THE

LEGAL NEWS,

EDITED

BY

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VOL. X

MONTREAL:
THE GAZETTE PRINTING COMPAN
1892.

TABLE OF CASES

REPORTED, NOTED, AND DIGESTED

IN VOL. XV.

THE LEGAL NEWS.

VOL. XV. JANUARY 2, 1892. No. 1.

CURRENT TOPICS AND CASES.

The year 1891 upon the whole dealt kindly with the members of the profession in this province. So few were the gaps made by death that the year contrasts very favourably with some of those which our readers are able to recall. As regards the bench, with one notable exception, there has been no change occasioned by death. In the Superior Court the only change was that involved in the resignation of Mr. Justice M. Doherty, and the appointment of his son in his place. The Chief Justice of this Court, whose judicial service counts more than a quarter of a century, still occupies his accustomed place, forming one of the most prominent and important links of the present with the past. Our recollections of things legal in Montreal take us back over thirty-two years, and at that time also the present Chief Justice was a prominent figure. He was then Crown Prosecutor, conducting the entire Crown business in both French and English. Mr. Justice Aylwin was on the bench. The late Judge Drummond, Edward Carter, B. Devlin, and Judge T. J. J. Loranger were usually of counsel for the defence. Without any disparagement of the counsel of the present day it may be said that the proceedings were then characterized by learning, dignity and decorum seldom equalled since.

In the Court of Queen's Bench, or the Court of Appeal as it is usually termed, the year 1891 has brought one of those considerable changes which seem to occur about every fifteen years. We have witnessed three of them. First, we recall Chief Justice Lafontaine with Justices Aylwin, Duval and Meredith sitting on either hand. The late Mr. Justice Caron, another member of the Court, was then engaged on the Codification Commission. Later we had Chief Justice Duval with Aylwin for a time, and Caron, Drummond, Badgley and Monk. The next principal group was composed of the late Chief Justice Dorion, with Justices Monk, Tessier, Ramsay and Sanborn. Justices Cross, Baby, Church and Bossé entered at later stages, as vacancies occurred, and an increase was made in the number of judges, from five to six. But in 1891 there came an extensive change. Chief Justice Dorion was removed by death. Mr. Justice Tessier retired after a lengthened service. Mr. Justice Church has also been obliged to retire owing to ill-health. The resignation of Mr. Justice Cross will probably occur soon. So that from the new year a new bench will practically be at work.

Three of the judges of the Montreal district, Justices Jetté, Baby and Davidson, were withdrawn from the Courts in September last, for the purposes of a Royal Commission. The task was one which few judges would undertake without extreme reluctance. Only the consideration that they were performing an important public duty could overcome the repugnance to such work. It is therefore all the more to be regretted that the treatment accorded to these judges since the completion of their task is far from being an encouragement to their colleagues to assume similar duties. A certain amount of vituperation, in matters pertaining to politics, seems to be inevitable. It was so in England in the case of the Parnell Commission, even with a president so greatly distinguished and esteemed as Lord Hannen. And after all, intelligent per-

sons have ceased to lend an ear to attacks of this sort. But the attacks are none the less unworthy, and it will not be long before their authors are ashamed of them. It should not be overlooked, however, that the counsel engaged before the Commission, were very far from countenancing the charges formulated by the press. Mr. Béique, Q. C., at the close of the proceedings, expressed himself as follows :—

"Before this last sitting rises I and my colleague, Mr. Amyot, consider it to be our duty to state publicly that from the first to the last, in the conduct of this enquiry, your Honors have not ceased for one instant to give a great example of justice. Many apprehended that on account of the political passions which an enquiry of this kind was calculated to excite, the Bench, of which your Honors are worthy representatives, might find its high reputation for impartiality somewhat lessened ; but I am happy to say—and I know that in so doing I voice the general opinion—that, thanks to your mode of procedure, all fears of this nature were quickly dissipated. In fact, you so acted throughout as to make everyone forget that the matter in dispute was political. But for all that the action of the Commission was none the less energetic, and it is admitted by all that it has brought out all the facts and circumstances entering into the scope of this enquiry. On our side, we think we can take the credit of not having been an obstacle to a thorough enquiry. On the contrary, we favored it as much as lay in our power."

Mr. Amyot congratulated the Montreal Bar on having sent such worthy representatives as Messrs. Béique, Q. C., and Hall, Q. C., and the proceedings were closed by Mr. Justice Davidson, in a few words whieh deserve to be recorded :—

"I add but a word to express our high appreciation and gratification for the assistance afforded us by the learned and able counsel who have appeared before the Commission. We desire to express our thanks for the gratifying remarks with which they have ended their labors. We feel that we would be unworthy exponents of that principle of our constitution which separates the judicial function from the warfare of parties, and that we would be unworthy of our position as British judges if we were not able to approach an enquiry of this character without prejudice, to conduct it without bias, and to determine it without favor."

A CONSTITUTIONAL QUESTION.

A number of opinions have been published recently concerning a question of great interest, viz., the interpretation of sections 85 and 86 of the B.N.A. Act. Section 86 reads as follows: "There shall be a session of the legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the legislature in each province in one session and its first sitting in the next session." The last session of the Quebec legislature came to an end December 30, 1890. The legislature was convoked (though not for the dispatch of business) for the 29th December, 1891. But on the 22nd December the legislative assembly was dissolved, and a new election being necessary, the session was deferred until April 7, 1892. It is unfortunate, as regards the weight accorded to lawyers' opinions, that in matters political they almost invariably take the view which suits their party; otherwise, we presume they would be suppressed altogether. But this fact gives them the air of having been manufactured to order, and they have no more weight than an ordinary political statement. One opinion has been emitted, however, by a gentleman whom the London *Times*, a few days ago, described as the highest living authority,— we refer to Dr. Bourinot, Clerk of the House of Commons. This opinion deals so fairly with the merits of the question, in its purely legal aspect, that we insert it here as a useful and interesting precedent.

"My consideration of the important and novel question involved in the dissolution of the Quebec legislature leads me to the conclusion that the Crown, as represented by the lieutenant-Governor, has a right to exercise its constitutional prerogative of dissolution at any moment under the law of the constitution. The 85th and 86th sections of the B. N. A. Act, when read together, as they clearly must be, provide for a meeting of the legislature every year within the term of five years that the Quebec Assembly may last, subject to be dissolved by the lieutenant-Governor of the province any time within a year. Even were we to take

the 86th section by itself, which I do not think should be done, the prerogative right of the Crown to dissolve would, nevertheless, still exist. The right of dissolving at any moment when it is believed the public interests demand it, cannot be taken away, any more than any other prerogative by implication, but only by express terms. In my opinion, however, this right is expressly acknowledged in the sections of the constitutional Act relating to the meeting and duration of the Assembly. In any case no legal or constitutional rights can be prejudicially affected so far as I can see at present, supposing the 86th section were imperative on the Crown—which, in my opinion, it is not—to call the legislature within twelve months. The right of the Crown to dissolve at its discretion is one of its most important prerogatives, absolutely essential, under our system of popular government, to give the people an opportunity of expressing their opinion on any great question at issue, and deciding at critical times between parties contending for the supremacy. It lies at the very basis of free institutions.

"Dicey, the highest English authority on such questions, has truly said that the discretionary power of the Crown occasionally may be, and according to constitutional precedents sometimes ought to be, used to strip an existing representative assembly of its authority. A dissolution is, in its essence, an appeal from the legal to the political sovereign—that is, to the electorate. A dissolution is allowable, and in fact is necessary, whenever the wishes of the legislature are, or may fairly be presumed to be, different from the wishes of the people. The earliest possible opportunity should be given to the people to express their opinions when the issues are vital and cannot be otherwise satisfactorily and definitely decided."

SUPREME COURT OF CANADA.

Quebec.]

CORPORATION OF THE COUNTY OF VERCHÈRES v. CORPORATION OF THE VILLAGE OF VARENNES.

Jurisdiction—Action to set aside a procès-verbal or by-law—Appeal—Sec. 24 (g) and sec. 29 of the Supreme & Exchequer Courts Act.

The Municipality of the County of Verchères passed a by-law or procès-verbal, defining who were to be liable for the rebuilding and maintenance of a certain bridge. The Municipality of Varennes, by their action, prayed to have the by-law or procès-verbal in question set aside on the ground of certain irregularities.

On appeal to the Supreme Court,

Held, that the case was not appealable under sec. 29 or sec. 24 "g" of the Supreme and Exchequer Courts Act, the appeal not being from a rule or order of a court quashing or refusing to quash a by-law of a municipal corporation.

Appeal quashed with costs.

Allan for appellant.

Archambault, Q.C., for respondent.

Quebec.]

WINEBERG *et vir* v. HAMPSON.

Jurisdiction—Appeal—Future rights—Title to lands—Servitude—Supreme & Exchequer Courts Act, sec. 29 (b)

By a judgment of the Court of Queen's Bench for Lower Canada (Appeal side) the defendants in the action were condemned to build and complete certain works and drains in a lane separating the defendants' and plaintiff's properties on the west side of Peel Street, Montreal, within a certain delay, and the court reserved the question of damages. On appeal to the Supreme Court of Canada,

Held, that the case was not appealable. *Gilbert* v. *Gilman* (16 Can. S. C. R. 189) followed.

The words "title to lands" in subsec. "*b*" sec. 29, Supreme and Exchequer Courts Act, are only applicable in a case where a title to the property or a right to the title are in question. *Wheeler* v. *Black* (14 Can. S. C. R. 242) referred to.

Appeal quashed with costs.

Bethune, Q.C., for motion.

Robertson, Q.C., contra.

Quebec.]

MOIR v. CORPORATION OF THE VILLAGE OF HUNTINGDON *et al.*

By-law—Appeal as to costs—Supreme & Exchequer Courts Act, sec. 24.

Since the rendering of the judgment by the Court of Queen's Bench refusing to quash a by-law passed by the Corporation of the Village of Huntingdon, the by-law in question was repealed. On appeal to the Supreme Court of Canada,

Held, that the only matter in dispute between the parties being a mere question of costs, the appeal should be dismissed. Supreme and Exchequer Courts Act, sec. 24.

Appeal dismissed with costs.

R. C. Smith, for motion.

Mitchell, and *D. C. Robertson*, contra.

Nova Scotia.]

KING'S COUNTY ELECTION.

BORDEN v. BERTEAUX.

Election petition—Preliminary objections—Service at domicile—R. S. C. ch. 9, sec. 10.

Held, that leaving a copy of an election petition and accompanying documents at the residence of the respondent with an adult member of his household during the five days after the presentation of the same is a sufficient service under sec. 10 of the Dominion Controverted Elections Act, even though the papers served do not come into the possession or within the knowledge of the respondent.

Appeal dismissed with costs.

Roscoe for appellant.
Boak for respondent.

Manitoba.]

LISGAR ELECTION.

COLLINS v. ROSS.

Election Petition—Preliminary objections—R. S. C. ch. 9, s. 63—English General rules—Manitoba—Copy of petition—R. S. C. ch. 9, sec. 9 (h)—Description and occupation of petitioner.

Held, affirming the judgment of the Court below, that the judges of the Court in Manitoba not having made rules for the practice and procedure in controverted elections, the English rules of Michaelmas Term, 1868, were in force; R. S. C. ch. 9, sec. 63; and that under rule 1 of said English rules, the petitioner, when filing an election petition is bound to leave a copy with the clerk of the court, to be sent to the returning officer, and that his failure to do so is the subject of a substantive preliminary objection and fatal to the petition. Strong & Gwynne JJ. dissenting.

2. Reversing the judgment of the Court below, that the omission to set out in the petition the residence, address and occupation of the petitioner is a mere objection to the form which can be remedied by amendment, and therefore not fatal.

Appeal dismissed with costs.

Martin for appellant.
D. McCarthy, Q.C., for respondent.

P. E. Island.]

QUEEN'S COUNTY ELECTION.

DAVIES AND WELSH v. HENNESSY.

Election Petition—Preliminary objections—Personal service at Ottawa—Security—Receipt—R. S. C. ch. 9, secs. 8 & 9, subsecs. (e) and (g) and sec. 10.

In Prince Edward Island two members are returned for the Electoral District of Queen's County. With an election petition against the return of the two sitting members, the petitioner deposited the sum of $2,000 with the deputy prothonotary of the Court, and in his notice of presentation of the petition and deposit of security he stated that he had given security to the amount of $1,000 for each respondent, "in all two thousand dollars duly deposited with the prothonotary as required by statute." The receipt was signed by W. A. Weeks, the deputy prothonotary appointed by the Judges, and acknowledges the receipt of $2,000, without stating that $1,000 was deposited as security for each respondent. The petition was served personally on the respondents at Ottawa.

Held, 1. That personal service of an election petition at Ottawa, without an order of the court, is a good service under section 10 of the Controverted Elections Act.

2. That there being at the time of the presentation of the petition security for the amount of $1,000 for the costs of each respondent under the control of the court, the security given was sufficient. Secs. 8 and 9 subsec. "e". Ch. 9, R. S. C.

3. That the payment of the money to the deputy prothonotary of the court at Charlottetown was a valid payment. Sec. 9, subsec. (g) Ch. 9, R. S. C.

Appeal dismissed with costs.

Peters, Q. C., for appellants.

W. A. Morson for respondent.

Quebec.]

STANSTEAD ELECTION.

RIDER v. SNOW.

Election Appeal—Preliminary Objections—Status of petitioner—Onus probandi.

By preliminary objections to an election petition the respondent claimed that the petition should be dismissed *inter alia*,

"14. Because the said petitioner had no right to vote at said election."

On the day fixed for proof and hearing of the preliminary objections the petitioner adduced no proof and the respondent declared that he had no evidence, and the preliminary objections were dismissed. On appeal to the Supreme Court of Canada, the counsel for appellant relied only on the 14th objection.

Held, Per Sir W. J. Ritchie, C.J., and Taschereau and Patterson, JJ., that the onus was upon the petitioner to establish his status, and that the appeal should be allowed and the election petition dismissed.

Per Strong, J., that the *onus probandi* was upon the petitioner, but in view of the established jurisprudence should be remitted to the court below to allow petitioner to establish his status as a voter.

Fournier and Gwynne, JJ., *contra*, were of opinion that the *onus probandi* was on the respondent, following the *Megantic Election case*, 8 Can. S. C. R. 169.

Appeal allowed with costs, and petition dismissed.

Geoffrion, Q. C., for appellant.

White, Q. C., for respondent.

Ontario.]

GLENGARRY ELECTION.

McLENNAN v. CHISHOLM.

Election petition—Re-service of—Order granting extension of time—Preliminary objections—R. S. C. ch. 9, sec. 10—Description of petitioner.

When this petition was first served no copy of the deposit receipt was served with it, and the petitioner within the five days after the day on which the petition had been presented applied to a Judge to extend the time for service so that he might cure the omission. An order extending the time, (subsequently affirmed on appeal by the Court of Appeal for Ontario), was made, and the petition was re-served accordingly with all the other papers prescribed by the Statute. Before the order extending the time had been drawn up, the respondent had filed preliminary objections, and by leave contained in the order he filed further preliminary objections after the re-service. The new list of objections included those made in the first instance, and also an objection to the power or jurisdiction in the Court of Appeal or Judge thereof to extend the time for service of the petition beyond the five days prescribed by the Act.

Held, that the order was a perfectly valid and good order, and that the re-service made thereunder was a proper and regular service. R. S. C., ch. 9, sec. 10.

The petition in this case simply stated that it was the petition of Angus Chisholm of the township of Lochiel, in the County of Glengarry, without describing his occupation, and it was shown by affidavit that there are two or three other persons of that name on the voters' list for that township.

Held, affirming the judgment of the Court below, that the petition should not be dismissed for the want of a more particular description of the petitioner.

Appeal dismissed with costs.

D. McCarthy, Q.C., for appellant.
S. Blake, Q.C., for respondent.

CONTROVERTED ELECTIONS FOR THE ELECTORAL DISTRICTS OF PRINCE COUNTY, P. E. I. (PERRY and YEO v. CAMERON);
SHELBURNE, N. S. (WHITE v. GREENWOOD);
ANNAPOLIS, N. S. (MILLS v. RAY);
LUNENBURG, N. S. (KAULBACH v. BISENHAUER);
ANTIGONISH, N. S. (THOMPSON v. MACGILLIVRAY);
PICTOU, N. S. (TUPPER v. MCCOLL);
INVERNESS, N. S. (MCDONALD v. CAMERON).

Election Petitions—Preliminary objections—Service of petition—Security—R. S. C. ch. 9, sec. 10, and sec. 9 (e) and (g).

In all these cases the appeals were from the decisions of the Courts below dismissing preliminary objections to the election petitions presented against the appellants.

The questions raised on these appeals were also 1st. Whether a personal service on the respondent at Ottawa without or with an order of the Court at Halifax or at his domicile is a good service. 2nd. Whether the payment of the security required by sec. 9 (*e*) into the hands of a person who was discharging the duties of and acting for the prothonotary at Halifax, and a receipt signed by said person in the prothonotary's name, sec. 9 (*g*) were valid. The Court, following the conclusion arrived at in the King's County (N.B.) & Queen's County (P. E. I.) Election cases,

held the service and payment of security were valid and a substantial compliance with the requirements of the Statute.

Appeals dismissed with costs.

Prince County P. E. I.
Peters, Q. C., for appellants.
Morson, for respondent.

Annapolis, N. S.
Shelburne, N. S.
Lunenburg, N. S.
Antigonish, N. S.
Pictou, N. S.
Inverness, N. S.

McCarthy, Q.C., & J. A. Ritchie, for appellants.
G. T. Congdon for respondents.

Ontario.]

ROSS v. BARRY.

Contract—Construction of railway—Standard of quality—Evidence.

McC. and R. were the contractors for the construction of a part of the Grand Trunk Railway, and sublet the masonry work to B. & S. In a conversation between McC. and S. before B. & S. began their work, S. understood that the second class masonry in his contract was to be of the quality of that of the "Loop line", another part of the Grand Trunk Railway road. and prepared his materials accordingly on receipt of a letter from McC. instructing him to carry out his contract "according to the plans and specifications furnished by the company's engineer". After a small portion of the masonry work had been done the sub-contractors were informed by the engineer in charge that the second class masonry required was of a quality that would increase the cost over 30 per cent, whereupon they refused to proceed until McC. who was present said to them, "go on and finish the work as you are told by the engineer, and you will be paid for it." They thereupon pulled down what was built and proceeded according to the directions of the engineer. When the work was nearly done McC. tried to withdraw his promise to pay the increased price, but renewed it on the sub-contractors threatening to stop. After completion of the work payment of the extra price was refused, and an action was brought therefor.

Held, affirming the judgment of the Court of Appeal, that the conversation between McC. and S. prior to the commencement of the work, as detailed in the evidence, justified the sub-contractors in believing that the standard of quality was to be that of the Loop line; that the promise to pay the increased price was in

settlement of a *bona fide* dispute, which was a good consideration for such promise; and that B. and S. were entitled to recover.

Appeal dismissed with costs.

Bain, Q. C., and *Laidlaw, Q. C.*, for appellants.

Osler, Q. C., for respondents.

Ontario.]

GRAND TRUNK RAILWAY CO. v. FITZGERALD.

Railway Company—Construction of line under charter—Money advanced and control exercised by another company—Liability of latter as to it—Tort-feasor.

In an action by F. against the G. T. Ry. Company for damages caused by the building of an embankment along a line of railway which cut off access to the highway from F.'s land, the company contended that the said line of railway was built by and under the charter of another company: that there was no statute authorizing the G. T. R. Company to build it, and its construction by them would be *ultra vires*; and that even if the officers of the G. T. R. Company were also officials of the company constructing said line, and F. had sustained damage by its construction, the G. T. R. Company as a corporation could not be made liable therefor. On the trial the evidence showed that the G. T. R. Company had advanced the money to build the line; and its president and other directors owned nearly all the stock in the chartered company, and that the work was done under the control and direction of the G. T. R. Company's engineers.

Held, affirming the decision of the Court of Appeal, that the G. T. R. Company were liable to F. as wrongdoers.

Appeal dismissed with costs.

W. Cassels, Q. C., for appellants.

Edwards for respondents.

Manitoba.]

BARRETT v. THE CITY OF WINNIPEG.

Constitutional law—Constitution of Manitoba—33 Vict. c. 3 (D.)—Act respecting education—Denominational rights—Separate schools.

The Act by which the Province of Manitoba became a part of the Dominion of Canada, 33 V. c. 3 (D.), gave to the Province the exclusive right to legislate in respect to education with the following limitation: "Provided that nothing in such law (a law relating to education) shall prejudicially affect any right or privilege with respect to denominational schools which any class of

persons has by law or practice in the Province at the Union." The words "or practice" are an addition to, and the only deviation from the words of the like provision in the B. N. A. Act under which *Ex parte Renaud* (1 Pugs. 273) was decided in New Brunswick.

In 1871, after the said Union, an Act relating to schools was passed by the legislature of Manitoba, by which the control of educational matters was vested in a Board consisting of an equal number of Protestants and Catholics. A Protestant and a Catholic superintendent of education was to be appointed, and Protestant and Catholic school districts established, the legislative grant for schools to be apportioned to each. This Act was amended from time to time, but the system it established continued until 1890.

By 53 Vict. c. 38, passed by the legislature in 1890, a system of public schools was established in the Province, the former system was abolished, the control of educational matters was vested in a Department of Education, consisting of a committee of the Executive Council, and all the schools were to be free and no religious exercises to be allowed except as authorized by the advisory boards to be established under the provisions of the Act. The ratepayers of the several municipalities were to be indiscriminately taxed for the support of the public schools.

A Catholic ratepayer of the City of Winnipeg moved to quash by-laws passed to impose a tax for school purposes, and in support of his motion an affidavit of the Archbishop of St. Boniface was read, setting forth the position of the Roman Catholic Church with respect to education and the control it always exercised over the same, and showing that prior to the admission of Manitoba into the Union, Catholics had their own schools, partly supported by fees from parents and partly by the funds of the church.

Held, reversing the judgment of the Court of Queen's Bench, Manitoba, (7 Man. L. R. 273) that this Act 53 Vict. c. 38, prejudicially affected the rights and privileges with respect to denominational schools which Roman Catholics had by practice in the Province at the Union, and was therefore *ultra vires* of the provincial legislature. *Ex parte Renaud* (1 Pugs. 273) distinguished.

Appeal allowed with costs.

S. H. Blake, Q.C., and *Ewart, Q.C.*, for appellant.
Gormully, Q.C., and *Martin* for respondents.

COURT OF QUEEN'S BENCH—MONTREAL.*

Architect—Submission of Plans—Contract—Damages.

The plaintiff, an architect, in response to a public advertisement, offered plans in competition for a building about to be erected by the defendant, on being assured by the president of defendant's board that all the plans sent in would be submitted to disinterested experts before a choice was made. The plans were not submitted to experts, and those finally adopted were submitted by an architect who was not a competitor within the terms of the public advertisement.

Held:—That the plaintiff was not entitled to damages, it being admitted that the defendant was not bound to adopt the plans which might be recommended by the experts, and no partiality or bad faith in the selection being proved.—*Walbank & Protestant Hospital for the Insane*, Lacoste, C.J., Baby, Bossé, Wurtele, JJ., Nov. 26, 1891.

Physician—Proof of services—C. C. 2260; 32 *Vic.* (*Q*), *c.* 32, *s.* 1 —*R. S. Q.* 5851.

Held:—That the oath of the physician or surgeon, which, under R. S. Q. 5851, makes proof as to the nature and duration of the services, can only be rebutted by the clearest and most precise testimony; which was not found by the Court in the present case, in which, by the evidence of doctors who had not seen the patient before or during the illness, and who did not speak positively, it was sought to reduce a physician's account, for treating a case of fracture of the collar bone, from $175 to $100.—*Bourgeau & Brodeur*, Lacoste, C.J., Bossé, Blanchet, Wurtele and Tait, JJ., Nov. 27, 1891.

Criminal Procedure—Reserved Case—Amendment—Notice to prisoner to produce document—Verbal evidence.

Held:—1. That a Reserved Case will not be sent back to be amended by the judge who reserved it, upon the mere allegation of the prisoner or his counsel that the facts are not accurately stated therein.

2. That a prisoner is not entitled to complain of short notice to produce a document at his trial, where it is shown that the document in question was in the possession of a person under the control of the prisoner and his counsel on the day of the trial.

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* To appear in Montreal Law Reports, 7 Q.B.

3. That the prisoner having in the circumstances declined to produce the document, secondary evidence was admissible.—*Regina* v. *Bourdeau*, Lacoste, C.J., Bossé, Blanchet, Wurtele and Tait, JJ., Nov. 27, 1891.

Unpaid Vendor—Privilege of—Opposition to sale of immovable seized —Art. 657, C. C. P.—Shareholder—Company.

Held:—1. The privilege of *bailleur de fonds* does not give the unpaid vendor the right of opposing the seizure and sale of the immovable subject to it.

2. The unpaid vendor is not entitled to ask for the resiliation of the sale of an immovable unless there be a stipulation to that effect in the contract of sale.

3. A shareholder of a company is not entitled to exercise the rights of the company in his own name, and cannot oppose the sale of an immovable belonging to the company.

4. A promise of retrocession by the majority of the shareholders of a company is null, the company alone having the power to make such an agreement.—*McNaughton & Exchange National Bank*, Lacoste, C.J., Baby, Bossé, Wurtele, JJ., Nov. 27, 1891.

Injunction—To prevent encroachment—Boundaries not determined—Bornage.

Held:—That the remedy by writ of injunction does not lie where another adequate remedy exists; and so, in the case of a dispute between adjoining proprietors of mining lands, where an encroachment is complained of, and it appears that the limits of the respective properties have not been legally determined by a *bornage*, an injunction will not lie to prevent the alleged encroachment, the proper remedy being an action *en bornage*.—*Anglo-Continental Guano Works & Emerald Phosphate Co.*, Lacoste, C.J., Baby, Bossé, Wurtele, JJ., Nov. 26, 1891.

ONTARIO DECISIONS.

Railway company—Horses killed—53 Vict. (D.) c. 28, s. 2.

Three horses got upon the defendants' line of railway from adjoining premises, where they had no right to be, and were killed. In an action of damages for their loss,

Held, following *Davis* v. *Canadian Pacific R. Co.*, 12 A. R. 724, that the words "under the circumstances it might properly be" in 53 Vict. (D.) c. 28, s. 2, mean "it might lawfully

be"; and that as the horses were not on the adjoining premises with the consent of the owner or occupant, they were not "lawfully" there.

Held, also, that although the owner did not object to their being there, still as there was no by-law of the municipality permitting them to run at large, they could not be held to have been properly there; and the action was dismissed with costs.—*Duncan* v. *Canadian Pacific R. Co.*, MacMahon, J., Chancery Division, Toronto, Aug. 15, 1891.

INSOLVENT NOTICES ETC.

Quebec Official Gazette, Dec. 26 & Jan. 2.

Judicial Abandonments.

DUBUC & Co. (Marie Rose Emilia Gélinas), Drummondville, Dec. 19.

FOREST, GEORGE, parish of Bonaventure, Dec. 16.

GAUVREAU & Co., cement manufacturers, Quebec, Dec. 23.

GORDON & HOWIE, traders, Beebe Plain, Dec. 21.

LANGLOIS, JOSEPH, trader, St. Scholastique, Dec. 18.

MORRIER, DELVECCHIO, Capelton, township of Ascot, Dec. 15.

TOUCHETTE, JOSEPH *alias* ZOZIME, St. Paul d'Abbotsford, Dec. 24.

VANANDAIGNE *dit* GADBOIS, ANDRE, St. Ephrem d'Upton, Dec. 28.

Curators Appointed.

BILODEAU & GODBOUT, Quebec.—H. A. Bedard, Quebec, curator, Dec. 21.

BOA, ANDREW.—J. M. M. Duff, Montreal, curator, Dec. 29.

BOIVIN, GEORGES, shoedealer, Quebec.—N. Matte, Quebec, curator, Dec. 24.

CHAMPOUX, JOSEPH, Joliette.—D. Seath and A. Turcotte, Montreal, joint curator, Dec. 28.

GAGNÉ, ONÉSIME, Sorel.—Kent & Turcotte, Montreal, joint curator, Dec. 15.

LANGLOIS, JOSEPH, Ste. Scholastique.—D. Seath, Montreal, curator, Dec. 29.

LOISEAU, J. E. A.—Bilodeau & Renaud, Montreal, joint curator, Dec. 29.

MARTIN, ARTHUR J.—Bilodeau & Renaud, Montreal, joint curator, Dec. 29.

MORRIER, DELVECCHIO. — Royer & Burrage, Sherbrooke, joint curator, Dec. 29.

PORTELANCE & Co., VICTOR.—G. H. Burroughs, Quebec, curator, Dec. 28.

VINEBERG, J. LYON, Sherbrooke.—Kent & Turcotte, Montreal, joint curator, Dec. 29.