The Legal News.

VOL. VIII. MARCH 28, 1885. No. 13.

In rendering judgment in the recent case of *Goldring & La Banque d'Hochelaga*, in the Court of Queen's Bench, attention was directed to the fact that since the decision in *Molson & Carter* (6 L. N. 189), no step has been taken by the Provincial Legislature to remedy the defect which was discovered to exist in the Code of Procedure. In *Molson & Carter* it was held, more than three years ago, that inasmuch as the Code of Procedure failed to attach any penalty whatever for not filing the statement required by Art. 766, the penalty provided by Art. 2274 of the Civil Code and by ch. 87 of the Consolidated Statutes of Lower Canada, sec. 12, s.s. 2, cannot be enforced. This decision has been confirmed by the Privy Council. It was remarked by the Chief Justice and Mr. Justice Ramsay that although numerous amendments to the Code of Procedure have been introduced at each session, no effort whatever has been made to remedy the defect then discovered. The inference is that the Legislature have acquiesced in the law as it was then stated, although the judges unanimously regretted that such a defect should have been permitted to exist.

The *Albany Law Journal* says:—"There is one species of Anglo-mania that ought to be encouraged in this country, and that is the imitation of the English dealing with criminals and their administration of criminal law. As we learn from the London *Law Times*, at the recent Lewes Assizes, Lord Coleridge made some observations as to the general diminution in crime in England and Wales, as shown not merely at these assizes, but by the returns for the last ten or twelve years throughout the country. 'When I recollect,' said his lordship, 'what assizes were when I was a young man, and observe that notwithstanding the more frequent gaol deliveries, the actual number of persons in the prisons of England has for the last ten or twelve years steadily declined, it is a matter on which we may heartily congratulate ourselves. We must not make too much of it, as it may have arisen from a concurrence of causes which may not be permanent; but for the present, at all events, it is satisfactory to find that upon returns which cannot deceive, and which include the whole of the prisoners in England and Wales, there has been a steady diminution in crime for the last ten or twelve years.' Mr. Justice Denman also, at Derby, said that judges in many parts of the country had noticed that crime was diminishing in England. So far as the Midland Circuit was concerned, he was happy to give the strongest confirmation to that view. If he might judge from what had happened in every one of the counties in which he had been holding assizes during the last month or so, it was certainly the case that the fewness and mildness of offences, as compared with other occasions within his memory, gave every reason for congratulation."

THE LAW OF EVIDENCE.

The following communication from Mr. Justice Ramsay appears in the *Gazette*:—

SIR,—In your issue of this morning you give the result of the division on Mr. Cameron's bill, "An act further to amend the law of evidence in criminal cases," with an amendment, proposed by the author of the bill, to the effect that "in case the accused does not tender himself as a witness, no observation shall be allowed to be made by the prosecutor or prosecuting counsel upon that fact to the prejudice of the accused." The bill evidently recommends itself to a certain class of minds, because it is a novelty. It is against the whole experience of the world. We can scarcely hope to rescue "remote antiquity" "from the ravages of modern ingenuity," and still less to induce abstract theorists to follow a general argument; but it is worthy of note that Mr. Cameron, by his amendment, has admitted a great mischief that would arise from his reform, and he suggests a remedy to the inconvenience which is unpractical in the extreme. How is it possible for the prosecution to be prevented from intimating to the jury what the law is on such a point? If the prosecution

did tell the jury how the law stood, the court could hardly tell the jury that the legislature had been too wise to pass Mr. Cameron's bill, and that it was not law. Again, suppose the defence, presuming on the ignorance of the jury, said the prisoner's mouth was shut, is silence still to be imposed on the prosecution? And is the court to appear to acquiesce in the mis-statement? Besides, the jury might know the law, and then the silence of the prosecution and of the court wonld not get the prisoner out of the difficulty Mr. Cameron's reform had created for him.

The strength of the reasons urged in support of the bill may be gathered from one advanced on the previous debate. It was said the principle of the law was admitted already in cases of assault, and therefore it should not be refused in murder. It must strike every one who thinks, that the greater the forfeit the greater will be the temptation to commit perjury, and therefore this reason is fallacious. In addition to this, it is hardly compatible with the argument used when the law was changed before as regards assault. Then we were told that the change could do no great harm in cases of assault, which were little more than civil proceedings.

Your obedient servant,

T. K. RAMSAY.

Montreal, March 12, 1885.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, March 4, 1885.

Before RAMSAY, J.

REGINA V. TASSÉ.

Libel—Criminal Prosecution—Evidence—Guilty knowledge—Journalist—Privilege.

RAMSAY, J. The indictment is drawn under Section 2 of the act respecting the crime of libel (37 Vic., c. 38),—that is to say that the libel was published by defendant, knowing the same to be false.

The defendant pleaded the general issue and a special plea of justification.

The prosecution closed its evidence and the defendant opposed the case going to the jury for two reasons: first, that the indictment was under the second section of the act, and that there was no evidence of guilty knowledge; second, that the communication was privileged on the face of it, and no evidence of express malice to destroy the privilege, and that as privilege was matter of law, the jury should be charged to acquit.

With regard to the first of these points, it seems to me to be a little premature to bring it up at this moment, and perhaps it may never arise in this case. It will be observed that the alleged libel consists in an appreciation of facts with which the writer, whoever he was, pretended to be familiar, and consequently, it can hardly be said there is nothing in the way of evidence to show that the writer knew the nature of his appreciation, that is whether false or true. I am not however prepared to say with the prosecution, that evidence of malice sustains the allegation of guilty knowledge. The converse is true; guilty knowledge implies malice. But in any case I am not inclined to think that, even if guilty knowledge were not proved, it would be the duty of the Court to instruct the jury that the defendant was entitled to an acquittal. 1 Taylor, § 214.

On the second point I am against the defendant. Privilege justifies the publication of incriminatory matter which, under other circumstances, would be slanderous or libellous; but the fact that a person occupies a public position does not confer on his neighbour the privilege of making an injurious attack upon his character. Nor can it be contended that the writer in a newspaper stands on a more favorable footing than any one else. The journalist is only a self-constituted critic, and the difference between him and other critics is, that he should be held to a greater degree of responsibility, because his opportunities to do injury are greater.

Had there been a privilege such as that contended for, the 6 and 7 Vic., c. 96, would have been unnecessary. However, that statute did not extend the law of privileged communication. It created a new defence to libel on certain conditions. It permitted the defendant to plead, together with or without the plea of "not guilty," the special plea that the matter complained of was true, and that it was for the public benefit that the matters

charged should be published. Except in so far the law of libel remains unchanged, and the truth could not be enquired of and could consequently be no justification or even a beginning to a justification.

In this case the special plea has been put in and it raises two questions of fact—namely that the statement complained of is true and that it was published for the public benefit. These two questions of fact the jury, and not the court, must decide.

Geoffrion, Q.C., for the prosecution.

Kerr, Q.C., *Church, Q.C.*, and *Lacoste, Q.C.*, for the defendant.

COUR DE CIRCUIT.

MONTRÉAL, 27 février 1885.

Coram DOHERTY, J.

BRUNELLE v. BROSSEAU.

Termes—Election municipale—Contestation—Présentation de la requête—Délai.

Jugé:—Que dans le District de Montréal, depuis le statut de Québec, 46 Vict. chap. 26, sections 1 et 2, il n'y a plus de termes pour la Cour de Circuit, et que, par conséquent, une requête en contestation d'une élection municipale, qui d'après l'article 351 du Code municipal doit être présenté durant le terme de la cour qui suit le jour de la nomination, peut être reçue après ce délai.

Le 12 janvier 1885, une élection a eu lieu dans la municipalité de la paroisse de Chambly, et le défendeur Brosseau a été élu conseiller municipal.

Le 11 février dernier, le requérant Brunelle fit signifier au défendeur une requête demandant la nullité de cette élection, et le 17 du même mois, il la présenta au tribunal.

Le défendeur à l'argument souleva la question préliminaire suivante :

Il prétendit que d'après l'article 351 du Code municipal, cette requête aurait du être présenté pendant le terme du mois de janvier ou le plus tard le premier jour du terme de février.

Cet article se lit comme suit :

"Nulle telle requête ne peut être présentée "ni reçue, après la clôture du premier terme "de la Cour qui suit le jour auquel la nomi- "nation contestée a été faite.

"Néanmoins si la nomination a été faite "dans les quinze jours précédant tel premier "terme, la requête peut être présentée le pre- "mier jour du second terme."

L'intimé cita à l'appui de son opinion la cause de *Lavoie* v. *Hamelin*, 5 Legal News, p. 94.

Le requérant a soutenu, que d'après le ch 26, Sect. 1 et 2, 46 Vict., il n'y a plus de termes pour le District de Montréal. Que tous les jours juridiques sont des jours de terme, et que, par conséquent, les jours où la Cour siège ne constituent pas un terme de cette Cour.

La Cour donna gain de cause au requérant, reçut la requête et en ordonna la preuve.

Pelletier & Jodoin, avocats du requérant.

Préfontaine & Lafontaine, avocats de l'intimé.

(J.J.B.)

SUPERIOR COURT—MONTREAL.*

Chemin de fer—Constructeur—Droit de rétention — Privilége.— Jugé: 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 privilége que lui accorde l'article 2013 C. C. sur la plus-value qu'il a donné aux immeubles.—*La Banque d'Hochelaga* v. *The Montreal, Portland and Boston Ry. Co.*, et *Raymond*, opposant.

Saisie-revendication — Gardien volontaire — Possession—Enlèvement par le défendeur—Intervention—Frais. Jugé: 1o. 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 des justes raisons de craindre que les biens sont en danger de disparaître, et que le défendeur refuse de les lui remettre.

2o. Qu'un tiers qui intervient dans cette saisie-revendication pour réclamer 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.

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* The above cases will appear in full in the M. L. R., 1 S. C.

Dupaul v. *Wheeler*, et *Wheeler*, intervenant. (En révision).

Compagnie de chemin de fer—Constructeur—Possession—Droit des propriétaires des terres expropriées—Acte des chemins de fer de Québec. Jugé : 1o. 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.

2o. Que lorsqu'ils ont volontairement laissé la compagnie prendre possession de leur terrain et y construire un chemin de fer, ils ne peuvent plus en réclamer la propriété et s'en faire restituer la possession, mais ils peuvent en justice réclamer l'indemnité représentant leur propriété.

3o. 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.

4. Que même dans le cas où les propriétaires ou l'entrepreneur auraient le droit de rentrer en possession des dits terrains, ils ne pourraient le faire sans avoir offert à la compagnie de lui laisser enlever le chemin de fer construit sur ces terrains par elle ou ses créanciers ou sans offrir d'en payer la valeur.—*La Banque d'Hochelaga* v. *The Montreal, Portland & Boston Railway Co.*. (En révision).

Vente à l'encan—Action hypothécaire—Priviléges—Impenses.—Jugé : 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, réclame un privilége pour ses impenses.—*Leprohon* v. *DeBellefeuille*, et *Prudhomme*, opposant.

Qualité pour poursuivre—Police d'assurance—Nullités résultant du non-envoi de la police—Application de l'article 19, *C.P.C.—Jugé :* 1o. 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 eût-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.

2° 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. *Giles es qual.* v. *Jacques.*

Intervention—Séparation de biens obtenue en France—Déclaration requise de la femme séparée de biens.—Jugé : 1o. 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.

2o. Qu'une séparation de biens entre mari et femme, obtenue devant les tribunaux de France, vaut ici, comme si elle eût été obtenue devant nos tribunaux.—*Goudron* v. *Lemonier*, et *Guyot*, Intervenante.

Capias—Saisie-arrêt avant jugement—Contestation séparée—Affidavit—Renvois et râtures—Recel et soustraction frauduleux—Jugé : 1o. 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.

2o. 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.

3o. 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 employé à payer une créance privilégiée.—*St. Michel* v. *Vidler*.

Quebec License Act of 1878 (41 *Vic., c.* 3)—*Action under Sections* 95, 96, 97—*Notice to Tavern-keeper—Damages.—Held,*—That in an 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.—*Cayionnetie* v. *Girard*.

Carrier—Railway—Conditions of Bill of Lading—C. C. 1676.—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 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 tha the loss was caused by the fault of the defendant or of those for whom it was responsible *Dionne* v. *The Canadian Pacific Railway Co.*

Femme séparée de biens et marchande publique—Sureté collatérale— Cautionnement— Endossement.—Jugé :-Qu'une femme séparée de biens et marchande publique n'a pas le droit d'ent dosser un billet reçue dans son commerce, et de le transporter, comme sûreté 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.—*Martin* v. *Guyot.*

Preuve testimoniale— Société Commerciale—Echéance—Intérêts.—Jugé : 1o. 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.

2o. 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. — *Rowan* v. *Massé.*

Biens d'un failli— Vente—Résolution de vente—Folle enchère— Compensation — Jugé :—Que lorsque les biens d'un failli sont vendus sur une soumission, et que l'acheteur refuse, sans raison, d'en payer le prix et d'en recevoir la livraison, la vente est résolue de plein droit après la mise en demeure de l'acheteur, et le vendeur peut, après les avis nécessaires, faire revendre les effets à la folle enchère de l'acheteur et à ses risques et périls. Dans ce cas, la différence du produit de la vente compensera ce que ce dernier aura payé comptant.—*Desmarais* v. *Picken.*

Bref de sommation —Amendement—Substitution du défendeur.—Jugé :—Que l'on ne peut par amendement à un bref de sommation substituer un défendeur non décrit au dit bref à un de ceux qui s'y trouvent déjà.—*Chisholm* v. *Langlois.*

Désistement—Plaidoyer—Frais.—Jugé :—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 d'eux personnellement, le défendeur pourra sur motion obtenir la permission de plaider *de novo*, et l'instance sera suspendu jusqu'à ce que le demandeur ait payé les frais taxés sur le désistement.—*Ib.*

Dette alimentaire— Epiceries—Insaisissabilité—Legs à terme—Droit acquis.—Jugé :—1o. 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.

2o. 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. (C. C. art. 902).—*Prescott* v. *Thibeault.*

Privilege—C. C. 2006—Commercial Traveller.—Held:—That the word "clerk," in Article 2006 of the Civil Code, includes a commercial traveller whose services were also required in the store of his employer containing the goods on which the privilege is claimed.—*Harris* v. *Hyneman.*

COURT OF QUEEN'S BENCH.

MONTREAL, March 20, 1885.

Before DORION, C. J., MONK, TESSIER, CROSS, and BABY, JJ.

Ex parte DAME KATE FRANCES MONJO, Petitioner, Rev. FATHER LOUAGE, Respondent, and DOMINGO M. MONJO, Intervenant.

Habeas Corpus ad subjiciendum—Security for Costs.

On an application for a writ of *habeas corpus ad subjiciendum*, on behalf of Kate Frances Monjo, of the city of New York, to obtain possession of her three children, alleged to be in the custody of the respondent, in the district of Montreal, the father, Domingo M. Monjo, appeared and presented a motion that the petitioner, being a non-resident, be held to give security for costs.

The Court said it was not the practice to allow costs in matters of *habeas corpus*, and the application for security of costs would not be granted.

Motion rejected without costs.

Trudel, Charbonneau & Lamothe for Intervenant.

Kerr, Carter & Goldstein for Petitioner.

APPEAL REGISTER—MONTREAL.

March 16.

Whitfield & Merchants' Bank of Canada.—Heard on motion for appeal to Privy Council.

Picard & British America Assurance Co.—Heard on motion for leave to appeal from interlocutory judgment.

French & McGee, & Rogers, es qual.—Petition to take up *instance* granted.

Ex parte Kate Frances Monjo, Petitioner for habeas corpus. Petition for habeas corpus returned, and proceedings continued to 26th inst.

The Quebec Central R.R. Co. & The Ontario Car Co.—Heard on petition to have case heard by privilege.

Pillow et al. & Recorder's Court.—Heard on motion for leave to appeal to Privy Council.

Rolland & Cassidy.—Motion for substitution granted.

Roy & G.T.R. Co.—Part heard on merits.

March 17.

The Quebec Central R. Co. & Ontario Car Co.—Motion for privilege rejected.

Bowen et al. & Ontario Car Co.—Same judgment.

Whitehead v. *Kieffer.*—Motion for rule against prothonotary granted.

Roy & G.T.R. Co.—On merits; hearing concluded.—C.A.V.

Darling & Ryan.—Heard on merits; C.A.V.

Starnes & Molson, & E Contra.—Part heard on merits.

March 18.

Duval & Prieur.—Motion to unite causes granted.

Elie & Prieur.—Same judgment.

Leroux & Prieur.—Same judgment.

Senécal & Hibbard.—Motion for distraction granted by consent as of 9th Dec., 1884.

Starnes & Molson, & E Contra.—Hearing concluded.—C.A.V.

Western Assurance Co. & Scanlan.—Heard on merits; C.A.V.

Paradis & Molsons Bank & Compagnie d'Assurance Mutuelle de Joliette.—Heard on merits *ex parte*; C.A.V.

March 19.

Whitehead & Kieffer.—Rule returned.

The Queen & Provost.—Conviction maintained.

Berard Lepine & Corporation de Berthier.—Heard on merits; C.A.V.

Pinsonault & Molleur.—Heard on merits C.A.V.

Molleur & Pinsonault.—Do.

March 20.

Bougie & Symons.—Heard on merits, C.A.V.

Corporation de Berthier & Guevremont.—Heard on merits; C.A.V.

Sundberg & Wilder.—Heard on merits; C.A.V.

March 21.

Wadsworth & McCord.—Three motions, rayé.

Whitfield & Merchants Bank of Canada.—Motion for appeal to Privy Council rejected.

Pillow et al. & City of Montreal.—Motion for appeal to Privy Council rejected.

Picard & British America Assurance Co.—Motion for appeal from interlocutory judgment rejected.

La Société de Construction d'Hochelaga & La Société de Construction Metropolitaine & Gauthier.—Confirmed.

St. Lawrence Sugar Refining Co. & Campbell.—Reversed.

Goldring & La Banque d'Hochelaga.—Reversed.

Thibaudeau & Mills.—Confirmed.

Curé et al. de Varennes & Choquet.—Reversed; Dorion, C.J., and Cross, J., diss.

Raymond Lajeunesse & Latraverse.—Reversed; judgment for $2,800, with interest at 5 per cent., from service of summons.

Salvas & Brien Durocher.—Judgment reformed *quoad* imprisonment.

Credit Foncier & Thornton.—Appeal dismissed.

March 23.

Whitehead & White.—Motion for dismissal of appeal taken *de plano*, granted. Motion of appellant for leave to appeal as from interlocutory judgment, granted.

Wheeler & Black.—Motion for dismissal of appeal granted as to costs only, the factum of appellant being filed.

The Queen & Exchange Bank.—(Two cases)—Heard on merits; C.A.V.

March 24.

Bury & Samuels.—Reversed. Ramsay and Baby, JJ., diss.

Wylie & City of Montreal.—Confirmed. Monk and Cross, JJ., diss.

Les Commissaires d'Ecole & Les Soeurs de la Congregation.—Confirmed. Tessier, J., diss.

Les Soeurs de l'Asile de Providence & Le Maire et al. de Terrebonne.—Reversed. Tessier and Cross, JJ., diss.

Robinson & McMillan.—Confirmed. Monk, J., diss.

The Montreal, Portland, & Boston Ry. Co. & Hatton.—Judgment reformed *quoad* penalty; costs against appellant.

Guilbault & McConville.—Confirmed.

Whitehead & Kieffer.—Motion for delay granted.

Wadsworth & McCord.—Part heard on merits.

March 26.

Fulton & Creighton.—Motion for leave to appeal from interlocutory judgment rejected.

Gillespie & Stephens.—Motion for leave to appeal, granted.

Hutchinson & Ingram.—Motion to dismiss appeal granted for costs only.

Copeland & Leclaire.—Heard on motion for leave to print part only of the evidence; C.A.V.

Wadsworth & McCord. — Hearing concluded; C.A.V.

Grand Trunk & Meegan.—Heard on merits; C.A.V.

Ex parte Kate Frances Monjo.—Part heard on petition for *habeas corpus ad subjiciendum.*

March 27.

Vallières & Ryan.—Judgment confirmed, Baby, J., dissenting.

Reilly et al. & Hannan et al.—Judgment confirmed, Ramsay, J., dissenting.

Paradis & Molsons Bank, & Cie. d'Assurance Mutuelle de Joliette.—Reversed.

Almour & Henderson; Bouchard & Lajoie; Société de Construction & Galt; McVeigh & Millar; Mousseau & Fraser Institute; Perimées.—Appeals dismissed.

Ex parte Monjo.—Argument on petition concluded; ordered that the two sons remain in the possession of the father and that the little girl be placed in that of the mother, petitioner.

Copeland & Leclaire.—Motion rejected.

The Court adjourned to April 2 for judgments.

RECENT U. S. DECISIONS.

Guarantee Insurance.—Where an employer discovers a shortage in the accounts of his agent, it is his duty to notify the sureties of the agent of such shortage; and if he fails to

do so and continues to entrust business to the agent, the sureties are not liable for any money collected by the agent after the discovery. The sureties are discharged, however, only from the time such discovery is made by the employer, and not from the time he might with due diligence have discovered the shortage. The employer is not bound to use diligence to make the discovery, but must report it as soon as made.—*Connecticut Mutual Life Ins. Co.* v. *Scott et al.;* (Supreme Court of Kentucky, January, 1884).

Letters— Mailing— Presumptions.—The fact of mailing a letter properly addressed, with postage prepaid, creates no legal presumption that it was duly received, but it is merely a fact, which is to be weighed, along with other evidence, in determining the question, and to which no more presumption attaches than to any other fact.—*Sullivan* v. *Kuykendall;* Kentucky Court of Appeals.—17 Chicago Leg. News, 218.

Telegraph Company—Conditions.—The printed blank forms in common use by a telegraph company contained the following condition: "No claim for damages shall be valid unless presented in writing within thirty days after sending the message": and beneath the blank space for message and place of signature was printed in large type: "Read the notice and agreement at the top." *Held,* that one who filled up, and signed, a message upon such blank form was presumed to have had notice of such condition, and was bound by it as a part of the contract with the company. *Held* also, that the same was a reasonable stipulation, and not contrary to public policy.—(*Cole* v. *West. Union Tel. Co.*) Sup. Ct., Minn.; N. W. Rep., Feb. 28.

GENERAL NOTES.

"George Eliot" relates the following characteristic anecdote of Carlyle:—"Carlyle was very angry with Emerson for not believing in a devil, and to convert him took him amongst all the horrors of London—the gin-shops, etc.—and finally *to the House of Commons,* plying him at every turn with the question, 'Do you believe in a devil noo?'"

The Paris correspondent of the *Daily News* says that at the Bourges Assizes, a youth, aged 13, named Wentzeis, apprentice to a confectioner, was tried for murdering his master. The prisoner cynically admitted that the idea of the murder had suggested itself to his mind while reading Emile Richebourg's novel, "La Belle Julie," from which he gathered that nothing more could be done to an assassin under 14 than to confine him in a House of Correction till 21. His calculation was correct. On a verdict of guilty being rendered, the judges were bound by the Code to make an order to that effect.

The Supreme Court of Michigan in the case of *Bacon* v. *R. R. Co.* (21 N. W. Rep. 324) decided that an action can be maintained against a corporation for libel; and that where a corporation, by its superintendent, prepares and sends a "discharge list," assigning a criminal act as a reason for the discharge of an employee, to its agents, and it reaches its destination and is read by such agents, this is sufficient publication to support an action for libel. The question whether such a communication should be considered as privileged was not raised in the trial court, and was, therefore, not passed upon in the decision.

In *Swinburn* v. *Ainslie,* in the Chancery Division of the English Court (33 Weekly Reporter, 195) severance of trees from land by the wind was under consideration. Testator made his will in October, 1873, devising his real property. In December and January following, violent storms blew down a large number of trees on the property, and in February testator died without having taken any steps in regard to them. Held, that those which were substantially blown down had become personalty. In applying the test as to what should be deemed severed, Pearson, J., said: "A tree is substantially blown down if the tree is so far blown down that the tree cannot grow as a tree any longer in the ordinary sense in which a tree grows. A tree which is blown down within three feet of the ground cannot grow as a tree ordinarily grows, because a great number of the roots must be out of the ground. A tree that is simply lifted, and is no longer in the perpendicular, can grow as a tree."

In connection with the recent decision of our Supreme Court holding Franklin Pierce to be guilty of manslaughter in causing the death of a patient by gross and wilful negligence although there was no evil intent, a recent German case is of interest. A physician was held liable for negligence under these circumstances: A servant, who received a wound in the chest in April last, died from *septicœmia* under the care of this doctor, who, despising antiseptic dressings, treated his patient according to ancient usages. The Court held that every medical practitioner should keep himself informed on the accomplished progress of science, and have an exact knowledge of modern systems of treatment. If these had been employed the patient's life might have been saved. Hence the liability for negligence. The Court of Appeals sustained the judgment.—*Boston Law Record.*

"George Eliot" went to the Tichborne trial, and gives her impressions in a letter to a friend:—"We have been to hear Coleridge addressing the jury on the Tichborne trial—a very interesting occasion to me. He is a marvellous speaker among Englishmen; has an exquisitely melodious voice, perfect gesture, and a power of keeping the thread of his syntax to the end of his sentence, which makes him delightful to follow. The digest of the evidence which Coleridge gives is one of the best illustrations of the value or valuelessness of testimony that could be given."