THE
LEGAL NEWS.

VOL. XVI. APRIL 1, 1893. No. 7.

SUPREME COURT OF CANADA.

OTTAWA, Dec. 13, 1892.

Manitoba.]

MANITOBA FREE PRESS COMPANY v. MARTIN.

Libel—Personal attack on Attorney-General—Pleading—Rejection of evidence—Fair comment—General verdict—New trial.

In an action for a libel contained in a newspaper article respecting certain legislation, the innuendo alleged by the plaintiff, the Attorney General for the Province when such legislation was enacted, was that the article charged him with personal dishonesty. Defendants pleaded "not guilty," and that the article was a fair comment on a public matter. On the trial the defendants put in evidence (plaintiff's counsel objecting), to prove the charge of personal dishonesty, and evidence in rebuttal was tendered by plaintiff and rejected. Certain questions were put to the jury requiring them to find whether or not the words bore the construction claimed by the innuendo or were fair comment on the subject matter of the article; the jury found generally for the defendants; and in answer to the trial judge who asked if they found that the publication bore the meaning ascribed to it by the plaintiff, the foreman said: "We did not consider that at all." On appeal for an order for a new trial:

Held, that defendants not having pleaded the truth of the charge in justification the evidence given to establish it should not have been received, but as it had been received evidence in rebuttal was improperly rejected; the general finding for the de-

fendants was not sufficient in view of the fact that the jury stated that they had not considered the material question, namely, the charge of personal dishonesty; for these reasons a new trial was properly granted.

Haegel, Q.C., for the appellant.

Ewart, Q.C., for the respondent.

Ontario.]

ATTORNEY GENERAL OF ONTARIO v. THE VAUGHAN ROAD COMPANY.

Statute—Application of—R. S. O. (1887) *c.* 159—53 *V., c.* 42—*Application to Company incorporated by special charter—Collection of tolls—Maintenance of road—Injunction.*

The provisions of the general Road Companies Act of Ontario (R. S. O. (1887), c. 159, as amended by 53 V., c. 42), relating to tolls and repair of roads, apply to a company incorporated by special acts, and on the report of an engineer, as provided by the General Act, that the road of such company is out of repair, it may be restrained from collecting tolls until such repairs have been made.

Judgment of the Court of Appeal on motion for interim injunction (19 Ont. App. R. 234) over-ruled, and that of the Divisional Court (21 O. R. 507) approved.

S. H. Blake, Q.C., and *Lawrence*, for the appellants.

Bain, Q.C., and *Kappele*, for the respondents.

Nova Scotia.]

NOVA SCOTIA CENTRAL RY. CO. v. HALIFAX BANKING CO.

Mortgage—Railway bonds—Security for advance—Second mortgagee—Purchase by—Trust.

W. having agreed to advance money to a railway company for completion of its road, an agreement was executed by which, after a recital that W. had so agreed and that a Bank had undertaken to discount W.'s notes indorsed by E. to enable W. to procure the money to be advanced, the railway company appointed said bank its attorney irrevocable, in case the company should fail to repay the advances as agreed, to receive the bonds of the company (on which W. held security) from a trust company, with which they were deposited, and sell the same to the best advantage, applying the proceeds as set out in the agreement.

The railway company did not repay W. as agreed, and the bank obtained the bonds from the trust company and having threatened to sell the same the company, by its manager, wrote to E. and W. a letter requesting that the sale be not carried out, but that the bank should substitute E. and W. as the attorney irrevocable of the company for such sale, under a provision in the aforesaid agreement, and if that were done the company agreed that E. and W. should have the sole and absolute right to sell the bonds for the price and in the manner they should deem best in the interest of all concerned and apply the proceeds in a specified manner, and also agreed to do certain other things to further secure the repayment of the monies advanced. E. and W. agreed to this, and extended the time for payment of their claims, and made further advances, and, as the last mentioned agreement authorised, they re-hypothecated the bonds to the bank on cer tain terms.

At the expiration of the extended time the railway company again made default in payment, and notice was given them by the bank that the bonds would be sold unless the debt was paid on a certain day named; the company then brought an action to have such sale restrained.

Held, affirming the decision of the Court below, that the bank and E. & W. were respectively first and second incumbrancers of the bonds, being to all intents and purposes mortgagees, and not trustees of the company in respect thereof, and there was no rule of equity forbidding the bank to sell, or E. & W. to purchase, under that sale.

Held, further, that if E. & W. should purchase at such sale they would become absolute holders of the bonds and not liable to be redeemed by the company.

Held, also, that the dealing by the bank with the bonds was authorised by the Banking Act.

Henry, Q. C., and *Newcombe* for the appellants.

Borden, Q.C., and *Russell, Q.C.*, for the respondents.

Ontario.]

WATEROUS ENGINE WORKS CO. *v.* TOWN OF PALMERSTON.

Municipal Corporation—Contract under seal—By-law—Executory contract—Enforcement.

In pursuance of Sec. 480 of the Ontario Municipal Act (R. S. O. 1887, c. 184) empowering any Municipal Council to purchase fire apparatus, the Council of the Town of P., by resolution,

authorised the Fire and Water Committee to ascertain the price of a fire engine, and on the committee's report recommending the purchase a contract was entered into under the corporate seal of the council for the construction of an engine by the Waterous Co. No by-law of the corporation was passed authorizing or sanctioning such contract. The engine was built and placed in the town Hall and a committee of the council was appointed to engage experts to test it. The test was made and the experts reported favorably upon it, but the council afterwards passed a resolution that all negociations in reference to the purchase be dropped, and that the company be notified to remove the engine from the town hall. An action was brought against the municipal corporation for the contract price of the engine and hose, on the trial of which the presiding Judge found as a fact that the engine had answered the test and fulfilled the requirements of the contract, but held that the contract could not be enforced for want of a by-law. This judgment was affirmed by the Divisional Court (20 O. R. 411), and by the Court of Appeal (19 Ont. A. R. 47).

Held, affirming the decision of the Court of Appeal, Gwynne, J., dissenting, that the engine not having been accepted by the corporation the contract was not executed; that sec. 282 of the Municipal Act requires all powers of the corporation to be exercised by by-law unless otherwise expressly authorized or provided; that the authority to purchase fire apparatus is expressly given to municipal corporations by the Act, and is a power to be exercised by by-law under said section, and the contract being executory the want of a by-law was a bar to the action.—*Bernardin* v. *North Dufferin* (19 Can. S. C. R. 581) distinguished.

Held, *per* Gwynne J.—That the powers to be exercised by by-law are only legislative powers, and a contract such as that in question in this case could be enforced without a by-law.

Appeal dismissed with costs.

Wilkes, *Q. C.*, for appellants.

A. M. Clark, for respondents.

Ontario.]

DRAPER *v.* RADENHURST.

Title to land—Purchase at tax sale—Cloud upon title—Agreement for quit-claim deed—Payment for deed—Right to monies paid.

J. R. died leaving all his estate to his widow, and in the event of her death without having made a disposition thereof, to his surviving children. The estate having become involved an absolute deed of all the real estate was executed in favour of one of the testator's children by the widow and other children, the grantee undertaking to pay off the liabilities and improve the estate, and on being repaid all amounts advanced for that purpose she was to re-convey the lands to all the heirs in equal proportions. The grantee managed the estate for several years, but was finally obliged to surrender it to trustees for benefit of creditors, it then owing her some $18,000.

A portion of the estate conveyed by the said deed was sold for taxes, and the purchaser wished to obtain quit-claim deeds from the heirs of J. R., the original testator, to perfect his title, and also to obtain title to 100 acres of timber land belonging to the estate of J. R., which was not included in the assignment for benefit of creditors. Similar quit-claim deeds had previously been given for portions of the lands, and the monies paid for the same were distributed in equal proportions among the surviving children and grandchildren of the testator, and in this case the deeds were prepared and executed by the heirs in favour of the purchaser at the tax sale. Before the money agreed to be paid for the same was received, however, the above mentioned deed executed by the widow and children of the testator, which had been mislaid for several years, the grantee under it having died, was discovered, and the children of the grantee claimed the whole of the said money, and an action was brought by the other heirs for their respective shares of the same. On the trial judgment was given in favour of the plaintiffs, the trial judge holding that an agreement was proved between the parties that the money should be equally divided. This decision was affirmed by the Divisional Court, but reversed by the Court of Appeal.

Held, affirming the decision of the Court of Appeal, that the purchaser at the tax sale paid the money in order to obtain a perfect title, and as the defendants were the only persons who could give such title, the legal estate being in them, the plaintiffs

could not claim any part of the money, no agreement with the defendants to apportion it being proved, and any agreement made by the plaintiffs with the purchasers not being binding on the defendants.

Appeal dismissed with costs.

Marsh, Q. C., for the appellants.

Donovan, for the respondent.

British Columbia.]

WEBSTER *v.* FOLEY.

Master and servant—Defective system in using machinery—Injury to workman—Liability of master—Notice to master.

F. was employed in a sawmill at Vancouver, B. C., as a chainer, and worked on a rollway, which is the portion of the machinery of the mill along which the logs are brought to the saw carriage. One of his duties was to put a chain under the log and roll it on to the carriage, and while doing so, on one occasion, a log rolled down the rollway and against one behind him, and crushed him against the carriage, causing severe injuries for which he brought an action against W. & E., the owners of the mill.

On the trial it was shown that chock blocks were used to check the log in its course down the rollway, which had a slope of from 5 to 7 inches in its length of 12 ft., and that the blocks were only sufficient to hold one log. The jury found that the accident was due to the slope of the rollway and defective chock blocks; that F. could not have avoided the injury by exercise of proper care and skill in discharging his duties; that he had complained of the chock blocks to the proper persons who promised to make them good; that W. & E., the owners, were not aware of the defects, but that W., the manager and foreman, should have taken cognizance of the matter, and did not appear to have exercised due care; and they assessed damages to F. at $5,000. The trial judge reserved judgment, and a motion was afterwards made on behalf of F. for judgment, and a cross-motion by defendants to set aside the findings, and for a non-suit. Eventually judgment was entered against W. & E. for the damages assessed, which was sustained by the Court in banc.

Held, affirming the decision of the Supreme Court of British Columbia, that the employers were no less responsible for the

injuries occasioned to F. by the defective system of using their machinery than they would have been for defect in the machinery itself.

Held, further, that there being no Employers' Liability Act in force in British Columbia, when the injury happened, F. was not precluded from obtaining compensation by failure to give notice to his employers of the defect in the chock blocks.

Appeal dismissed with costs.

Cassidy, for appellants.

Ewart, Q. C., for respondent.

Ontario.]

BOOTH v. RATTE.

Practice—Master's office—Reference to assess damages—Severance of damages—Reasons for report—Judgment of Court—Equal division—Withholding judgment.

R. brought an action against several mill owners on the Ottawa River for damage to his business as an owner and letter of boats, caused by sawdust and mill refuse being thrown into the river and accumulating so as to obstruct navigation, and he claimed that he was not only prevented from sailing his boats on the river, but his customers who hired boats left him on account of the sawdust and refuse accumulating in front of his boathouse. On the trial judgment was given for the defendants, but was reversed by the Court of Appeal and by the Privy Council, and a reference to a master was ordered to assess the damages. Before the master defendants claimed that other mill-owners, not proceeded against in the action, had contributed to the alleged nuisance, and that the report should show the amount of damage caused by each defendant, also the amount of damage to R. under each head of injury claimed. The defendants offered evidence to show that the loss of custom to R. in letting boats arose from the change in public taste, customers preferring the canal to the river; and plaintiff gave evidence in rebuttal, some of which defendants alleged to be irrelevant. The master having reported generally, awarding R. $1,000 damages against each of the defendants, an appeal was taken against the report, resulting in its being affirmed by the Chancellor; and in the Court of Appeal two of the four judges were in favour of confirming the

report and the other two gave no judgment. On appeal by defendants to the Supreme Court, in addition to the objections to the report, it was argued that the Court of Appeal gave no judgment.

Held, that the master properly treated defendants as joint tort-feasors and was not obliged to give reasons for his report, provided he sufficiently followed the directions in the decree; and, that he was not obliged to sever the damages, either to show the liability of each defendant or the amount due plaintiff under each head of damage claimed.

Held, further, that the master was the final judge as to the credibility of the witnesses, and his report should not be sent back because some irrelevant evidence may have been admitted of a character not likely to have affected his judgment, especially as no appeal was taken from his ruling on the evidence.

Held, also, that this Court should not go behind the formal judgment of the Court appealed from, which stated that the appeal was dismissed. Moreover the position was the same as if the judges of the Court of Appeal had been equally divided in opinion, in which case the appeal would have been properly dismissed.

Appeal dismissed with costs.

Gormully, Q. C., for appellants.

O'Gara, Q. C., for respondent.

COURT OF APPEAL ABSTRACT.

Vente conditionnelle—Reprise de possession à défaut de paiement—Exercice abusif de ce pouvoir.

En janvier 1888, le demandeur a acheté de la défenderesse certaines machines pour un moulin à scies, pour la somme de $1,690, payable $400 comptant, et la balance par quatre billets à 6, 12, 18 et 24 mois, avec stipulation que la propriété resterait à la défenderesse jusqu'au parfait paiement, et qu'à défaut de paiement des termes à échéance, la totalité du prix deviendrait exigible, et la défenderesse pourrait reprendre possession des machines sans remboursement des paiements faits. En août 1889, la défenderesse, réclamant une balance de $681, comme non payée, a enlevé les machines, qui étaient établies et enmurailléés

dans le moulin du demandeur,—et de là action par ce dernier pour $10,000 de dommages. La défenderesse n'a remis les billets qu'avec ses plaidoyers, et la preuve a démontré qu'il n'était dû par le demandeur, lors de l'enlèvement des machines, qu'une balance de $2.88.

Jugé, que si la Cour est obligée de reconnaître des contrats de cette nature, qui sont peut-être, dans la rigueur, nécessaires avec notre mode de transiger les affaires, elle doit les limiter à leurs strictes dispositions; que dans les circonstances de la présente cause, la Cour ne pouvait faire autrement que de déclarer abusive la conduite de la défenderesse, et le jugement accordant $1,760 de dommages, (au montant des argents payés en accompte par le demandeur, et les dommages à ses bâtisses), est confirmé avec dépens.—*Waterous Engine Works Co.* et *Collin*, Québec, Lacoste, C. J., Baby, Bossé, Blanchet, Hall, JJ., 6 mai 1892.

Vente par licitation—Annulation.

La vente par licitation d'un immeuble dont une partie a été distraite, au cours des procédures, par aliénation en faveur d'une compagnie de chemin de fer, sous l'Art. 5164, S. R. Q., est annulable à la demande de l'adjudicataire par voie d'action en nullité de décret.—*Picard & Picard et al.*, Québec, Lacoste, C. J., Baby, Blanchet, Hall, et Wurtele, JJ., 6 février 1892.

Cité de Québec—Règlement municipal.

Jugé :—Un règlement municipal qui frappe d'un droit de $5 chaque cheval et chaque voiture, etc., est conforme au Statut qui autorise la Corporation à prélever ce droit " sur chaque cheval et chaque voiture, etc.," quoiqu'il ajoute " lesquels cheval et voiture seront exemptés de porter un numéro, et ne devront pas stationner aux portes et aux stations des cochers et charretiers," ces derniers mots étant ajoutés pour un objet spécial et n'ayant pas pour effet de borner le pouvoir de la Corporation à l'imposition d'un seul droit pour chaque cheval avec voiture.—*Cité de Québec* et *Godin*, Lacoste, J. C., Bossé, Blanchet, Wurtele, JJ., et Ouimet, J. A., 6 février 1892.

Statute—Construction of—54 Vict. (Q.) Ch. 96—"Is authorized to to pay"—Preamble.

A testator directed that certain allowances should be paid monthly to his children. By a subsequent act of the Legislature (54 Vict., Q., Ch. 96), his testamentary executrix was "authorized to pay" to each of the children an additional sum of $200 per month,—the preamble stating that the revenues of the estate were considerable, that it appeared from the provisions of the will that it was the desire of the testator that his children should continue to live, after his death, in the same condition as to fortune, as during his lifetime, and that the testamentary executrix, with a view to the settlement of her children, desired to secure to them, during her administration, a larger income out of the revenues of the estate. It appeared that the revenues of the estate were amply sufficient for the payment of the increased allowances.

Held, that the terms of the statute, "is authorized to pay," were permissive and not imperative, and that the testamentary executrix might refuse to pay the additional allowance without being obliged to assign any reason for such refusal.—*Lapierre & Rodier*, Montreal, Bossé, Blanchet, Hall, Wurtele, JJ., Ouimet, J., *ad hoc*, February 24, 1892.

Chemin de fer—Traverse de ferme—Obligation d'en construire pour chaque subdivision de lot—Droits futurs—Appel.

Jugé:—Les dispositions de l'Acte des clauses consolidées des Chemins de fer, 14 et 15 V., c. 51, s'appliquent à la Compagnie du Grand Tronc, incorporée par 16 V., c. 37, et cette compagnie est par conséquent tenue à la construction d'une traverse de ferme pour chaque terre traversée par sa ligne, que ces terres soient des subdivisions, ou non, des terrains originairement expropriés.

Le Statut Provincial des Chemins de fer (S. R. Q. 5171) n'affecte pas la compagnie du Grand Tronc ni les autres chemins de fer qui sont sous le contrôle de l'autorité fédérale, lesquels restent soumis à la seule autorité du Parlement Fédéral.

Dans la présente cause un appel au Conseil Privé est accordé : des droits futurs se trouvant affectés, quoique le montant de l'action ne soit que de $110.—*Cie. du Grand Tronc et Huard*, Québec, Sir A. Lacoste, J. C., Baby, Bossé, Hall, Wurtele, JJ., 21 juin 1892.

Corporation publique—Chemins à barrières—Saisie des péages.

Jugé:—Les syndics des chemins à barrières de la Rive Sud, près de la ville de Québec, ne sont pas les agents du Gouvernement mais forment une corporation, et les argents produits des péages perçus aux barrières sur les chemins sous leur contrôle ne forment pas partie du revenu provincial, ni des argents appartenant à la Province, et peuvent être saisis pour le paiement des dettes contractées par les Syndics pour les fins de leur incorporation.—*Les Syndics des Chemins à Barrières & Burroughs*, Québec, Sir A. Lacoste, J.C., Baby, Blanchet, Hall, Wurtele, JJ., 21 juin 1892.

SUEPRIOR COURT ABSTRACT.

Promissory note—Relation between parties to—Prescription.

Held, that the relation between two persons, joint and several makers of a promissory note, one of whom signs after the other for his accommodation, is that of principal debtor and surety; and where the person signing for accommodation is obliged to pay the amount of the note at or after maturity, his claim against the principal debtor is not subject to the five years' prescription applicable to promissory notes and claims of a commercial nature, but only to the prescription of thirty years, applicable to the claim of a surety who has paid the debt, against the principal debtor.—*Cullen* v. *Bryson*, Montreal, in Review, Johnson, C. J., Loranger, Doherty, JJ., November 30, 1892.

Rivière flottable—Ecluse—Glissoire—Drave.

Jugé:—Le droit de draver le bois sur les rivières flottables à bûches perdues dans leurs grosses eaux, est reconnu par la loi, et celui qui y met obstacle, par la construction d'une chaussée sans glissoire, est responsable des dommages qui peuvent en résulter. —*Atkinson* v. *Couture*, Québec, en Révision, Casault, Routhier, Caron, JJ., 31 mai 1892.

Cession de biens—Curator's costs—Landlord's privilege.

The defendant, plaintiff's tenant, became insolvent and assigned to the opposant, who did not take possession. Later, the plaintiff seized and sold defendant's effects under a writ of attachment for rent, and on the proceeds the opposant sought to be paid his bill as curator, by privilege.

Held, that the opposant had no right to be collocated for any portion of his claim to the detriment of the plaintiff who, as landlord, had a lien upon the whole of the effects seized and sold. —*Mc William & Osler, & Matte*, oppt., Quebec, S. C., Andrews, J., March 10, 1892.

Municipality—Injunction by ratepayer—Amended declaration—Service.

Held:—1. A ratepayer of a municipality has no right of action to restrain works or cause the removal of obstructions on the public highway, without showing that the same have caused, are causing, or will cause him some special damage peculiar to himself, and different from the damage which they may cause to the public generally; and the Court is not required in such action, on the issue between the plaintiff and the party executing the works, to decide whether the resolution of council, under the authority of which the works are being performed, is radically null.

2. Where a municipality is *mise en cause* in a suit in which the plaintiff asks that a resolution of the council be set aside, grounds of nullity, which are invoked only in the declaration as amended, cannot be taken into consideration by the Court on the issue with the *mise en cause* unless the amended declaration has been served upon the *mise en cause.—Senécal* v. *Edison Electric Co.*, Montreal, S. C., Doherty, J., January 7, 1892.

Loi électorale—Dépenses personnelles d'un candidat.

Jugé:—Il existe en loi une action pour le recouvrement d'une dette encourue par un candidat pour ses dépenses personnelles.—*Bernard* v. *Vallée*, C. C., Montmagny, Pelletier, J., 21 déc. 1892.

Mariage—Epoux séparés de fait—Aliments.

Jugé:—La femme séparée de fait de son mari, a un recours contre lui pour aliments, lorsque les mauvais traitements de ce dernier sont la cause de la séparation.—*Samson* v. *Lemelin ès-qual.*, Québec, C. S., Casault, J., 24 décembre 1892.

Charge publique—Usurpation—Acceptation—C. P. C., 1016—*Requête libellée—Déposition.*

Jugé:—Puisque le recours que donne l'article 1016 du C. P. C. n'existe que lorsqu'il y a *usurpation, détention* ou *exercice* illégaux

d'une charge, une déposition sous serment qui ne mentionne que son *acceptation* est insuffisante pour autoriser l'émanation du bref. *Prendre sans permission* une charge (version française) n'est pas seulement l'accepter, mais s'en saisir, les mots "*intrude into*" (version anglaise) ne voulant pas dire seulement *accepter* une charge, mais s'en méler, s'y fourrer.

Dans l'espèce, cette objection n'ayant pas été prise *in limine litis*, et la preuve démontrant que l'acceptation mentionnée a réellement été une prise de possession, le jugement dépossédant le défendeur de la charge de conseiller, pour manque de qualification, est confirmé avec dépens.—*McLaughlin* v. *Paul*, Québec, en Révision, Casault, Routhier, Caron, JJ., 29 février 1892.

Garantie contre les faits et promesses du vendeur seulement—Droit de commutation ouvert—Connaissance de la cause d'éviction—Dépôt d'un acte sous seing privé chez un notaire—Preuve—Art. 1510, *C. C.*

Jugé:—1. Que l'acquéreur d'un immeuble, sous la garantie contre les faits et promesses seulement du vendeur, ne peut réclamer de ce dernier le montant qu'il a payé pour acquitter un droit de commutation ouvert lors de la vente.

2. Que plusieurs mutations de l'immeuble en question ayant eu lieu avant le titre de cet acquéreur, et la commutation devenant exigible lors de la première mutation, l'acquéreur est présumé avoir connu cette cause d'éviction, et ne peut l'opposer à son vendeur qui ne l'a garanti que contre ses faits et promesses seulement.

3. Que le dépôt d'un acte sous seing privé chez un notaire, n'a pour but que de conserver cet écrit, et ne donne pas aux copies qu'en dresse le notaire le caractère et la force probante d'un acte authentique, mais que cet écrit doit être prouvé comme les autres écrits sous seing privé.—*Guérin* v. *Craig*, et *Craig*, opposant, Montréal, en Révision, Loranger, Tellier et Davidson, JJ., 31 mai 1892.

Contrainte par corps—Injure—Dénonciation calomnieuse.

Jugé:—Il n'y a pas lieu à la contrainte par corps en exécution d'un jugement accordant des dommages, pour une dénonciation calomnieuse.—*Riverin* v. *Lessard*, Montréal, C. S., Mathieu, J., 2 décembre 1892.

Mandamus.

Jugé :—Que, dans une requête pour *mandamus*, sous l'art. 1022, C. P. C., contre un magistrat qui refuse d'entendre une plainte, dans une affaire où il a juridiction, il n'est pas nécessaire d'alléguer que le requérant n'a pas autre remède.—*Hooper & Dugas*, Montréal, C. S., Mathieu, J., 21 octobre 1892.

Action en dommages—Contrainte par corps—Distraction de frais.

Jugé :—Que la partie qui a obtenu jugement, dans une action pour injures personnelles, pour des dépens qui ont été distraits à son avocat, ne peut procéder à la contrainte par corps, en son nom, pour le montant de ces dépens.

Qu'il n'est pas nécessaire, avant de demander la contrainte par corps, de discuter les immeubles de la partie condamnée.

Que, sous les articles 2272 et 2276, C. C., la femme peut être incarcérée, lorsqu'elle est sous le coup d'un jugement accordant des dommages-intérêts pour injures personnelles.

Que la contrainte par corps est à l'arbitrage du tribunal qui peut l'accorder pour un temps limité.—*Quenneville* v. *St-Aubin*, Montréal, C. S., Mathieu, J., 2 décembre 1892.

Loi seigneuriale—Droit de pêche.

Jugé :—1. Le droit de pêche sur les rives du St. Laurent bornant les seigneuries, n'en était pas un accessoire et n'appartenait pas au seigneur auquel il n'avait pas été spécialement accordé.

2. Ce droit, lorsqu'il avait été accordé au seigneur, n'était pas sous-inféodé sans concession expresse et spéciale ; et le seigneur. auquel le donne son titre, peut empêcher le censitaire riverain, que n'en a pas, de tendre une pêche sur la grêve du St. Laurent à laquelle sa terre aboutit.—*Fraser* v. *Fraser*, Québec, en Révision, Casault, Routhier, Andrews, JJ., 31 mai 1892.

Procédure—Saisie-arrêt avant jugement—Requête pour annuler la saisie—Inscription.

Jugé :—1. Que quand la procédure a été faite d'une manière négligente de part et d'autre, il convient de s'assurer si justice a été rendue aux parties, et non pas si l'on a suivi strictement les règles de la procédure.

2. Que lorsqu'une requête pour l'annulation d'un bref de saisie-

arrêt avant jugement a été, après sa présentation, continuée à un autre jour, il n'est pas nécessaire qu'il y ait inscription pour preuve et audition sur cette requête, mais que le jour fixé, le requérant doit être présent avec ses témoins, et que faute par lui de procéder sur sa requête le tribunal, sur inscription du demandeur, peut rendre jugement sur le mérite de l'action, sans avoir égard à la requête du défendeur.—*McHugh* v. *Walker*, Montréal, en Révision, Jetté, Davidson et Pagnuelo, JJ., 30 novembre 1892.

Requête pour annulation d'élection municipal—Objections préliminaires—Cautionnement—Amendement—Délais.

Jugé, qu'en matière de contestation d'élections municipales, la Cour est toujours disposée à permettre d'amender la procédure et même de compléter le cautionnement, pourvu que les amendements ne constituent pas une procédure nouvelle en dehors des délais de rigueur.

Que le cautionnement exigé en pareil cas doit se rattacher clairement à la procédure dont il est question.—*Desmarteau et al.* v. *Daignault*, Montréal, C. C., Pagnuelo, J., 16 avril 1892.

Procédure—Opposition—Effets exempts de saisie—Choix du saisi—Description des effets—Articles 556, 560, *C. P. C.*

Jugé, que lors de la saisie, l'huissier instrumentant doit offrir au saisi le choix des effets qui sont exempts de saisie.

Que l'huissier doit décrire les effets saisis de manière à les identifier; qu'ainsi, la désignation, au procès-verbal, de "quatre lits sur sept" est insuffisante.—*Lanthier* v. *Thouin,& Thouin*, Montréal, C. C., Pagnuelo, J., 1892.

Condictio indebiti—Lien de droit—Défense en droit—C. C. 1047.

La déclaration alléguait qu'en avril 1891, le gouvernement provincial, désirant payer certains subsides votés en faveur de la Compagnie de Chemin de fer de la Baie des Chaleurs, et voulant que ces subsides fussent d'abord employés à acquitter certaines dettes antérieures de cette compagnie, nomma un mandataire qu'il chargea de faire ces paiements, et qu'une lettre de crédit au montant de $100,000, adressée à la Banque Union, fut mise à la disposition de ce mandataire pour cet objet. Que celui-ci la déposa à la dite Banque Union, et, le même jour, fit à l'ordre

du nommé C. N. Armstrong, cinq chèques de $20,000 chacun, et les lui remit dans le bureau du défendeur, et qu'immédiatement les dits chèques furent endossés et délivrés par le dit Armstrong au défendeur, sans qu'il ne fut rien dû à ce dernier. Et le gouvernement demanda le recouvrement de cette somme du défendeur, par action en répétition de l'indû.

Jugé :—Sur défense en droit, que l'action ne démontrait aucun lien de droit entre le Gouvernement et le défendeur, et ne pouvait être maintenue.—*Casgrain, Proc.-Gén.* v. *Pacaud*, Québec, S. C., Routhier, J., 16 mai 1892.

Femme mariée—Obligation pour son mari—Billet—Tiers porteur de bonne foi—Preuve—Art. 1301, *C. C.*

La femme mariée, qui veut profiter de la disposition énoncée en l'article 1301, C. C., pour échapper au paiement d'un billet qu'elle prétend avoir signé pour son mari, doit prouver que le tiers porteur qui a escompté ce billet savait, au moment où il a avancé son argent sur la foi de la signature de la défenderesse, que cette dernière ne s'était obligée que pour son mari. —*La Banque Nationale* v. *Dame H. Ricard*, Montréal, S. C., Loranger, J., 11 avril 1892.

Telegraph Company—Power to cut overhanging boughs—Trespass.

Held :—The Montreal Telegraph Company has, by its charter, the right to cut the branches of trees overhanging highways, which interfere with the working of its telegraph lines ; but such right does not justify a trespass on private property for the purpose of cutting such branches, and the Great North Western Telegraph Company, as lessees of the Montreal Telegraph Company's lines, has the same rights.—*Roy* v. *Great North Western Telegraph Co.*, Quebec, C. C., Casault, J., 1892.

APPEALS.—The Quebec Act, 56 Vict. ch. 42, passed last session, provides that an appeal from an interlocutory judgment must first be allowed by one of the judges of the Court of Queen's Bench, upon a summary petition.