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CONFESSIONS TO PRIESTS.

In the course of a judgment recently delivered by the Master of the Rolls, in the case of *Wheeler* v. *Marchant*, his Honor stated that communications made to a priest in confession were not protected. On this question the English *Law Times* has an interesting note, which we subjoin:

"It is, no doubt, true that most text book writers lay it down that a priest or clergyman is bound, if required in a court of justice, to give in evidence confessions or statements made to him under the seal of confession or otherwise in his clerical capacity. And this view has also the support of several dicta of eminent judges. But, if we examine carefully the authorities on the subject, we shall see that really the question cannot be considered as decided.

"There can be little or no doubt that before the Reformation confessions were held sacred and inviolable by the common law of England, both civil and ecclesiastical, and that no court of justice compelled the confessor to reveal communications made to him by the penitent: Phillimore Eccl. Law, 700. It would seem from Lyndwood that there were exceptions from this rule, as when statements were made by the penitent which ought not properly to have formed part of his confession. Possibly cases of high treason may also have been excepted. The laws of Henry I. (Leges Hen. I. c. 5, s. 17), forbid the priest to reveal sins told him in confession, and punish him with degradation and a pilgrimage with ignominy. Also the 9th of the Constitutions of Archbishop Reynolds (A.D. 1322), forbids a priest, even through fear of death, to discover any confession, and if he offends, orders him to be punished by degradation without hope of reconciliation: Johnson, ii. 342. As this Constitution is contained in and glossed by Lyndwood, (Oxford edit. p. 334), it must be considered part of the canon law of England. And this, except when contrary to the statute law, common law, or royal prerogative, has statutory recognition by one of the most important of the Reformation statutes: 25 Henry VIII. c. 19. By the 113th Canon of 1603, which was passed by Convocation with the consent of the Crown, a clergyman is forbidden to reveal anything learnt by him in confession, except to save his own life. And by the rubric in the service for the visitation of the sick, "the sick person shall be moved to make a special confession of his sins, if he feels his conscience troubled with any weighty matter." Now by the Act of Uniformity this rubric has the authority of an Act of Parliament; so that, if the clergyman is bound to give in evidence, facts thus obtained, the rubric would constitute a mere trap. Several of the modern cases, which are usually quoted to show that confessions are not privileged, are shown by Mr. Best, in his work on Evidence, to be inapplicable: Best 690. However, in *R.* v. *Sparkes*, cited in 1 Peake, 77, Mr. Justice Buller held (on circuit) that confession to a Protestant clergyman was not privileged. And in *Butler* v. *Moore*, Macnally's Evid. 253, the Irish Master of the Rolls gave a similar decision with respect to a Roman Catholic priest. *Wilson* v. *Rastall*, 4 T. R. 753, is a dictum to the like effect. On the other hand, in *Du Barre* v. *Livette*, 1 Peake, 77, Lord Kenyon said, when *R.* v. *Sparks* (*ubi sup.*) was cited: "I should have paused before I admitted the evidence there admitted." In *Broad* v. *Pitt*, 3 C. & P. 518, Chief Justice Best said he should not compel a clergyman to disclose in evidence communications made by a prisoner, but should receive them if the clergyman chose to disclose them. Of course, in the case of privileged communication, the privilege is that of the person making the communication, not of the adviser.

"In *R.* v. *Griffin*, 6 Cox Cr. Cas. 619, Baron Alderson expressed his opinion that evidence consisting of conversations between the accused and her spiritual adviser, the chaplain of a work house, should not be given in evidence.

"We believe that in some, at least, of the American States, confessions made to a minister of any denomination are privileged. In the result, while we must guard ourselves from being supposed to give an opinion that confessions are privileged, we would say that the question is not so settled as to entitle the Master of the Rolls to lay it down as positive law that they are not. Mr. Justice Stephen's opinion is that clergy probably can be compelled to give

confessions in evidence, but says, correctly, that it has never been solemnly decided: Steph. Evid. Art. 117 and Note xlv."

THE TEMPORALITIES FUND CASE.

The case noted at 3 Legal News, p. 250, *Dobie* v. *Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland*, has been argued before the Judicial Committee of the Privy Council, in pursuance of leave to appeal obtained, (3 Legal News, p. 308.) The hearing occupied three days, and judgment has been reserved. There were present Lord Blackburn, Lord Watson, Sir Barnes Peacock, Sir Montague Smith, Sir Robert Collier, Sir Richard Couch, and Sir Arthur Hobhouse. From the *Times* of the 16th July we take the following summary :—

This was an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec (Appeal Side) of the 19th of June, 1880, affirming a judgment of the Superior Court of Lower Canada.

Mr. Horace Davey, Q.C., Mr. McLeod Fullarton, and Mr. Donald Macmaster (of the Canadian Bar) were counsel for the appellant; Mr. Benjamin, Q.C., Mr. Jeune, and Mr. J. L. Morris (of the Canadian Bar) for the respondents.

This was admittedly a very important case, in which the appellant, the Rev. Robert Dobie, by means of a writ of injunction, contested the right of the respondents to the management of a large amount of property. It also involved intricate questions arising out of the distribution under the British North America Act, 1867, of the legislative powers attributed to the Canadian Parliament, and to the local or provincial Legislatures respectively. The facts, as briefly stated by Mr. Justice Ramsay, were these :— Prior to 1875, there existed a religious body known as the Presbyterian Church of Canada in connection with the Church of Scotland. It did not owe its existence to any charter or statute, but it grew out of the settlement in Canada of Presbyterians in communion with the Church of Scotland. But if no statute defined precisely the limits, rights and privileges of this body, numerous statutes acknowledged its existence, and the right of its clergy to share in the lands, known as the "Clergy Reserves," was admitted. When, by process of legislation, the share of the clergy of the Church of Scotland in Canada became fixed, an Act of the Legislature of United Canada was obtained (22 Vict., chap. 66) to make provision for the management and holding of certain funds of the Presbyterian Church in connection with the Church of Scotland, "now held in trust by certain commissioners, hereinafter named, and for the benefit hereof, and also of such other funds as may from time to time be granted, given, bequeathed, or contributed thereto." The body so incorporated was the Board of Management, the present respondents. This Act being still in force, in 1874 numerous clergymen and others, members of different Presbyterian Churches in Canada, deemed it desirable to unite their ecclesiastical fortunes and henceforward to form one body, to be called "The Presbyterian Church in Canada." Application was made almost simultaneously to the Legislatures of Ontario and Quebec for authority to give effect to this determination, and to enable the new body to deal with the property of the churches so united. An Act of the Ontario Legislature (38 Vic., ch. 75) was passed, the preamble of which set up that :—

"Whereas the Canada Presbyterian Church, the Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, have severally agreed to unite together and form one body or denomination of Christians, under the name of 'the Presbyterian Church in Canada,' and the Moderators of the General Assembly of the Canada Presbyterian Church, and of the Synods of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, respectively, by and with the consent of the said General Assembly and Synods, have by their petitions, stating such agreement to unite as aforesaid, prayed that for the furtherance of this their purpose, and to remove any obstructions to such union which may arise out of the present form and designation of the several Trusts or Acts of incorporation by which the property of the said churches, and of the colleges and congregations connected with the said churches,

or any of them respectively, are held and administered or otherwise, certain legislative provisions may be made in reference to the property of the said churches, colleges and congregations, situate within the Province of Ontario, and other matters affecting the same in view of the said Union."

The first section then vested all the property of the different churches so united in the united body under the name of the "Presbyterian Church in Canada." Then came reservations and modifications of certain rights, and then by section 4 certain legislation in Ontario respecting the property of religious institutions was made applicable to the various congregations in Ontario in communion with the Presbyterian Church in Canada. Section 5 declared that all the property, real and personal, belonging to or held in trust for the use of any college, educational or other institution, or for any trust in connection with any of the said churches or religious bodies, either generally or for any special purpose, or object, shall, from the time the said contemplated union takes place, and thenceforth belong to and be held in trust for and to the use in like manner of "The Presbyterian Church in Canada." Section 7 then dealt specially with Knox College and Queen's College in Ontario, and with "The Presbyterian College" and with "Morrin College" in the Province of Quebec. Section 8 dealt with the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, "administered by a Board incorporated by statute of the heretofore Province of Canada." Section 9 dealt with the Widows and Orphans Fund of "The Canada Presbyterian Church," and "The Presbyterian Church of Canada in connection with the Church of Scotland." Section 10 authorized the new body to take gifts, devises and bequests; and lastly, section 11 declared that "the union of the said Churches shall be held to take place so soon as the articles of the said union shall have been signed by the moderators of the said respective Churches." The legislation of the Province of Quebec took the form of two Acts, 38 Vict., chap. 62 and 64, the former respecting the union of certain Presbyterian Churches; the latter is styled "An Act to amend the Act intituled, 'An Act to incorporate the Board of Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.'" Chap. 62 of the 38 Vict., Quebec, with the exception of the section relating to the Temporalities Fund, was substantially the same as the Ontario Act, 38 Vict., Chap. 74, but there were a few points of difference. The Ontario Act bestowed all the above-mentioned privileges on "the Presbyterian Church in Canada," while the Act of Quebec bestowed them on the body so named "or any other name the said Church may adopt." The Quebec Act also declared that the union of the four Churches was to take place from the publication of a notice in the *Gazette* to the effect that the articles of union had been signed by the moderators of the respective Churches. The Act transferred almost the whole of the Temporalities Fund over to the new Church, and confided its management to a Board constituted in a manner entirely different from the Board under the old Act. The condition of union in Ontario was accomplished, and the notice appeared in the Quebec *Gazette*. The appellant, Mr. Dobie, a minister of the Presbyterian Church in Canada in connection with the Church of Scotland, refused, with others, to concur in that fusion, and he petitioned for an injunction to prohibit the Board, as now constituted, to deal with the Temporalities Fund. The Court dissolved the injunction, and its judgment was upheld on appeal by a majority of the judges of the Court of Queen's Bench for Quebec. Hence the present proceedings.

For the appellants it was contended that the statutes 38 Vic., c. 62 and 64 (Quebec) and 38 Vic., c. 75 (Ontario), were, in respect of the provisions material to the case *ultra vires* and illegal, and that the Act 22 Vic. c. 66 (Canada), was in force and binding on the respondents. The Board was at present illegally constituted and the individual respondents had no right to act as members of it. "The Presbyterian Church in Canada" was not identical with "the Presbyterian Church of Canada in connection with the Church of Scotland," and was not entitled to its rights, property, and status, nor was its General Assembly identical with the Synod of the latter church. The ministers, members and congregations, who refused to join in the act of union, and were now organized under the name of "the Presbyterian Church of

Canada in connection with the Church of Scotland," were identical with the Church of that name before the union, and were not entitled to its rights, property, and status.

For the respondents, it was argued that the Acts in question were within the scope of the legislative authority conferred upon the Legislature of the Provinces by the Confederation Act, 1867, and were valid and binding. "The Presbyterian Church of Canada in connection with the Church of Scotland" continued its identity after its union with the other Presbyterian bodies, and the appellant (Mr. Dobie) having seceded, and thus ceased to be a minister, had forfeited all claim to the fund in question. The rights of persons entitled to beneficial interests in the fund were unaffected either by the union of the various bodies or the legislation impugned by the appellant.

Their Lordships, at the close of the arguments, which had lasted three days, took time to consider their report to Her Majesty in the matter. Judgment was therefore reserved.

MUNICIPAL CORPORATION—LIABILITY OF, FOR INJURY FROM DEFECTIVE SEWER.

ENGLISH HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, APRIL 13, 1881.

FLEMING v. MAYOR AND CORPORATION OF MANCHESTER, 44 L. T. Rep. (N.S.) 517.

A municipal corporation having authority to build, repair and clean sewers is liable for injury to private property arising from a defect in a sewer constructed by it, where such defect might be discovered by the use of reasonable means, and the corporation has neglected to use such means.

Motion for judgment. This action was tried before Stephen, J., at Manchester, at the last assizes in January, 1881. The following are the facts of the case:

The plaintiff was the owner of a house in Manchester, and the defendants are the corporation of Manchester. During a violent storm of rain, thunder, and lightning a sewer burst under a cellar which communicated with the lower rooms of the plaintiff's house. The rooms were flooded and the outer wall blown out into the river Irwell, which flowed past the walls of the house. The fall of the wall brought down the whole of the house, which fell into the river.

The action was brought against the corporation for damages, which were agreed upon between the parties in the course of the trial.

At the trial the principal question of fact put before the jury was whether the bursting of the sewer was caused by a flash of lightning or by the force of the water, and the jury found that it was caused by the water, and not by the lightning.

At the request of the learned counsel the learned judge put to the jury the following questions, and received the following answers: 1. Was the destruction of the house caused by the bursting of the sewer? Yes. 2. Was the bursting of the sewer caused by defects in the original construction of the sewer? Yes. 3. Was the bursting of the sewer caused by the omission of the defendants to take reasonable means to discover it? Yes. 4. Was the ignorance of the corporation as to the existence of any defect in the sewer due to any omission on their part to take reasonable means to discover it? Yes. 5. Was the bursting of the sewer caused by the lightning? No; *i.e.*, would it have happened if there had been no lightning? Yes.

Upon these findings the learned judge left the parties to move for judgment, and they did so accordingly on the 26th March, 1881, when the case was fully argued.

By 11 Geo. IV, chap. xlvii, § 58, power was given to the Manchester Improvement Commissioners to make main sewers, etc., and to use, widen and enlarge private sewers for the purpose of communication, and also to continue sewers through inclosed lands.

By 6 Vict., chap. xvii, § 3, the powers of commissioners were transferred to the corporation of Manchester. By section 4 the powers of the corporation are to be executed by the town council; and by section 5 the property of the commissioners were vested in the corporation.

By 14 and 15 Vict., chap. cxix, § 36, it was enacted: "That it shall be lawful for the council from time to time, and at all times hereafter, to cause such and so many common sewers and drains as they may think sufficient and necessary to be constructed in, along, or across any of the streets within the borough, and also to

cause any of the common sewers or drains which now are or hereafter shall be within the borough to be enlarged, repaired or cleansed when and so often as they shall deem proper; and in case it shall be found necessary, for making or completing any such common sewers or drains, it shall be lawful for the council to carry the same into or through any inclosed lands or grounds lying within the borough, and also to make use of any private sewers or drains for the purpose of forming a communication between any public sewer, drains or watercourses, and in case any such private sewer or drain shall not be sufficient for the purposes aforesaid, to widen and enlarge the same."

C. Russell, Q. C. (with him *Leresche*), for the plaintiff.

Sir *John Holker*, Q.C., and *Heywood*, for the defendants.

STEPHEN, J., stating the facts of the case as given above, continued: It will be convenient in the first place to state the position of the corporation in relation to the sewers. In 1830 an act (11 Geo. IV, chap. xlvii) was passed by which it was enacted that it should be lawful for the Manchester Improvement Commissioners to cause such sewers as they should think necessary, to be made, and when made, to be repaired and cleansed. In 1843 the powers of the commissioners were transferred to the corporation, and the property of the commission was vested in the corporation, and it was provided that the powers of the commissioners should be exercised by the town council. In 1851 it was enacted that it should be lawful for the council from time to time to cause as many sewers and drains as they might think necessary, to be constructed, and also cause any sewers within the borough to be repaired, enlarged or cleansed as often as they thought it necessary. The drain which burst was constructed by the commissioners forty years before the accident, and I understand the findings of the jury to amount to this, that if the sewer had been originally properly constructed it would have required no repair, and would not have burst, and that if the corporation, the sewer being what it was, had taken reasonable means to inform themselves of its condition and had executed proper repairs, it would not have burst. Upon this state of facts it was contended for the plaintiff that though the corporation were not within the rule stated in *Fletcher* v. *Rylands*, L. R., 3 H. L. 330, according to which a person is bound to protect others against a danger which he has caused for his own purposes upon his own land, they were nevertheless under a legal duty of a narrower kind, viz., a duty to take reasonable means to inform themselves of the state of the sewer, and to use the powers conferred upon them by statute for the purpose of preventing injuries which a defective condition of the sewer might cause. It was contended that the omission to do this constituted negligence, for the effects of which they were answerable in damages. On the other hand it was argued for the defendants that the corporation were under no legal duty to inform themselves as to the state of the sewer, but that their duty was only to execute repairs upon having notice that such repairs were required. A great number of cases were cited in the course of the argument before me; but it appears to me that the principles on which this case ought to be decided are established by the comparatively small number of decisions to which I am about to refer. It was decided in the case of *Parnaby* v. *Lancaster Canal Company*, 11 Ad. & El. 223, and see especially pp. 242, 243, that when a company constituted under a private act of Parliament constructed a canal for their profit and opened it to the public on the payment of tolls, the common law imposed upon the proprietors a duty to take reasonable care, as long as they kept the canal open for the public use of all who might choose to navigate it, that they might navigate it without danger to their lives and property. The decision of the Court of Queen's Bench suggests (see p. 230), though it does not exactly state, that if the company has statutory powers for the purposes referred to, it is their duty to use them. The cases of *Mersey Docks Trustees* v. *Gibbs* and *Mersey Docks Trustees* v. *Penhallow*, L. R., 1 H. L. 93, carry the doctrine somewhat further. The opinion of the judges delivered in the House of Lords in that case by Lord Blackburn examines all the decisions at length, and one of the results arrived at in the House of Lords (which adopted to the full the opinion delivered by Lord Blackburn) was that the fact that the trustees in whom the docks were vested did not collect tolls for their owu profit, but merely as trustees

for the benefit of the public, made no difference in respect of their liability. Lord Blackburn states in one part of the opinion referred to (at p. 110), that the proper rule and construction of such statutes (namely statutes constituting bodies of trustees, etc., for public purposes) is that in the absence of something to show a contrary intention, the Legislature intends that the body, the creature of the statute, shall have the same duties and that its funds shall be rendered subject to the same liabilities as the general law would impose on a private person doing the same thing. Two cases, which complete and supplement each other, seem to me to show distinctly that these duties, in the case of such a body as the corporation of Manchester, include the use of every power conferred upon them by law for the purpose of protecting all persons affected by their operations from being injured by them. These cases are *Cracknell* v. *Corporation of Thetford*, L. R., 4 C. P. 629, decided in 1869, and *Geddis* v. *Proprietors of Bann Reservoir*, L. R., 3 App. Cas. 430, decided in 1878. In the first of these cases the corporation of Thetford erected certain staunches in the river Brandon which caused an accumulation of silt and the growth of river weeds, whereby the plaintiff's land was flooded. It was held that the defendants were not liable because they were justified in erecting the staunches, although their erection caused silt to accumulate, because they had no power, and were therefore under no duty, to cut the weeds. In *Geddis* v. *Bann Reservoir*, the proprietors were held to be liable because the plaintiff's land had been overflowed and damaged by a flood caused by the omission of the proprietors to dredge the silt out of a water-course which it was held they had a statutory duty to keep in proper order. Lord Blackburn in this case said (at p. 455): "No action will lie for doing that which the Legislature has authorized, if it be done without negligence, although it does occasion damage to any one; but an action does lie for doing that which the Legislature has authorized, if it be done negligently. And I think that if by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented, it is, within this rule, 'negligence' not to make such reasonable exercise of their powers." These two cases show, as it seems to me, precisely what is the position of such a body as the corporation of Manchester. It is under a legal duty to exercise whatever legal powers it possesses for the purpose of protecting persons from damage by the works which it is under a statutory duty to perform. But their duty does not stop here. It has also been decided by two cases, which again complement each other, that it is their duty to use all reasonable means to inform themselves of the existence of an occasion for the use of those powers. These cases are the *Mersey Docks* cases, already referred to for another purpose, and the case of *Hammond* v. *Vestry of St. Pancras*, L. R., 9 C. P. 316. In the *Mersey Docks* cases, Lord Cranworth, then Lord Chancellor, said (at p. 122): "In the other case (the case of *Penhallow*) it must be taken as an established fact that the appellants had by their servants the means of knowing the dangerous state of the dock, but were negligently ignorant of it. It is plain, that if the appellants are liable in the former case, they must be liable also in the latter. If the knowledge of the existence of the mud bank made them responsible for the consequences of not causing it to be removed, they must be equally responsible if it was only through their culpable negligence that its condition was not known to them." The case of *Hammond* v. *Vestry of St. Pancras* was almost identical with the present case. A sewer, the existence of which was in fact unknown to the vestry, though it might have been ascertained by reasonable care and inquiry, became obstructed and caused damage. The jury found that the obstruction was not known to the vestry, and that it could not have been known to them by reasonable care, and it was held that under these circumstances they were not liable. Upon these authorities I hold, first, that the corporation of Manchester were under a legal duty to use such powers as the statute gave them to keep the sewer in proper order, and from time to time to inform themselves as to its condition; and secondly, that 14 and 15 Vict., chap. cxix, § 36 (private act), and 11 Geo. IV, chap. xlvii, § 58 (private act), gave them power to cause the sewer to be cleansed and repaired, and that the common law superinduced upon that power a duty to use it, and to use all reasonable means to inform themselves whether there was occasion to do so. Thirdly, that the findings of the jury show that the corporation

omitted to perform this duty, and so were negligent. Accordingly I give judgment for the plaintiff for the amount of damages agreed on between the parties, with costs.

Judgment for plaintiff.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

BŒCKER v. FOREMAN et al., and THE BANK OF TORONTO, intervening.

Procedure—Intervention.

A demand in intervention may be made at any time before judgment.

PER CURIAM. After issue joined, trial was had before me on the 8th June, and the case was taken *en délibéré*. Since then an intervention has been filed by a third party, and the question is whether it should be allowed.

After consultation with my brother judges, seeing the precise terms of the Code as to interventions, I think there is no doubt that an intervention may be put in at any time before judgment.

The intervention, therefore, is allowed to be filed, and the *délibéré* is discharged.

Intervention allowed.

L. N. Benjamin for plaintiff.

Kerr, Carter & McGibbon for defendants.

R. & L. Laflamme for intervening party.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

COSSITT et al. v. LEMIEUX.

Capias—Special Bail—Statement.

A defendant who has given bail not to leave the country is not bound to file a statement and make the declaration of abandonment mentioned in Art. 764 C.C.P., within 30 days from the date of the judgment rendered in the suit in which he was arrested.

The case came up on a petition for *contrainte* against the defendant, for not having made a *bilan* and declaration of *cession de biens*.

On the 19th October, 1880, the plaintiffs obtained judgment against defendant for $2,134.45.

Subsequently they caused a capias to issue against him, on the ground that immediately after judgment, and before execution issued thereon, he had been fraudulently secreting all his property and effects.

The defendant was arrested Dec. 23, 1880, and on the 27th of the same month was set at liberty, on giving security that he would not leave the Dominion of Canada without paying the plaintiffs' debt. On the same day, Dec. 27, he presented a petition to quash, and on the 27th April, 1881, the petition to quash was rejected (Taschereau, J.), the judge stating that the allegations of the affidavit were corroborated by the evidence.

On the 10th May, 1881, judgment was rendered by the Superior Court, declaring the capias good and valid.

On the 17th June, 1881, more than thirty days after the date of the judgment maintaining the capias, the present petition for *contrainte* was presented, on the ground that thirty days had elapsed, and the defendant not having deposited his *bilan*, nor made a declaration of *cession de biens*, was *contraignable par corps*. C.C. 2274, and C.S.L.C., cap. 87.

The defendant resisted the petition, assigning the following grounds :—

"Que le défendeur a été rendu à la liberté en fournissant cautionnement qu'il ne laisserait pas le pays ;

"Que ce cautionnement spécial n'est pas forfait, et que partant le demandeur n'a aucun droit d'obtenir les conclusions de sa requête ;

"Qu'en vertu du dit cautionnement et en vertu de la loi, le défendeur ne saurait être emprisonné pour les causes mentionnées en la dite requête."

MACKAY, J. The defendant was arrested 23rd December, 1880. He gave bail before the prothonotary on the 27th December, and was discharged in consequence. The condition of the bond was that he would not leave Canada without paying plaintiffs ; his bail were bound to pay if he should leave without settling.

The plaintiffs now say that thirty days have passed since the judgment maintaining the capias, and no *bilan* or *état de ses biens* has yet been filed by defendant. *Contrainte* is asked, and the arrest of defendant.

The question as to the obligation of a defendant who has given special bail to file a

bilan has been so fully treated by Chief Justice Meredith in the case of *Poulet* v. *Launière*, 6 Q. L. R. 314, that it is unnecessary to go into it again. It was held in that case that a defendant who has given special bail is not bound to file a statement and make the declaration mentioned in Art. 766 C. C. P. I concur in that ruling, and the petition will therefore be rejected.

The judgment was as follows :—

"Considérant l'espèce de cautionnement qu'a fourni le défendeur le 27 Dec. 1880, et que, sous les circonstances, le défendeur n'était pas tenu de déposer au bureau du protonotaire un état de ses biens, et n'est pas contraignable par corps, renvoie et rejette la dite requête avec dépens," &c.

DeBellefeuille & Bonin for plaintiffs.

Pelletier & Ethier for defendant.

SUPERIOR COURT.

MONTREAL, July 7, 1881.

Before MACKAY, J.

BROWN et al. v. GUY et al., and PROULX, plff. *par reprise*.

Woman séparée de biens—Authority to contract debt for necessaries.

A wife séparée de biens does not require the authorization of her husband for the purchase of necessaries.

PER CURIAM. This is an action on an account for goods sold and delivered, amounting to over $260. The defendant is *séparée de biens*, and bought the goods. There was no charge in the plaintiffs' books to the husband. The goods were always charged to the wife, and they were necessaries. But it is said that even for necessaries a woman *séparée de biens* requires the authorization of her husband. I have often ruled against this pretension, and I cannot hold otherwise now. C. C. 1318 allows the wife *séparée* perfect freedom to dispose of and alienate her moveable property, and to contract debts without her husband's authorization. (*Sic* Renusson, ch. ix. No. 28, Comm.; also Marcadé, vol. 5, p. 581.) Judgment will go for the plaintiff *par reprise;* but as to the amount, I do not see proof to warrant judgment for more than $210.

The judgment reads as follows :—

"Considering that plaintiff and plaintiff *par reprise d'instance* have sufficiently proved against the female defendant to entitle them, *nommément* the plaintiff *par reprise*, to a judgment against her for $210 for goods sold and delivered—necessaries sold and delivered—to her as alleged in plaintiffs' declaration;

"Considering that the plaintiffs never charged the male defendant anything;

"Considering that in contracting for these things the female defendant acted by and for herself, and was so charged; that she was in so contracting only making acts of administration lawful to her, though *séparée de biens*, and that she was under the circumstances competent for such acts or contracts, but this judgment to be *exécutoire* only on or against her moveables or moveable property;

"Judgment accordingly for $210 and costs."

T. Bertrand for plaintiff *par reprise d'instance*.

Barnard, Beauchamp & Creighton for defendants.

U. S. SUPREME COURT DECISIONS.

Maritime law—Collision—Ship drawn by tug—When both liable for negligence.—A ship and a tug towing it are in law one vessel, and that a vessel under steam, and it is their duty to keep out of the way of a sailing vessel. And where both the tug and the ship were under the general orders of the pilot of the ship, and were approaching a sailing vessel, which was seen both on the ship and on the tug, and the tug neglected to take the proper course to avoid a collision, and the pilot on the ship gave no direction to take such course, *held*, that both the ship and the tug were liable for the collision. Both vessels were responsible for the navigation. The ship, because her pilot was in general charge, and the tug, because of the duty which rested on her to act upon her own responsibility in the situation in which she was placed. The tug was in fault because she did not on her own motion change her course so as to keep both herself and the ship out of the way; and the ship, because her pilot, who was in charge both of ship and tug, neglected to give the necessary directions to the tug, when he saw or ought to have seen that no precautions were taken by the tug to avoid the approaching danger. Decree of U. S. Circ. Ct, S. D. New York, affirmed. — *Ship Covilita* v. *Perry*.—Opinion by Waite, C. J.—[Decided May 2, 1881.]