The Legal News.

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BUSINESS IN APPEAL.

The delays of justice have at all times been the subject of serious complaints, and the grievance has often been of great magnitude. It is not possible entirely to avoid the inconvenience, but it is not the less the duty of the legislator to adopt every possible means of facilitating the transaction of legal business. Within the last twenty years much has been accomplished in this direction by cutting down the delays of procedure; but all this fails to secure the desired result so long as obstacles occur in the hearing and adjudication of cases. A mere cry for "despatch" is idle. Despatch without opportunity for due deliberation would be a misfortune. On the composition of the judicial body, and the facilities they have for hearing and deliberating, we must depend for securing the only kind of despatch that is to be desired.

It is not our intention for the moment to refer to the Courts of original jurisdiction. The serious difficulty with us at present is as to the business in appeal, and in the remarks we have to make we do not desire to throw any kind of blame on the Judges of the Court of Queen's Bench. In a previous number we have shown that the arrears by which the Court is now encumbered are not of their making, and that in the face of an immense increase of business the Court has not lost ground. The practical question therefore resolves itself into this: Is it impossible for the five judges to clear off the arrears? If they cannot, some temporary expedient should be devised in order to accomplish this object. But we do not think this is necessary, and we have reason to believe that the judges are not of opinion that it is. It requires no very deep study of our system to discover very formidable impediments to the despatch of business, which being cleared away would give the Court an opportunity of applying its energies more effectively. In the first place the judges are by law compelled to reside in two towns 180 miles apart. Secondly, there are but four terms of eleven days each for hearing cases in Montreal. Thirdly, practically the whole five judges are obliged to sit in every case, otherwise they are liable to re-hearings, which take up much time. Fourthly, by reason of the necessity of the five judges all sitting at once, it is impossible to hold extra terms of the court, appeal side, without breaking in on the vacation or on the terms of the criminal court.

The remedy for all these evils is simply to allow the judges to fix their own sittings, to make the quorum of the Court on the appeal side four, and to abolish all restrictions as to residence.

Some prejudice exists as to the quorum of four. It is said that if the judges are equally divided, it is the judgment of the inferior Court that prevails and not that of the Court of Appeal. We see no harm in that. It is a result directly in accordance with principle. The theory is that the presumption of law is that the judgment is correct, and it should not be touched in appeal unless it be clearly wrong. How can it be said to be clearly wrong if one-half of the Court of Appeals thinks it right? The presumption then in favour of the judgment should prevail. But we go further and say that this chance in favour of the successful litigant in the Court of first instance, constitutes a wholesome check on litigation. There is, however, another thing to be considered, and it is that four is arithmetically the best quorum for a Court of Appeal. If the judges in Appeal are equally divided, as has been said, the judgment below should be confirmed, and we have thus a decision of three judges to two. If again there is a division, but not an equal one, you have perhaps four to one, and at any rate three to two. But by our system the judgment is often rendered by three against three, and when complicated by a decision in Review, it may be by three against six.

As far as authority may have weight, it is in favour of a quorum of four. When Sir Louis Lafontaine, no mean authority as regards the organization of civil courts, re-organized the Courts in 1849, he made four the quorum in Appeal. This was altered owing to an outcry, which continued to increase rather than to abate after the alteration. The truth is it was a criticism of the uninformed. Again, recently when the Judicial Committee was re-organized, the paid judges were appointed to the number of four, and the Court usually sits with four Privy Councillors.

A Bill, fortunately not passed, and which we hope will be reconsidered, raises the number of judges in Appeal in the Province of Quebec to six, and peremptorily fixes the quorum at five, while it does not allow the judges to fix their own time of sitting. The effect of this is to give room for two majorities in the Court, thus keeping the jurisprudence on points of difficulty in almost endless uncertainty, and it also exposes the Court to the inconvenience of being unable to sit if one judge is ill or absent for any cause.

INJURIES RESULTING IN DEATH.

An interesting decision on the subject of life insurance, re-affirming an old principle, was pronounced recently by the Supreme Court of the United States, in the case of *The Mobile Life Insurance Co.* v. *Brame*. The action was brought by the Company to recover the sum of $7,000, under the following circumstances. It had insured the life of one McLemore, a citizen of Louisiana, for various sums, amounting to $7,000 in favor of John P. Kennedy, and while the policies were in force, the defendant, Brame, wilfully shot McLemore, inflicting upon him a mortal wound, from the effects of which he died two days afterwards. The Company being compelled to pay the amount of the policies, sought to recover the same from Brame, through whose "illegal and tortious" act the loss was alleged to have been incurred. In the Court below the action was dismissed, and this decision has been affirmed by the Supreme Court, the ruling being that "by the common law no civil action lies for an injury which results in death; and the death of a human being, though clearly involving pecuniary loss, is not ground for an action of damages." It was intimated that the Act, 9 & 10 Victoria (1846), giving an action in certain cases to the representatives of the deceased, which has been incorporated into the Statutes of many of the States, did not include a claimant such as the one in this action. Mr. Justice Hunt, in delivering the opinion of the Court, remarked that the authorities are so numerous and so uniform to the proposition, that by the common law no civil action lies for an injury which results in death—that it was impossible to regard it as open to question. He quoted Hilliard on Torts, where the rule is laid down as follows: "Upon a similar ground it has been held that at common law the death of a human being, though clearly involving pecuniary loss, is not the ground of an action of damages." Numerous authorities are referred to, and the Judge quoted several other decisions in the same sense. In the case of *Green* v. *The Hudson R. R. Co.*, 2 Keyes, 300, the plaintiff alleged that his wife was a passenger on the defendants' road, and by the gross carelessness and unskilfulness of the defendants, a collision occurred which resulted in the death of his wife," whereby he has lost and been deprived of all the comfort, benefit and assistance of his said wife in his domestic affairs, which he might and otherwise would have had, to his damage," &c. The defendants demurred to this on the ground that the allegations constituted no ground of action, and the demurrer was sustained. Having referred to other decisions to the same effect, the Judge continued: "The relation between the insurance company and McLemore, the deceased, was created by contract between them. But Brame was no party to the contract. The injury inflicted by him was upon McLemore, against his personal rights; that it happened to injure the plaintiff was an incidental, a remote and indirect result, not necessarily or legitimately resulting from the act of killing."

The Legislature has stepped in to remedy the hardship that might arise from a rigid adherence to the old rule of law, but the Court held that the statutory provision did not apply. "By the common law," Judge Hunt observed, "actions for injuries to the person abate by death, and cannot be revived or maintained by the executor or by the heir. By the Act of Parliament of Aug. 21, 1846 (9 & 10 Vict.), an action in certain cases is given to the representatives of the deceased. This principle, in various forms and with various limitations, has been incorporated into the Statutes of many of our States, and among others, into that of Louisiana. It is there given in favor of the minor children and widow of the deceased, and in default of these relatives, in favor of the surviving father and mother. The case of a creditor, much less a remote claimant like the plaintiff, is not within the Statute."

The point here decided seems to have arisen more frequently than might be supposed, and

therefore is not unimportant to life insurance companies. But the proportion of such cases to the volume of business done is so small, that the adverse decision here referred to can hardly have an appreciable effect upon the prosperity of insurance corporations.

STAMPING NOTES.

The collection of revenue by requiring bills and notes to be stamped is attended by the inconvenience of sometimes involving innocent holders in heavy loss. There may be no intention to do wrong, yet the penalties of the law may be incurred by an oversight or by ignorance of the forms enjoined. A contemporary calls attention to a case which came before the Court of Common Pleas of Ontario, in which a bank suffered a considerable loss through an irregularity in stamping some customers' paper, whereby an endorser was held to be released. In the case referred to, the note endorsed, but not filled in, was handed by the customers to the bank's agent, who some time afterwards filled it in for the amount of the customers' indebtedness and affixed double stamps, which were then cancelled with the date at which the note was thus completed. The note, however, bore date the day it had first been deposited in the bank, and the Court of Common Pleas held that the bank could not recover against the endorser. It were much to be desired that the necessary revenue could be collected by some method not so perilous to those who innocently go astray; but under present circumstances it is well that persons who have to do with bills and notes should be well-informed and careful to observe the forms enjoined by law.

THE PARLIAMENTS OF FRANCE.

[American Law Review.]

The lawyer who seeks in his studies something besides authorities to be cited before the court *in banc;* who takes a wider interest in the history of jurisprudence than as it illustrates the growth of the doctrine of uses and trusts or the development of the law of bailments; who thinks that the influence of lawyers in the political history of Europe is as important as the law of mortmain or the rule in Shelley's case,—must have his interest excited by the very different political and social development of the courts of France and England. That the jurisprudence of France was based upon the Roman law, modified by a strange and confused compound of local customs, while English jurisprudence had its origin in the common law of some of the German tribes, is not the most marked distinction between the judicial systems of those great and neighboring nations.

The English courts have administered a uniform system of law throughout the kingdom; their judges have been taken from members of the profession, of whatever original social rank, who had acquired prominence in the practice of the law. No Englishman has been "swaddled and rocked and dandled" into a judge. English, like American, lawyers have been active in the political affairs of their country. The English courts have often done great work for the restraint of tyranny, for the development of good government. Some of their decisions are among the landmarks of triumphing liberty. But the courts have held no political power. Only incidentally have they been brought into contact with the political side of the government.

In all this the history of France was far different. There, separate courts administered different systems of law. The judges became a caste, transmitting or selling the succession to the ermine as a part of their estate. Their political power grew to overshadow their judicial duties in importance. The highest court at times endeavoured to seize the reins of government, and, if guided by more wisdom, might have become a check on the power of the king, which would have changed the nature of the French monarchy.

The origin of the French Parliaments is partly lost in the obscurity of antiquity. It can, however, be traced vaguely.

The extensive powers of the feudal nobility in France included judicial authority; and most disputed questions in the early feudal period came before the Lords' Courts for decision. The right of *basse, moyenne, et haute justice* over his serfs and villeins was as precious to the seigneur as his right to take part of their fruits and crops, his right to confiscate their property when they left his territory, his right to aid when his son was knighted or his

daughter wed, his right to make his subjects grind at his mill or follow his banner.

The King's Court or Council possessed, however, an undefined jurisdiction, chiefly over the king's private domain, or in cases where he might be deemed to be specially concerned. This council was composed of the great nobles and officers of the State, to whom those versed in the law were gradually added as advisers or assistants.

Philip Augustus, in his resolute attack on feudal power, endeavored to organize the ancient King's Council or Parliament into a more effective body. He formed what he called a Court of Peers. Six lay and six ecclesiastical lords sat in this court, and their first case was the trial of King John of England for his failure to perform his duty to his feudal superior. The English king refused to heed the summons of herald or bailiff, unless he could be assured of a safe return. Philip informed him that this would depend upon the sentence imposed in the case. Unwilling, apparently, to intrust his cause to the doubtful decision of a court of his enemies, John was condemned by default; and for his contumacy, for murder and treason, he was sentenced to death, and to the forfeiture of all his fiefs in France. A court that began with the trial of a king might hope for great power and judicial might in the future. The Court of Peers was, however, soon merged in the more fully developed Parliament. St. Louis and Philip the Fair carried on these endeavors to form a tribunal which should derive its authority from the king. By the fourteenth century, the judicial power was chiefly vested in a body of magistrates forming part of the central government. The people welcomed the change from the uncertain justice which had been meted out by the feudal courts, from the necessity of bribery, the certainty of injustice, and the possibility of every wild and bloody vagary of decree and punishment, to the orderly and honest judgment of the courts of the king.

The transfer of judicial power from untutored nobles to trained lawyers was, moreover, a necessity attending the development of the law. However well fitted to pass upon some question of the law of the chase, to adjudge the delinquency of some villein failing to render the feudal dues, to adjust the quarrels of the chief equerry with the chief huntsman, the nobles found themselves sadly perplexed, and still more bored, when complicated cases came before them to be decided by yet more complicated rules of law. In the good old times they had appealed to the judgment of God, to hot ploughshares and boiling water, to dispose of troublesome questions of fact, and had imposed the duty of a jury on the Almighty; but such pious and convenient modes of determining the right and exposing the wrong were going out of vogue. Some base-born *roturier*, in a mean black gown, quoted to them Latin they did not understand and rules of law they could not comprehend. To leave to such as he to decide the confused laws they cited was the natural tendency of the lords who had once delighted in *justice, haute, moyenne*, and *basse*.

Jealousy of the power of the great nobility excited the resolve on the part of the king to absorb judicial power. The clergy, also, were restrained in the functions which had fallen largely into their hands when they were the sole possessors of learning. An ordinance of Philip the Fair, in 1287, provides that, if there are any clergy among the bailiffs or sergeants, they shall be removed, and that those who have causes before the Parliament shall have laymen for their solicitors. An organized judicial force soon throws all legal business into the hands of a trained class of men; and the lawyers constituted a special body in France earlier than in England.

The Parliament of Paris, *La Cour du Roi*, as formally organized by St. Louis and Philip the Fair, possessed both original and appellate jurisdiction; and it added legislative functions to judicial responsibilities. Its jurisdiction, like that of most courts, grew by legal fictions. Cases that might affect the king as suzerain were styled *cas royaux*. The king's courts, the Parliament or inferior magistrates subject to its authority, insisted on trying them, to the exclusion of the feudal tribunals. This power was found as elastic as the similar jurisdiction of the English Court of the Exchequer. By the writ of *commitimus*, a large class of cases, over which the Parliament claimed appellate jurisdiction, were brought before it to be tried in the first instance. Those who were subject to the king alone, living within his private domain, must of course be tried by his judges. The rights and guilt of peers could be deter-

mined only by the Parliament. Apart from this, a right of appeal to the King's Parliament from almost all of the inferior trial courts, was gradually established—from those held by the king's baillis or presidencies or by the prévôts, and from those held by the feudal lords or their representatives. The Parliament thus absorbed a jurisdiction greater than that of any English Court. It had, moreover, a power much like that of the Roman prætor. In cases not already provided for, the parliament could declare that, until the king should otherwise order, certain questions should be decided in certain ways. Such a right is very near to that of actual legislation. The body of the Roman law sprang from such an origin; and, though to a much less degree, the French courts made a portion of the laws which they were to administer.

The court was divided into sections having different functions. All of these sat together to consider the subjects which required the attention of the entire Parliament. With little change, save in the number of its members, it preserved the form in which it was organized by Philip the Fair, in the ordinance of 1302, down to the time when, with royalty and nobility, it perished in the French Revolution.

Various Chambers of Inquiry—*Chambres des Enquêtes*—heard appeals from the baillis, prévôts, and other inferior tribunals. The result of their deliberations was reported to the great chamber, where the decision was pronounced which the *Chambre des Enquêtes* had reached. The Chamber of Petitions—*Chambre des Requêtes*—was originally organized to hear and answer petitions presented to the Parliament. It finally heard most of the civil suits of original jurisdiction which were brought before that court. In these cases, the members of the chamber performed the duties of both judge and jury. The number of the judges might atone for the lack of the more popular element. Some of the cases were heard orally; others were decided on written proofs. The regulation of the practice is too obscure to be clearly understood. The solicitors and advocates seem to have performed their duties in much the same manner as the attorneys and barristers of the English courts.

La Tournelle Criminelle was organized at a later period than the other chambers. It had jurisdiction of criminal cases, and tried all those brought before the Parliament, except some of special importance,—the trials of nobles, of some ecclesiastics, and of great public officers, which were heard before the great chamber, or all the sections combined. The members of the *Tournelle* varied from twenty to thirty. They did not sit permanently in this court; but were taken from the great chamber and the other branches of the Parliament, in order, as it was humanely stated, "that the habit of condemning men and sentencing them to death should not alter the natural clemency of the judges, and render them inhuman." Despite this merciful provision, prisoners had a trial far different from that secured in England to those accused of crime. The trials were ordinarily had with closed doors and upon written evidence, and there were few of the humane presumptions of the common law in favor of innocence. A majority of only two was sufficient for a conviction.

The highest branch of the Parliament was the great chamber,—*La Grande Chambre*. The first president, nine presidents *à mortier*,—as they were styled from their caps,—and thirty-seven counsellors, of whom twelve were originally in orders, composed this body. Apart from the professional members of the court, the peers of France and the princes of the royal blood had the right to sit in this body. Here the judgments reached by the other sections were brought to be pronounced. Matters of State as well as of law were discussed before it. The suits of the peers of France and actions involving royal rights were here tried.

The Parliament met in the old Palais de Justice,—the palace which unites the France of Saint Louis with France under the presidency of Marshal McMahon. In the Hall of Saint Louis, the meetings of the entire body were held. No hall of justice has witnessed more varied or more tragic scenes. There the Parliament met in its solemn sessions when the wars, the treaties, the finances, and the government of France were discussed, and matters of national importance were adjudged. There, at the beginning of the Fronde, it was sought to establish a new constitution for France, of which the Court should be the executor. There, during the wars of the Fronde, the Parliament received the envoy of Spain, to treat with him

on measures against the king of France. The President, De Mesmes, pathetically asked the Prince of Conti, if a prince of the blood of France would give audience on the *fleurs de lys* to France's most cruel enemy. There it was decreed that no foreigner should sit in the councils of France; that a price should be set on Mazarin's head, and that his noble library of four thousand books should be sold to pay the reward. There it was more nobly determined that the philosophy of Descartes might be taught in the schools. Louis the Fourteenth annulled this decree, and the Jesuits succeeded in having the doctrines exclusively inculcated, that extent is not necessary to body; that thought is not necessary to soul; and that vacuum exists. There the Parliament avenged itself for the contumely it had received from *Le Grand Monarque*, by annulling his will, and recognizing the Duke of Orleans as absolute regent. There it issued its decree against Law's bank, which, if courageously enforced, might have prevented the ruin which resulted from that wildest of financial dreams. There the suppression of the great order of the Jesuits was decreed, and its members exiled from the country. In this chamber, when the conservative, powdered, and gowned aristocrats of the Parliament had been succeeded by the Revolutionary tribunal; when Molé and De Harlay and D'Aguesseau had been replaced by Hermann and David and Fouquier Tinville,—more dramatic trials were had than had ever been conducted by the peers, presidents, and counsellors who sat upon the *fleurs de lys*. The hall was re-christened "La Salle de l'Égalité," and in it Marie Antoinette was found guilty of having been a queen, and condemned for the crime. There Danton pleaded his cause before the Revolutionary tribunal. He raised his voice to such a pitch that it could be heard across the Seine; and his words were listened to by the great crowd which had gathered outside the palace in dismay at the overthrow of the great agitator. The President, Hermann, sounded his bell for him to speak lower. "Don't you hear the bell?" said the President. "The voice of a man who pleads for his life," replied Danton, "may well drown the tinkling of a bell." From this hall the Girondins marched, after receiving sentence of death, chanting the "Marseillaise."

In the *Salle des Pas Perdus*,—the great hall into which the chamber of Saint Louis opened,—Fouquier Tinville had a guillotine erected, so that those on trial could look from the faces of their judges to the doom that was soon to be theirs. But the Committee of Public Safety, when it restricted Tinville to the trial of sixty persons at once, also deprived him of the ever-present sight of the instrument he loved so well. The hall has been sadly changed. The visitor who gazes at reputable-appearing advocates in gowns and caps, sharp-featured notaries, uneasy clients, and wearied judges, sitting in a modern-looking hall, sees little to bring back the parliaments of Paris or the tribunals of the Revolution. The voice of Danton has ceased to vibrate; the eloquence of Harlay no longer delights the ear; the prose of the nineteenth century has replaced the pathos of the eighteenth, and the pride and dignity of the seventeenth.

(*To be Continued.*)

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Quebec, March 2, 1878.

Present: DORION, C. J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

SARGEANT v. BLANCHET et al.; and BEAUDETTE, plff. *en gar.*, v. REID, deft. *en gar.*

Demurrer—Appeal—Illegal Issue of Debentures.

The action was brought against the president and directors of the Levis & Kennebec Railroad for damages, for illegal issue of debentures. Beaudette, one of the defendants, sued Reid, the London financial agent of the road, for having issued certain of these debentures in violation of the Company's charter. Reid pleaded to the action *en garantie*, among other things, that the directors authorized the issue, and that Beaudette, as one of a firm, actually accepted a portion of the debentures as collateral security. The plaintiff *en garantie* demurred to this last part of the plea and the demurrer was maintained. The defendant *en garantie* now moved to be allowed to appeal.

Leave was granted.

Quebec, March 4, 1878.

Present: DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

O'FARRELL, appellant; and BRASSARD, respondent.

Appeal to Privy Council—1178 *C. C. P.*

A motion was made on the part of Brassard to be allowed to appeal to the Privy Council, on the ground that the judgment (ante, p. 25) bound the future rights of the bar.

Leave to appeal was refused. The Court held that it had no power to grant leave to appeal beyond the cases mentioned in art. 1178 C. C. P. This case was not within any of them. It bound no future rights of Brassard, and the bar was not a party. The only remedy was for Brassard to apply to the Privy Council for special leave to appeal.

GLEASON and VAN COURTLAND; and MARQUIS and D'ANJOU, T. S

Seizure by Garnishment—617, 624, *C. C. P.*—*Appeal.*

Marquis had his domicile in the district of Rimouski. The writ issued in the district of Arthabaska. The *tiers saisi* made his declaration in his own district within the proper delay (Art. 617 C. C. P.), but it was not duly forwarded to the court at Arthabaska. On application the court condemned the *tiers saisi* personally to pay the whole debt unless he made a new declaration and paid all the costs of the *tierce saisie*. The T. S. moved for leave to appeal from this interlocutory judgment.

The motion was granted.

D'Anjou made a similar motion, but he had not made his motion within the delay, and consequently the declaration he made before the prothonotary at Rimouski was invalid. The judgment was therefore in conformity with Art. 624 C. C. P., and leave to appeal was refused.

DOUCET and CORPORATION OF THE PARISH OF ST. AMBROISE.

Prohibition—Appeal.

This was an appeal by the Judge of Sessions at Quebec against a judgment on a prohibition directed against him, and prohibiting him from proceeding in a certain case. The party complainant took the case to Review, and was unsuccessful. Mr. Doucet did not go to Review.

The Court reserved the motion to be decided with the merits.

METHOT and BURKE.

Action of Damages—Title.

An action of damages for an assault. The judgment was confirmed, but the motives of the judgment of the Court below, which appeared to decide a question of property with regard to a wharf where the assault took place, were omitted.

BOUDREAULT and VADEBONCOEUR.

Judgment confirmed.

KINGSBOROUGH and POUND.

An action *en déclaration de paternité*. The conclusions of the declaration did not ask for arrears. No notice of this was taken at the argument, and therefore the judgment was reformed with regard to this point only, with costs.

OUELLET and DUTREMBLE.—Confirmed.

LA CORPORATION DE LA VILLE DE ST. GERMAIN DE RIMOUSKI and RINGUET.

Illegal By-Law—Action to recover money paid thereunder.

Action to recover back money paid for licenses. It was not denied that the charge was illegal (34 Vict., Que., C. 2, S. 128,) but it was said that the by-law was not set aside, and could not be attacked incidentally (705 C. M.) The Court held that, even if this article applied to the municipality appellant, the article of the Municipal Code could not be interpreted to say that a by-law in direct opposition to the law must be set aside within three months or thirty days as provided by the statute.

This decision was held not to be in contradiction to the decision in the case of *Parent & La Corporation de la Paroisse de St. Sauveur*, 2 Q. L. R. 258.

Montreal, Jan. 28, 1878.

Present: DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

BECKHAM, (plff. below), Appellant, and FARMER, (deft. below), Respondent.

Extra work—Defendant's Admission—Art. 1690 C. C.

The judgment appealed from dismissed a claim made by the appellant, a builder, for extra work executed for respondent beyond what was comprised in a contract for the erection of a block of tenement houses in Montreal. The *motif* of the judgment was: "Seeing that by article 1690 C. C., plaintiff cannot be allowed to make proof either by parole testimony or the oath of the defendant, of the making and furnishing of the extras, the price whereof is sought to be recovered by this action; doth dismiss," &c.

In appeal the judgment was reversed and the extra work allowed. The judgment is as follows:

"Considering that the respondent has admitted that the appellant had done for him extra works in addition to what was provided for in the contract of the 23rd Oct., 1874, and the value thereof to the amount of $719.71, and that in view of such admission there is no occasion to apply to the works so admitted the rules of law contained in article 1690 C. C.," &c.

Judgment for $323.

F. W. Terrill for appellant.

Doutre, Doutre, Hutchinson & Walker for respondent.

ST. PATRICK'S HALL ASSOCIATION (plffs. below), Appellants; and GILBERT and MITCHELL (defts. below,) Respondents.

Builder—Responsibility for Work.

The action was brought by the St. Patrick's Hall Association against Gilbert, and Mitchell, his surety under a contract, claiming damages occasioned by the falling of the roof of the St. Patrick's Hall. Gilbert pleaded that he was not a builder by profession; that the iron supplied by him was good, and that under the contract entered into he was bound to follow the instructions given him by the architect, and was not responsible for the design. Mitchell pleaded similarly that Gilbert was bound to follow the instructions received, and that he was not responsible for the strength of the work. The judgment maintaining the pretensions of the respondents was confirmed.

Judgment confirmed.

J. J. Curran and *Doherty* for the appellant.

C. S. Burroughs for the respondents.

ST. AUBIN et vir (plffs. below), Appellants; and ST. AUBIN (deft. below,) Respondent.

Community—Partage—Account.

The appeal was from a judgment of the Superior Court, dismissing the Appellants' action, by which he asked that the respondent be ordered to render an account of the community existing between the late Jean Baptiste Aubin, the father, and the late Sophie Cavallier, his wife, and that he be ordered to make an inventory in due form of the *continuation de communauté*, and to render an account under oath.

The facts of the case were as follows:

On the 18th of November, 1823, a contract of marriage was entered into between Jean Baptiste St. Aubin, of the parish of St. Martin, farmer, and Sophie Cavallier; by which it was stipulated that they should be *communs en biens*; that further, one-third of the immoveable or real rights belonging to Sophie Cavallier should be mobilized, and that all the property and rights real and moveable of Jean Baptiste St. Aubin, both *propres et acquêts*, should enter into the community as *conquêts*, with the exception of a sum equal to two-thirds of the real rights of Sophie Cavallier, which sum so reserved should be the property of Jean Baptiste St. Aubin;

That afterwards, on the 25th November, 1823, said Jean Baptiste St. Aubin and Sophie Cavallier were married;

That of the marriage there was issue five children, to wit, the appellant Sophie St Aubin, the respondent Jean Baptiste St. Aubin, and Constance, Gertrude, and Luce;

That afterwards, about the 13th March, 1841, said Sophie Cavallier died, having previously made her last will and testament before a notary and witnesses at St. Martin, on the 8th March, 1841;

That by said will Sophie Cavallier bequeathed to her husband during the time he should remain unmarried, the usufruct and enjoyment of all and every her property, moveable and immoveable, on his making a good and faithful inventory thereof, and on his death the remainder to her, said Sophie Cavallier's heirs; and she further named the said Jean Baptiste St. Aubin her executor of the will and testament;

That all the children, issue of the said mar-

riage were minors at the death of the said Sophie Cavallier;

That the property, real and personal, belonging to the community existing between Jean Baptiste St. Aubin and Sophie Cavallier at the time of Sophie Cavallier's death, was worth $15,000 cy.

That Jean Baptiste St. Aubin remained in possession of all the estate of the said community, never made any inventory thereof, or of any part thereof;

That about the 15th of January, 1874, Jean Baptiste St. Aubin died at St. Martin, having previously thereto made his last will and testament, dated 3rd July, 1863, by which he made and constituted the defendant, Jean Baptiste St. Aubin, his son, his universal residuary legatee, and bequeathed to him the rest and residue of his estate;

That by the default of Jean Baptiste St. Aubin, *père*, to make an inventory of the community theretofore existing between him and his wife, there was a continuation of the said community between him the said Jean Baptiste St. Aubin and his said five children, to wit, amongst others, with the female plaintiff.

Then followed a description of the real estate, and it was alleged that during the continuance of the community, Jean Baptiste St. Aubin, *père*, received the rents and issues thereof, and never rendered an account to any of his children, and never caused an inventory to be taken.

That Jean Baptiste St. Aubin, defendant, accepted the said residuary bequest, and entered into possession of all the properties, moveable and immoveable, belonging to the *continuation de communauté*.

Then followed the allegation of the marriage of the plaintiffs; then the allegation that the value of the estate and effects of the *continuation de communauté* taken possession of by the defendant Jean Baptiste St. Aubin, was $25,000.

Then followed allegations with respect to the marriage of the other sisters of the plaintiff.

The defendant pleaded that by deeds passed Francois St. Aubin and his wife sold to their father and father-in-law, Jean Baptiste St. Aubin present and accepting, all their rights of succession, moveable and immoveable, etc., which the said Luce St. Aubin could claim in the succession of her said late mother, and that afterwards on the 11th of October, 1859, the female plaintiff then being a major, with two of her co-heirs, acknowledged to have sold and transferred to her said father for the price of $300, all her rights, pretensions and claims in the succession of her late mother, and that afterwards Gertrude St. Aubin, one of the defendants, sold for the price of $1,000 her rights in the same; and that by virtue of the said deeds Jean Baptiste had acquired the entire of the goods and estate which his wife Sophie Cavallier had possessed at the time of her decease.

There was then set up the residuary bequest to the defendant, and these were wound up by a *défense au fond en fait*.

To the first plea the appellants demurred, and moreover by a special answer urged the illegality of the deed of sale by the female plaintiff, on the ground of *lésion*.

To these the respondents replied generally.

On the appeal, the appellant said: It is shown clearly that no inventory was ever made by St. Aubin père. There is contradiction in the evidence as to the value of the community property, but it is shewn to have been worth more than $10,000.

Three points present themselves for consideration in this case:

1. Was the *continuation de communauté* existing between J. B. St. Aubin and his child, the female plaintiff, put an end to by the passing of the deed between him and her of the 11th October, 1859?

2. Was it necessary for the plaintiffs specially to set up the nullity of that deed in their declaration, and pray by the conclusions thereof that it might be set aside?

The judgment rendered by DORION, J., and which was confirmed in appeal, was as follows:

La Cour, &c.

Considérant que tous les droits que la demanderesse avait dans la succession de sa mère comprenait sa part dans la communauté qui avait existé entre cette dernier et feu Jean Baptiste St. Aubin, son mari;

Considérant que par la vente que la demanderesse a faite à son père de tous ses droits dans la dite succession de sa mère, elle s'est dépouillée du droit de demander un compte et partage des biens de la dite communauté, si elle eut existé;

Considérant que la demanderesse ne pouvait par une réponse spéciale demander la nullité, pour cause de lésion, de la dite vente faite par elle-même, mais que cette demande aurait dû être faite par action principale ;

Sans égard à la preuve faite sur la dite réponse spéciale de la dite demanderesse, maintient l'exception péremptoire du défendeur Jean Baptiste St. Aubin, et déboute l'action de la dite demanderesse.

Judgment confirmed.

Kerr & Carter for appellant.

Loranger, Loranger & Pelletier for respondent.

Present: MONK, RAMSAY, TESSIER, CROSS, JJ., TASCHEREAU, J. *ad hoc.*

LAWLOR, (deft. below), Appellant, and WOODS, (plff. below), Respondent.

The action, *en déclaration d'hypothèque*, was dismissed by the Superior Court, but this decision was reversed by the Court of Review, and the action maintained. In appeal the judgment was confirmed. The case turned in great measure on a question of good faith.

Lacoste & Globensky for Appellant.

Geoffrion, Rinfret & Archambault for Respondent.

Present: DORION, C. J., MONK, RAMSAY, TESSIER, CROSS, JJ.

LALONDE et al., (defts. below), Appellants, and ALARIE, (plff. below), Respondent.

The action of respondent was on a note. Plea, that the note was given in payment of a threshing machine sold by respondent, and that the machine was a bad one. A question of evidence.

Judgment condemning defendants confirmed.

Duhamel, Pagnuelo & Rainville for Appellants.

Loranger, Loranger & Pelletier, for Respondent.

BEAUPRÉ, (plff. below), Appellant, and COMPAGNIE DES REMORQUEURS DU PORT DE MONTREAL, (deft. below), Respondent.

Action for damages alleged to have been caused to the barge *Union* by the tug *Messenger*. Question of proof.

Judgment dismissing the action confirmed, Tessier, J., dissenting.

Duhamel & Rainville for Appellant.

F. X. Archambault and *A. David* for Respondent.

OUIMET, Appellant, and BERGEVIN dite LANGEVIN, Respondent.

Judgment of Superior Court, Montreal, confirmed.

DOUTRE, (deft. below), Appellant, and LA BANQUE JACQUES CARTIER, (plff. below), Respondent.

Action on a note. Plea by the endorser that notice of protest was not given in time ; the protest being made 7th December, and the notice, according to appellants, being deposited in the post office only on the 11th. The Superior Court maintained the action, considering the weight of testimony to be on the side of plaintiff.

Judgment confirmed.

Doutre, Doutre, Robidoux, Hutchinson & Walker for Appellant.

Lacoste & Globensky for Respondent.

Present: DORION, C. J., MONK, RAMSAY, CROSS, JJ.

LA BANQUE NATIONALE, (plff. below), Appellant, and CONVERSE, (deft. below), Respondent.

Action on notes made in the name of respondent by his agent John Converse (son of respondent). Plea, that the notes sued on were not justified nor authorized by any authority given to John Converse. The Court below sustained the plea and dismissed the action. This judgment was reversed in appeal.

Judgment: "Considering that the appellants have proved that John Converse was authorized as the duly constituted attorney and agent of the respondent in this cause to sign the two promissory notes mentioned in the declaration in this cause, and that the said notes were given for matters arising out of transactions connected with the business of the said respondent," &c.

Judgment reversed.

Geoffrion, Rinfret & Archambault for Appellant.

John L. Morris for Respondent.

CURRENT EVENTS.

UNITED STATES.

SPIRITUALISM AND ITS EFFECT UPON WILLS.—In the case of *Leighton* v. *Orr*, 44 Iowa, 679, one Wolcott had lived for years in unlawful relations with a woman who shared his home, and who claimed to be a spiritualistic medium, and

to have daily communication with his deceased wife, whose memory he greatly revered. During this time she acquired great influence over him, and controlled him to a large degree in the management of his business affairs, and at the same time he was addicted to the use of alcoholic liquors to such extent that he became debilitated in mind and body. Previous to his death he conveyed large portions of his property, for the considerations of "one dollar and friendship," to this woman. The court held that these conveyances should be set aside on the ground that they were procured by undue influence. This case, in one respect, resembles *Lyon* v. *Home*, L. R., 6 Eq. Cas. 655. The defendant in that action was somewhat celebrated as a spiritualist. The plaintiff sought him and thrust her gifts upon him; in consequence, however, of directions received, as she supposed, through the defendant, from her deceased husband. There were, however, no illegal or immoral relations between the parties. The court held that, owing to the confidential relations between the parties, the burden was on the defendant to support the deeds or gifts, and that he should satisfy the court that they had not been obtained by reason of confidence reposed, or undue influence. In *Robinson* v. *Adams*, 62 Me. 369, the subject of spiritualism, and its effect on the validity of wills, is extensively discussed, and the conclusion reached that when a will is attempted to be impeached upon the ground that it was the result, to some extent, of assumed spiritual communications with the deceased husband of the testatrix, and of her belief that her son-in-law possessed supernatural power over his wife, and was possessed of devils, the jury must determine how far these beliefs were founded in insane delusion, or exercised undue influence in producing the will. See, also, note to this case in Redfield's Leading American Cases on Wills, p. 384.—*Albany Law Journal.*

PROTECTION OF WORKING PEOPLE.—A curious bill has been introduced in the New York Assembly by Mr. Seebacher. It reverses the old order of things, when the poor were ground under foot by the rich, and proposes to place the employer under the heel of the employee. The bill provides that where judgments are recovered for wages for amounts less than $50, and the execution issued thereon is not paid, the debtor may be arrested and put in a jail or debtor's prison for fifteen days. By way of compensation it is provided that if, on a trial by jury, it shall be found that the plaintiff was in the wrong, or intended persecution, he may be imprisoned. It will be observed that no evidence of fraud on the part of the employer is required. The measure is evidently a restoration of imprisonment for debt, and it is to be hoped that the Legislature will not sanction a step in so dangerous a direction.

U. S. CASES IN BANKRUPTCY.

Some of the decisions in bankruptcy by courts in the United States admit of more than local application, and, regard being had to the difference in the law, may be usefully consulted. Appended is a digest of such recent decisions as appear to be of general interest:

Bankrupt.—If a bankrupt honestly regards a judgment held by him as worthless, he can omit it from his schedule without being chargeable with false swearing or fraud. If it had value as an asset, it is neither wilful false swearing nor fraud unless the omission to place it in the schedule was intentional.—*In re Winsor*, 16 N. B. R. (W. D. Mich.) 152.

Books of Account.—1. Keeping proper books of account, within the meaning of the Bankrupt Act, may be said to be the keeping of an intelligent record of the merchant's business affairs, and with that reasonable degree of accuracy and care which is to be expected from an intelligent man in that business. A casual omission of an entry, or mistake, would not be conclusive against the bankrupt.—*In re Winsor*, 16 N. B. R. (W. D. Mich.) 152.

2. In order that a merchant or trader should comply with the law requiring him to keep proper books of account, it is not necessary that he should enter therein entries of debts owed by him at the time he went into trade, previously contracted, as well as those incurred in his business as a trader.—*Ib.*

Composition.—After a composition in bankruptcy had been confirmed, a petition for a rehearing was filed, pending which the payments became due. Upon notice to all the creditors, the bankrupt was ready to pay all at the time and place notified, and all were there except the petitioning creditors. *Held*, that it was the

duty of the bankrupt, if he could find no one to take the money for the petitioners, to pay the same into the Bankruptcy Court. Upon failure to do so, the unpaid creditors are entitled to a summary order for payment.—*In re Reynolds*, 16 N. B. R. (S. D. N. Y.) 176.

Debt.—When A., at the time he purchases goods of B., intends either in whole or in part not to pay for them, he has "created a debt by fraud," within the meaning of the Bankrupt Act.—*In re Alsberg*, 16 N. B. R. (Del. Dist) 116.

2. And a like debt is created when the vendor is induced to sell his goods upon the representations of the buyer that he possesses property which he does not possess.—*Ib.*

Discharge.—A discharge obtained by fraud will be set aside.—*In re Augenstein*, 16 N. B. R. (Sup. Ct. Dist. of Col.) 252.

Fees.—1. The assignee of an insolvent debtor under the general assignment for the benefit of creditors is entitled to the disbursements legitimately made in the execution of his trust before the debtor was adjudged a bankrupt, but he is not entitled to services as preferred, nor to attorney's fees paid by him. As to these, proof as an ordinary creditor must be made.—*In re Lains*, 16 N. B. R. (Mi n.Dist.) 168.

2. Where property coming into the hands of an assignee is subsequently found to be subject to a lien, it is to be charged with the reasonable costs of keeping and selling it, as well as the assignee's fees; but not for services of an auctioneer, without showing that such services were necessary, nor for attorney's fees for services rendered the assignee in contesting the lien claim.—*In re Peabody*, 16 N. B. R. (Col. Dist.) 243.

Fraudulent Conveyance.—Fraudulent conveyances are not void but voidable by creditors, and property embraced in them does not vest absolutely in the assignee in bankruptcy as a portion of the bankrupt's estate.—*Phelps* v. *Curts*, 16 N. B. R. (Sup. Ct. Ill.) 85.

Fraudulent Preference.—1. In a suit to set aside a mortgage as fraudulent, if the defendant knew that there was a large amount of other unsecured debts which the debtor could not pay, and that a large part of the property was common to all, from which to get their pay, he knew that he was, in taking the mortgage, obtaining a fraudulent preference.—*In re Armstrong*, 16 N. B. R. (Vt. Dist.) 275.

2. Where a mortgage sought to be set aside was executed within the time named in the act to constitute a fraudulent conveyance, *held*, that the fact that the mortgagor had repeatedly failed to pay when promised, coupled with the knowledge of other debts owing by the mortgagor, constituted reasonable cause for him to believe that the insolvency which in fact existed did exist.—*Ib.*

Preference.—A creditor accepting security has no right to wilfully close his eyes to facts the existence of which he could have ascertained by the slightest effort.—*Lloyd* v. *Strobridge*, 16 N. B. R. (Cal. Dist.) 197.

Sale.—1. The objection that the purchaser at an assignee's sale was the attorney of the assignee, and as such incapable of purchasing, should be made in a court of bankruptcy, and cannot be made collaterally in another.—*Spilman* v. *Johnson*, 16 N. B. R. (Vt. Ct. App.) 145.

2. Where a claim was marked "worthless" by the bankrupt in his schedule, and it was sold by the assignee with other claims, the validity of the sale cannot be affected by the fact that the claim has turned out to be valuable in the hands of the purchaser.—*Phelps* v. *McDonald*, 16 N. B. R. (Sup. Ct. Dist. Col.) 217.

Subrogation.—S. and H. were partners, equally interested. Upon final settlement S. was found to owe H. a balance. As partners they guaranteed a debt to G, which they were decreed to pay and did pay out of the partnership assets. S. went into bankruptcy, when H. claimed a lien upon the individual estate of S., and to be subrogated for G. for one-half the debt. *Held*, that the debt being a partnership debt, and having been paid out of partnership assets, there was no right of substitution as against creditors of either partner. Such payment only created an item in the account between the partners.—*In re Smith*, 16 N. B. R. (E. D. Va.) 113.

Tradesman.—A bankrupt engaged in farming and trading, buying, and selling live stock, is not a tradesman, within the meaning of Sect. 5110 of the Revised Statutes.—*In re Rugsdale*, 16 N. B. R. (Dist. Ind.) 215.

Waiver.—Acceptance by a creditor of his dividend under a composition is a waiver of any claim of set-off.—*Hunt* v. *Holmes*, 16 N.B.R. (Mass. Dist.) 101.