Dart.* **III,** S. C. **424.**

(Reversing the decision of the Superior Court M. L. R. 3 S. C. 424). That where there are two distinct hirings of a vessel, the voyage under each hiring is a separate transaction, and freight upon the first hiring is earned by the vessel's arrival and readiness to deliver at the port of destination thereunder, although by the second hiring she may be engaged to convey her cargo to another port without unshipping the same at the first port.

Freight so earned may be collected by the master of the vessel, he being also principal owner, and may be applied by him in payment of an antecedent debt owed by him.

The furnishers of necessary supplies upon a completed voyage, having, prior to possession taken by mortgagee, obtained a draft from the master and principal owner upon the consignees, covering the amount of such supplies, thereby obtain an assignment of freight earned upon such voyage *pro tanto* and are entitled to receive the same in priority to the mortgagee.

The mortgagee of a vessel, in taking possession, becomes entitled to all freight accruing due, subject to the claim for necessary supplies for the last voyage, which is privileged, and ranks before him. His rights are not greater than the owner's rights.—DORION, MONK, TESSIER, CHURCH, JJ., 20 JUNE 1888, *Pickford & Dart.* **IV,** Q. B. **70.**

CITATIONS.—*Carver, Carriage of good by sea* (1885) *pp.* 542 *à* 547—*Pothier des Louages Maritimes, No.* 59—*Foard, on Merchant Shipping, p.* 306—*Keith v. Burrows,* 2 *A. C.* 646—*Willis v. Palmer,* 29 *L. J* (*C. P.*) 194—*Jackson v. Vernon,* 1 *J. C. Bl.* 114—*Rich v. Coe, Cowp.* 636—*Farmer v. Davies,* 1 *T. R.* 108—*Beldon v. Campbell,* 6 *Ex.* 885—*Farmer v. Philips,* 42 *L. J.* (*Ch*) 125.

4. Right to freight coming alongside too late — Usage of trade.—That where no time is fixed for the bringing of freight alongside the ship the carrier, according to the usage of trade in the port of Montreal, has no right to call for the freight when he needs it, in order to complete loading of cargo in time for the regular sailing of the ship. So, where a steamship was to take a barge load of deals, and fair warning was given that 7 a m. on a day named would be the latest time permitted for the barge to come alongside, and the barge did not come alongside till half past one in the afternoon, at which time the ship was preparing to take cattle on board to complete her cargo preparatory to sailing, it was held that the carrier was justified in refusing to take the deals.—DAVIDSON, J , 30 JUNE 1888, *Taylor vs The Canada Shipping Co.* **IV,** S. C. **371.**

SIGNIFICATION OF TRANSFER

See TRANSFER OF DEBT.

SLANDER

The fact that the injurious statements complained of were made principally in the privacy of the family, and that evidence of the slander was obtained by concealing a witness for the purpose of overhearing what transpired, will be considered in mitigation of damages.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Waldron & White.* **III,** Q. B. **375.**

See LIBEL AND SLANDER.

SOCIETY

See ASSOCIATION.

SOLATIUM

See DAMAGES.

SPECIAL ASSESSMENT

See TAX.

SPECULATIVE TRANSACTIONS

See PROMISSORY NOTE.

STATUTE

An Act consolidated in similar terms by a subsequent Act is not repealed, by such consolidation, but is continued in force thereby.—DORION, TESSIER, CROSS, BABY, JJ., 26 MARCH 1887, *Cie Navigation Longueuil vs Montréal.*

III, Q B. **172.**

The Act 45 Vict. ch. 23 (D) applies to incorporated commercial companies, the erratum distributed by the Queen's Printer with the statutes, which supplied an omission in section one, forming an integral part of the act in question. —DORION, TESSIER, CROSS, BABY, JJ., 22 FEB. 1887, *Commissaires Hochelaga & Montreal Abbatoirs.* **III,** Q. B **116.**

STATUTE LABOR TAX

See MONTREAL.

STATUTORY PRIVILEGE

A statutory privilege was accorded (by 26 Vict. c. 32) to a person, his heirs and assings, to levy tolls on a toll-bridge erected by him over a river, and by the statute according such privilege, it was enacted (sect. 10) "that after the bridge shall be open for the use of the public, no person shall erect or cause to be erected any bridge or bridges, or maintain or cause to be maintained, any means of communication for the carriage of any person, cattle or carriage whatsoever, for hire across the said branch of the river Yamaska, at the place above mentioned, anywhere within one mile above and one mile and a half below the said bridge, under penalty etc., provided that nothing in this Act shall be constructed to deprive the public of the right of crossing the said river within the limits aforesaid by fording, or in canoes or otherwise, without payment." A large number of persons built a subscription bridge within the limits of the statutory privilege, avowedly with the object of avoiding the use of the toll-bridge and depriving the owner of the benefit of his privilege.

That this was an indirect mode of defeating the statutory privilege and that the defendants should be condemned to

demolish the bridge by them constructed.—MONK, TASCHEREAU, RAMSAY, SANBORN, LORANGER, JJ., 22 SEPT. 1874, *Girard & Bélanger.* **IV,** Q. B. **104.**

CITATIONS.—*Leprohon v. Glotensky*, 3 *L. C. J.* 360—*Tripp. v. Frank*, 4 *T. R.* 666.

STENOGRAPHER'S FEES

That a stenographer, though employed by the attorney *ad litem* of one of the parties to take the evidence of his witnesses, is nevertheless the officer of the court, subject (as regards the performance of his duties and the payment of his fees) to the orders and direction of the prothonotary, and, consequently, the party so employing him is relieved of all liability for the stenographer's fees, when he deposits the amount thereof in the hands of the prothonotary.—LORANGER, J., 14 MARCH 1885, *Morris vs Currie.*

I, S. C. **258.**

STOCK EXCHANGE

That by-laws which give the governing comittee of a stock exchange the right to sell a member's seat at the board for cause of insolvency, are reasonable and *intra vires.*

That on receiving notice from a member that he has been compelled to suspend payments, the governing comittee may proceed to dispose of his seat.

That an action will not lie by a member who considers himself aggrieved, to correct even errors or illegal acts, and the government and administration of a corporation, until the remdies, by way of appeal to the domestic tribunal of the corporation, provided by the by-laws or the constitution have been exhausted.—DAVIDSON, J., 24 JAN. 1888, *MacIver vs Montreal Stock Exchange.* **IV,** S. C. **112.**

CITATIONS.—*Carlen v. Drury*, 1 *Ves. & B.* 157—*Loubat v. LeRoy*, 47 *Hun. N. Y. Rep.* 549—*Lafond v. Deems*, 81 *N. Y.* (*Sickels*) 507—*Gebhard v. The New-York Club*, 10 *L. N.* 401.

STOCK TRANSACTIONS

See GAMING CONTRACT.

STREAM POLLUTION OF

See WATER COURSE.

STREET

See SALE—SHERBROOKE.

STREET RAILWAY

See MONTREAL—NEGLIGENCE—RAILWAY.

SUBROGATION

1. Conventional—Erroneous noting of deed by registrar.—Conventional subrogation under art. 1155 C. C. par. 2, is effected without any formal or express declaration of subrogation being required, when the debtor, borrowing a sum of money declares in his deed of loan that it is for the purpose of paying his debt, and in the acquittance it is declared that the payment has been made with the moneys furnished by the new creditor for that purpose.

Where subrogation is given by the terms of a deed, the erroneous noting of the deed by the registrar as a discharge, and the granting by him of erroneous certificates cannot prejudice, the party subrogated.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 20 NOV 1889, *Owens vs Bedell.* (Confirmed by Supreme Court 19 S. C. R. 137). **VII,** Q. B. **395.**

2. Bailiff condemned to pay damages.—Que cet art. 555, tel qu'amendé, s'applique aussi bien aux saisies qui ont lieu pour le recouvrement d'une dette antérieure à cet article que pour les dettes postérieures ;

Que le jugement condamnant, dans ce cas, l'huissier à des dommages le subrogera pour autant dans la créance du demandeur contre le locataire.—TORRANCE, PAPINEAU, TASCHEREAU, JJ., 12 JUIN 1886, *Michon vs Venne.* **II,** S. C. **367.**

3. Payment by debtor in solido—Evidence.—Qu'un débiteur qui paie une dette à laquelle il est tenu conjointement et solidairement avec un autre, est de plein droit subrogé au créancier payé contre ce dernier débiteur.

Que, dans ce cas, l'aveu du créancier payé ou de son procureur est suffisant et est une preuve légale du paiement qui a opéré la subrogation—CHUSON, TASCHEREAU, GILL, JJ., 30 AVRIL 1887, *Shorey vs Guilbault.* **III,** S. C. **138.**

CITATIONS.—3 *Larombière, pp,* 308, 340, *No.* 43—*Marcadé, p.* 55, *art.* 1, 328, *part III.*

SUBSCRIPTION TO STOCK

See CORPORATION.

SUBSTITUTION

I.—Capital sums—Interest.
II.—Construction of will.
III.—Death of substitute—Terms creating.
IV.—Degree of.
V.—Executor.
VI.—Final alienation of property of.
VII.—Insinuation, reading and publication before.
VIII.—Inventory.
IX.—Legacy to children to be born.
X.—Powers of curator.
XI.—Rights of creditors.
XII.—Sale by authority of justice—Sheriff's sale—Fraud—Nullity—Prescription.
XIII.—Sale of substituted property.
XIV.—Sale—Remploy—Eviction—Fear of trouble.
XV.—Term "children."
XVI.—Terms creating.

See EXECUTOR—INSURANCE (FIRE).

1. Capital sums—Interest.—Que le curateur à une substitution n'a aucun droit de recevoir des capitaux appartenant à cette substitution et dont il doit être fait emploi conformément à l'art. 931 du code civil.

Qu'un tel curateur n'a pas non plus le droit de réclamer les intérêts de ces sommes capitales, ces intérêts étant dus aux grevés de substitution.—Dorion, Ramsay, Tessier, Cross, Baby, 26 mai 1885, *Dorion & Dorion.* (Affirmed in part by Supreme Court 13 S. C. R. 193). **I, Q. B. 483.**

Citations.—*Williamson & Rhind*, 22 *L. C. J.* 167.

2. Construction of will.—A testator made his will as follows: "I give, devise and bequeath all my real estate and personal property and effects of every nature, kind and description, and wherever situate, to my beloved wife, Ann Bain, for and during the term of her natural life and after her death, to my nephew W. E. Philipps, and to his heirs

and assigns for ever," and the nephew having died during the life of the widow.

That this did not give the usufruct to the widow, and the nue propriété to the nephew and his heirs, as the latter contended, nor did it create a substitution in favor of the nephew only, which became *caduque* on his death before the opening of the substitution on the death of the widow, as contended by her, but that it created a substitution which continued in favour of the heirs of the nephew after the death of the widow.—LORANGER, J., 14 MARCH 1885, *Philipps vs Bain.* **II, S. C. 300.**

CITATIONS—*Thevenot d'Essaule, Substitution, art.* 183, 189, 200, 201, 210—7 *Aubry et Rau,* 376—*Demolombe I Donation,* 132, 139, 140, 143, 180—7 *Aubry et Rau,* 320—*Platt v. Charpentier,* 8 *L. C. R.* 481—16 *Guyot vo Substitution,* 941—32 *Merlin vo Subst. Fidei, sec.* 8552—*Pothier, Substitution,* 207—2 *Ricard, Substitutions, ch.* 8, *sec.* 2, *part.* 1, *No.* 545—2 *Bourjon,* 165.

Qu'en matière de fidéicommis, c'est la volonté du testateur qu'il faut avant tout rechercher et faire exécuter.

Qu'il résulte du testament de feu l'honorable Joseph Masson qu'il a voulu transmettre la propriété de ses biens à ses arrières petits enfants, et a institué à cette fin des fidéicommissaires auxquels il en a confié la garde et la gestion, jusqu'à ce que le degré permis par la loi pour la restitution soit atteint à la charge de payer à chacun des enfants nés lors de son décès avec feue Dame Sophie Geneviève Raymond, la moitié des revenus de la part assignée à chacun d'eux par le partage, et à ses petits enfants la totalité de ces mêmes revenus, et de faire emploi durant la vie de ses dits enfants de leur moitié des revenus ainsi réservés.

Qu'il y a eu accroissement au profit de la masse de la part léguée à feu Louis Masson décédé sans enfants.

Que le partage des revenus de chacune des parts que le testateur a léguées à ses enfants avec réversion au profit de leurs enfants et avec substitution de descendants en descendants, de même que le partage qui doit être fait à chaque transmission entre chacun de ses enfants, ne constitue pas une assignation de parts ou un partage définitif; qu'il n'y a en cela que l'indication du mode à suivre pour déterminer la part des revenus dont le testateur entendait gratifier chacun de ses enfants et petits enfants.

Que cette indication de parts ne porte que sur l'exécution du legs et doit en conséquence être considérée comme une déclaration accessoire de la portion dans laquelle les enfants du testateur doivent jouir des biens qui leur ont été légués ; que cette indication ne fait pas obstacle à l'accroissement au profit de la masse ;

Qu'il est de règle que le décès du grevé avant l'ouverture de la substitution ne fait pas obstacle à la substitution elle-même ; que la charge de rendre passe à son héritier, s'il résulte des termes du testament que la volonté du testateur a été comme dans l'espèce actuelle que la propriété de ses biens soit transmise à ses descendants ;

Que le legs fait au dit feu Louis Masson n'est qu'un legs de revenu qui, étant mobilier, n'a opéré aucun démembrement de la propriété ; qu'il n'a jamais eu la saisine de la propriété même et n'a pu la transmettre à ses héritiers ; qu'au contraire cette part a été consolidée à la masse des biens du testateur pour être administrée par les fidéicommissaires dans les conditions indiquées par le testament et transmises par eux aux arrières petits enfants ;

Que les pupilles de l'intervenante viennent à la succession de leur oncle, le dit feu Louis Masson, comme neveux au premier degré, leur aïeul, feu Joseph Edouard Candide Masson, le premier fils et le second petit fils du testateur, ayant tous deux prédécédés le dit Louis Masson —LORANGER, J., 27 FÉV. 1891. *Taschereau et ux. esqual vs Marson et al esqual & Dufaux esqual.* **VII,** S. C. **207.**

CITATIONS.—*Sirey*, 1835, 1re *partie*, *p.* 87—*C. C.* 980—*Troplong*, *Donations*, *No.* 2174 *et* 2191—2 *Demolombe*, 371—7 *Aubry et Rau*, 535—*Thévenot*, *No.* 1201.

3. Death of substitute—Terms creating.—Que dans un acte de donation entre vifs où une propriété est donnée par un père à sa fille et à son gendre, dans les termes suivants :... "He was desirous of securing to... the enjoyment and usufruct of... during the time of their natural lives, and to settle the said farm upon their children after their death... hath given... and doth give... the use and enjoyment, usufruct, of... to be by them and surviving of them held... during their natural lives à titre d'usufruit, and alsogive... unto the children now living and those hereafter to be

born... to be delivered to them from and after the death of the survivor of... and agreeing that his said daughter and husband be seized and invested with the full and entire possession thereof during their natural lives, and after their death that the child and children surviving should be vested with the full and entire possession thereof..." ces termes créent une substitution fidéicommissaire et non un legs d'usufruit.

Que dans une substitution fidéicommissaire, le décès de l'appelé avant celui des grevés, rend la substitution caduque et permet aux grevés de disposer de la propriété substituée comme propriétaire absolu.—CIMON, J., 20 FÉV. 1886, *Coutu vs Dorion.* **II,** S. C. **132.**

CITATIONS —*C. C.* 303, 777, 789, 790, 925—8 *Duranton, Nos.* 49, 50, 51—18 *Demolombe, Nos.* 115, 116, 117, 122—14 *Laurent, Nos.* 410, 411, 417—1 *Troplong, Nos.* 133, 151, 185—*Pothier, Substitution,* 498—*Thevenot d'Essaulles, ch. XI Nos.* 199, 200, 201, 205—*Furgole, Testaments, vol.* 3, *ch.* 8, 5, 1 *No.* 124—5 *Zachariae,* 243 *à* 266.

4. Degress of.—Que sous l'ancien droit, la loi et la jurisprudence constante limitaient les substitutions par testament à deux degrés, outre l'institué.

Que le statut impérial de 1774 et l'acte provincial de 1801 accordant la liberté illimitée de tester, n'ont pas eu l'effet d'abroger des dispositions de l'ancien droit, et que les substitutions sont restées limitées depuis comme elles l'étaient avant ces statuts.

Que les degrés de substitution doivent être comptés par tête et non par souches ; que lorsque plusieurs personnes reçoivent ensemble et par des droits égaux leur échéant en même temps, tous ne font qu'un degré, mais chacune de ces personnes fait aussi un degré pour la part, qu'il recueille, de telle façon que, si à son décès, ses co-héritiers reçoivent sa part ils se trouveront à former un degré subséquent.—MATHIEU, J., 3 JAN. 1885, *Cuthbert vs Jones.* **II,** S. C. **23.**

(Confirming the judgment of the Superior Court M. L. R. 2 S. C. 23). That by old jurisprudence introduced into this province and which was not affected by the Imperial Statute of 1774, 14 Geor. III c. 83, but was still in force in August 1798 when the will in question was made, a substi-

tution created by will was limited to two degrees exclusive of the institute.

Degrees of substitution are counted by heads (par têtes) and not by roots (par souches). When the share of one among several who took conjointly passes to the others by his death, such transmission is reckoned an additional degree as regards the share so transmitted.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 25 SEPT. 1885, *Jones & Cuthbert.* **II,** Q. B. **44.**

CITATIONS.—*Pothier, Substitutions, sec 7 art. 4 p. 570—Blanchet v. Blanchet,* 11 *L. C. R.* 204—*Jarman, on Wills, vol I, p. 259—Thevenot d'Essaules, Substitution, art.* 33 *p.* 46 *et p.* 463—*Durocher v. Beaubien, Stuarts Rep.* 308—*D'Agnesseau, Questions sur Substitution, p.* 100 *à* 105, 112-113-114.

5. Executor.—Que l'exécuteur testamentaire n'a pas la saisine ni l'administration des immeubles et ne peut esqualité contracter des dettes à leur égard.

Que ni l'éxécuteur testamentaire, ni le curateur à la substitution n'ont en loi aucun pouvoir d'hypothéquer les immeubles d'une substitution, et que ni la Cour, ni le juge, ni le protonotaire, même sur l'avis du conseil de famille, ne peuvent les y autoriser ; le grevé seul a le droit de les hypothéquer sujet aux droits des appelés,—TASCHEREAU, J., 17 OCT. 1888, *Arbec vs Lamarre.* **IV,** S. C. **447.**

CITATIONS.—*Merlin, Rép. vo substitution fidéicommissaire S. XII* § 3 *art.* 1, *No.* 2, *p.* 39—*C. C.* 831, 869, 918, 921, 951—*Thevenot d'Essaulles, Substitutions c.* 42, *No.* 684 *p.* 225—2 *Ricard, Donations, c.* 15 *No.* 153 *p.* 488.

(Affirming the decision of Taschereau, J. M. L. R. 4, S. C. 447). That the testamentary executor has no right to hypothecate immovables of a substitution without the consent of the institute; and the order of a judge or of the prothonotary authorizing such hypothecation on the advice of a family council will be set aside. —JOHNSON, LORANGER, WURTELE, JJ., 31 JAN. 1889, *Arbec vs Lamarre.* **V,** S. C. **7.**

6. Final alienation of property of.—That the final alienation of the property of a substitution cannot validly be affected while the substitution lasts, except in the manner indicated by art. 953 C. C. and that the sale of such property by judicial authorization on the advice of a family council, and with the consent of the curator to the substitution, cannot

be enforced where the vendor covenants to give perfect title. —GILL, J., 16 DEC. 1889, *Joyce vs Hodgson.* **VI,** S. C. **453.**

7. Insinuation, reading and publication before. — Que d'après l'ancien droit tout acte comportant une substitution devait être insinué, lu et publié devant les tribunaux civils, cour tenante ; l'insinuation seule n'était pas suffisante

Que l'enregistrement d'acte comportant une substitution avant le statut de 1855, 18 Vict. ch. 109, n'a pas l'effet de remplacer l'insinuation, la lecture et la publication exigées par la loi.

Que les droits des appelés avant l'ouverture d'une substitution sont des droits réels compris dans les articles 2172 et 2173 du Code Civil, et dont le renouvellement d'enregistrement est exigé après les deux ans de mise en force d'un nouveau cadastre.—OUIMET, J., 30 OCT. 1888, *Despins vs Daneau.* **IV,** S. C. **450.**

CITATIONS.—*McIntosh & Bell,* 12 *L. C. J.* 121.

8. Inventory.— Que des appelés de substitution ayant éventuellement droit à la propriété possédée par des grevés, ont droit de faire un inventaire des biens substitués aux frais des grevés, et d'y appeler ces derniers, dans le cas où ils refusent de le faire eux-mêmes, mais ils ne peuvent prendre une action pour forcer les grevés à procéder à cet inventaire. —TASCHEREAU, J., 13 MARS 1888, *Bourassa vs St-Marie.* **IV,** S. C. **41.**

9. Legacy to children to be born.—Que dans le cas de legs à des enfants à naître d'une personne nommée et désignée, avec le droit de toucher aux sommes léguées lors de leur âge de majorité, le premier des enfants nés de la personne ainsi nommée, a droit, à son âge de majorité de toucher sa part de l'héritage sans attendre que tous les enfants à naître soient nés ; dans ce cas, les enfants à naître lors du décès du testateur ne pourraient être qu'appelés de la substitution dont les enfants nés seraient grevés envers eux, et le grevé de substitution a toujours droit d'être mis en possession des biens substitués.—MATHIEU, J., 1 FÉV. 1889, *Desjardins vs Bellerose.* **V,** S. C. **91.**

CITATIONS.—*C. C.* 838, 891, 944—*Cupples v. Martin,* 5 *L. N.* 428—*Thevenot d'Essaules, Nos.* 84, 100, 101, 102, 183, 206, 207, 208, 320, 321, 508—*Pothier, Substitutions, sec.* 2, *art.* 2—*Ricard, ch.* 9, *No.* 629.

10. Powers of curator.—Qu'un curateur à une substitution ne peut ester en justice que pour la conservation des droits de la substitution, ses droits étant définis par le Code Civil (art. 945, 946 et 956).

Qu'il ne peut offrir de faire abandon et rétrocession de certaines valeurs commerciales dont il serait porteur au nom de la substitution, cet acte étant apparemment contraire aux intérêts des appelés. — TASCHEREAU, J., 16 OCT. 1890, *Benoît vs Ouimet.* **VII,** S. C **184.**

11. Rights of creditor.—Qu'un créancier grevé de substitution étant propriétaire animo domini a droit de poursuivre le recouvrement d'une créance hypothécaire échue sujette à la substitution.—LORANGER, J., 27 FÉV. 1891, *Benoît vs Ouimet.* **VII,** S. C. **187.**

12. Sale by authority of justice — Sheriff's sale — Fraud — Nullity—Prescription.—The will in this case created a substitution in favour of plaintiff.

A sale of substituted property by authority of justice, is null as regards the substitute who was not represented therein, where the authorization to sell was obtained by the tutrix fraudulently concealing the will creating the substitution (not yet open) and by also witholding information as to the assets and grossly overstating the debts of the succession.

A sale under judicial authorization is also null, where the property of a minor not represented by a tutor ad hoc, is sold to his tutrix through persons interposed who were merely *prête-noms*, and made no payments on account of the price.

The substitute may assert his claim to property sold, even against a third party who has become the purchaser thereof at sheriff's sale under an execution issued against a person who held the property under title from the tutrix, such sale having taken place after the substitute became of age but before the substitution was open.

The ten years' prescription in favor of a purchaser in good faith with title, runs against a substitute who is a minor, only from his majority.—PAGNUELO, J., 30 MAY 1890. *McGregor vs Canada Investment.* (Reversed in Appeal, 1 R O. Q. B. 197). **VI,** S. C. **196.**

13. Sale of substituted property.—Que, d'après le droit et la jurisprudence existant en France avant l'ordonnance de 1747, tout grevé de substitution pouvait et devait, avec l'autorisation judiciaire, aliéner les immeubles sujets à la substitution pour cause nécessaire et lorsqu'il y avait urgence d'acquitter des dettes grevant les biens substitués et de prévenir la vente par décret des dits biens ; et que telle aliénation était finale et ne pouvait être résolue à l'ouverture de la substitution.

Qu'avant l'ordonnance de 1747, la présence seule du tuteur ou du curateur à la substitution à une vente de biens de mineurs, était suffisante, le concours d'un tuteur aux appelés alors nés n'était pas nécessaire.

Que l'absence du concours des appelés à une substitution dans les procédés judiciaires faits pour arriver à la vente des biens substitués ne peut être invoquée que par les dits majeurs eux-mêmes.—TASCHEREAU, J., 22 NOV. 1884, *Caty vs Perrault.* **I, S. C. 131.**

CITATIONS.—*Denisart, actes de notoriété, p.* 406—*Guyot vo Tuteur à Substitution, p.* 338 –2 *Laurent, No.* 7—7 *Demolombe, Nos* 189, 246, 528, 323—6 *Bioche, vente judiciaire, No.* 107—*Thevenot d'Essaulles, Nos.* 1264 *à* 1274—7 *deLorimier, art.* 945 *et* 953—*Guyot vo Substitution, p.* 545—*Castonguay v. Castonguay,* 14 *L. C. R. p.* 308—*McIntosh vs Bell,* 12 *L. C J.* 121—*Lafontaine vs Suzor,* 11 *L. C. R.* 388—2 *Toullier, No.* 1119.

The ordinance of substitutions of 1747, never was in force in Canada ; and according to the law which existed in France before the ordinance of 1747, any *grevé de substitution* might, upon judicial authorization duly obtained, alienate the immovables of the substitution for necessary cause, and to prevent the sale thereof by the sheriff ; and such alienation was final.

Before the ordinance of 1747 and in Canada, before our Civil Code, the consent of the tutor or cutator in the substitution, at the sale of substituted property, was sufficient ; the concurrence of a tutor in the substitutes then born was not required.

Absence of consent by substitutes who were of age at the time of the authorization to sell can be invoked only by themselves in their own behalf and does not invalidate the sale

as regards the other substitutes who were duly represented. —MONK, TESSIER, CROSS, CABY, JJ., 26 MAY 1886, *Caty & Perrault.* **IV,** Q. B. **451.**

CITATIONS.—*Poustie vs McGregor*, 9 *L. C. J.* 332—*Béliveaux & Chevrefils*, 2 *Q. L. R.* 191—*Trust & Loan v. Vadeboncœur*, 4 *L. C. J.* 358—*Benoît vs Benoît*, 18 *L. C. J* 286—*Wilson & Leblanc*, 13 *L. C. J.* 201—*Merlin Rep. vo. Substitutions fidéi-commissaire, s.* 12, § 3, *art.* 2—2 *Ruard, Substitution, Tome* 3, *ch.* 15, *No.* 153 —*Thevenot d'issaulle, ch.* 50, *No.* 821 *et seq. McIntosh & Bell*, 12 *L. C. J.* 121.

14. Sale—Remploi—Eviction—Fear of trouble.—Que l'acheteur d'un immeuble sujet à une substitution, mais dont le grevé a, par l'acte créant la substitution, le droit de vendre en faisant le remploi du prix de vente pour les fins de la substitution, a droit de retenir le prix de vente jusqu'à ce que le vendeur se soit conformé aux conditions de l'acte en faisant le remploi.

Qu'il ne suffit pas qu'il établisse avoir acheté une autre propriété laquelle il entend payer avec l'argent provenant des biens substitués, il faut de plus qu'il fasse les déclarations nécessaires pour que les titres aux nouvelles propriétés ainsi achetées constituent un remploi en faveur des appelés à la substitution.

Que la dite substitution avec faculté de vente aux conditions de remploi constitue pour l'acheteur un juste sujet de crainte d'éviction ou de trouble pour l'avenir.—GILL, J., 10 MAI 1890, *Desjardins vs Dagenais.* **VI,** S. C. **280.**

15. Terms "children."—Held that the expression "enfans" in a donation creating a substitution in their favor, includes "les petits enfans" in the absence of any express limitation in the deed in favor of the children only.—JOHNSON, TORRANCE, RAINVILLE, JJ., 31 JAN. 1884, *Joubert vs Walsh.* **I,** S. C. **85.**

CITATIONS.—*C. C.* 937, 980—*Pothier (Bugnet) Subst. No.* 66, *vol.* 8—*Thévenot, ch.* 4 *No.* 58 *à* 76, *ch.* 10 *No.* 141 *à* 172; *ch.* 28, 58. *No.* 518; *ch.* 79, *Fo.* 1132—*Ricard, Subst. No.* 130, *p.* 252—*Merlin, Rep. vo enfants* § 2—*Furgole, Testament, ch.* 7 *sec.* 6, *No.* 125—4 *Denisart* 598—2 *Bourjon, Tit*, 5 *Subst., ch.* 4 § 3 *et* 4 *p.* 169—2 *Basset, liv.* 8 *T.* 2 *ch.* 1—*Brunette & Peloquin*, 3 *R. L.* 52—*Marcotte v. Noël*, 6 *Q. L.* 245—*Lee & Martin*, 9 *L. C. R.* 351.

16. Terms creating.—A testator having bequaethed his estate as follows:... "I leave all my personal and real estate for the benefit of my wife and family during her life

if she remains unmarried, to receive and apply such funds as may be accruing out of it for the support and maintenance of family and educating them if she again marry her dower is all that she will have out of the estate, the rest to be equally divided among the children my sons R. and W. I wish to enter the ministry... and I earnestly desire that every facility be given them to get thoroughly educated..."

That this created a substitution of which the widow was institute and the children substitutes, and was not a case of usufruct to the widow and nue propriété to the children.

That though both widow and children had for years acted on the latter interpretation they were not thereby deprived of the right to urge the other interpretation now.—DORION, MONK, TESSIER, BABY, JJ., 28 APRIL 1882, *MacDonnell & Ross.* **II,** Q. B. **249.**

CITATIONS.—*Pothier, Subst* § 2 *art.* 2—*Thevenot, Subst. pp.* 9, 69, 71—*Redfield, Wills,* 14—5 *Pothier, Subs.* 537.

SUCCESSION

1. Interest.—Que les héritiers ont droit aux intérêts que produisent les legs particuliers tant qu'ils n'ont pas été acquittés par l'exécuteur testamentaire —PAPINEAU, J., 17 OCT. 1887, *Mayer vs Léveillé.* **III,** S. C. **190.**

2. Partition—Reasons of utility justifying delay.—That art. 689 C. C. which provides that a partition may be deferred during a limited time, if there be any reason of utility which justifies the delay, expresses the law as it was before the Code.

That where a testator bequeathed his whole estate to trustees to pay an annuity to his wife and the remainder of the revenues to divide and pay to the whole of his children of their lawful issue *per stirpes* and directed that the immovables in his estate should be divided at the majority of his youngest grandchild there were sufficient "reasons of utility" justifying the delay, and the testator's directions would be respected by the Court.

That as the legacy was universal and *per stirpes*, grandchildren born after the testator's death were clearly in-

cluded in the terms of the bequest and an action for partition brought when all the grandchildren born in the testator's lifetime were of age, but before the majority of some of the after born grandchildren was premature.—TASCHEREAU, J., 24 APRIL 1891, *Muir vs Muir.* **VII,** S. C. **229.**

3. Payment of debts.—Que lorsque par testament une personne laisse tous ses biens à un fidéicommissaire avec entr'autres obligations celle de les diviser ou de les léguer quand bon lui semblera à ses enfants, savoir, ceux du testateur, ou à l'un d'eux, par parts inégales ou égales, le fidéicommissaire devant avoir en attendant la jouissance et la saisine de ses biens, les créanciers de la succession n'ont pas d'action contre les futurs héritiers, enfants du testateur, aussi longtemps que les biens n'ont pas été partagés ou légués par le fidéicommissaire. — DAVIDSON, J., 17 MARS 1890, *Martin vs Hardouin.* **VI,** S. C. **189.**

CITATIONS.—*Beaudry v. Rolland,* 22 *J.* 72—*Lionais & Molson Bank,* 10 *S. C. R.* 526.

That universal legatees may be sued for a debt of the succession though executors were appointed by the will of the deceased, and have accepted office and entered into possession of the estate. The universal legatees have a right to call upon the testamentary executors to pay the debt in their behalf, but they are not entitled to a suspension of the proceedings against them to permit them to exercise their recourse against the testamentary executors.—WURTELE, J., 9 SEPT. 1890, *Bourassa vs Bourassa.* **VII,** S. C. **1.**

4. Right of legatees.—Que tous les biens d'une succession insolvable ne sont pas le gage des créanciers de préférence aux légataires particuliers, de manière à ce qu'ils puissent empêcher ces derniers de prendre possession de leurs legs ; s'il doit y avoir réduction des legs particuliers pour payer les dettes du testateur, les créanciers ont une action contre les légataires à ce titre pour obtenir cette réduction, mais ils ne peuvent faire mettre au nom d'un curateur nommé à la succession insolvable tous les biens du testateur.

Que la renonciation d'un légataire universel unique ne rend pas la succession vacante s'il reste d'autres héritiers au testateur.

Qu'un curateur nommé à une succession vacante par la renonciation des légataires ou héritiers n'a que les droits qu'auraient eu ces légataires ou ces héritiers.—JOHNSON, TORRANCE, LORANGER, JJ., 30 AVRIL 1885, *Banque Ville Marie vs Rocher.* **I,** S. C. **409.**

5. Support and education of child.—Que le légataire ou donataire universel en usufruit est tenu personnellement vis à vis des créanciers des dettes de la succession, même des capitaux, et que la contribution aux dites dettes par les nus propriétaires dans les proportions fixés par la loi doit être établie entre eux et l'usufruitier, ne regarde pas les créanciers et n'empêche pas leur recours.

Que le père et tenu, en loi, à l'entretien et à l'éducation de son enfant et que ni lui ni ses représentants ne peuvent opposer les dépenses faites pour ces objets en compensation à une dette légitimement due à l'enfant.—TASCHEREAU, J., 17 JANV. 1885, *Boileau vs Seers.* **I,** S C. **239.**

6. Vacant—Sale of property.—Que les formalités imposées par la loi pour la vente par le curateur des biens meubles et immeubles d'une succession vacante sont impératives, et sous aucune circonstance le juge ne peut sur simple requête en permettre la vente.—TASCHEREAU, J., 16 AVRIL 1887, *Ex parte Lamothe.* **III,** S. C. **147.**

See EXECUTOR—PROCEDURE—TUTOR AND MINOR.

SUMMARY MATTERS

See PROCEDURE.

SUMMONS

See PROCEDURE.

SUPERINTENDENT OF EDUCATION

On an application by H for a writ of mandamus to compel the appellants to establish a new district, in accordance with the terms of a decision rendered on appeal by the Superintendent of Education under 40 Vict, (Q) ch. 22 s. 11, the appellants pleaded, *inter alia*, that the Superintendent had no jurisdiction to make the order, the petition in appeal

to him not having been approved of by three qualified visitors.

That inasmuch as one of the visitors who signed the petition in appeal to the Superintendent, was the parish priest of an adjoining parish, and inasmuch as under R. S. Q. 1951, priests and ministers can be visitors only for the municipality in which they reside, the petition in appeal had not the approval in writing of three quailfied visitors, and the decision rendered by the Superintendent was null and void. —DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 23 MAY 1890, *Commissaires Ecoles Ste. Victoire & Hus.* (Confirmed by Supreme Court 19 S. C. R. 477). **VII,** Q. B. **330.**

CITATIONS.—*Tremblay vs Commissaire Ecoles St-Valentin*, 12 *S. C. R.* 546—1 *Pigeau, pp.* 225 *et* 226—1 *Thomine Demazures*, 382, 383.

On demurrer, where a petition was presented to the Superior Court for a writ of mandamus against school commissioners, to compel them to enforce a decree of the Superintendent of Education ordering them to maintain a school district and to erect thereon a school house, and the commissioners pleaded that the appeal to the Superintendent was not authorized by three duly qualified visitors as required by law, and that the commissioners had not been heard that the pleas were not demurrable.—DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 23 MAY 1890, *Commissaires d'Ecoles de la Paroisse de St-Marc & Langevin.*

VII, Q. B. **390.**

CITATIONS.—*Tremblay vs Commissaires Ecoles St-Valentin*, 12 *S. C. R.* 546.

SURETY

1. Cash security—Deposit receipt held by government—Failure of Bank—Responsibility.—The plaintiff agreed to put up a cash security of $15000 to the Government of Canada for the performance of a contract by the defendants, which security was to remain in the hands of the Government until the contract should be fulfilled; and the defendants were to pay to the plaintiff $2000 per annum until the security should be released. By arrangement with the Exchange Bank, a deposit receipt for $15000 in that Bank was ac-

cepted by the Receiver General, which sum was placed to his credit in the Exchange Bank, and remained under his control.

That the loss of $15000 by the failure of the Bank, was a loss to be borne by the Government and not by the plaintiff, and that the plaintiff was entitled to recover the $2000 per annum from the defendants, notwithstanding the tender back to him of the deposit receipt after the insolvency of the Bank; that the terms on which the plaintiff obtained the credit at the Exchange Bank were not material to the issue, the plaintiff having furnished what was accepted by the Government as equivalent to cash at the time it was given; that the amount being entered in the books of the Bank to the credit of the Receiver General, the deposit thereby became a debt due by the Bank to the Receiver General, and was at the risk of the Government.—DAVIDSON, J., 3 APRIL 1888, *Gilman vs Gilbert.* **IV,** S. C. **227.**

The appellant agreed to put up a cash security of $15000 to the Government for the performance of a contract by the respondents, which security was to remain in the hands of the Government until the contract should be fulfilled; and the respondents were to pay to the appellant $2000 per annum until the security should be released. By arrangement with the Exchange Bank a deposit receipt for $15000 was accepted by the Receiver General and that sum was placed to his credit in the Exchange Bank and remained under his control.

That the loss of the $15000 by the failure of the Bank was a loss to be borne by the Government and not by the appellant, and that the appellant was entitled to recover the $2000 from the respondents, notwithstanding the tender back to him of the deposit receipt; that the terms on which the appellant obtained the credit at the Exchange Bank were not material to the issue, the appellant having furnished what was accepted by the Government as equivalent to cash at the time it was given; that the amount being entered in the books of the Bank to the credit of the Receiver General, the deposit thereby became a debt due by the Bank to the Receiver General, and was at the risk of

the Government.—Tessier, Cross, Baby, Church, Doherty, JJ., 22 dec. 1887, *Gilman & Gilbert.* **III,** Q. B. **402.**

Citations.—*Story, on Bailments, No.* 417—*Pothier (Bugnet) Louage, No.* 139.

2. Composition and discharge.—Que dans le cas de composition et décharge entre un débiteur et ses créanciers, lorsque l'acte a lieu non pas à raison de l'intention des créanciers de donner le montant de leurs créances, mais parce qu'ils ne peuvent pas avoir plus, la dette naturelle continuant à exister, la caution solidaire n'est pas déchargée.—Torrance, Doherty, Papineau, JJ., 31 oct. 1884, *Leclaire vs Forest.* **I,** S. C. **113.**

Citations.—*Pothier, Oblig. No.* 380—7 *Toullier, No.* 330—12 *Duranton, No.* 376—18 *Duranton, No.* 361—3 *Larombière, Oblig. art.* 1287, *No.* 4.

3. Right against principal debtor.—Que la caution solidaire du consentement du principal obligé peut, avant comme après l'échéance de la dette, sans avoir payé le créancier, soit que celui-ci ait donné terme ou non au débiteur principal, poursuivre ce dernier s'il devient insolvable, en déconfiture, ou dans un cas de louage, s'il enlève des lieux loués les meubles affectés au loyer.

Que dans le cas ci-dessus, si la caution solidaire ne prend aucune action contre le débiteur principal, elle ne peut, après avoir été poursuivi conjointement et solidairement par le créancier, opposer à ce dernier l'exception de discussion. —Papineau, J., 14 mai 1880, *Laurent vs Paquin.* **I,** S. C. **344.**

4. Woman as surety.—Qu'une femme majeure et non sous puissance de mari peut légalement être offerte comme caution judiciaire —Rainville, J., 29 jan. 1884, *Slessor vs Désilets.* **I,** S. C. **306.**

SURETYSHIP

1. Bond—Donation by security.—That where a bond has been given to the Crown for the fidelity of a public officer, no claim exists against the surety so long as the person whose fidelity is assured has not made default. Therefore a sale or donation made by the surety of all his property and effects, after the date of the contract of suretyship, but

before any default has occurred, will not be revoked at the instance of the Crown, in the absence of proof that any claim against the surety resulting from the bond existed at the date of the donation.—DORION, TESSIER, BABY, CHURCH, BOSSÉ, JJ., 22 JAN. 1890, *Marion & Her Majesty's Postmaster General.* **VI,** Q. B. **175.**

2. Extinction of by act of creditor—Imputation of payments.—The plaintiffs who were collocated by privilege (under C. C. P. 606) for the costs of a suit in the Superior Court, desisted from the greater part of the collocation in their favor, and the money was then distributed *au marc la livre* among the creditors. The plaintiffs afterwards instituted suits against the defendant's sureties in appeal for the costs in both courts, the judgment having been confirmed in appeal.

That as the effect of the desistment, made without notice to the sureties, was that the sureties could no longer be subrogated in the rights of the plaintiffs for the amount collocated by privilege, the surety was extinguished to the extent of the amount for which the plaintiffs had filed a retraxit (1959 C.)

That a sum of $315 paid by the sureties, for which the plaintiffs gave a receipt without making any special imputation of payment, should be imputed on account of the costs in the Court of Queen's Bench, that being the debt which the defendant had the greatest interest in paying (C. C. 1161).—TAIT, J., 20 DEC. 1887, *MacMaster vs Hannan.* **III,** S. C. **459.**

3. Judicial.—Qu'un cautionnement judiciaire où la caution s'oblige généralement à payer tous les frais et dommages qui seront adjugés, sans déterminer un montant quelconque qu'elle aura à payer, ne crée pas d'hypothèque judiciaire, et la caution peut par une action faire radier l'enregistrement fait de ce cautionnement sur ses immeubles.

Que la justification sous serment que fait une caution de sa solvabilité jusqu'à concurrence d'une somme fixe ne fait pas partie du cautionnement et n'en détermine nullement le montant.—JOHNSON, DOHERTY, MATHIEU, JJ., 21 DÉC. 1885, *Lavallée vs Paul.* **II,** S. C. **72.**

CITATIONS —3 *Delvincourt*, 158—19 *Duranton*, 337—30 *Laurent, p.* 226, *No.* 248.

4. Obligation with a term—Insolvency of principal debtor. —That a surety whose obligation is limited to the capital of the debt, is entitled to the benefit of the term stipulated for payment, notwithstanding the insolvency of the principal debtor.—DELORIMIER, J., 30 JUNE 1891, *McCulloh vs Barclay.* **VII,** S. C. **414.**

CITATIONS.—2 *R. L.* 410 *et* 597—*C. C.* 1933, 1934—3 *Zachariae et Massé*, § 437 *p.* 386—2 *Demolombe, Oblig. No* 705.

See BANK INSOLVENCY.

TACIT RECONDUCTION

See LESSOR AND LESSEE.

TANNERY

See NUISANCE.

TARIFF OF FEES

That Nos. 41 & 42 of the tariff of fees are applicable to a petition praying that liquidators under liquidation act of 1882 be ordered to deliver all property in their possession. —MATHIEU, J., 28 JUNE 1887, *Adams Tobacco & Plummer.* **III,** S. C. **153.**

Que dans les causes où le jugement est de $100 précises, les honoraires des avocats doivent être taxés comme dans une cause appelable de $100 à $200.—MATHIEU, J., 22 MARS 1889, *Varieur vs Rascony.* **V,** S. C. **126.**

Que les cas non prévus par le tarif doivent être décidés par analogie avec les cas semblables prévus par le tarif.

Que le tarif n'ayant pas prévu quels sont les droits dus au pétitionnaire et les honoraires dus au procureur sur une requête en destitution d'huissier, et sur les procédures relatives, c'est l'art. 83 du tarif des avocats relatifs aux nominations de tuteur, curateurs, émancipation, etc., qui doit régler les honoraires des procureurs et, comme conséquence, ce sont les art. 8, 9 et 114 du tarif du protonotaire qui doivent régler ces honoraires.—JETTÉ, J., 4 JAN. 1890, *Huissiers District Montreal vs Caisse.* **VI,** S. C. **32.**

TAX, TAXATION

1. Exemption from taxes—Church—Special assessment.—That the Statute 38 Vict. (Q.) c. 73, s. 3, exempting churches, parsonages and bishops' palaces from the payment of all taxes, includes special assessments for local improvements.—TELLIER, J., 21 MARCH 1888, *City of Montreal vs Christ Church.* **IV,** S. C. **13.**

CITATIONS.—*For plaintiff*—2 *Dillon, Mun. Corp.* 717-20—*Cooley, Taxations,* 146—*Lord Coke, on Talliage*—4 *Zabriski's R.* 385-400—*Hilliard, Taxation,* 72—*Burroughs, Taxations,* 113.

For defendants—2 *Dillon, Mun. Corporation,* 742, 1775—*Cooley, Taxations,* 207-660—*Hardcastle, Construction and effet of statutes,* 89-151—*Maxwell, Statutes,* 99—*Montreal & St. Sulpice, M. L. R.* 4 *Q. B.* 1.

(Confirming the judgment of Tellier, J. M. L. R. 4 S. C. 13). That the Statute 38 Vict. (Q) c. 73, s. 3, exempting churches, parsonages and bishops' palaces from "all taxes" includes exemption from special assesments for local improvements—DORION, TESSIER, CHURCH, BOSSÉ, DOHERTY, JJ., 26 MARCH 1889, *City of Montreal vs Christ Church.* **V,** Q. B. **20.**

CITATIONS.—*Harrison, Mun manual* 608—*Proudoon, Domaine de la Rrop.* p. 101, *No* 849—*Cooley, Taxation,* p. 207—*Hilliard, Taxation,* 72—*Burroughs, Taxation,* p 75—*Dillon, Mun. Corporation,* 773 *et seq*—*Zabriski's R. vol.* 4 p. 385—*Hardcastle, Statutes,* p. 17—*Mun Code, art.* 712—*Corp. or Verdun & Nuns of the Congregation,* 1 *Q. B. Rep.* 163—*School Comrs of St. Roch & Sem. of Quebec,* 10 *Q. L. R.* 335—*Wylie & City of Montreal,* 12 *S. C. R.* 381—*Cité de Montréal & Ecc. Séminaire St. Sulpice, M. L. R.* 4 *Q. B.*

2. Exemption—Insane Asylum—Charitable institution.—That an asylum for the insane, established and incorporated by an Act of the legislature, and supported chiefly by voluntary donations, the members of the corporation individually deriving no profit from the institution, is a charitable institution within the meaning of S. R. Q., 2044, 6146, and therefore exempt from the payment of municipal and school taxes.—LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 27 SEPT. 1891. *Village of Verdun vs Protestant Hospital.* **VII,** Q. B. **299.**

CITATION.—*Cooley, Taxation,* p. 202.

See COMMERCIAL CORPORATIONS—CONSTITUTIONAL LAW — EDUCATIONAL INSTITUTION — EXEMPTION FROM TAXES — MONTREAL — RAILWAY.

TELEGRAPH COMPANY

See LIBEL AND SLANDER.

TELEPHONE COMPANY

See SHERBROOKE.

TENANT

See LESSOR AND LESSEE.

TENDER

Que pour être valables, les offres réelles et la consignation doivent être telles qu'il soit possible à la partie d'accepter purement et simplement sans aucune condition.—PLAMONDON, BOURGEOIS, LORANGER, JJ., 21 DEC. 1885, *Prud'homme vs Scott.* **II,** S. C. **63.**

CITATIONS.—*Carter & Forbes,* 4. *L. N.* 77.

(Affirming the judgment of Davidson, J. M. L. R. 4 S. C. 233). That a vendor, seeking to give effect to a right of redemption, and who makes a tender to the purchaser, not followed by consignation, does not thereby acquire a right to the revenues of the property pending the contestation, if the purchaser refuses to retrocede, although the result of the contestation is that the purchaser is ordered to retrocede, but is allowed $40 for improvements. A consignation, to be effective, should be made, *partie appellée,* at a place and time and with a person duly designated to the holder of the property.—DORION, BABY, CHURCH, BOSSÉ, JJ., 21 MAY 1890, *Fournier & Léger.* **VI,** Q. B. **448.**

CITATIONS.—*Nugent v. Mitchell,* 12 *Q. L. R.* 149—*Ellis vs Courtemanche,* 11 *L. C. J.* 325—*Sirey, C. N. annoté, Nos.* 10, 11 *et* 30 *sous art.* 1673.

TERM

See LOAN.

TIERS-SAISIE

See SAISIE ARRET.

TIMBER LIMITS

See CROWN LANDS.

TITHE

Que la dîme est due par celui qui a récolté le grain et non pas par celui qui l'a simplement fait battre et vanner.

Que le privilège du curé à la dîme existe sur les récoltes qui y sont sujettes tant que le grain reste en la possession de celui qui l'a récolté, mais se perd dès que ce grain passe, sans fraude, entre les mains d'un acquéreur de bonne foi pour valable considération —DORION, MONK, TESSIER, CROSS, BABY, JJ., 19 NOV. 1884, *Godin vs Ethier.* **I,** Q. B. **37.**

See CURE—INJUNCTION—PARISH.

TOLL BRIDGE

See STATUTORY PRIVILEGE— MUNICIPAL LAW.

TRANSFER OF DEBT

That service of an action by the transferee of a debt, setting up the transfer, is equivalent to a signification of the transfer.—DOHERTY, J., 9 MARCH 1887, *Nicholson vs Prowse.* **III,** S. C. **189.**

CITATIONS —*Brunet vs Hochelaga*, 28 *L. C. J.* 281.

(Reversing the judgment of Court below). That service of action is not equivalent to signification of the transfer on which the action is based, and which is alleged in the declaration; and that a transferee has no right of action against debtor before signification of a transfer accepted by him.

That where the Court below enunciates an erroneous principle in the adjudication of costs, the Court of Appeal will reverse the decision though the appeal involves costs only.—DORION, CROSS, CHURCH, BOSSÉ, JJ., 23 JAN. 1889, *Prowse & Nicholson.* **V,** Q. B. **151.**

CITATIONS.—*Charlebois & Forsyth*, 14 *L. C. J.* 135—*O'Halloran v Sweet*, 16 *L. C. J.* 318—*McDonald v. Molleur*, 13 *L. C. J.* 188.

Where a sale of a debt is made in duplicate under private signature and one of the duplicates is delivered to the debtor,

the transfer is sufficiently signified, and the buyer is entitled to bring suit for the debt.—TESSIER, CROSS, BABY, BOSSÉ, DOHERTY, JJ., 19 JUNE 1890, *Moodie & Jones*.

VI, Q. B. 354.

TRAVELLER

See INNKEEPER.

TREE

See MONTREAL.

TRESPASS

See RAILWAY COMPANY.

TRIAL

See PROCEDURE.

TROUBLE

See SALE.

TRUST

(Cross and Church, JJ. diss.) That a complete and valid investment in trust cannot be created until the same has been accepted or ratified by the *cestui que trust* or some one duly authorized in his behalf; and until is accepted, such investment may be revoked by the person who made it. And so, where the father of a minor, who was not her tutor, invested monies belonging to her in shares of a joint stock company, "in trust," and afterwards sold the same, and invested the proceeds otherwise, it was held that no valid trust having been created for want of acceptance in behalf of the minor, her tutor (subsequently appointed) had no right to recover such shares from the purchaser, who had bought them in good faith and paid full value; and in the circumstances, there being no valid trust, the question whether the purchaser had notice of a supposed trust was immaterial.—TESSIER, CROSS, BABY, CHURCH, BOSSÉ, JJ., 27 NOV. 1889, *Raphael vs McFarlane*. (Reversed by Supreme Court 18 S. C. R. 183). **V, Q. B. 273.**

CITATIONS.—*Bank of Montreal v. Sweeney, L. R.* 12 *Ap. Cas*, 617—*Bank of Montreal v. Simpson*, 10 *L. C. R.* 225—*Sweeney v. Bank of Montreal*, 12 *S. C. R.* 661.

TRUSTEES

By the Act 43-44 Vict. (Q.) ch. 49 the South Eastern Railway Company were authorized to issue mortgage bonds to a certain amount, and to convey the railway franchise rights and interest to trustees representing the bondholders. The trustees were empowered to take possession of the road in the event of default by the company to pay the bonds, or interest thereon for 90 days. It was also provided (by sect. 10) that neither the company nor the trustees should have power to cease running any portion of the road. The respondents sold cars to the company after the execution of a trust deed in conformity with the statute above mentioned, but before the trustees took possession of the road for default by the company to pay interest on the bonds. The respondents first sued the company for the amount of their claim, and obtained judgment, and then brought the present action for the same cause against the trustees.

(Reversing the judgment of Mathieu, J.) That the effect of the Act above mentioned and of the deed executed in conformity therewith, was not to convey the possession of the road to the trustees from the date of such deed, so as to constitute them pledgees; and the trustees were not liable for the price of cars necessary for operating the road, furnished before the time they assumed possession.

That although the cars for which payment was claimed in this case were furnished at a time when the railway company was in default to pay interest on bonds, and when the trustees might have taken possession under the Act, but neglected to do so, the company was not thereby constituted *negotiorum gestor* of the trustees so as to render the trustees liable for the value of supplies necessary, for the operation of the road, obtained by the company before the trustees took possession.—Tessier, Cross, Church, Bossé, Doherty, JJ., 28 may 1889, *Farwell & Ontario Car and Foundry*. (Affirmed by Supreme Court 18 S. C. R. 1).

VI, Q. B. 91.

TRUSTEES AND ADMINISTRATORS

That a lease for nine years, with a stipulation that the lease should have a renewal on certain conditions for nine years longer, is in effect a lease for eighteen years, and an alienation which is *ultra vires* of trustees and administrators of public property, unless specially authorized by their act of incorporation.

That administrators who have entered in such a contract are entitled to sue for the resiliation thereof, as regards the second term; and a clause in the lease, which provided that three months' notice of termination of the lease be given to the lessee, could not avail the latter after the first term had expired.

That where the renewal for the second term was conditional on the proper discharge by the lessee of certain duties and obligations during the first nine years, it was competent to the lessors, at the expiration of the first term, to invoke the lessee's neglect of such duties as a ground of terminating the contract, without having made formal complaint previously.

That a resolution adopted by the trustees that legal proceedings be instituted, advised by counsel, is sufficient authority for the institution of a suit.—JOHNSON, TASCHEREAU, MATHIEU, JJ., 30 NOV 1888, *Commune de Laprairie vs Bissonnette.* **VI,** S. C. **414.**

TRUSTEES TURNPIKE ROADS

Par leur charte, les commissaires de chemins à barrières de Montréal nommés par le gouverneur de la province "auront et pourront avoir succession perpétuelle et pourront ester en jugement dans toutes les cours de justice et autres lieux."

Il est pourvu par une autre section de la charte que "de temps à autre ils pourront nommer et employer un inspecteur et tels officiers et personnes sous leurs ordres qu'ils jugeront nécessaires pour les fins de cette ordonnance et ils pourront destituer tels inspecteurs et autres officiers et personnes ou aucune d'elles et en nommer d'autres à leur place."

Que les commissaires n'étaient pas autorisés par leur charte à destituer un secrétaire trésorier employé à l'année, sans cause ou avis préalable.

Que la commission en question ne constitue pas une branche du service civil ou un département du gouvernement de la province et que les commissaires ne peuvent pas réclamer les prérogatives de la Couronne pour destituer leurs employés à leur bon plaisir.

Que le secrétaire-trésorier de la commission, employé à l'année par une résolution fixant son salaire, et congédié sans cause avant l'expiration de son terme, avait droit de réclamer la balance de son salaire pour l'année après avoir dûment protesté les commissaires et offert ses services.

Que malgré le changement du personnel de la commission, depuis l'engagement pris avec leur secrétaire-trésorier, les nouveaux commissaires ne pouvaient se soustraire à l'obligation contractée par leurs prédécesseurs.—OUIMET, J., 8 JAN. 1889, *Rielle vs Commissaires Chemins à Barrières.*

V, S. C. 1.

En vertu de leur charte les commissaires de chemins à barrières de Montréal nommés par le gouvernement de la province "auront et pourront avoir succession perpétuelle et pourront ester en jugement dans toutes les cours de justice et autres lieux."

Une autre section de leur charte pourvoit à ce que "de temps à autre ils pourront nommer et employer un inspecteur, et tels officiers et personnes sous leurs ordres qu'ils jugeront nécessaires pour les fins de cette ordonnance et ils pourront destituer tels inspecteurs et autres officiers et personnes ou aucune d'elles, et en nommer d'autres à leur place.

Que les commissaires en question ne feront pas partie du service civil de la province, mais constituent une corporation indépendante dont les pouvoirs sont contenus dans l'ordonnance 3 Vict. c. 31 et les actes qui l'amendent.

Que partant les commissaires ne peuvent pas se prévaloir des prérogatives de la Couronne pour justifier le renvoi de leurs employés sans avis, sans cause et sans indemnité.

Que la clause de la charte citée plus haut ne fait que donner à la commission le droit de contracter avec ses em-

ployés, et que cette corporation ayant contracté avec l'intimé, est responsable comme toute autre personne de la violation de ce contrat. — DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 26 MARS 1890, *Commissaires Chemins à Barrières & Rielle.* **VI,** Q. B. **53.**

CITATIONS.—*Demangeat, vol.* 1 *p.* 360—*Lennan vs St. Lawrence & Atlantic Ry' Co.*, 4 *L. C R.* 91—*Samson vs Syndics etc. Rive Sud*, 6 *Q. L. R.* 86—*Cité de Montréal & Dugdale*, 3 *L. N.* 204—*Regina vs Belleau, L. R.* 7 *Ap. C.* 473.

TUTOR

That a tutor cannot appeal from a judgment until he is authorized by the judge or the prothonotary, on the advice of a family council (art. 306 C. C.)

That where an appeal has been taken by a tutor without such authorization, and the respondent moves for the dismissal of the appeal for want of authorization, the Court of Queen's Bench, sitting in appeal, may continue the motion to the next term with leave to the appellant to produce the necessary authorization; and on the production thereof, will permit the authorization to be filed on payment of costs of motion.—DORION, CROSS, BABY, CHURCH, BOSSÉ, JJ., 16 NOV. 1889, *Laforce vs Maire, etc., Sorel.* **VI,** Q. B. **109.**

CITATIONS —*Clément & Francis*, 6 *L. N* 325.

The insolvency of a tutor is not a sufficient ground for removing him from office, where he is not guilty of maladministration or unfaithfulness in the performance of his duties.

The fact that a tutor has left the revenues of the minor in the hands of testamentary executors who were appointed by the father of the minor and whose capacity and solvency are not disputed, is not a ground for removing the tutor unless it appears that the interests of the minor are prejudiced thereby.—DORION, TESSIER, CROSS, CHURCH, JJ., 24 SEPT. 1887, *McFarlane & Stimson.* **VII,** Q. B. **397.**

See INDIANS.

TUTOR AND MINOR

I.—Acceptance of succession.
II.—Action.
III.—Administration of tutor.
IV.—Deed equivalent to rendering account.
V.—Engagement of minor to marry.
VI.—Ground for removal of tutor.
VII.—Judicial abandonment made by tutor.
VIII.—Loan to minor.
IX.—Release and discharge by minor on attaining age of majority—Prescription.
X.—Sale of immovables of minor.

1. Acceptance of succession.—That a tutor cannot accept a succession which falls to his pupil without an authorization granted on the advise of a family council.—Taschereau, Loranger, Ouimet, JJ., 28 feb. 1887, *Johns vs Patton.*

III, S. C. **113.**

2. Action.—1. *By tutor ad hoc — Registration.* — Qu'une action en dommages pour un mineur peut être intentée par un tuteur ad hoc dûment autorisé.

Que dans une action par un tuteur, il n'est pas nécessaire d'alléguer spécialement que l'acte de tutelle a été enregistré avant l'institution de l'action, et que sur l'allégation que le demandeur a été dûment nommé tuteur ad hoc, l'on peut prouver l'enregistrement de l'acte de tutelle.—Mathieu, J., 23 sept. 1888, *Adam vs Cie. Chemin Urbain Montreal.*

IV, S. C. **477.**

2. *For seduction of minor.*—Qu'une action en dommages pour séduction d'une fille mineure et inexécution d'une promesse de mariage ne peut être intentée par un tuteur ad hoc, mais doit l'être par le père, la mère ou le tuteur de la fille mineure.

Qu'avant d'intenter aucune action, le tuteur doit faire enregistrer son acte de tutelle. — Taschereau, J., 30 avril 1886, *Vallée vs Leroux.* **II,** S. C. **196.**

Citations.—*Fournel, Séduction,* 15 *et* 29—*Brousseau vs Bédard,* 3 *R. L.* 447.

3. *Pending for removal of tutor.*—Que bien que l'action en destitution de tutelle n'enlève pas au tuteur l'adminis-

tration des biens du mineur, il est de principe de ne pas lui laisser la disposition des capitaux tant que cette action est pendante.—JETTÉ, J., 17 DEC. 1887, *Lebeuf vs G. T. R. Co.* **III,** S. C. **272.**

3. Administration of tutor.—Que le tuteur peut exercer une discrétion modérée dans l'emploi des deniers pupillaires, et acheter à crédit un immeuble, surtout s'il est établi que telle acquisition ne constitue pas un acte de mauvaise admistration. — TORRANCE BOURGEOIS, MOUSSEAU, JJ., 30 JAN. 1886, *Société Construction Jacques-Cartier vs Desautels.* **II,** S. C. **77.**

CITATIONS.—*Art.* 296, *C. C.*—*Art.* 455 *C. N.*—7 *Demolombe, p.* 450 *et seq.*—6 *Laurent, p.* 69 —2 *Toullier, No.* 1221—*Rolland de Villargues, vo Tutelle, p.* 311—13 *R. L.* 440—1 *L. C. R.* 481—2 *L. C. R.* 325—1 *Aubry et Rau, p.* 459, *No.* 65—*Sirey et Gilbert, Codes Annotés, p.* 229, *No.* 17—2 *Toullier, p.* 387 *No.* 1221—3 *Duranton, p.* 534—1 *Solon, p.* 281—1 *Laurent, p.* 105—1 *Aubry et Rau, p.* 122.

4. Deed equivalent to rendering account.—That a sale by a minor, emancipated by marriage, to her father and ex-tutor (without any account being rendered, but after the making of an inventory of the community existing between her father and mother) of her share in her mother's succession,—said sale containing a valuation of what was coming to her from her tutor—should be considered as equivalent to an account accepted and discharged granted, and therefore under C. C. 2258, which is applicable to such cases, the action of the pupil to annul the sale is prescribed by ten years from the majority.—MONK, RAMSAY, TESSIER, CROSS, BABY, JJ., 25 JAN. 1886, *Gregoire & Gregoire.* **II,** Q. B. **228.**

CITATIONS.—*Larombière, art.* 1304, *No.* 40, *p.* 62—*Argou, tome* 1*er p.* 68—*Pothier, Bugnet,* 10 *vol., p.* 357, *No.* 745—*Motz & Moreau,* 7 *L. C. R.* 147—*Sykes & Shaw,* 15 *L. C. R.* 304—*Bélanger & Talbot,* 3 *Dec. d'app.,* 317—*Conte & Legacé,* 3 *Dec. d'ap.* 319.

5. Engagement of minor to marry.—Que lorsqu'une fille mineure, orpheline, s'engage sans le consentement de son tuteur à contracter un mariage et que subséquemment, regrettant cet engagement, elle demande à son tuteur de le rompre, l'intervention de ce dernier et son opposition au mariage, sans autre raison, est légitime et ne le rend pas responsable des dépenses d'argent que le prétendant aurait faites en vu de ce mariage ni des dommages qu'il peut en subir.

Que bien plus, le fait seul d'avoir décidé ce mariage sans le consentement et la connaissance du tuteur et d'avoir convoqué un conseil de famille en ne lui en donnant avis que par le notaire, serait suffisant pour justifier le tuteur de s'opposer à un mariage décidé dans de pareilles circonstances. —MATHIEU, J., 14 FEV. 1887, *Gadbois vs Morache.*

III, S. C. **38.**

6. Grounds for removal of tutor.—Que la déconfiture et l'insolvabilité ne sont pas des motifs de destitution de tutelle

Qu'il faut des raisons très graves pour autoriser un tribunal à destituer un père de la tutelle de ses enfants — TASCHEREAU, J., 22 FEV. 1886, *Charbonneau vs Charbonneau.*

II, S. C. **121.**

CITATIONS.—*C. C. arts* 273, 276, 285, 262—*Guyot vo Tutelle, p.* 318, *par.* 4—*Ancien Denizart, vol.* 4, *p.* 594—*Pigeau, vol.* 2, *p.* 305, *No.* 4—*Bourjon, droit commun de la France, vol.*1, *p.* 47—4 *Laurent, Nos.* 505, 506, 513, 520, 523, 524, 525, 509, 521—1 *Aubry et Rau, pp.* 422, 425, 426, 419—7 *Demolombe, p.* 491.

7. Judicial abandonment made by tutor.—Que la cession de biens mentionnée à l'article 763 et suivants du C. P. C. et au statut de Québec, 48 Vict., c. 22 ne s'applique pas à la liquidation des biens d'une succession appartenant à des mineurs; que, par suite, une cession de biens ainsi faite par une tutrice esqualité pour ses enfants mineurs insolvables, à la demande d'un créancier, est illégale et doit être mise de côté.—MATHIEU, J., 29 MARS 1887, *Tourville vs Dufresne.*

III, S. C. **288.**

8. Loan to minor.—A person lending money to a minor is bound at his peril to see that the authorization to borrow is regular on the face of it; and where no proper summary account was submitted by the tutor, as required by art 297 C. C., and the sub-tutor was moreover the agent and son of the lender, and was bound to know that in fact the loan was not required by the minor, but was being improperly obtained by the tutor for his own purposes, the obligation so given was held null and void.—TESSIER, CROSS, CHURCH, BOSSÉ, DOHERTY, JJ., 28 MAY 1889, *Kerr & Davis.*

V. Q. B. 156.

9. Release and discharge by minor on attaining age of majority—Prescription.—Where a minor on attaining the age of majority, gives her tutrix a release and discharge from her administration as tutrix, that the action of the minor for an account of the tutorship, is prescribed by the lapse of ten years from the date of such discharge; and this rule was held to apply where the discharge was not given immediately and expressly to the tutrix, but to the trustees in whom the estate had been vested by the tutrix on her second marriage, the minor (then of age) however, declaring that she had received her share, and that she discharged the trustees and all others from all further accountability and in a letter to the tutrix, 15 years afterwards expressly disclaimed any intention of disturbing the settlement.—Dorion, Tessier, Cross, Baby, Bossé, JJ., 27 nov. 1889, *Watt & Fraser.* **V,** Q. B. **307.**

10. Sale of immovables of minor.—That the sale by a tutor of the immovables of the minor without the observance of the formalities prescribed by law is null; and even when the tutor is authorized to sell such immovables by the will of his deceased wife from whose succession the property devolved to the minors, he is bound after his appointment as tutor to observe the formalities prescribed by law.

The nullity can be invoked by the tutor himself, in answer to an action *en garantie* alleging that the tutor has sold property as belonging to minors to which they had no legal right.—Plamondon, Bourgeois, Loranger, JJ., 30 nov. 1885, *Pichette vs O'Hagan.* **II,** S. C. **384.**

TUTORSHIP

1. Alien.—Qu'un aubain ne peut être nommé tuteur ou curateur et que, dans l'intérêt de l'interdit, il ne pourra se faire nommer à cette charge en se faisant, pendant l'instance, naturaliser sujet anglais, si son intention n'est que de demeurer temporairement dans le pays.—Loranger, J., 3 dec. 1883, *Driscoll vs O'Rouke.* **I,** S. C. **311.**

2. Complaint of administration.—Que des mineurs devenus majeurs ne peuvent se plaindre de l'administration de leur

tuteur, lorsque depuis leur majorité ils ont accepté son compte, lui ont donné une décharge et ont fait actes d'héritiers.—LORANGER, J., 30 MAI 1884, *Banque Jacques-Cartier vs Pinsonnault.* **I,** S. C. **18.**

3. Grounds of exclusion - Incapacity.—Que l'âge peut être une raison pour refuser la tutelle d'un mineur mais pas une cause d'exclusion.

Que l'incapacité d'un homme, pour être une cause d'exclusion de tutelle, doit être telle qu'elle le rend inapte à conduire ses affaires et celles d'autrui.—JETTÉ, J., 23 FEV. 1885, *Lebeuf vs Daoust.* **I,** S. C. **227.**

CITATIONS.—*Meslé, Minorités, tome 1er ch. 10, No. 24—Pigeau, tome 2 p. 305—Demolombe, No. 254—Chardon, Traité de la Puissance Tutélaire, Nos 54 et 55.*

UNION OF CAUSES

See ACTION QUI TAM—PROCEDURE.

UNIVERSAL LEGATEES

See SUCCESSION.

UNPAID VENDOR

See SALE—PRIVILEGE.

USUFRUCT

Where a person intervened in the marriage contract of his niece, and made her a donation of $200,000 payable at his death, the intended husband to have "the administration and enjoyment of said sum of $200,000 from the time of the same becoming due" and the only condition of the husband's administration and enjoyment was the birth of children, which was a fact admitted, HELD that the husband was usufructuary and the wife had the *nue propriété.*

In such case the action against the donor's universal legatee, for the recovery of the amount of the donation, can be brought by the usufructuary only. An action by the wife, even with her husband's authorization will be dismissed — JOHNSON, TORRANCE, PAPINEAU, JJ., 30 JUNE 1885, *Kimber vs Judah.* **II,** S. C. **86.**

CITATIONS.—3 *Dorion, Dec. App.*, pp. 317 *et* 319 *Bélanger & Talbot, Comte & Lagacé*—10 *Demolombe, No.* 323 *et* 320—2 *Aubry et Rau*, p. 491—6 *Laurent, Nos.* 413 *et* 414.

See PARTIES TO ACTION—PROCEDURE—SHERIFF'S SALE—SUBSTITUTION.

USUFRUCTUARY

Que les taxes municipales et autres impositions publiques sont à la charge de l'usufruitier.

Qu'un donateur ne peut par une clause d'insaisissabilité, soustraire les biens donnés aux charges et contributions imposées dans l'intérêt public, et malgré cette clause d'insaisissabilité, les biens qui y sont sujets peuvent être vendus pour taxes municipales.—JETTÉ, J., 27 JUIN 1887, *Montreal vs Bronsdon.* **III,** S. C. **146.**

See SUCCESSION.

USUFRUCTUARY LEGATEE

See LEGATEE.

USURPATION OF CORPORATE OFFICE

That the proceedings authorized by art. 1016 C. C. P. and subsequent articles of the same section, apply to cases of usurpation of an office in any corporation whatever, without any distinction.—DORION, MONK, RAMSAY, CROSS, BABY, JJ., 22 NOV. 1886, *Gilmour & Hart.* **II,** Q. B. **374.**

CITATIONS.—*Paris v. Couture*, 10 *Q. L. R.* 1.

See JURISDICTION.

VACANT SUCCESSION

See SUCCESSION.

VAGRANCY

See CRIMINAL LAW.

VALUABLE SECURITY

See CRIMINAL LAW.

VALUATION

See MANDAMUS—EVIDENCE.

VENDITIONI EXPONAS

See PROCEDURE.

VENDOR AND PURCHASER

See EVIDENCE—SALE.

VERDICT

See DAMAGES—JURY TRIAL.

VERDICT AGAINST EVIDENCE

See RAILWAY.

VICE CACHE

See SALE.

VIOLATION AND FEAR

See OBLIGATION.

VOTER, VOTERS' LIST

See ELECTION LAW.

WAREHOUSE RECEIPT

Que bien qu'un gardien d'entrepôt qui a donné un reçu pour les marchandises qu'il a reçues dans son entrepôt, peut s'opposer à la saisie et vente de ces marchandises, néanmoins, il lui faut un intérêt pour faire cette opposition et lorsque le porteur du reçu d'entrepôt aura déjà fait une opposition afin de conserver, le gardien d'entrepôt ne sera pas recevable à faire une opposition afin d'annuler.—TELLIER, J., 12 DEC. 1888, *Straas vs Kerouack.* **IV,** S. C. **341.**

WARRANTY

Dans une action en garantie :—

Que celui qui transporte un billet insuffisamment timbré n'est pas tenu de garantir le porteur, vu que ce défaut est

un vice apparent que ce dernier a pu et dû connaître lorsqu'il a acquis le billet.

Que lorsque le cessionnaire d'un billet promissoire appelle en garantie son cédant sur le plaidoyer de libération d'un des endosseurs, il a droit de demander que le coût d'achat qu'il a payé lui soit remis et ce qu'il aura reçu d'un autre endosseur ne pourra être compté en déduction, mais, à son tour, il doit offrir de remettre le cédant dans la même position où il était avant le transport.

Que quoique le garant ne puisse répondre à l'action en garantie en alléguant le mal fondé des moyens opposés au garanti, néanmoins lorsque les parties auront lié contestation sur la vérité même de ces moyens, la Cour de Révision ne pourra pour cette raison seule, modifier le jugement rendu en première instance.

Qu'aucune dénonciation n'est requise avant l'action en garantie, la mise en demeure se faisant par l'action même.—JOHNSON, PAPINEAU, LORANGER, JJ., 29 FÉV. 1884, *Lamarche et al. vs La Banque Ville-Marie.* **I,** S. C. **203.**

Qu'il n'y a pas de garantie en matière de délit ; qu'en conséquence un homme de police (private detective) poursuivi en dommages pour fausse arrestation n'a pas de recours en garantie contre celui pour le compte duquel il a fait l'arrestation.—GILL, J., 20 DÉC. 1886, *Couvrette vs Fahey.* **II,** S. C. **423.**

Qu'une délégation de paiement acceptée ne change pas la nature de la dette du débiteur et n'augmente pas ses obligations ; de sorte que si la dette vient à s'éteindre, hors le fait du débiteur vis-à-vis le premier créancier, elle l'est également vis-à-vis le dernier.—CIMON, J., 27 FÉV. 1886, *Drapeau vs Marion.* **II,** S. C. **99.**

CITATIONS.—*Trust and Loan Co. vs Guertin,* 1 *Dec. d'ap.* 32—*Soc. Permanente de Cons. J. C. vs Léonard,* 2 *L. N.* 168, 285—*Druommond v. Holland,* 23 *L. C. J.* 240—4 *Marcadé, p.* 622—5 *Larombière, oblig. p.* 535.

That the maker of a promissory note cannot by dilatory exception stay the suit of the holder in order to call the payee *en garantie.*—JETTÉ, J., 8 OCT. 1886, *Black vs Lawrence.* **II,** S. C. **279.**

CITATIONS.—17 *Laurent, No.* 297—*Beaulieu v. Demers,* 5 *R. L.* 244.

Que lorsque le vendeur et les acheteurs dans un acte de vente sont poursuivis conjointement et solidairement pour faire déclarer que par fraude et collusion le dit acte a été simulé, le vendeur ne peut appeler en garantie les acheteurs, ses codéfendeurs, sur le principe qu'il n'a lui commis aucune fraude; car, dans ce cas, l'action principale sera déboutée quant à lui; et, s'il y a eu fraude commune, le vendeur n'a aucun recours en garantie contre ceux qui auraient avec lui participé à la fraude.—TASCHEREAU, J., 31 DÉC. 1885, *Benoît vs Bruneau.* **II,** S. C. **82.**

See ACTION—EVIDENCE—MONTREAL—SALE.

WATER COURSE

1. Floatable river—Seigniorial rights—Expertise—Direct action—Conclusions.—Since the abolition of seigniorial rights a servitude alleged to have been acquired from the seignior previously, for the construction of dams, without payment of indemnity has no effect.

Ch. 51 C. S. L. C. applies to floatable as well as non-floatable rivers.

The remedy given by chap. 51 C. S. L. C., to a person who is damaged by the construction of a dam on a water course, is not exclusive, and does not deprive him of the ordinary remedy by action before a competent Court.

Where in such action the plaintiff prays for the demolition of the dam, and for damages, a judgment which orders the payment of damages as awarded, and, in defaut of payment within the delay fixed, orders the demolition of the dam, is not *ultra petita.*—LACOSTE, BABY, BOSSÉ, WURTELE, JJ., 26 NOV. 1891, *Bazinet & Gadoury.* **VII,** Q. B. **233.**

CITATIONS.—*Boissonneault & Oliva Stuart's Rép. p.* 564—*Jean vs Gauthier,* 5 *L. C. R.* 138—*Emond v. Gauthier,* 3 *Q. L. R.* 360—*Beliveau v. Levasseur,* 1 *R. L.* 726.

2. Pollution of running stream.—That where the proprietor of a tannery, for the purposes of his industry makes such use of a private watercourse as to render the water unfit for domestic purposes and dangerous to health, and to deprive proprietors of land bordering on said stream of the

use and enjoyment of the same, damages will be granted against him.—JOHNSON, J., 30 OCT. 1886, *Weir vs Claude.* (Reversed in appeal 4 M. L. R. Q. B. 197 Jt. of appeal confirmed by Supreme Court 16 S. C. R. 575). **II,** S. C. **326.**

CITATIONS.—*C. C.* 549—*C. N.* 690, 691—*C. C.* 501, 503—2 *Maleville, p.* 101—11 *Demolombe, p.* 43, 206—*Proudhon, Domaine Public, vol.* 4, *p.* 137—1 *Demante, p.* 573—5 *Duranton, p.* 159—3 *Aubry et Rau, pp.* 10, 51—*Daniel, Cours d'Eau, vol.* 2, *p.* 412-18—7 *Laurent, vol.* 7 *p.* 354—*Coulson & Forbes, Waters, p.* 151—*Minor & Gilmour,* 9 *L. C. R.* 115—*Allen's Reports, vol.* 13, *p.* 103—*Bigelow, Leading Cases, p.* 465—*Addison, Law of Torts* (1875), *p.* 33, *p.* 117—*Cooley, on Torts,* 46—2 *Daniel* 416—*Pardessus, Servitudes, vol.* 1, *p.* 130—*Lalaure, Traité des Servitudes, p.* 654—*Garnier, Regime des Eaux, vol. I, p.* 202, *vol. III, p.* 18—*Frerot, Lois du Voisinage, vo. Etablissements dangereux et insolubres*—2 *Masse et Verger sur Zach.* 157—*Angell, Watercourses, s.* 136.

See INJUNCTION.

3. Right to control flow of the water.—The parties are owners of mills situated upon the same stream (neither navigable nor floatable) which is the outlet of a pond. They derived title from the same *auteur.* Respondent owned the dam and the land at the outlet, and also a saw mill and a saw and a grist mill, some distance down the stream, and below appellants mill. Respondent's title was anterior to that of the appelant, and gave right "of taking and using the water from the pond, down to low water level on the dam on the sold land, without hindrance or obstruction on the part of the said vendor, his heirs or assigns." Appellant, who had a saw mill below respondent's dam at the outlet of the pond, took his title subject to this privilege.

That respondent was entitled, under the clause above cited, to control the flow of the water from the pond, and to the use of the surplus water, down to low water level on the dam at the outlet.—CROSS, BABY, BOSSÉ, TAIT, JJ., 24 JAN. 1891, *Merill & Rider.* **VII,** Q. B. **426.**

4. Riparaian rights.—Que lorsqu'un cours d'eau a son lit dans un chemin, le propriétaire voisin du chemin peut réclamer les droits de riverain lorsque le cours d'eau a son lit dans la partie du chemin contiguë à son fonds.

Que lorsqu'un fonds traversé par un cours d'eau est morcelé, les portions du fonds qui sont devenues non riveraines

conservent néanmoins le droit aux eaux dont elles jouissaient avant la division.

Que les intéressés peuvent régler le cours des eaux, et qu'un riverain qui a demandé à un tiers sa souscription pour le posage de tuyaux servant à l'écoulement des eaux n'est pas admis à plaider que ce tiers n'a pas droit à la jouissance du cours d'eau.—TAIT, J., 31 JANV. 1890, *Godin vs Lortie.*
VI, S. C. **13.**

WATER RATE

See MONTREAL.

WIDOW

See PRESCRIPTION.

WIFE

See ACTION—HUSBAND AND WIFE—SEPARATION OF PROPERTY.

WILL

1. Evidence.—Qu'en l'absence d'une inscription en faux, on ne peut attaquer par une preuve testimoniale rien de ce qui concerne la solennité extérieure d'un testament authentique, ni contredire les énonciations qui y sont contenues.—TASCHEREAU, J., 31 MARS 1887, *Leriger vs Daigneault.*
III, S. C. **444.**

2. Revocation of legacy.—H. who had $5000 of stock in La Banque du Peuple, made a will, by which he bequeathed $1000 of this stock to his granddaughter. Subsequently he made three separate codicils, all bearing the same date, by one of which he bequeathed $3000 of the said stock to the same granddaughter, and by the other two codicils he made specific bequests of $1000 each of said stock for other objects, thus disposing by the codicils of the entire sum of $5000.

The question was whether the bequest by the first codicil of $3000 to the granddaughter, under the circumstances stated, revoked the previous bequest in her favor, of $1000 contained in the will.

That the legacies contained in the codicils, disposing, as they did specifically of all the stock which the testator had in La Banque du Peuple, operated a revocation of the first

bequest of $1000 to the granddaughter, contained in the will.—MONK, TESSIER, CROSS, BABY, JJ., 30 JUNE 1886, *Pattison & Fuller.* **II, Q. B. 349.**

3. Testamentary executor.—A testator by his will bequeathed to his wife an annuity to be paid her during her lifetime, and directed that she should have the power to dispose of the capital of the said annuity by will in such manner as she might see fit, but in default of such disposition he directed that this capital should be divided between his three children in equal shares, with representation in favour of their children. The testator's wife survived him, and subsequently died leaving a will in which, after a number of special legacies, but without any mention of the capital of the said annuity, she bequeathed the rest and residue of her estate to her daughter for one half and to the children ot one of her sons, for the other half.

That by this universal residuary legacy the testatrix had effectually exercised the power of appointment conferred on her by her husband's will over the capital of said annuity, and that the children of one of the sons of the testator who were not included in such residuary legacy, had no claim on the capital of said annuity.—PAPINEAU, J., 31 MARCH 1886, *Gemley vs Low.* **II, S. C. 311.**

That under art. 913 C. C. an executor has no power to substitute an other person for himself, but merely to appoint an attorney for determinate acts.

That the appointment by an executrix, of a salaried agent to collect and invest the monies of the estate and to handle the funds, was a delegation of the powers of the executrix prohibited by art. 913 C. C. and not the mere appointment of an attorney for determinate acts.

That the executrix could not escape liability for the misappropriation committed by her agent by simply establishing that such agent was not notoriously unfit at the time of his appointment; and that the immunity granted to the mandator empowered to substitute under art. 1711 C. C. does not apply to the case of a testamentary executrix.

That when a testamentary executrix employs an agent as attorney, she is bound to supervise his management of the

matters entrusted to him and to take all due precautions and securities

That, in the present case, the executrix had acted carelessly and without due precaution in making cheques payable to her agent instead of to the borrowers on the proposed mortgage and in signing these without sufficiently examining their contents —JOHNSON, J., 30 MAY 1888, *Gemley vs Low.* **IV,** S. C. **92.**

CITATIONS.—22 *Demolombe, p.* 41—14 *Laurent, No.* 323.

4. Unlawful condition.—That a condition of a will by which the plaintiff was to have a share in the revenue of the testator's estate in the event of her becoming a widow "or of her obtaining a separation of bed and board from her husband so that he can have no control over her property" though not an impossible condition, is one contrary to good morals within the meaning of art. 760 C. C. and the plaintiff was entitled to the share as though the condition was not written.—DAVIDSON, J., 12 DEC. 1890, *Webster vs Kelly.* **VII,** S. C. **25.**

See EXECUTOR—EVIDENCE—DONATION—LEGACY—LEGATEE—SUBSTITUTION.

WINDING UP ACT

See INSOLVENCY.

WITNESS

The testimony of a witness who declares that he does not know whether there is a state of rewards and punishments after death, is inadmissible, art. 259 C. C. P.—TAIT, J., 16 NOV. 1888, *Schwersenski vs Vineberg.* **V,** S. C. **372.**

WRIT OF ERROR

See CRIMINAL LAW.

WRIT OF PROHIBIRION

See PROHIBITION.

WRIT OF SUMMONS

See PROCEDURE.

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