The Legal News.

VOL. VIII. JANUARY 31, 1885. No. 5.

Section 28 of the Patent Act of 1872 provides "that in case disputes should arise as "to whether a patent has or has not become "null and void under the provisions of this "section, such disputes shall be settled by "the Minister of Agriculture or his deputy, "whose decision shall be final." Under the authority of this Statute the Minister of Agriculture has pronounced an elaborate judgment, which appears in the present issue, declaring that the Bell Telephone Patent has become void in Canada. The minister refers to a decision of Mr. Justice Osler. This was rendered in the Common Pleas Division, Ontario, in December, *Re Bell Telephone Co. et al.* v. *The Minister of Agriculture.* Mr. Justice Osler held that a court or judicial tribunal for the determination of the matters referred to in the section was constituted by the Patent Act; and that the constitution of such a court was not *ultra vires* of the Dominion Parliament as infringing upon subjects of exclusive Provincial legislation; and also that it was competent for the Minister to decide as to the existence of disputes arising for his decision.

It will be observed that the Minister merely declares that the patent *has become void*, not that it was void from the first. He refers to a decision by Dr. Taché in *Barter* v. *Smith.* In that case the petitioner asked that the patent should not only be declared void, but that it had been void from the date of the expiration of the delay mentioned in the Act. The patent in that case was sustained, but on the point referred to Dr. Taché observed: "It has been hinted in the arguments, that "should a decision intervene declaring a "patent null and void, it ought to specify "that the patent was voided at the date of "the expiration of the delay mentioned in "the law, and has stood null since to all "intents and purposes. As this incidental "question touches rights which do not come "within this jurisdiction, it appears clear "that, in duty and through respect for the "higher courts, this tribunal is forbidden "from entering such domain, even by ex"pressing an opinion, being bound to restrict "its investigations and decisions within the "narrowest possible limits. The law orders "that the Minister of Agriculture should say "*whether a patent has or has not become null* "*and void*, consequently the judgment is "simply to decide *if it has* or *it has not*, as the "case may be: all the consequences that "may follow are to be adjudicated upon by "the ordinary judges of such disputes be"tween citizens." Mr. Pope appears to coincide with this view, and therefore the parties, with respect to infringements before the voidance of the patent, are left to their recourse before the ordinary courts.

Another year has gone by, and the New-York Appeal calendar shows an increasing list of cases unheard. The new calendar, according to the *N. Y. Herald*, contains nearly eight hundred cases. "When the Court adjourns for the summer vacation," says the *Herald*, "it will leave a docket of five or six hundred cases, which will be materially lengthened when the autumn session begins. The Court is crowded with business beyond its capacity to dispose of it, and until some means of relief is provided the pressure is likely to increase instead of diminish. This is an important matter, which demands and ought to receive the attention of the Legislature at the present session. When litigants have to wait two years or more for their rights to be determined on appeal the practical effect in many instances is simply a denial of justice."

Mr. Justice Stephen makes the following observations on law reform, in an article in the *Law Quarterly Review*:—"One of the many difficulties which stand in the way of improving the law of England, perhaps I might say the great difficulty, may be thus expressed. Those who have acquainted themselves with its provisions have, generally, neither the time nor the inclination to undertake any other task than that of administering it as an existing system. Besides, when a man has mastered an intricate and difficult system, he takes a positive pleasure not only

in the superiority which his knowledge gives him, but in that knowledge itself. The late Lord Wensleydale, whilst pitying the hard lot of a man who was ruined because his pleader had supposed his remedy to be trespass instead of case, added: 'No doubt it is hard on him. The declaration ought to have been in case. If it had been, he would have won; but if the distinction between trespass and case is removed, law, as a science, is gone—gone.' On the other hand, those who have not a professional acquaintance with law are almost certain to be baffled in any attempt which they may make to improve it by their ignorance of the subject. It has real and great difficulties, and to attempt to deal with the subject without careful previous study and a considerable amount of collateral knowledge is only to run the risk of making bad worse. Being strongly impressed with these views, and preferring a systematic attempt to improve the law to any other form of public life open to me, I have for some years past employed such leisure as I could command in writing expositions of existing branches of law at once technically correct and complete, and capable of being understood by any person of decent education, sufficiently interested in the subject to read books of moderate length about it requiring close attention. It seemed to me that if the law as it actually is, were, so to speak, translated into common English, and made accessible to the public at large, the materials for its re-enactment in an improved and simplified form—in other words, for its codification—would be provided, and I felt sure that the convenience of that process would be so generally recognized that if it were once begun, there would be every reason to hope that it might proceed quite as rapidly as would be desirable."

Some time ago the *Times* said the bar must look to its laurels, referring to the decline of eloquence and the growth in number of cases conducted without the assistance of counsel. There is no doubt, we regret to say, that forensic eloquence is not what it was. The number of counsel who can state a case with anything like elegance of diction may be counted on the fingers of one hand, while even fewer digits would suffice to enumerate those who have any power with juries. As to this last remark we do not know that it is altogether a reflection upon the bar. Their training now is on stricter legal lines; our best advocates are good lawyers, and are frequently too terse and logical for juries. Furthermore, juries of to-day are of a higher order than the juries of even twenty years ago, and are not so easily influenced by counsel.—*Law Times.*

PATENT OFFICE.

Ottawa, Jan. 24, 1885.

Before the MINISTER OF AGRICULTURE.

In re BELL TELEPHONE PATENT.

THE TORONTO TELEPHONE MANUFACTURING CO. *v.* THE BELL TELEPHONE CO. OF CANADA.

Patent Act of 1872—*Combination of known elements—Importation after twelve months from date of Patent—Importation of manufactured parts to be put together in Canada—Refusal to sell.*

1. *An accidental delay, by which an importation arrived a day or two after the expiration of twelve months from the date of the patent, held not to avoid the patent.*
2. *The importation of manufactured parts to be put together in Canada avoids the patent.*
3. *Refusal to sell the right to use unconditionally an invention or to license avoids the patent.*

The following is the text of the decision of the Hon. J. H. Pope, minister of agriculture, voiding the patent in the Bell Telephone case:—

This case is the second which has come before this tribunal. It happens that both cases concern interests of vast magnitude, a circumstance which contributed to enhance the sense of the heavy responsibility imposed by the law on me as the minister of agriculture or on my deputy in this respect. The first case, *Barter* v. *Smith*, was tried before Mr. Taché, in November, 1876, and his judgment was rendered in February, 1877.

I have to refer to that judgment, because it has been made the basis of argument by the learned counsel on both sides in this case, because it constitutes the declaratory law of the country on points raised by the application of the 28th section of the Patent Act of 1872, being in matter of doctrine and of legal interpretation unquestionably correct; and endorsed, as remarked by Mr. Cameron, by the highest judicial authorities, namely, the Court of Appeal of Ontario, the Supreme Court, and, in relation to this present case, by Mr. Justice Osler in his judgment rejecting an application for a writ of prohibition.

This tribunal is, therefore, bound to attach

great weight to the doctrine and rules of interpretation laid down in that judgment of the deputy minister, which judgment embodies the jurisprudence adopted in Canada, when dealing with that section of the Patent Act.

The feature of Patent No. 7,789, granted for what is known under the name of "Bell's System of Telephony," is peculiar in so far as it consists both of a process or art and of a portion of the machinery necessary to carry it into practice. The two elements are inseparable; the electric circuit and the two instruments are the means of giving a practical and tangible shape to "Bell's system of telephony." Moreover, the instruments—described in the specification and illustrated in the drawings of the patent—are the mechanical contrivances which distinguish this invention from other methods of getting at a similar result. All the elements of which these instruments are composed are of the public domain, and public are also the means of erecting an electric circuit; therefore the patent is a patent for a new and useful combination of old elements, to attain an object known beforehand. The combination is the invention, and consequently the subject matter of the patent, and the mechanism of which it is constituted are new articles of manufacture.

The doctrine, universally admitted, of the patentability of a variety of combinations of the same elements for the same object has been clearly laid down by the Supreme Court in *Smith* v. *Goldie*. What is patentable is the subject of a privilege, and in Canada submitted to the conditions of section 28 of the Patent Act.

This patent, like every other patent granted, is therefore under the obligations exacted from all patentees by section 28 of the Patent Act of 1872, and subject to the adjudication of this tribunal, should disputes arise as to whether it has or has not become null and void under the provisions of this section.

The patent was granted on the 22nd of August, 1877, to Mr. Alexander Graham Bell, and is now, through a series of assignments, the property of "The Bell Telephone Company of Canada," the respondents in the case. It must be remarked that it matters not who the owners are for the time being or were at any time; it is the patent which stands before me as the minister of agriculture to be adjudicated on, not the owners. The patent does so stand with the uninterrupted privileges as well as with the uninterrupted obligations attached to it.

This tribunal has not to investigate the *locus standi* of disputants nor of respondents, nor in relation to companies, to inquire whether they are legally incorporated or not; such questions are not within its jurisdiction and, besides, are quite indifferent to the issue in such cases. When this tribunal is made aware that disputes are raised, in accordance with the provisions of the 28th section, by some person who undertakes to prove his allegations, it immediately becomes the duty of the judges of such disputes to investigate the matter in the interest of public rights, if the policy of the law has not been carried out, or in the interest of patent rights if the obligations have been fulfilled. I, as minister of agriculture, have not to undertake to initiate cases of disputes, but I must take notice of all cases brought before me in a formal way.

The first allegations of the petitioners in this case are that illegal importations have been made of the patented articles, after twelve months from the date of the patent, specifically in the latter days of August, 1878, in January, 1879, and during the years 1880 and 1881.

The facts of the first alleged act of illegal importation are as follow:—During the first year of the existence of the patent, the patentee or his representatives in Canada had contracted with Mr. Charles Williams, of Boston, in the United States, for one thousand telephones to be delivered within the twelve months allowed by law for importing the invention. At the expiration of the twelve months Mr. Williams had not been able to complete his contract, more than half of the number contracted for having not been furnished. Under the misapprehension created by the date of the registering of the patent (24th August) that the twelve months would only expire with the 24th day of August, 1878, Mr. Williams did forward from Boston, on the 23rd day of the same month, a lot of seventy-five telephones, which, in the

ordinary course of transit, should have entered Canada on the 24th, but which, owing to some mishap, did actually pass the frontier only a few days after. The circumstances of these facts show that there was no intention to break through the law, and that the importation was not considerable; therefore this case of importation in the latter part of the month of August, 1878, cannot entail the voidance of the patent.

At the same time that no stress is put upon these facts, it is, nevertheless, an occasion to warn patentees in general against the danger of running so close to the expiry of the twelve months as to incur the risk of coming even a day too late with their last importation. This tribunal is a paternal tribunal, the judges of which are the natural protectors of the patentees' rights; and, as such, bound to give to the facts the most liberal construction consistent with a compliance with the spirit of the law; but the patentees are the first guardians of their own interests and should not put their property in jeopardy, by placing these judges in the position of being obliged to overstretch leniency in order to save their patents.

During the first year of the existence of the patent, then, the patentee or his legal representatives, imported, or caused to be imported, about five hundred instruments ready for use, as they had a right to do; a few days after the expiration of the twelve months they also imported, or caused to be imported, seventy-five complete instruments, which latter importation being inconsiderable and apparently done in good faith, and not with any intention to evade the law, is declared not to have forfeited the patent. There remains now to examine what was done after that time.

It is desirable, first, to enter into a cursory examination of the instruments patented as new articles of manufacture. It will, however, be sufficient to investigate the elements of one of these two instruments, the one commonly called the "hand telephone," represented in figure 6 of the drawings of the patent. It consists, 1st, of a casing with a side cover, the whole being at the same time a handle, with a flat ring piece fixed to it, called disk in the trade, and a perforated cup-like screwed top, the whole and the four distinct parts of which are of a form special to this new article of manufacture; this handle casing may be made of any suitable materials, but as a matter of fact is in this case made of hard rubber; 2nd, of four bars of magnetized steel, bound together by screws and nuts; 3rd, of two soft iron pieces, called drop forgings; 4th, of a bobbin, on which silk covered, small copper wires are rolled around; 5th, of wire posts, also called screw cups, and a regulating screw; 6th, of a metallic vibrating plate or diaphragm, sometimes called disk, as a matter of fact cut out and otherwise worked from what is commonly called japanned or ferrotype plates; 7th, of a few other insignificant articles of construction.

It will expedite matters to consider together the two questions raised in the dispute, of illegal importation and of non manufacture; for in the measure that illegal importation goes on, in that measure the industry and the labor of the country are deprived of the benefit of manufacturing.

Therefore, we have to examine what, in these instruments, is raw material which does not fall under the application of the 28th section, and what are industry and labor; because it is clear that if the aggregate amount of industry and labor entering into the making of such instruments was merely trifling, unless a criminal intention of totally disregarding the law was shown, which is not the case here, it would not be a liberal nor a reasonable interpretation of the spirit of the law to destroy the patent, on account of its importation or non-manufacture; if it were, for instance, amounting in all to a value of ten dollars a year, as the learned counsel, Mr. Macdougall has it, with the Latin maxim—*de minimis non curat lex*, or even if it were ten times as much as that for every year.

As already said, it will suffice to confine our study of the case, to the examination of one of the two instruments patented, the "hand telephone." The raw materials of this instrument comprise, steel in bars, soft iron, wood and vulcanized rubber, to which must be added, as common articles of commerce, silk covered wires, japanned plates or sheets of ferrotype, as some call them, screws, nuts, and may be wire posts. The value of each hand telephone complete is about $2.00; the value of the raw materials, including common articles of commerce, entering into each instrument, may be said with certainty, not to reach the aggregate of $0.90. Therefore the industry and labor put upon each of these instruments may be set down at about $1.10. One would be inclined to take a much more exalted idea of the value of the labor put upon the two instruments patented from the statement made by Mr. Sise, the general manager of the Bell Telephone Company of Canada, that their telephone factory at Montreal, established in 1882, has $50,000 capital invested in it, and that the pay roll of that factory amounts to $30,000 a year wages; notwithstanding that the rubber handles of the hand telephone are not yet manufactured in Canada, as we have it from Mr. Sise, who says that they cannot get them made in Canada, having again vainly tried to do so a week before he gave his evidence in this case; which, of course, can only mean that the Bell Telephone Company have not pro-

cured for themselves the moulds to manufacture those rubber handles. Although Mr. Sise does not discriminate the work done at their Montreal factory, it is clear that such an amount of yearly wages cannot be exclusively devoted to the making of the two instruments patented in patent No. 7,788; but the statement, with all its surroundings, proves that the manufacture of the two instruments is not an insignificant trifle, but is, on the contrary, an advantage worth being looked after; there are many thousands of them now in use in Canada, and there were, at least, several thousand, when the Montreal factory was started.

The question comes then:—Has the patentee or his legal representatives imported or caused to be imported, after twelve months of the existence of their patents, the new articles of manufacture patented? There cannot be a shadow of doubt that they have so imported or caused to be imported the articles, manufactured in parts, to be simply put together at an amount of labor, at times paid $0.30, at other times $0.27, in Canada. It is in fact, virtually admitted by them, when pleading that putting together or "assembling" the parts ready made, is construction and manufacture, in the meaning of the law.

It is equally evident that, during the same period, that is coming to the year 1882, they have failed to manufacture to the extent that they have imported, and that, from the year 1882 to the date of hearing the evidence of Mr. Sise, the 3rd December, 1884, they had been importing rubber handles in a manufactured state.

The intention, although not malicious, to evade the law, is nevertheless manifest. During that considerable time of the existence of the patent (to 1882), the same foreign manufacturer, Mr. Williams, with whom the patent owners had contracted for one thousand telephones to be delivered during the first twelve months of the life of the patent, and who furnished only about five hundred during that period of time, did continue to send them into Canada for years, to supply an ever increasing demand; but to evade the law and give color to the importation, instead of sending these instruments consigned to the patentee's representatives, he sent them in pieces to be put together in Canada, to some one through whose intermediary the patentee's representatives received them when "assembled."

All this is proved in the clearest manner by customs papers, by accounts furnished, by declarations from one Cowherd, from Mr. Foster, and by correspondence on the subject. We have it from Mr. Sise himself, with some reticence but also with some details. He explains the reason why this importation and this non-manufacture were resorted to. "Mr. Charles Williams, one of the owners of the patent," says Mr. Sise, "was and is the only manufacturer of Bell telephones in the United States; he is the only man who is licensed by the Bell Telephone Company to manufacture telephones; he is the only manufacturer to-day that I have any knowledge of..... Mr. Charles Williams was the only man who had any knowledge of it, and who had the control of Cowherd's shop..... I think we paid Williams, and I think he was the man who employed Cowherd..... Mr. Williams having arranged with Mr. Cowherd to manufacture in Canada, Mr. Cowherd had a number of machines on hand (at the time of Cowherd's death), and Mr. Foster continued the manufacture, and my impression is that he continued to contract with Mr. Foster until we got our shop into such shape that we could make ourselves..... There was no time or period when we were not supplied with telephones for the public, either from Cowherd, Mr. Foster and our own manufacture. They were continuously manufactured, inasmuch as they were ready for the public always when they came for them."

So far as the law requires a prompt introduction in Canada of a patentee's invention, the patentees have observed the law, as Mr. Sise remarks, but the protective policy of the Patent Act, they have, in intention and effect, disregarded and defeated to a very large amount of the industrial manufacturing value of the patented article.

In support of the pleading that the importation of an instrument in parts is no importation, Mr. Wood, on behalf the respondents, quoted a recent ruling of the English courts (*Townsend* v. *Hawthorne*), in which case it was decided that the importation of the materials of a composition of matter was no infringement of the patent, and, says the learned counsel with reason so far, what is no matter of infringement cannot be a matter for illegal importation. So far so good; but the conclusion, which is correct in the abstract, fails in the concrete, as applied to the present case. The materials of the composition are raw materials unworked; such as would be, in the present case, steel in bars, iron as a commercial article of trade, rubber and even silk covered wires: but the moment these are worked into shape and form, to constitute a Bell telephone, they cease to be raw materials and become a manufactured article. Mr. Taché, in his judgment, has anticipated the ruling of the English courts, in the very species of case cited by Mr. Wood. "It is not difficult," says Mr. Taché, "to imagine a case in which the importation of all and every one of the component parts of an invention, to be simply put together in Canada would not be an importation in the meaning of section 28 of the Patent Act * * * for

example, the case of a patent granted for a composition of matter." It is immediately after this that Mr. Taché adds, referring to such cases, "every one of which must stand on its own merits."

The other and last allegation of the disputants is that the patentees have refused to sell their invention after two years of the existence of their patent, namely, to the inhabitants of Port Perry in 1882, to Messrs. Lohnes and McKenzie in 1884, to others, and generally refused to sell in order to monopolize the control of telephonic operations throughout Canada, and derive, from their invention, more than what they were entitled to for the use thereof.

A question has been raised on the meaning of the words sale and license as applied to patents. One of the learned counsel was under a misapprehension about the signification of the words used by Mr. Taché in his decision—"license the right of using on reasonable terms." In this sentence the word license is employed in its broad technical sense in patent science; it does not mean a lease upon payment of a rental, but the absolute transfer of a property, which becomes vested in the licensee or purchaser *quoad* the result suggested by the nature of the invention and the extent of the purchase in point of number. Of course, if one or many of the public prefer to lease and agree to do so, there is no disability created by the law to prevent them from entering into such a contract.

There are, in the nature of things, three sorts of contracts in relation to patents:—1st. The license to use, or by the purchaser furnishing himself with the means to use. 2nd. The sale of the means to use the invention. 3rd. The assignment of the whole or portion of the patentee's privileges. As tersely expressed by Judge Hall, in *Pitts* v. *Hall* (2 Blatchford, 229): "A license, or assignment, or sale of a machine is a transfer, *pro tanto*, of the property secured by the patent."

In all these cases, however, it must be borne in mind that our Patent Act differs essentially from the English and present American laws. Our patentees are bound to license, that is, to sell the use of their invention, and bound to see that their invention is not imported after twelve months, and that it be manufactured in Canada after two years, because connivance in an importation is equal to importing or causing to be imported. On the contrary, the English and American patentees are at liberty to import, and at liberty to entirely withhold from the public use, their inventions, if they choose to do so; therefore, they can select their own conditions in a contract, in the nature of which they are bound of course when entered upon; but into which they are not forced by law.

The instances of refusal to sell which were the subject of evidence in this case are several, but, with the exception of three, they are mixed, or seem to be mixed, with demands to use poles, wires, communication with lines and exchanges, which, naturally, the patentees are not bound to furnish. The three clear instances of refusal are: 1st, The case of Mr. Bate, of Ottawa, commenced in April, 1883; 2nd, The case of Mr. Dickson, of Montreal, commenced in November, 1883; 3rd, The case of Mr. Richard Dinnis, of Toronto, commenced in March, 1884. The correspondence is completed and certified by statutory declarations.

In the case of Mr. Bate, he wrote on the 14th April, 1883, to the Bell Telephone Company of Canada asking them to give him their lowest prices for three telephones, including transmitters, for a private line. He was answered by Mr. McFarlane that their agent at Ottawa was directed to call on Mr. Bate. Mr. Bate wrote a second letter to the company to explain that he wanted to purchase and not to rent the instruments. Mr. Sise, in answering this second letter, intimated to Mr. Bate the following: "We do not sell telephones, but we rent them."

In the case of Mr. Dickson, a protracted correspondence took place, first opened with Mr. Scott, agent of the company, to be continued with Mr. Sise, in which Mr. Dickson insisted on his right to get the instruments as his property, according to law, and Mr. Scott and Mr. Sise declined to sell, but offered to lease or rent. To close the correspondence, Mr. Dickson informed the company that being thus denied the purchase of the instruments, he had decided to have them constructed himself for his own use; to which threat Mr. Sise answered that they could not consent to an unconditional transfer, but would sell a Bell telephone for thirty dollars, subject to the stipulation "that it is to be used only between certain specified points."

In the case of Mr. Richard Dinnis, he wanted to purchase three sets of telephones to connect his office, his residence and his factory, and asked to be informed of the cost. Mr. Sise answered him that they had never sold these instruments, but that he (Mr. Dinnis) could have three sets rented at the rate of $20 per annum, he (Mr. Dinnis) building his own line; but that he would sell the instruments to him for $100 per set to be used only for the purpose stated by Mr. Dinnis. Mr. Sise refers Mr. Dinnis to Mr. Neilson, agent of the company at Toronto, for further information. Mr. R. Dinnis, in an interview with Mr. Neilson accompanied by Mr. Arthur Dinnis, both of whom render an account of the interview by statutory declarations, tried to get information from Mr. Neilson about prices, and asked if he could get the instruments at a more reasonable price and uncon-

ditionally, but was answered by Mr. Neilson that he could not give any other answer than the one contained in the letter of Mr. Sise. The price asked was unreasonable and with a limitation of use.

The case of Mr. Bate was one of flat refusal. The two other cases were instances of protracted resistance, ended by offers to sell under restrictions, some of which were beyond the privileges of a patentee. The limitation as to where to use the invention, after purchase, is similar to a sale of patented sewing machine to be used only in a particular house, or the sale of a patented plough to work only a given plot of land. The patent license, in Canada, accompanies the purchaser wherever he chooses to move on the wide territory of the Confederation, provided he does not use more than the number of articles purchased.

The policy of refusal to license or sell, for the purpose of leasing at a rental, is made plain again by the answers, although very reticent, of the manager of the company to the interrogatories of counsel. A few quotations of his evidence will suffice:—"I do not "think," says Mr. Sise, "there has ever been "a set sold by us." "I would not swear that "we have not refused to sell private tele- "phones. I would not say we did." "I should "not be able to say whether we had abso- "lutely refused to sell unconditionally one "or two or more instruments, nor would I "say that we had not." "I do not think we "ever sold an instrument unconditionally."

The whole case is plain on the face of it, and it is also plain that the patentees or their representatives had in view to build up a commercial enterprise (for the benefit of the public as they contended), rather than content themselves with getting their mere royalty on licenses or sales as patentees. With such intention, simply, there is nothing to find fault, so far as this tribunal is concerned, if the steps necessary to carry it out had not led them beyond the provisions of the Patent Act.

The conclusion is that the patentees, the respondents in this case, or their representatives, having extensively imported the patented articles after the expiration of twelve months from the date of their patent; having not manufactured in Canada the said articles to the extent they were bound to do, after two years of the existence of their privilege; having resisted and refused to sell or deliver licenses as required by the statute, to persons willing to pay a reasonable price for a private and free use of the patented invention, they have forfeited their patent.

Therefore I decide that Alexander Graham Bell's patent (No. 7,789) for "Bell's System of Telephony" has become null and void, under the provisions of section 28 of "The Patent Act of 1872." Patent annulled.

Christopher Robinson, Q. C., and *J. R. Roaf*, for Petitioners.

Hector Cameron, Q. C., Dalton McCarthy, Q. C., Wm. Macdougall, Q. C., and *S. G. Wood*, for Respondents.

SUPERIOR COURT.

MONTREAL, Jan. 17, 1885.

Before TASCHEREAU, J.

LUNN et vir v. THE WINDSOR HOTEL CO. OF MONTREAL.

City of Montreal—Special Assessment—42-43 *Vict.* (*Que.*), *ch.* 53.

The assessment roll prepared to defray the cost of a special improvement in the city of Montreal was set aside by the Courts, and a new roll was made for the same improvement under the authority of an Act of the provincial legislature.

Held, that the assessment under the new roll must be paid by the person who was proprietor at the time the new roll came into force, and that he has no recourse against the antecedent proprietor.

Davidson, Cross & Cross for the plaintiffs.

Abbott, Tait & Abbotts for the defendants.

COURT OF APPEAL REGISTER.

MONTREAL, Jan. 26.

Sharpe & Cuthbert.—Heard on merits; C. A.V.

Normandeau & Dickinson.—Appeal dismissed, appellant not proceeding.

Dansereau & Letourneux.—Heard on merits; C.A.V.

Arless & Belmont Manufacturing Co.—Do.

Tye & Fairman.—Do.

Jan. 27.

The Queen v. *Prevost.*—Reserved Case sent back for amendment.

Stephen & La Banque d'Hochelaga.—Motion for additional security, rejected.

Black & Shorey.—Judgment confirmed.

Pillow & Recorder's Court—Judgment confirmed.

Biron & Trahan.—Judgment confirmed, Ramsay, J., dissenting.

Tourville & Ritchie.—Judgment confirmed, each party paying costs of printing his factum.

Wright & Moreau.—Judgment confirmed.

The Exchange Bank of Canada & The Queen.—Motion that the case be heard by privilege, granted; hearing on 16th March.

Campbell v. *Bate, & Cunard Steamship Co.*—

Heard on motion for leave to appeal from interlocutory judgment, C.A.V.

Smith & Fairbanks.—Motion to dismiss appeal, rejected.

Scottish American Insurance Co. & Bury.—Appeal dismissed (*perimé*).

The January Term then came to an end.

BUSINESS FAILURES IN 1884.

The following is a statement of the failures in Canada and Newfoundland during 1884, by Provinces:—

	No.	Liabilities.
Ontario	608	$9,602,392
Quebec	401	4,766,180
New Brunswick	73	1,570,337
Nova Scotia	140	2,068,860
Newfoundland	19	251,536
P. E. Island	7	146,000
Manitoba	79	786,001
Total	1,327	$19,191,306

The total number of failures is somewhat less than in 1883, but the liabilities are greater, a comparison with the previous years giving the following result:—

	Number.	Liabilities.
1884	1,327	$19,191,306
1883	1,384	15,949,361
1882	787	8,587,657
1881	635	5,751,207
1880	907	7,988,077
1879	1,902	24,347,937
1878	1,697	23,908,677

A comparison by provinces shows the following figures:—

	1883.	1884.
Ontario	567	608
Quebec	438	401
New Brunswick	48	73
Nova Scotia	89	140
Prince Edward Island	5	7
Newfoundland	5	19
Manitoba	232	79

And the amount of liabilities in the same period was as follows:—

Ontario	$4,700,000	$9,602,392
Quebec	6,400,000	4,766,180
New Brunswick	747,000	1,570,337
Nova Scotia	1,068,000	2,068,860
Prince Edward Island	40,000	146,000
Newfoundland	48,000	251,536
Manitoba	2,869,000	786,001
Total	$15,949,361	$19,191,306

CRIMES AT SEA.

Sir Sherston Baker in his interesting article in the current number of the *National Review* on the Mignonette Case hardly proves the very ingenious point which he takes. It is true, as he points out, that the Act of Henry VIII. transferring the jurisdiction to try crimes on the high seas from the Admiralty Courts to the ordinary Criminal Courts deals only with procedure and not with substantive law, so that if immediately after the passing of that Act the law of murder as understood in the Admiralty Courts was different from the common-law idea of murder the Admiralty view prevailed. The existence of any such distinction is, however, not shown by the citation of more or less vague passages from more or less obscure writers on the civil law. The civil law is no part of the law of England unless it has been adopted by the English Courts, and it lay on Sir Sherston Baker to show that the Admiralty Court had adopted the principle that a man may be killed at sea to sustain life without the commission of murder. He has not succeeded even so far, and it would be an absurdity if at any time in the history of the law an act was at once criminal when the tide was out, and justifiable or even laudable on the same spot when the tide was in. In regard to the law of the present day, and as applicable to the Mignonette Case, the matter has been put beyond doubt by 39 Geo. III. c. 37, passed to amend the Act of Henry VIII. This Act provides that 'all and every offence and offences which, after the passing of this Act, shall be committed upon the high seas out of the body of any county of this realm shall be, and they are hereby declared to be, offences of the same nature respectively and to be liable to the same punishments respectively as if they had been committed on the shore, and shall be inquired of, heard, tried, and determined, and adjudged in the same manner as treasons, felonies, murders, and confederacies are directed to be by the same Act.' We do not think this Act is referred to by Sir Sherston Baker. — *Law Journal* (London).

GENERAL NOTES.

Le plus ancien journal du monde que l'on connaisse est sans doute le journal intitulé "*Acta populi romani diurna*," dont il existe encore un numéro remontant à l'année 168 avant Jésus-Christ, et dont voici la traduction:—Le 29 mars, Livinius a exercé aujourd'hui les fonctions gouvernementales.—Un violent orage a éclaté dans la journée d'aujourd'hui, la foudre est tombée sur un chêne, peu après midi, dans la proximité de la colline Véli, et l'a fendu en plusieurs morceaux.—Il y a eu une rixe dans une auberge qui a pour enseigne l'Ours, tout près de la colline de Janus; l'aubergiste a été grièvement blessé.—L'édile Titinius a condamné les bouchers qui dépècent la viande, attendu qu'ils ont vendu de la viande au peuple, qui n'avait pas été soumise à l'inspection des autorités. Les amendes ont servi à élever une chapelle à la déesse.—Le changeur Ausidius, dont le bureau a pour enseigne le bouclier du Cimbre, a pris la fuite en emportant une somme considérable. On l'a poursuivi et on est parvenu à l'atteindre. Il avait encore sur lui tout l'argent emporté. Le préteur Fontejus l'a condamné à restituer tout cet argent à ceux qui l'avait déposé chez lui.—Le chef des brigands Denniphon, arrêté par le legat Nerva, a été crucifié aujourd'hui dans le portj d'Ostie.—En lisant ces faits, ne dirait-on pas qu'ils viennent de se passer aujourd'hui même. Changez seulement les noms, et cette petite gazette est toute d'actualité. Il n'y manque que les nouvelles à la main et les échos de théâtres.—*La Minerve.*