The Legal News.

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CRIMINAL LAW AMENDMENTS.

We have received a copy of Mr. Cameron's Bill to extend the provisions of the Act respecting offences against the person, as amended in Committee. It is now reduced to three clauses applying to sexual intercourse, (1) between parent and child; (2) between brother and sister of the age of fifteen or upwards; and (3) between grandparent and grandchild. Persons offending shall be deemed guilty of felony, and the punishment enacted is imprisonment, not exceeding ten years, in gaol or penitentiary.

Offences of the character to which the Bill applies, have happily been so rare that serious doubts were expressed in Parliament as to the propriety of putting such a measure on the statute book. Some time ago, however, we read in the charge of a Judge to the Grand Jury, in one of our rural districts, that the offence was on the increase in the country. If it be so, we suspect that it proceeds from causes which will be only slightly affected by the punishment enacted by Mr. Cameron's measure. The horror which this offence inspires is so universal that probably none but those who are naturally of weak intellect, or who have been degraded by various causes to the level of brutes, are guilty of it. Reference was made in the House to the execution of Burns at Montreal. In that case the prisoner, if we remember aright, had been long living with his family, in nearly total solitude, in a remote district; and further, the case stands almost alone in our criminal annals. If the existence of the evil be recognized, it should be combated by the spread of education and enlightenment, and the vigilance of priest and missionary. The locking up in our gaols or penitentiaries of imbeciles, or those who are all but imbecile, cannot be expected to do much towards bringing about a better state of things.

APPEALS FROM SUPREME COURT.

The Judicial Committee of the Privy Council have recently granted leave to appeal from two decisions of the Supreme Court of Canada—one is in the case of Mr. Doutre, Q.C., a suit for professional services, and the other is the case of *McLaren* v. *Caldwell*, 5 L. N. 393.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Feb. 28, 1883.

TORRANCE, J., RAINVILLE, J., JETTE, J.

[From S. C., Beauharnois.

OUIMET *es qual.* v. FONTAINE.

Action against Secretary Treasurer of Municipality —Delivery of books, etc.

A secretary-treasurer of a municipality may be condemned to deliver up the books, papers, and monies of the municipality, and also to pay the penalty for default to make delivery.

TORRANCE, J. This was an action by the superintendent of education, under 40 Vict. c. 22, against the defendant, as having been secretary-treasurer of the municipality of the parish of St. Antoine de Chateauguay, to have him ordered to deliver up to the president of the Commissioners of the municipality, the books, papers, and monies of the municipality, and also to have him condemned to pay a sum of $1,000, being $20 per diem for his defaults in not making such delivery between the 21st October, 1880, and the 9th December, 1880. Judgment went against the defendant for $250 for his defaults, being $5 per diem, and he was ordered to make delivery of the books, papers, and moneys in question. The defendant made a variety of objections to the demand.

1. As an official, he was entitled to notice of action, and no notice, he says, was proved. We find, as the court has already found, notice duly served.

2. He complains of *cumul d'actions*, and denies the right to demand at the same time, the order for delivery of the books, etc., and for the penalty. This has been ruled against him by the court, citing 40 Vict. c. 22, s. 22. We find no error here.

3. He also sets up the engagement with the corporation of St. Antoine Abbé, whereas the demand was by the corporation of St. Antoine de Chateauguay. It was explained and proved that the description of St. Antoine Abbé was a clerical error, and that the corporation which complained was the corporation with which the defendant contracted.

4. The defendant also complained of a *faux* in the resolution by which he was removed from office, alleging that no such resolution was passed or recorded, on the 2nd October, 1880. This was also rightly ruled against him.

5. He also objected that the resolution appointing his successor, did not remove him. Here again he was unsuccessful, as also in the objection that the chairman of the meeting was not duly qualified. We have no hesitation in confirming the judgment.

L. A. Seers and *Lacoste, Globensky & Bisaillon*, for plaintiff.

T. Brossoit and *R. & L. Laflamme*, for defendant.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1882.

MACKAY, TORRANCE, MATHIEU, JJ.

]From S.C., Montreal.

LES COMMISSAIRES D'ECOLE DE ST. HENRI v. DESMARTEAU et al., and LA VILLE DE ST. HENRI, and PLAINTIFFS, parties collocated, and MCLAREN, contesting.

Prescription—Interruption — C.C. 2229 — Ventilation.

A hypothecary creditor may invoke the prescription acquired by his debtor as to municipal taxes, notwithstanding the renunciation of the debtor.

A hypothecary creditor is entitled to ask for a ventilation, where it appears that by taxing a number of lots en bloc, the taxes due on a much larger extent of property were imposed on a portion, the proceeds of which are being distributed.

The inscription in Review was on a judgment of the Superior Court, Montreal, June 30, 1882. In pronouncing judgment the following observations were made by the Judge *a quo*: —

JOHNSON, J. The town of St. Henri is collocated by the 7th item of the report, for municipal taxes, and the School Commissioners for School taxes, by item 5.

The contestant is a large hypothecary creditor, and he contests both of these collocations.

First, as regards the collocation of the Town: it is first of all to be reduced by the amount of arrears of taxes charged for the years 1876, 1877 and 1878, which are prescribed by law. It was said there had been an interruption of this prescription by payments made by Wilson who formerly held the *bailleur du fonds* claim now held by the contestant, but the articles 2187 and 2229 C.C. apply here, and the third party can oppose the prescription, even when the debtor renounces, which, however, as a matter of fact, is not clearly seen here. This is the first point in the case, and it has the effect of deducting at once from the collocation No. 7, the sum of $443.

Then there are two other questions raised. It being admitted by Desève, the Secretary Treasurer, that these taxes were imposed by error, it would seem that the defendants, or the contestant as their creditor, should be allowed to plead such error. It was argued that the valuation roll was final. Without going into that at all, and more particularly without looking at it as regards third parties, a mortgage creditor like the contestant is surely entitled to complain of the fact, if it is a fact, that several distinct properties were taxed *en bloc*, if that fact whether irrevocable or not subjects him to the injustice of making a few lots pay the whole that is due upon a much larger number. He may say, your valuation roll may be very good as far as it goes, but it cannot make me pay in an arbitrary manner. I am entitled to a ventilation to see what proportion of the taxes ought to be borne by the lots sold, and what by those taxed but unsold. Whatever the effect of a valuation roll, surely it cannot have the effect of taxing the property of a third party to pay what neither he nor it owes. It is not necessary however to decide that now. The ventilation is necessary on account of the taxes imposed on what are used as streets. Therefore as to this question of proportion between the subdivision lots sold and those unsold, the Court orders a ventilation.

The third question raised was as to the taxes imposed on the lots of land partly owned by the Government under an expropriation for the enlargement of the canal, and without any regard to the expropriation. This question is decided against the contestant, the facts not being clearly made out.

On the contestation with the School Commissioners, the only question is that of the taxes on the land used for streets, and a ventilation is ordered on that head, the same as in the other collocation for the town. In the one case, therefore, the collocation is reduced by $443, amount prescribed, and in the other by $200,— amount admittedly paid; and in both a ventilation is ordered as to the balance of the collocation.

In Review, the judgment was confirmed.

MACKAY, J. MacLaren contests a judgment of distribution by which the town of St. Henri and the School Commissioners have been awarded money for taxes on lands in St. Henri

There are two contestations upon separate collocations, one in favor of the School Commissioners, the other in favor of the town of St. Henri. MacLaren is not proprietor of the lands, but has a first mortgage on them. The taxes of 1876, 1877 and 1878, he says, are prescribed, and a great portion of the lands taxed are public streets, and not taxable. MacLaren has succeeded in the Court below.

We all think that the judgment complained of, freeing the street surfaces from taxation, cannot be disturbed, and, therefore, the *ventilation* ordered must go on.

Dispute is as to whether the prescription allowed by the Court below (of $443) ought to be held improperly allowed, the parties collocated claiming that there has been interruption, by payments on account, and by virtue of an *arrangement* (December 1879). The payments on account are not proved; credit is given for them by the Secretary Treasurer of St. Henri; he writes down the payments in his book; but, as said by me in another case just disposed of, a plaintiff or creditor cannot make proof for himself, or make interruptions of prescription by merely writing them down in his books. Can the *arrangement* of December, 1879, affect MacLaren, seeing that he is not party to it, and that Wilson could not bind him? Let Wilson be bound as he arranged; but MacLaren is not bound, being a third person not party to the *arrangement*. It is error to say that MacLaren, not owner of the lands but only a mortgage creditor, is to be bound by all or any treaties that his debtors, the land-owners, may make. Yet the counsel for St. Henri insists that "it is evident that he is so bound." Art. 2229 of our Code is formal in favor of MacLaren.

Judgment confirmed.

Longpré & Co., for plaintiffs.
Trenholme & Taylor, for contestant.

COURT OF REVIEW.

MONTREAL, Feb. 28, 1883.

TORRANCE, J., DOHERTY, J., RAINVILLE, J.

CHARTRAND v. THE CORPORATION OF THE COUNTY OF ST. JOHN.

Registrar—Claim for furnishing, heating and cleaning office.

Where a county registrar, who had never applied to the County Council to make provision for heating and cleaning the registry office, brought suit for the cost of such service at the end of 17 years, held that there was no right to recover.

TORRANCE, J. The plaintiff, who is registrar of the County of St. John, claims from the county $935. His declaration states that he has been such registrar for 17 years; that the registry office has always been kept in a building belonging to the defendant, that the defendant was bound to furnish, maintain, heat and clean the said office, but has failed to do so, and this duty has been performed by plaintiff for the defendant, and the value of plaintiff's performance of this duty was at least $50 per annum, and further, plaintiff has paid for defendant the sum of $60 for three desks, for the advantage of defendant, and $25 for seven chairs useful and necessary for the furnishing of said office.

The defendant denies the liability, and succeeded in the Court below.

The plaintiff examined as a witness says that when he bought the furniture it did not enter into his head that he should later claim the amount from defendant, and he never addressed himself to the Council of the County to provide for the heating and the maintenance of the office.

C. S. L. C. cap. 24, s. 26, § § 5, authorizes the Council to pass a by-law for the acquisition, construction and maintenance of an office for the registration of deeds and of a fire-proof vault; but I see no reason to say that the appeal is well founded. The judgment should be confirmed.

Judgment confirmed.

Lacoste, Globensky & Bisaillon, for plaintiff.
Beique & McGoun, for defendant.

SUPERIOR COURT,

MONTREAL, Jan. 25, 1883.

Before RAINVILLE, J.

ERNEST ANDERS v. CHARLES HAGAR.

Mandamus—Inspection of minute book.

The shareholders and creditors of a joint stock company have a right to demand inspection of the minute book of the directors; when it appears by the evidence that said minute book may contain certain entries required to be kept in the company's books under 40 *V., cap.* 43, § 36.

This was a petition for mandamus, served upon the defendant as president of the Pioneer Beet Root Sugar Company. It appeared that the petitioner was a creditor and shareholder of the company, and as such made an application to defendant as president, to be shown the

company's books, under 40 Vic., cap. 43, § 37, Joint Stock Company Act of 1877.

The only book then under the control of the defendant was the minute book, the other books being at Coaticook, the company's place of business. The defendant claimed that he was not bound to show the minute book, it not being enumerated in § 36 of the Act, as one of the books required by law to be kept open for inspection.

Upon examination of the defendant, it appeared that he was not able to state positively that said minute book did not contain certain entries which by law the company was required to keep and exhibit under the Act.

Mandamus granted.

Laflamme, Huntington, Laflamme & Richard, for petitioner.

Wotherspoon, Lafleur & Heneker, for defendant.

SUPERIOR COURT.

MONTREAL, June 15, 1882.

Before MACKAY, J.

LAFON v. LAFON et al.

Aliment—Misconduct of plaintiff.

MACKAY, J. The action is *in forma pauperis* by a poor man, sixty-four years of age and in bad health, against his three sons, and one daughter, and her husband, asking for alimentary pension. It seems that he would be satisfied with two dollars a week to be made up by the defendants together.

Of the defendants the three sons plead that they have always helped the plaintiff as far as possible, that they have always been willing *à tour de rôle* to receive the plaintiff in their homes; yet they offer $1 a month each; they say they are poor, and really not worth $5 a piece their debts paid.

The son-in-law and his wife do not plead. The picture of the parties is this: The plaintiff is made out to have been always what is vulgarly called a hard case. He used to maltreat his first wife and family, and was dreadfully addicted to intemperance. He has been known to thrust his young children into the street, kick his poor wife, blacken her eyes, attempt to strangle her, etc. A witness adds that when she was relieved, by death, he had not a copper to bury her. It is the sad tale so often told of drink's doings. It is not said whether or not he frequented drinking saloons, regularly licensed. It is proved that at present he is unable to work.

It is to be remarked that, however little meritorious in one view plaintiff's case may be, his action may not be bad; he may have right to aliment from defendants.

Now for the defendants, they appear hard working, respectable, struggling people, not rich, but the very contrary. One has a wife and two children, another a wife and four children, another is a widower with two children; since he was eight years of age his father, the plaintiff, never did a thing for him, he swears. Yet plaintiff may have right to *aliments* from him.

The son-in-law, one of the defendants, says that he does not earn a dollar a day regularly, and has a wife and two children; he does not plead, and offers, by his deposition, fifty cents a week to plaintiff. He seems fair.

The judgment of the Court is that L. Beaudry and wife together, do pay fifty cents a week to plaintiff, and the other three defendants each forty cents a week; and arrears are allowed, at these rates, and ordered to be paid from say 1st of February last; the money to be *portable* and payable on the Monday of each week for the future; the arrears payable in fifteen days from date of the present judgment.

On Monday next, one week's pension for the current week to be payable; no costs are allowed.

Adam & Co., for the plaintiff.

Archambault & Co., for defendants.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, February 21, 1883.

Before JETTÉ, J.

IVES v. SEEGMILLER *et al.*, and E. CONTRA.

Proportion of costs taxable against plaintiff on discontinuance of proceedings against one of three defendants, who has severed in his defence from the other two defendants who plead jointly.

The plaintiff's action was directed against three defendants, Seegmiller, Carter and Smith, as having been co-partners under the firm name of Seegmiller, Carter & Co. Seegmiller severed from the other two in his defence, pleading, amongst other things, that before the institution of the action he had ceased to be a member of the firm, and that plaintiff had released him from all liability connected therewith, and had there-

after dealt with the remaining partners who continued the business under the style of Carter, Smith & Co. The defendants Carter and Smith appeared and pleaded jointly to the action.

On 5th December, 1882, towards the close of the Enquête, the plaintiff filed a discontinuance of his proceedings against Seegmiller with costs.

Defendant's counsel thereupon applied to the Prothonotary for taxation of their bill against plaintiff on this discontinuance, claiming that not only the fees on that issue, but all the costs of *enquête* should be included in this taxation. The Prothonotary ruled that only one-third of the costs which had been incurred in the interest of all the defendants should be taxed against the plaintiff on his discontinuance.

On revision, before Mr. Justice Jetté, it was held that *one-half* instead of a third of these common expenses should be taxed against plaintiff, his Honor adopting the doctrine that as between co-defendants, costs are divisible according to their interest, and not *par portion viriles*. (Berriat-Saint-Prix, Procédure, p. 172, and authorities there cited). In the present case there being two issues, the defendant Seegmiller was liable to his co-defendants for one half of the expenses incurred in the common interest, and the plaintiff on discontinuing, was bound to hold him harmless against his co-defendants to that extent.

Wotherspoon, Lafleur & Heneker for plaintiff.
R. A. Ramsay, counsel.
Abbott, Tait & Abbotts for defendants.

COUR DE CIRCUIT.

MONTRÉAL, 15 Janvier 1883.

Coram LORANGER, J.

LA COMPAGNIE D'ASSURANCE MUTUELLE CONTRE LE FEU DU COMTÉ DE JOLIETTE, v. DAME M. L. PROTEAU *et vir.* (1)

Compagnie d'Assurance Mutuelle—Billet de prime—Preuve—Responsabilité des assurés.

Jugé:—Que dans les poursuites intentées par une Compagnie d'Assurance Mutuelle pour répartir des pertes par elle subies, sur les billets de prime des assurés, elle est tenue de prouver que la répartition a été faite par nécessité, pour réparer des pertes actuellement encourues par la Compagnie depuis la signature du billet de prime, et que la répartition a été faite proportionnellement au dit billet. Que le défendeur sera admis à prouver que la répartition a été faite sans nécessité et est frauduleuse.

(1) Le rapport de cette cause a été soumis à l'honorable juge Loranger qui l'a approuvé.

La demanderesse, dans son action, allègue que sur l'application de la défenderesse, elle a effectué avec elle un contrat d'assurance mutuelle, et qu'en conséquence la défenderesse lui a fait un billet de prime pour $41; qu'ainsi elle est devenu un des membres de la dite Compagnie et sujette à ses règlements et aux lois en sa faveur.

Qu'à une assemblée de la dite Compagnie, il fut décidé de liquider la société et qu'un bureau de directeurs fut nommé, lesquels annulèrent toutes les polices, le 28 février 1881, et firent une répartition totale sur tous les billets de prime pour payer les dettes de la Compagnie et le coût de la liquidation.

C'est pour cette répartition que la défenderesse était poursuivie.

Le plaidoyer à l'action fut que la Compagnie n'avait aucun intérêt parce qu'elle avait transporté le montant de ses billets de prime, y compris celui de la défenderesse à une tierce personne, dans un but de spéculation; que la Compagnie n'alléguait pas qu'elle avait fait des pertes suffisantes pour réclamer le total des dits billets, et que de fait la dite répartition avait été faite sans autorité, ni nécessité quelconque. Que la défenderesse ne pouvait être responsable que pour sa quote-part des pertes depuis son contrat d'assurance.

A l'enquête, la demanderesse prouva qu'à une assemblée générale des membres de la Compagnie, tenue les 10 janvier et 9 février 1881, il avait été décidé de dissoudre la Compagnie, et de liquider ses affaires; que les polices avaient été annulées le 28 février suivant, et qu'avis à cet effet avait été donné à ses membres; que deux prélèvements avaient été faits les 5 avril et 9 Décembre 1881, ce dernier pour toute la balance des billets de dépôt, et étant celui en vertu duquel l'action en cette cause avait été intentée. La défenderesse prouva que la balance des billets de dépôt, savoir, $29,000, avait été transportée à un nommé Ayer, de Magog, pour $3,500, et que l'argent réclamé par l'action, devait en conséquence retourner à un tiers.

A l'argument, la défenderesse appuya sur le fait que la Compagnie n'avait pas établi sa réclamation d'une manière satisfaisante, et que pour justifier ses prélèvements, elle était obligée de donner des détails sur les pertes qu'elle avait subies et sur les frais d'administration de son bureau d'affaires.

PER CURIAM :—" La Cour, etc.

" Considérant que la demanderesse, Compagnie d'Assurance Mutuelle incorporée en vertu des dispositions du ch. 68 des S. R. B. C., réclame de la défenderesse, membre de la Compagnie, la somme de $30.13, montant de sa proportion dans le prélèvement fait sur les billets de dépôt, en vertu d'une résolution du bureau de direction du 9 décembre 1881 ;

" Considérant que la défenderesse a plaidé : que le prélèvement réclamé a été fait sans nécessité ; et qu'il n'existait à l'époque de la dite résolution du 9 décembre 1881, et qu'il n'existe encore, aucune créance contre la Compagnie demanderesse ; que la présente action a été intentée par et dans l'intérêt de certains spéculateurs, qui auraient acheté à vil prix les billets de dépôt des membres de la dite Compagnie, et dans le seul but d'encourager la spéculation de ces dites personnes ;

" Considérant que la responsabilité de la défenderesse, comme membre de la dite société est déterminée, et limitée aux pertes encourues pendant la durée de sa police d'assurance, et ce dans la proportion définie par son billet de dépôt ;

" Considérant que dans l'espèce, il n'existe aucune preuve que la demanderesse fut à l'époque du dit prélèvement, dans la nécessité de faire ce prélèvement ; qu'au contraire, il est en preuve que le produit de la vente des dits billets de dépôt a été distribué entre les créanciers de la dite demanderesse ; que rien ne fait voir que depuis ce paiement aucune demande ou réclamation ait été produite de la part d'aucun créancier de cette dernière ;

" Considérant que la demanderesse n'a fait aucune preuve satisfaisante de l'item $19,204 de l'exhibit A, savoir, l'état des affaires de la dite société à l'époque du dit prélèvement ; que déduction faite de ce montant, il se trouverait que le prélèvement du 5 avril précédent était plus que suffisant pour payer et acquitter toutes les dettes de la Compagnie demanderesse ;

" Considérant qu'il n'est pas prouvé qu'à l'époque de l'institution de l'action en cette cause, il existait contre la demanderesse d'autres réclamations que celles qui avaient été couvertes par le prélèvement du 5 avril 1881 ;

" Considérant que l'action de la dite demanderesse est mal fondée, la Cour déboute la dite action avec dépens distraits à MM. Barnard, Beauchamp & Doucet, avocats de la défenderesse.

Greenshields, Busteed & Guerin, pour la demanderesse.

Barnard, Beauchamp & Doucet, pour la défenderesse.

(J. J. B.)

RECENT ONTARIO DECISIONS.

Criminal Law—Selection of Jurors—32-33 Vict. cap. 29, Sec. 44 (Can.)—By 32-33 Vict. c. 29, s. 44 (Can.,) every person qualified and summoned to serve as a juror in criminal cases according to the law in any province, is declared to be qualified to serve in such province, whether such laws were passed before the B. N. A. Act or after it, subject to and in so far as such laws are not inconsistent with any Act of the Parliament of Canada. By 42 Vict. cap. 14 (O.) and 44 Vict. cap. 6 (O.) the mode of selecting jurors in all cases formerly regulated by 26 Vict. c. 44, was changed. The jury was selected according to the Ontario Statutes, and the prisoner challenged the array, to which the Crown demurred, and judgment was given for the Crown. The prisoner was found guilty and sentenced, and he then brought error. *Held* (*per* Hagarty, C.J., that the Dominion Statute was not *ultra vires* by reason of its adopting and applying the laws of Ontario as to jurors to criminal procedure. (Queen's Bench Division, Dec. 9, 1882.)—*Reg.* v. *O'Rourke*.

RECENT DECISIONS, P.Q.

Contrainte par corps.—La *contrainte par corps* en matière de dommages-intérêts résultant d'*injures personnelles*, peut être obtenue postérieurement au jugement accordant tels dommages, bien qu'elle n'ait pas été demandée par les conclusions de la déclaration.—*Ouellette* v. *Vallières*, (C.C.) 26 L. C. J. 391.

2. En pareil cas, la contrainte peut être accordée pour moins de 200 livres ancien cours ; elle peut l'être pour tous dommages adjugés quel qu'en soit le montant, et dans le cas actuel, elle sera accordée pour la somme de $25.—*Ib.*

Insurance (Life).— Although a policy of life insurance issued by a Company having its head office in New York, but licensed to do business in Canada, and issued and payable in New York, on the life of a person resident in Montreal, and

on an application made through the Company's agent in Montreal, is a Canadian policy within the meaning of the Dominion Statute 40 Vict. ch. 42, the contract is, nevertheless, a New York one, and payment of the amount covered by the policy must be demanded there before the Company can be considered in default. Nevertheless, in case of the insolvency of the company the assured would have a right to rank with Canadian policyholders on the special deposit made under said Statute.—*The Equitable Life Assurance Co. of the United States & Perrault es qual.*, (Q.B.) 26 L.C.J. 382.

2. Although the assured died in Montreal, payment under judgment of the Superior Court of New York to the administrator of the assured's estate in New York was a complete bar to any suit for the recovery of the amount of the policy in Montreal.—*Ib.*

ASSUMED NAME OF AUTHOR NOT A TRADE MARK.

For the first time we find "Mark Twain" engaged in serious business, namely, a lawsuit. He sued Belford, Clark & Co., of Chicago, to restrain them from publishing a book written by another person under the assumed name of "Mark Twain." The decision made by Judge Blodgett, in the United States Circuit Court, for the Northern District of Illinois, is given in the *Chicago Legal News*, of January 20th, and sustains a demurrer to the bill. The court, after showing that no question of infringement of copyright arises under the pleadings, remarks: "The position assumed by the complainant in this bill is, that he has the exclusive right to the use of the *nom de plume*, or trade-mark of 'Mark Twain,' assumed by him, and that defendants can be enjoined by a court of equity from using such name without the complainant's consent or license. It does not seem to me that an author or writer has or can acquire any better or higher right in a *nom de plume*, or assumed name, than he has in his Christian or baptismal name. When a person enters the field of authorship he can secure to himself the exclusive right to his writings by a copyright, under the laws of the United States. If he publishes anything of which he is the author or compiler, either under his own proper name or an assumed name, without protecting it by copyright, it becomes public property, and any person who chooses to do so has the right to republish it, and to state the name of the author in such form in the book, either upon the title page or otherwise, as to show who was the writer or author thereof. * * * The bill rests then upon the single proposition that the complainant is entitled to invoke the aid of this court to prevent the defendants from using the complainant's assumed name of 'Mark Twain' in connection with the publication of sketches and writings which complainant has heretofore published under that name, and which have not been copyrighted by him. That he could not have done this if these sketches had been published under complainant's proper name is clear from the authorities I have cited, but the complainant seems to assume that he has acquired a right to the protection of his writings under his assumed name as a trade name or trade-mark. This is the first attempt which has ever come under my notice, to protect a writer's exclusive right to literary property under the law applicable to trade-marks. Literary property is the right which the author or publisher of a literary work has to prevent its multiplication by copies or duplication, and is from its very nature an incorporeal right. William Cobbett could have no greater right to protect a literary production, which he gave to the world under the fictitious name of 'Peter Porcupine,' than that which was published under his own proper name. The invention of a *nom de plume* gives the writer no increase of rights over another who uses his own name. Trade-marks are the means by which the manufacturers of vendible merchandise designate or state to the public the quality of such goods, and the fact that they are the manufacturers of them. And one person may have several trade-marks designating different kinds of goods or different qualities of the same kind; but an author cannot, by the adoption of a *nom de plume* be allowed to defeat the well-settled rule of the common law in force in this country, that the 'publication of a literary work without copyright is a dedication to the public, after which any one may republish it.' No pseudonym, however ingenious, novel or quaint, can give an author any more rights than he would have under his own name. The policy of the law in this country has been settled too long to be now considered doubtful; that the

publication of literary matter without protection by copyright, has dedicated such matter to the public, and the public are entitled to use it in such form as they may thereafter choose, and to quote, compile or publish it as the writings of its author. That is, any person who chooses to do so can republish any uncopyrighted literary production, and give the name of the author either upon the title page or otherwise, as best suits the interest or taste of the person so republishing.—*Albany Law Journal.*

GENERAL NOTES.

Judah P. Benjamin, Q.C., has retired from practice at the English bar. The cause is said to be declining health. Mr. Benjamin has enjoyed a large and successful practice, almost since his admission to the English bar in 1866, and he is believed to have realized a considerable fortune.

A new terror is added to the anxieties of law examiners. Herr Keysner, a Supreme Court councillor at Berlin, lately received a package which, on examination, was found to contain an infernal machine. This, it is stated, was sent to him by a law student irritated at the severity of his examination.

In reply to a question in the House of Commons (Feb. 16), Sir John A. Macdonald stated that the work of consolidating the Statutes affecting Criminal law is not sufficiently advanced to enable it to be submitted for the consideration of Parliament during the present session. A report of progress has been made.

No one, we imagine, ever supposed that the old Courts at Westminster possessed "artistic merit." Nevertheless, among the things recently offered for sale there were materials of great beauty. It would be difficult to find wainscoting of a more solid and unblemished character than that of the Court of Exchequer, and it is to be hoped that it has fallen into good hands. The relic hunter was, however, placed at a considerable disadvantage. He could not buy a set of bookshelves without also investing in a jury-box, witness box and other pieces of furniture such as are not in request every day in private houses. It is almost melancholy to think of the possible destination of some of these classic planks.—*Law Times.*

The Longmans have just issued a thick volume containing passages from a manuscript of Lord Bacon, with parallel passages from Shakespeare's plays. The Bacon manuscript is in the Harleian collection. It was apparently drawn up as a sort of commonplace book for use in the great Chancellor's writings, but none of the quotations or phrases are to be found in his acknowledged works, while all are in Shakespeare. On the whole, this book is the most remarkable attempt yet made to prove that "Baconian theory" of Shakespeare with which both American and English readers have been acquainted through the books of Miss Delia Bacon, Mr. Nathaniel Holmes, and Mr. George Wilkes. The title of the manuscript is—"Progress of Formularies and Elegancies."

Portuguese deputies have to swear on the Holy Gospels to be faithful to the King and to maintain the Catholic Apostolic and Roman religion. A republican deputy during the present session has introduced a bill to abolish the religious oath. He would replace the Holy Gospels by an urn filled with the electoral returns, and proposes that every deputy shall stretch his hand over the urn, which would represent the national sovereignty, and promise on his honor to devote all his powers to the preparation of just and wise laws, which would tend to establish on solid bases the rights of the citizen and the greatness and glory of the country.

The Jeffersonville correspondence of the *Courier-Journal* says: "Gilligan, Clegg & Anthony are arranging to bring suit against the Jeffersonville Railway for $10,000 for a peculiar damage they claim resulted to their plaintiffs. John Wyatt and a Louisville detective went to the house of two ex-Kentuckians, at a point near Henryville, Clark County, one night, more than a year ago. They put the men under arrest for an alleged crime committed in Kentucky, and took them to the railroad station at Henryville. Captain Clegg, who was attorney for the accused party, notified the conductor, Will Conner, that the officers were kidnapping the men and had no warrant to arrest them. The conductor said he didn't care, if they had tickets he must take them. The attorneys think they gave the Company proper notice as a common carrier not to assist the officers in kidnapping, and they want to see if there is any liability in such a case. The men were afterward acquitted by a Kentucky Court."

Amusing "definitions" are cropping out on every hand. In *Moir's Estate*, Eng. Ch. Div., Nov. 3, 1882, the testator directed that "all the household goods, furniture, pictures, prints, books, china, articles of *vertu*, and all my plate, jewels, and all other things in and about the said mansion house," should be "annexed to the same as heirlooms to be enjoyed by the person or persons for the time being beneficially entitled to the said mansion house under the limitations hereinbefore contained." He died possessed, *inter alia*, of a cellar of wines, and two carriage horses and three carriages and harness. Kay, J., held that the property in question, being consumable, did not pass as "heirlooms."——In the *Matter of Hastings*, Philadelphia Quarter Sessions, Nov. 27, 1882, (Leg. Int., Dec. 1, 1882), it was held that a "garden," where spirituous drinks were sold, and there was singing, dancing and boxing on the stage, "by the best artists," although no entrance fee was charged, and there was no drop-curtain, scenery, or footlights, was a "place of amusement," within the act exacting licenses for "any theatre, circus, museum or other place of amusement." The Court observed: "Why it should be called a garden at all does not appear, since it contains neither trees, flowers, plants, grass nor botanical specimens of any kind, nor in fact anything whatsoever suggestive of horticulture. It must be therefore by some figure of speech that it is called a garden, just as one speaks of any place of great enjoyment as a paradise. Perhaps this is a paradise to those accustomedto resort there."—*Albany Law Journal.*