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THE MARRIAGE LAWS IN UPPER CANADA.

A case now pending in the Court of Chancery of Upper Canada has attracted general attention to the state of the marriage laws. An action for alimony was brought by the wife against the husband, on the ground of desertion, and the defence set up was that the alleged marriage of the parties was celebrated by the Roman Catholic Bishop of Toronto, without the publication of banns or the procurement of a license from the Governor, under the statute, and such marriage was celebrated privately in the Bishop's house, without any witness being present, and after canonical hours. The aid of the English statute known as Lord Hardwicke's Act, (26 Geo. II., cap. 33.) was also invoked, whereby it is provided that marriages celebrated without banns or license, shall be deemed clandestine, and shall be null and void to all intents and purposes whatsoever. The plaintiff sought to avoid this defence by setting up that these acts did not apply to Roman Catholics (both parties being such in this case, and resident within the diocese of the Bishop who officiated at the marriage ceremony); that marriage was accounted a sacrament by the Roman Church, and, as such, being a part of their religion, it was preserved to them intact by the stipulations made upon the capitulation of Canada, and that it was open to that church to regulate the celebration of marriage by their own ecclesiastical rules—and at all events, if the aforesaid statutes did apply, then the marriage was at most only irregular, but not null and void.

The *Upper Canada Law Journal*, commenting on this remarkable case, urges the necessity of a thorough revision and amendment of the Marriage Laws by the Confederate Parliament. The matters presented to the Court for adjudication are whether the marriage of Roman Catholics by their own Bishops is regulated by the Upper Canada Statute, or by the French law applicable to the subject, which obtained at the time of the cession of Canada, or whether, exempt from both, Roman Catholics are in this respect a law unto themselves.

WRITS OF ERROR.

We have deferred till the present month the publication of the judgment quashing the first Writ of Error, in the case of *The Queen* v. *Dunlop*, and are now enabled to complete the case by the report of the subsequent judgment upon the merits. A considerable amount of indignation has, it seems to us, been lavished unnecessarily upon the action taken by the representative of the Attorney-General in this matter. The objection raised when closely examined, assumes almost a purely technical character. It is difficult to imagine that the Attorney-General would not have been just as much responsible for the act of Mr. Ramsay under the circumstances as though he had signed the fiat for the writ himself. The subdivision of Lower Canada into a large number of Districts has rendered it almost impracticable for the Attorney-General, or Solicitor-General, to be present and make a personal inquiry into the propriety of signing every writ of error.

A majority of the judges held the act of Mr. Ramsay to be illegal, and it must therefore be assumed that he exceeded his authority in signing the fiat without a special commission from the Crown. But apart from the strictly legal bearing of the case, if it were necessary to exculpate Mr. Ramsay in the matter, it is only necessary to observe that although the majority decided against the legality of the act, yet the learned judge, the execution of whose judgment was stayed by the writ of error, was of a contrary opinion; and, further, a majority of the same Court have since sustained the second writ of error, and held that the judgment in question went too far in ordering the immediate destruction of all the powder in the magazine.

Before the latter judgment was rendered, Mr. Ramsay published some remarks upon the case, in a letter to the *Gazette*, from which we subjoin the following extracts:—

"The question is not alone whether the Attorney-General can sign a fiat for a writ of error by proxy; but whether his duties in Court can be performed by proxy. In fact, the same question may be raised as to signing an information, and has been raised as to signing a *nolle prosequi*. It seems difficult to suppose that the one can be done by proxy and not the other; and yet it has been held in the case of a *nolle prosequi* that it may be done by proxy. When the thing was questioned I shewed, by a tabular statement which I then drew up, that the right to enter a *nolle prosequi* had been exercised nearly a hundred times in Montreal within the fifteen years preceding, and that in not a single instance had it been signed by the Attorney-General in person; but always, save in two or three instances, by the Solicitor-General, by the Clerk of the Crown, or by the usual proxy. I shewed, moreover, that this had been done by the tacit assent of every judge of the Queen's Bench and by several other judges, and most frequently when Mr. Justice AYLWIN was presiding. Mr. Justice AYLWIN explains this by saying it was done without his knowledge; but this explanation is hardly satisfactory. The truth is, the judges never thought of questioning it till they perceived that it could be used by the Executive as a check upon them.

The question of the fiat for a writ of error is exactly parallel. It has been said that there was this distinction, that the power exercised by the Attorney-General, being judicial, could not be delegated. This is sheer nonsense. His power is prerogative, and he exercises it under an implied proxy from the Crown. Formerly it was granted under the sign manual, but that became disused by one or two Attorney-Generals singly signing the fiats, and I never heard of any jealous judge in England quashing a writ upon this ground. Is the step taken here greater? The Attorney-General never prosecutes in person, and yet some one must sign these things who knows something of the facts. If the Attorney-General is to sign personally, he must sign on faith of what his representative puts before him. Judge AYLWIN says, I understand, that formerly, here, the representative of the Attorney-General had a lot of blanks signed by the Attorney-General in his despatch, and ready to be applied in case of need, and that this avoids the difficulty. And what then becomes of the intransmissible judicial power of the Attorney-General ?

In matters of information, in the only Courts where they are used, they have constantly been signed by proxy. Indeed, this idea of the Attorney-General being unable to grant a proxy is a novelty. Once before it was questioned whether he had granted it, but never whether he could if he wished. The case is a curious one, and, as we have the advantage of the opinion of the law officers of the Crown on the point (Mr. AYLWIN being the Solicitor-General, L. C.), I shall briefly resume it. The Attorney-General, Mr. OGDEN, being absent in England, Mr. PRIMROSE signed for him several suits which could only be brought "*in the name* of some superior officer of the Customs or navy, or *by* Her Majesty's Advocate or Attorney-General. No one questioned the right of the Attorney-General to give his proxy, but the fact of his having given it was doubted, and Mr. PRIMROSE was called upon to produce it. This he failed to do, and the suits were dismissed. Of this proceeding Mr. PRIMROSE complained to the Governor-General, who referred the matter to the law officers for Upper and Lower Canada; and they reported that by the peculiar nature of the Admiralty Court the proxy could be demanded, and incidentally they stated their opinion "as to the conduct of Crown cases generally by the Queen's Counsel in the absence of the Attorney-General." "With reference, however, to the Crown cases generally, both in the Vice-Admiralty and other Courts, the question raised in the case of the Master of the Dumfriesshire is no doubt of great practical importance, as the personal attendance of Her Majesty's Attorney-General for Lower Canada, in all the Courts, *is rendered impracticable* by the judicial organization of these Courts into distinct and separate tribunals, possessed of equal powers and of the same jurisdiction, which they exercise at the same time in different and distinct districts." * * * "There is no rule of law by which one attorney may not delegate to another the power of

acting, and, therefore, of signing acts for him; and there is even an express rule in the Court of Appeals which enjoins upon attorneys residing out of the City of Quebec to appoint an attorney resident there as an agent for them. We are not aware of any rule, either in the practice of the Courts in England, or in either of the sections of this Province, by which the Attorney-General, or any other attorney, may not delegate to a professional brother the power of signing legal proceedings *for him* and *in his name*. The argument *ab inconvenienti*, resulting from the organization of the Courts of Law of Lower Canada, would be easily shaken by a judicial decision founded upon some known rule of law. But if precedents be adverted to, it will be found that they are in favor of the practice of conducting and *signing* proceedings in the name of the Attorney-General by other counsel. This practice has been sustained, with reference to Mr. PRIMROSE himself, by the Court of Queen's Bench at Quebec, in the cases of the QUEEN v. BONNER and the QUEEN v. PETRY, and also in the District Court of Quebec. We believe that it may be said that the practice never has been shaken, and has been and is general. With reference to the course which obtains in England, we know that in some proceedings under the excise laws, at the instance of the Crown, the Solicitor of the Treasury is the prosecuting officer, *and his printed name at the foot of process has been held sufficient*." Signed: L. H. LAFONTAINE, Attorney-General L. C.; ROBERT BALDWIN, Attorney-General U. C.; T. C. AYLWIN, Solicitor-General L. C.; and JAS. E. SMALL, Solicitor-General U. C. The Dumfriesshire, STUART'S Vice-Admiralty Cases, p. 245.

It would seem that this general practice has now been shaken by a "judicial decision," but on what "*known* rule of law" that decision is founded is not so evident.

It is fit the public should also know that on the first application made to me for a writ of error, I communicated with four of the judges on the subject, and they declined to give any opinion on the weighty point. I was not, therefore, to *blame* in giving effect to the Attorney-General's proxy, provided I used it discreetly."

JUDICIAL CHANGES IN ENGLAND—LORD JUSTICE TURNER.

The long vacation has again brought with it several changes in the Judiciary. Last year Lord Justice Knight Bruce was, shortly after his resignation, removed by the hand of death; and this summer, Lord Justice Turner has been called away. This learned Judge was born in 1798, was educated at Pembroke College, Cambridge, and was called to the bar in 1822. He was made a Queen's Counsel in 1840, and from 1847 to 1851 was a member of the House of Commons. On the retirement of Sir James Wigram in 1851, he was appointed Vice-Chancellor, and two years later, on Lord Cranworth's becoming Lord Chancellor, Sir George Turner was promoted to be Lord Justice of the Court of Appeal in Chancery, as the colleague of the late Sir James Lewis Knight Bruce, an office which he held till his death on the 9th of July. The Lord Chancellor has said of him: "I am sure the bar will deeply regret the loss which the public and the profession have sustained in the death of that most excellent man and upright Judge, Lord Justice Turner. The unvarying kindness and courtesy which he showed to the profession, his devoted application to every case that was brought before him, the anxious care with which he worked out all his judgments, and which were always full and satisfactory, can never be forgotten; and I am quite sure that there is hardly any one connected with the Court of Chancery, who will not feel that he has lost almost a personal friend in this most amiable and esteemed man, and upright and conscientious Judge."

Sir John Rolt, the Attorney General, has been appointed to the vacancy occasioned by the death of Lord Justice Turner; Sir John B. Karslake, the Solicitor General, succeeds Sir John Rolt as Attorney General; and Mr. Jasper Charles Selwyn, Q.C., a leading member of the Chancery Bar, becomes Solicitor General.

The venerable Dr. Lushington, who has so long occupied the position of Judge of the High Court of Admiralty, has resigned. He was born in 1787, and was made Judge in 1839. While at the bar, he was one of the

counsel for Queen Caroline. He has been succeeded on the bench by Sir Robert Joseph Phillimore, the Queen's Advocate, who has been replaced by Dr. Travers Twiss, Q.C. The *Law Times*, commending the last appointment, says: "Nothing can more preserve the tone and dignity of the profession, than the invariable recognition of the highest claims in the dispensation of its honors and emoluments."

CORRUPTION OF THE BENCH IN THE UNITED STATES.

The following letter, which appeared in the *Times* of August 24, from its New York Correspondent, shows how rapidly the Bench of the neighboring Republic is becoming demoralized by the influences to which it is subjected.

NEW YORK, Aug. 2.

The effect of electing Judges by universal suffrage, and appointing them for short periods, has long been dreaded by that large but powerless class of Americans which desires to place some limit upon the sway of an ever-encroaching democracy. The Bench and the Bar have alike been degraded, and the courts are always full of scandals. Men are placed on the Bench not for any ability they have displayed, still less on account of their legal attainments, but simply as a reward for party services, and because they set their sails dexterously to the breath of popular opinion. In New York the system may be seen in its fullest development; all vicious systems possible under the American form of government flourish there in unrivalled completeness; but in every State where the Judges are elected by the people, incapacity and corruption are the prevailing characteristics of the Judiciary. The founders of the Constitution never looked forward to such an ascendency of the will of the majority as we now witness, but they had their doubts, and they wisely placed the Judges of the Supreme Court, and of such inferior courts as Congress might establish, above the reach of popular caprice. Their idea was, as one of them expressed it in the *Federalist*, that the Courts of Justice should be considered "as the bulwarks of a limited Constitution against legislative encroachment." Madison himself was opposed to electing Judges by a popular vote. The commentators are unanimous in commending their opinions, and in deploring the tendency of recent times to throw the three Departments of the Government entirely into the hands of the people. Mr. Justice Story says,—

"Does it not follow that, to enable the Judiciary to fulfil its functions, it is indispensable that the Judges should not hold their offices at the mere pleasure of those whose acts they are to check, and, if need be, to declare void? Can it be supposed for a moment that men holding their offices for the short period of two, or four, or even six years, will be generally found firm enough to resist the will of those who appoint them, and may remove them?"

I feel that I ought to apologize for quoting the words of these exploded authorities; but there was a time when their interpretation of the Constitution was respected, and their writings still have an interest as historic relics.

It must be a melancholy sort of satisfaction to the Constitutional party to know that all the evils predicted as certain to result from a course which enabled the changing majority of the hour to gain possession of absolute power are now actually experienced. In one State they make themselves felt in one way, in another State by a different way; but the people have them all before them in various shapes. If an example is wanted of the disastrous consequences of electing Judges by universal suffrage we have only to refer to New York. There not only the Judges, but all the officers concerned in the Judiciary, are chosen by popular election. An American publication of well-known character, the *North American Review*, has given an account in its last number of the working of this system. The statement comes with authority; it enters into minute particulars; and it has not been questioned nor denied by any of the persons implicated in its charges. A month has elapsed since it first appeared, and I have watched carefully for some contradiction or disproof. Nothing of the kind has been offered. Nay, the people seem even to be indifferent to the existence of so huge a scandal, and, with

the exception of the *Tribune*, which corroborates the reviewer's assertions, the press is quite silent respecting it. So that an exposure of this kind not only does the parties concerned no harm, but causes neither surprise nor indignation in the public mind, and is looked upon as a thing inevitable, and one of the necessary fruits of that principle of an unrestricted suffrage which appears to grow into favour in other parts of the world the more its disadvantages are revealed here.

It must be understood that there are Judges upon the Bench in New York who are guiltless of the offences described by the reviewer; he admits that fact readily; and it is only to be regretted that he or his publishers had not the courage to disclose the names of the persons whom his accusations specially affect. As it is, the innocent suffer for the guilty, and such men as Chief Justice Robertson, of the Supreme Court, whose integrity is above suspicion, are classed with their dishonest colleagues by readers who know no better. In the same way, it is usual to attack the entire municipal government of New York, without excepting the Mayor, Mr. Hoffmann, who is allowed by all parties to be a gentleman of the highest character.

The reviewer mentions the immense increase in the foreign population as one cause of the degraded state of the Judiciary. He believes that there are 100,000 foreign born voters in the city to 60,000 native voters, and they are "hopelessly degraded by dirt, foul air, and drink." They always choose the worst condidates on the list, such as one of their present representatives in Congress, whom the writer describes as "a man notorious in the past as a pugilist and a criminal, and whose entire claim to a reformation of character consisted in his having given up prize-fighting and become the chief of professional gamblers."

When Judges are chosen by this same class of voters any one may guess what character the Bench is likely to assume. But another cause of their debasement is the patronage placed in their hands by the great increase in the number of referable causes. The referee suffers it to be understood that he is "open to offers" from the parties seeking a decision, and sometimes he manages to pocket $50 or $100 a day as his fee. Receiverships are also offices of profit to the Judges. A public journal of respectable character recently asserted that upon the settlement of a certain receiver's accounts the Judge demanded half his fees, which amounted to some $10,000. Judges of this stamp are as incompetent as they are corrupt, and they drag the Bar down to their level. Formerly Americans used to leave foreigners to make these revelations, and abuse them afterwards; now they tell the truth themselves, and there is consequently a better hope of reform.

Besides taking money as bribes the New York Judges will hear counsel *ex parte, out of court*. The *North American Review* says:

"It very naturally follows that the Judge who will do this is often utterly indifferent to the argument in open court; and it also follows, in not a few cases, that he pledges his decision beforehand. We have known extensive stock speculations to be conducted on the faith of decisions thus promised, and it is not to be wondered at if the Judge was strongly suspected of having an interest, as he certainly had a friend, in the speculation."

The reviewer gives what he describes as a "portrait" of one of the Judges. His knowledge of law is small, but he is naturally quick and acute, and except for a habit which he has of hearing arguments privately, after he leaves the court, he might not be altogether a bad Judge. This probably accounts for the fact, mentioned by the reviewer, that he sometimes cuts short a case before it is fairly stated. "You can go on," he will say to the lawyer who is pleading before him, "all day if you like; but I have decided this case, and I never take back a decision." He indulges continually in coarse language or profane jokes while on the Bench. Once he said in open court "that William Cullen Bryant was the most notorious liar in the United States. On another occasion he referred to the President (Lincoln) and the Secretary of War as "those villains down there." He is greatly under the influence of certain lawyers who are supposed to share their fees with him. "Not long ago," says the reviewer, "certain parties having an important affair in litigation

were privately notified *that if they wished to succeed before the Judge they must employ two lawyers (neither of them having any claim to the business) at a handsome fee.*" Some other instances are given of this man's iniquitous dealings, and then the reviewer proceeds to state that the criminal courts are little, if any, better than the civil courts. "If," he remarks, "we were to relate half the rumours which are afloat, and which are fully credited, too, by the most intelligent and discreet members of the Bar, we should draw a picture as appalling as anything to be found in the books of the prophets Amos and Micah." One Judge (not now on the Bench), before whom an assault case was brought, was asked during the progress of the trial to to go with the prisoner and his counsel to dinner. He accepted the offer, and found a bill for $100 under his plate. He was "astonished," but he literally "pocketed the affront" and decided in favor of the accused. Thus were things pleasantly arranged. Another Judge accepted $500 in return for a decision. "Within a much more recent period," says the reviewer,—

"A man was indicted for a series of enormous frauds, by which he had made himself wealthy. The indictment was quashed for some informality, and he openly boasted that he knew how to manage the drawing of future grand juries so as to secure himself against any renewal of the indictment—a boast which the failure of all subsequent attempts to indict him seems to justify. We are assured, on the most respectable authority, that the judge received $10,000 for his decision."

Most of the judges on the criminal bench are described as "coarse, profane, uneducated men." One of them was a butcher, another a barkeeper:—

"As a rule they are excessively conceited and overbearing, and in some cases positively brutal in their demeanour. The officers in attendance naturally take their tone from their superiors, and treat every one who enters the court-room with a roughness which makes attendance upon such places ineffably disgusting."

If the guilty person be wealthy and the accuser poor there is very little chance of justice being done. The following case is described by the reviewer:—

"We remember an instance in which a rich but infamous brothel-keeper had terribly beaten one of the poor wretches in her house. The 'prisoner' was on bail, the accuser was detained as a witness. When the case was called, the poor creature came forward, her face all clotted with blood and her clothes torn to rags—a ghastly spectacle. The counsel for the accused took her aside, and, under the very eyes of the judge, bullied and coaxed her by turns, threatening her with prosecution as a vagrant, and with the revenge of her mistress, until she agreed not to prosecute the case on condition of her doctor's bill (say $5 or $10) being paid. The counsel then announced to the justice that the complaint was withdrawn. The justice shortly asked the complainant if that was so, to which the poor creature sadly answered that she would not withdraw her complaint if she were not so poor; but as it was she supposed she could not help herself. The justice harshly replied that he had nothing to do with that. The complaint was dismissed, and the miserable woman was promptly bundled out of court by the officers."

The lawyers in such courts match the judges. When a person gets "into trouble" his gaoler, or some friend, recommends him to trust his defence to one or other of a certain set of lawyers. What ensues is best told in the reviewer's own words:—

"The person thus introduced, after making a very few inquiries about the case, asks the prisoner, 'How much money have you?' Usually, of course, the amount is very small; and the next question is, 'How much can you raise.' The answer is, perhaps fifty, perhaps a hundred dollars. 'A hundred dollars!' cries the lawyer contemptuously; 'why, I shall have to give that much to the judge and twenty to the clerk. D—— it, you must squeeze out two hundred and fifty dollars somehow, or you're gone up.' The prisoner asks advice of his keeper, and is told that 'Lawyer —— knows what he is about,' and should be secured at any price. If, after severe pressure, the prisoner declares that he cannot raise the required sum, the lawyer

grudgingly accepts whatever he can get. But it must not be supposed that the fees are limited as a rule to two hundred and fifty dollars. These men, whom long experience has made keen in judging of a prisoner's means, take all he has, be the same more or less. If he has only ten dollars in the world they take that, and really make a good fight upon it; if he has five thousand dollars they will extract it all out of him, if not interfered with, though, of course, such opportunities are very rare."

From Lamirande, the French cashier, these harpies extorted nearly $20,000, and bribed his gaolers with part of the plunder to let him escape. Servant girls are stripped of all they possess, and during the war thousands of men were liberated from prison on condition that they would enlist in the army, *the judge, lawyer, and prison officials receiving the bounty money,* amounting to $600, or even $1,500, for each person. And all this, the reviewer implies, is little to the revelations which might be made. He has purposely understated the case.

One other periodical representing the ruling party of the day, the *Nation*, has come forward with an addition to the reviewer's presentment. His indictment is laid against the bar. The admissions to the American Bar are made without the commonest care or discretion. "There are many lawyers," the writer states, "in practice in this city (New York) who habitually plunder their clients, sometimes by retaining the moneys collected by them, sometimes by selling their clients' interests outright to the adverse party." He further states that "one of the most reputable firms in the city" offered to bribe a young lawyer to allow a judgment to go against his client by default, and afterwards urged in excuse that "such offers had been accepted in other cases." The tone of the profession has sunk, and its leading members are cowed. They might bring about the removal of the most notoriously corrupt judges, but they have not the courage or the spirit to interfere.

I have given but an outline of two articles which might naturally have been expected to shock any community and arouse an imperative demand for reform. But the people are so used to hearing stories of corruption in high places that they pay scarcely any attention to new disclosures. The Constitutional Convention is now sitting, with power, of course, to remodel the laws of the State. It remains to be seen whether they will make an attempt to deal with a Judiciary which is a disgrace to the age; down to the present moment they have let it pass unnoticed.

LEGAL EXPENSES IN ENGLAND.

We have already given some instances of extraordinary bills of costs in England. The following, from the *Times*, shows that a bill of £369 was taxed in a suit for 6s. 8d.

IN RE J. HATTON.

The bankrupt, a farmer, of Mattishall, Norfolk, applied for his discharge from debts of £392. It appeared that having resisted the payment of a rate due to the churchwardens of the parish of Mattishall, proceedings were commenced against him in the Ecclesiastical Court, and eventually an order was made for payment of the rate (6s. 8d.) and the costs of the suit, which were taxed at no less than £369. This constituted practically the only debt upon the schedule. The bankrupt in his accounts made the following statement:—

"In April, 1866, E. W. Crosse, my proctor in the suit instituted against me by Messrs. Edwards and Mann, obtained a judgment against me in an action brought by him for recovery of his costs, and I sold part of my last year's crop to make payments to him on account of his judgment: but on the 4th of February last the said Mr. Crosse levied execution and sold all my remaining crop, stock, and effects, to pay the balance (£165 13s. 10d.) of his judgment and the half-year's rent then due."

Mr. Reynard, for the assignee, did not oppose; Mr. Bagley supported the bankrupt.

Mr. Lawrance, for the churchwardens of Mattishall, opposed on the ground that the bankrupt, having exhausted his assets, had vexatiously defended the suit in the Ecclesiastical Court.

The bankrupt in his evidence said that he was a Dissenter, and he had refused to pay the rate because he considered it illegal and unnecessary.

By Mr. BAGLEY.—He had occupied the farm at Mattishall, in Norfolk, for 22 years, and during that time he had paid only one rate. He defended the suit upon the belief that he had a good defence to it, and he had been completely ruined in consequence. When the matter came before the magistrates they declined to interfere on the ground of want of jurisdiction.

Mr. BAGLEY said he was prepared to call Mr. Crosse, the proctor, who would prove that the defence was well advised, but

The learned COMMISSIONER, after hearing Mr. Lawrance, said it was unnecessary to adduce further evidence. He was of opinion that, although the result of the suit had been most unfortunate and lamentable, there was no proof that the bankrupt had acted vexatiously. The order of discharge would therefore be granted.

LAW JOURNAL REPORTS.

COURT OF QUEEN'S BENCH.

APPEAL SIDE.

Montreal, Sept. 9, 1867.

GAULT ET AL., (Plaintiffs in the Court below,) APPELLANTS; and DONNELLY, (Defendant in the Court below,) RESPONDENT.

Secreting—Undue Preference.

Held, that an undue preference given by an insolvent to one of his creditors, by selling him goods in payment of his claim, is not a "secreting with intent to defraud," and does not justify the issue of a *capias ad respondendum.*

This was an appeal from a judgment rendered on the 28th of February, 1866, by *Badgley*, J., giving judgment for the plaintiffs for debt, interest and costs, but granting the defendant's petition to set aside the *capias* which had issued. (This judgment will be found reported in Vol. 1 of the *Law Journal*, p. 119.)

The *capias* issued upon affidavit of one of the plaintiffs that he was credibly informed, had every reason to believe, and did verily and in his conscience believe, that the defendant had secreted, and was then immediately about to secrete his estate, debts and effects, and was immediately about to leave the Province of Canada, with intent to defraud the plaintiffs and his creditors. That defendant was insolvent and *en déconfiture*, and harassed by suits; and that his wife desired him to go to the United States to live there.

The deponent proceeded to allege that on the previous day he had been in the defendant's shop, and the defendant informed him he had just got through stock-taking, and that he had $5,000 stock in store. The next day, when the deponent visited the store, he found that a large part of this stock had been removed, and he saw an entry in the books, of two pages in length, of goods sold to T. J. Walsh.

The defendant first moved to quash the *capias*, and this motion being rejected by *Berthelot*, J., he petitioned to set aside the process, averring that the transaction between the defendant and Walsh was not fraudulent, but for the simple purpose of fairly and honestly paying Mr. Walsh a debt of $1,800, honestly owing him, and for which Mr. Walsh then held the defendant's note for cash before then loaned by him to the defendant.

The evidence adduced upon the petition to quash disclosed the following facts:—Mr. Walsh, a dormant partner of the defendant, had advanced him $1,400. Finding that the business was not prosperous, he endeavored to get his money back, and on the day before the *capias* issued went to the defendant's store, and asked for payment of the debt in goods. The defendant at first refused to allow any goods to be removed, but on the guarantee of Mr. Mullin, who happened to be present, that he would be answerable in the event of any difficulty being raised, he allowed Mr. Walsh to take a considerable amount of goods, which were entered in the sales book. After an attachment had issued, these goods were claimed by the assignee, and were placed in his possession.

The judgment of *Badgley*, J., set aside the *capias* on the ground that the sale to Mr. Walsh, though an illegal preference of one creditor, could not be considered a "secreting" within the statute. From this judgment the plaintiffs appealed.

DUVAL, C. J. In this case a *capias* issued against the defendant, but was set aside in the Court below on the ground that there was no proof of fraudulent secretion by the defendant. The majority of the Court think that this judgment should be confirmed, but I am of a different opinion. The whole case turns upon the interpretation to be put upon the word "secreting." The facts of the case are that the defendant, being the plaintiffs' debtor and being insolvent, made over a portion of his property to Mr. Walsh, another of his creditors. It is contended that this was only an undue preference, and does not amount to a fraudulent secretion. But what meaning can be given to the term "secreting," if it be not a secreting to put property beyond the reach of the creditors, as was done in this case? Suppose the defendant had sold the effects in question and put the money in his pocket, would not that have been a secreting of his effects? I am of opinion, whenever, by any improper means, a creditor is deprived by his debtor of the means of getting his just claims, that such act is a secreting. The majority of the Court, however, are of opinion to confirm the judgment.

[No remarks were made by DRUMMOND, MONDELET, and JOHNSON, JJ., who concurred in confirming the judgment.]

Perkins & Stephens, for the Appellants.

M. Doherty, for the Respondent.

Montreal, June 4, 1867.

DUNLOP, PLAINTIFF IN ERROR; AND THE QUEEN, DEFENDANT IN ERROR.

Writ of Error—Attorney-General.

Held, that the fiat for a writ of error must be signed by the Attorney-General or Solicitor-General, in person, or by some one specially commissioned by the Crown, and that the Attorney-General cannot depute his authority to sign the fiat to another.

The plaintiff in error, Charles John Dunlop, having been convicted on an indictment for nuisance, in the September Term of the Court of Queen's Bench, Crown side, in September, 1866, sued out a writ of error.

A preliminary question was raised as to the validity of this writ, it having been allowed by "Geo. Et. Cartier, Attorney-General, "L. C., for T. K. Ramsay, advocate prosecuting for the Crown, and representing the "Attorney-General in criminal cases in the "District of Montreal."

MONDELET J. I must dissent from the judgment about to be rendered. I am of opinion that Mr. Ramsay had power to sign the fiat for the writ of error. In conducting the Crown business he does much more important acts than this in the name of the Attorney-General.

BADGLEY, J. Whatever inconveniences may fall upon individuals, the law must be obeyed. What is the law respecting writs of error? This is a high prerogative writ which at first never issued except on the sign manual of the Sovereign. Then authority was delegated to the Attorney-General to sign the writ, because it was generally upon his advice that the Sovereign acted. The responsibility of issuing the writ then rested upon the Attorney-General, a high prerogative officer. He is not responsible to us, but in his individual capacity to Parliament. Even the opinion that the Court might grant a writ has been set aside. If the Attorney-General is not present, the Solicitor-General must sign, but no other, unless he be deputed under a commission from the Crown. We have been favored with a copy of the delegation by the Attorney-General to Mr. Ramsay. This paper states that in consequence of the Attorney-General being obliged to leave the country, on public business, he appoints Mr. Ramsay his attorney to do certain acts, and to sign writs of error. Could this mere procuration impose upon the Attorney General any responsibility for Mr. Ramsay's malfeasance? I have always entertained a strong opinion upon this point—that the power of signing a writ of error is in the Attorney-General as Counsellor of the Crown. I think, therefore, the writ has issued improvidently, and was signed by a person who had no authority to do so.

AYLWIN, J. In this case I feel myself obliged to state that there has been an unconstitutional act. The Attorney-General is supposed to hear the party applying for the writ, and after inquiry into the circumstances, he decides whether the writ should issue or not. So far from this being done in the present instance, without any ceremony, the judgment of the

Court of Queen's Bench was at once stopped by the signature of Mr. T. K. Ramsay. Under what authority did he act? He produces a power signed by G. E. Cartier, Attorney-General, in which it is stated, that inasmuch as he is about to leave the Province, he authorizes Mr. Ramsay to act in all things for him, and especially in issuing writs of error. But the instant that the Attorney-General stated that he was about to leave the Province, he had no more right to do anything; and the whole of his *mandat* was worth nothing at all. It fell completely to the ground. What is the law? If the Attorney-General is obliged to be absent, then let the Solicitor-General act. Whether there was a Solicitor-General or no does not appear in this case. We have thus seen the whole of the people of this Province governed by a man who was absent from the country? Was that not unconstitutional? If these things are allowed to be carried on, then I say it is vain for any man in this Province to say that his life or property is worth anything at all. I say that this was clearly unconstitutional. I shall say no more, but that this writ must be quashed at once, and quashed ignominiously.

Duval, C. J. There are involved in this case some points that deeply involve the liberty of the subject. There is no question here of *pratique*: it is a question of constitutionality. What are the powers of the Attorney-General? Let any man reflect for one moment upon the extent of the powers committed to him, and then say whether they are to be entrusted to any person he may name. An indictment is preferred, a jury convict, and then a writ of error suddenly stops all proceedings. The door of justice is closed. Why? Because *sic volo sic jubeo*—no trouble taken to enquire as to the reasons for such a course. I am of opinion, however, that he to whom a power is delegated has no right to delegate it to another—*delegatus non potest delegare*. It is said this is done every day in the Criminal Courts, when an indictment is signed by an advocate for the Attorney-General, and that if he has a right to hang an individual, he has a right to sign a writ of error. But it is quite a mistake to suppose that an advocate may not take up and conduct a criminal prosecution without showing an authority from the Attorney-General. So long as the Attorney-General does not interfere, the Court will say nothing. The practice of signing for the Attorney-General is a vicious practice, but it has been allowed, and no harm is done. But the right of private counsel to conduct a prosecution has been tried, and where the Attorney-General does not interfere, the Court will not do so. Upon these grounds, I was quite prepared to say yesterday, when this case was argued, that the Attorney-General had no right to delegate his power to sign writs of error, and therefore the writ was wrongly issued.

The judgment was *motivé* as follows: Seeing that the writ of error in this cause issued, hath improvidently and illegally issued, inasmuch as the same was allowed by T. K. Ramsay, Esq., for and in the name of Her Majesty's Attorney-General, and not by Her Majesty's Attorney-General, &c. Writ quashed.

9th September, 1867.

A new writ having issued, the case came up on the merits.

R. Mackay, Q. C., for the Plaintiff in Error:—The Plaintiff in Error was indicted for nuisance in the September Term, 1866, of the Court of Queen's Bench, (Crown side,) at Montreal. He pleaded on the 12th October, 1866, a kind of plea to the jurisdiction, setting forth that the keeping of gunpowder, in the locality mentioned in the indictment, was regulated by Statute 27-28 Victoria, C. 56: that the Council of the City of Montreal was charged to regulate it by by-laws, and had done so, and that against persons violating any such by-law, proceedings special were to be taken in the Recorder's Court; subject to the jurisdiction of which Court, only, he, Dunlop, was or could be placed. The Plea substantially raised the question of whether the common law was not taken away in such a case as the present by force of the new and special provisions in the 27-28 Victoria, and other Acts. Afterwards in April, 1867, the Plaintiff in Error, having pleaded not guilty after dismissal of his preliminary Plea, was tried, at Montreal, in the Queen's Bench, upon said indictment: he was found guilty, and judgment

was pronounced against him on the 12th of April, as follows:--

"Considering that the defendant not having established before this Court that he hath abated and prostrated, but on the contrary, he having neglected to abate and prostrate the nuisance complained of, and declared by the verdict of the Jury, it is hereby declared and adjudicated, that the defendant should pay, and he is hereby condemned to pay to Her Majesty the Queen a fine of fifty pounds, current money of this province, and to be imprisoned in the Common Gaol of this district until the said fine be paid.

And it is further ordered that the Sheriff of the district do forthwith abate and prostrate the said nuisance, and he is, by this Court, ordered and authorized to employ and use all such means as will enable him to abate and prostrate altogether, fully and completely, the said nuisance, by the immediate destruction of the gunpowder contained in the defendant's powder magazine, found to be a nuisance by the verdict of the jury."

The plaintiff in error having obtained the Attorney-General's fiat sued out the writ of error now pending. The reasons of error assigned are numerous; a material one being that raising the question of jurisdiction in the Court that tried the indictment.

Another one raised the question of whether the indictment could lie, being at common law, in a case in which the plaintiff in error contends that the common law was and is abolished or repealed; other material ones raise the question of whether it was competent to the Court to declare forfeiture of the powder contained in the magazine mentioned in the indictment, and whether it was proper to order the "immediate destruction" of the gunpowder contained in the said magazine.

The plaintiff in error submits that his plea filed 12th of October was good, and ought to have been maintained, and that the common law had been repealed, before the time of the indictment being found against him, and the indictment was therefore bad. Where there are two laws on the same subject the special must prevail over the general. If that be maintained there will not be cause to go farther; but should the Court be, upon these points, against the plaintiff in error, then he will contend that the sentence of the 12th of April last was unreasonable, excessive, illegal and erroneous. Seeing its requirements the owners of the gunpowder, the keeping of which in an alleged excessive quantity was found a nuisance, might actually feel hindered abating the nuisance by the natural course of removing the powder. They might fear to handle their own property. Seeing duty on the Sheriff precisely to take possession of it, and destroy it, they might feel it dangerous to interfere with him.

A kind of forfeiture has been pronounced needlessly, of a very considerable quantity of property, worth over eighty thousand dollars; much of it public property, imported by the province for the public defence.

"Every judgment should be adapted to the nature of the case," says the law. The alleged nuisance here could have been abated perfectly, without destruction of the powder, so much wealth. Gunpowder *per se* is not a nuisance. A precept to the Sheriff to abate the nuisance would have led to its abatement. Abatement is one thing, and destruction of property another. Suppose a Sheriff ordered "to abate the nuisance," in a case like the present, could he proceed by "immediate destruction" of the powder? Certainly not, and were he to presume to do so he would have to answer in damages. Duty would be upon him to hurt as little as possible.

The plaintiff in error obliged to defend the property entrusted to him, had no alternative, after the judgment referred to, but to resort to the writ of error. Whatever may be ruled upon the question of jurisdiction, certainly the plaintiff in error has right to have his property left to him, willing as he is to abate any nuisance. The fine imposed upon him he also complains of.

Badgley, J. The writ of error in this case has occasioned the Court considerable difficulty. In order to render intelligible the judgment which is about to be rendered, it is necessary briefly to review the proceedings in the case. A bill of indictment was, in September, 1866, brought against Mr. Dunlop for nuisance. This indictment contained two counts. The first was that the defendant in a certain building,

"did unlawfully and injuriously receive and keep and still keeps, an excessive quantity of gunpowder;" and the second count charged, that he "did unlawfully, injuriously and negligently in said building receive and keep and still keeps a large quantity of gunpowder, to wit, fifty-one tons of gunpowder, the said building being insecure and unsafe for the purpose of storing gunpowder, being neither vaulted nor fire-proof," &c. The judgment condemned the defendant to pay a fine of £50, and to be imprisoned till the fine be paid. But instead of simply ordering the abatement of the nuisance, the judgment added that the Sheriff should abate the nuisance by the immediate destruction of the powder contained in the defendant's powder magazine. The reasons of error assigned amount to this—that the indictment was brought under the common law, whereas there is authority given to the Corporation to regulate powder magazines within a certain circuit of Montreal. It is sufficient to say that by the common law any quantity of powder kept in a building is a nuisance. It is not the quantity, but the mere keeping of powder that is a nuisance. But the first count does not go so far as the common law, inasmuch as it limits the common law, and charges the defendant with keeping an excessive quantity of powder. The verdict was guilty, and the Sheriff was ordered to abate the nuisance by the immediate destruction of the powder. Now it was unreasonable that the Sheriff should destroy all the powder, when the defendant was merely charged with keeping an excessive quantity. Here was the difficulty. Then the next count was that the powder was stored in an insecure building, and the judgment went upon this count also by ordering the destruction of the powder. The Court is of opinion that the judgment went too far in ordering the destruction of the powder, therefore, in the opinion of the majority, the judgment in this case must be reversed.

Duval, C. J. I differ and am for confirming the judgment. I believe that the Court in the case of a nuisance by the keeping of powder, has the right to order its destruction. If the Sheriff were ordered to remove a bridge which unlawfully obstructed a stream, it would not be necessary for him to destroy the timber, because the material *per se* would be harmless. But that is not so with gunpowder. The Sheriff has no place to keep the powder. If he would keep it in a private building, he would be just as liable to an indictment as Mr. Dunlop. I see by the record sent up that the defendant being ordered to abate the nuisance, refused to do it, and then the judge said he had no other recourse but to order the destruction of the gunpowder. I think the judge was perfectly right in ordering the powder to be destroyed, and I would have done the same thing myself, had I been sitting in his place.

Caron, and Drummond, JJ., concurred with Badgley, J.

The judgment is recorded as follows: —Whereas there is error in the judgment rendered by the Court of Queen's Bench, sitting at Montreal on the 12th of April, 1867, which orders the abatement of the said nuisance "by the immediate destruction of said "gunpowder, contained in defendant's powder "magazine," this Court doth reverse and set aside the said judgment in that respect and to that extent, and doth order that the said words above related be struck from said judgment.

R. Mackay, Q. C., for the plaintiff in error.

T. K. Ramsay, Q. C., for the defendant in error; and *E. Carter, Q. C.*, for the private prosecution.

September 9, 1867.

J. BTE. LEGER dit PARISIEN (Plaintiff in the Court below), Appellant; and CHARLES LEGER dit PARISIEN (Defendant in the Court below), Respondent.

Slander—Insufficient Damages.

In an action for slander, the evidence having proved a gross case against the defendant:—

Held, in appeal, that $50 damages and costs awarded by the Court below was inadequate: amount increased to $200 and costs.

The present action was instituted for the recovery of $2000 damages, under the following circumstances:—The plaintiff had been summoned as a witness in a cause pending before the Superior Court, and as soon as his deposition was finished, the present defendant (who was also the defendant in the cause

above mentioned) began to spread injurious reports concerning him, accusing him of falsehood and perjury. The plaintiff then brought an action of damages against him, which proceeded *ex parte*, the defendant having neglected to plead. The *curé* of the parish, and several other witnesses, were called to prove the injurious expressions used by the defendant. The judgment of the Superior Court was rendered by *Monk*, J., on the 31st of October 1866, condemning the defendant to pay $50 damages, and the costs of an action for $50. Of this judgment the plaintiff complained, representing that although his action had been maintained, nevertheless the judgment really mulcted him to the extent of $3.81; in this way: his attorney's taxed costs were $69.31, whereas the damages and costs recovered amounted to only $65.50, leaving a deficit of $3.81. He accordingly appealed, and claimed more ample damages.

The respondent appeared, and submitted that the judgment should not be disturbed.

Duval, C. J. The plaintiff had proved his case, and we think it unjust that he should be made to pay money for having brought his action. We are of opinion that the judgment must be set aside, and the defendant condemned to pay $200, with the costs in both Courts.

Drummond, J. I do not think a man should be mulcted in costs for exercising a clear right. The plaintiff having been outraged in a gross manner, only performed a duty from which he could not shrink, in bringing an action against his slanderer. This was a very gross case, and I think it was the duty of the Court to make an example of the defendant, and thus protect witnesses brought before the Courts, and see that they are not hunted down as Parisien has attempted to hunt down his nephew. We think it is the duty of the Court to give exemplary damages, and are of opinion that the Court below should have awarded him $200 damages instead of $50.

Caron, and Badgley, JJ., concurred.

The judgment was *motivé* as follows:—

Considérant que la somme de cinquante dollars, que le défendeur a été condamné à payer par le jugement dont appel, est insuffisante pour indemniser le demandeur des injures infamantes et cruellement grossières à lui prodiguées par le défendeur à plusieurs reprises avec une persistance qui indiquait chez le défendeur une malice profonde: considérant partant que dans le dit jugement il y a erreur, &c. Judgment reversed, and defendant condemned to pay $200 damages, with costs of the highest appealable class in the Circuit Court, and the costs of the appeal.

Jetté & Archambault, for the Appellant.

Denis & Lefebvre, for the Respondent.

L'HEUREUX (Plaintiff in the Court below), Appellant; and BRUNEL (Defendant in the Court below), Respondent.

Libel—Justifiable Writing.

The defendant in an action for libel had written a letter to the plaintiff's brother-in-law, accusing the plaintiff of dishonesty and trickery, on account of his having broken up a sale from the brother-in-law to defendant:—

Held, in appeal, that although the letter was not a privileged communication, yet that it was justifiable under the circumstances, and an action did not lie.

The plaintiff instituted the present action in the Circuit Court to recover damages from the defendant for libellous expressions contained in a letter written by the defendant on the 5th of April, 1864, to one Lachapelle, the plaintiff's brother-in-law. It appears that Brunel, the defendant, had entered into negotiations with Lachapelle for the purchase of a piece of ground belonging to the latter, and the terms had been concluded, when L'Heureux, the plaintiff, hearing of the proposed sale, succeeded in inducing Lachapelle to sell the ground to him. Brunel then brought an action against Lachapelle to compel him to execute the deed to him; and while this action was pending, being informed of the part played by L'Heureux, he wrote to Lachapelle complaining of the machinations of L'Heureux, and amongst other things using the expression, "Vous voyez maintenant la fourberie, la malhonnêteté et l'injustice avec lesquelles il a agi, et avec lesquelles il agit encore aujourd'hui à votre égard." This letter Lachapelle had no sooner received than he took it to L'Heureux to get him to read it to him,

and then both went to a notary to have it reread. It was for the expressions contained in this letter that L'Heureux instituted the present action of damages.

On the 30th of December, 1865, judgment was rendered by *Monk*, J., in the Circuit Court, awarding the defendant $50 damages. The defendant then inscribed the case for review, and on the 30th of May, 1866, this judgment was reversed by *Smith and Berthelot*, JJ., (*Badgley*, J., dissenting), and the action dismissed. The grounds of this judgment were that the letter in question was written to Lachapelle confidentially in reference to the transaction of bargain and sale made by Lachapelle to the defendant, and that the publication of the letter was unauthorized by the defendant, and that the letter was under the circumstances justifiable. The following remarks were made when judgment was rendered in review.

SMITH, J. This is an action of damages for slander brought by the plaintiff for a letter written by the defendant. The letter was written strongly and in very severe terms, and was considered by the Court below to be a libel. This judgment appears to us to be erroneous. We think that the slander, if a slander at all, was one which the defendant had at the time a strong reason for writing. The plaintiff's brother-in-law had promised to sell to Brunel a certain piece of ground, and the plaintiff persuaded him to break this agreement, and even went so far as to declare that he would hold him harmless for anything he might suffer for his breach of agreement. Now a man who stands in this position of inducing another to break his agreement, is naturally exposed to imputations on his honesty. The letter in question charged the plaintiff with iuducing this violation of contract, and it must be admitted that there was a good deal in the way of justification for this. Moreover the plaintiff did not negative the facts; there is, therefore, a strong presumption that they are true, and, if these facts are true, it cannot be pretended that there is much slander in the letter complained of. The plaintiff does not stand in the position of a man with clean hands before the Court. The defendant has perhaps only told the truth in rather plain language. There is no ground as far as we can see for damages, and we think that the judgment must be reversed, and the action dismissed.

BADGLEY, J. It is perfectly true that the plaintiff does not come into Court with clean hands. He is the cause of the whole trouble. He induced his brother-in-law to break a contract for the sale of property, and afterwards obtained this property for himself. The slander is no slander as between the two parties themselves; but when the defendant went beyond this, and imputed atrocious motives to a third party, he was no longer protected. For these reasons I must dissent, but I would not give the plaintiff vindictive damages. I would merely support the plaintiff's right of action, and say to the defendant, if you do slander, you must take the consequences. The Court must look at a case of this kind as a jury would. Under the circumstances I would have given the plaintiff judgment for $10 and costs, and no more.

BERTHELOT, J., concurred in the judgment.

The plaintiff then instituted the present appeal.

DUVAL, C. J. The Circuit Court condemned the defendant to pay a certain sum of damages. The Court of Revision has reversed this judgment and dismissed the action, upon the principle that the letter was written confidentially and was a privileged communication. We confirm the judgment of the Court of Revision, but not for the reasons given. We do not think the letter was a confidential letter or privileged, but we say this, that every word in the letter is proved to be the strict truth. I do not recollect a single case in which the conduct of the plaintiff was proved to be worse. He interfered between the seller and purchaser, and counselled his brother-in-law to destroy the *acte* of *garantie* which he had given him against the defendant's claim.

JOHNSON, J. I will state briefly the grounds on which I concur. It would appear, and did appear to me, at first sight, that if this letter was not a privileged communication, it was unlawful, and therefore, the plaintiff should not be turned out of Court. But it is clearly proved that the plaintiff acted in a dishonest manner: he is a detected villain, exposed by

the publication, in the most restricted legal sense, by the person who had the greatest interest to detect him. I am satisfied from the evidence that no injury was suffered. Therefore I concur in the judgment of the Court.

DRUMMOND, and MONDELET, JJ., also concurred.

The judgment was *motivé* thus:

"Considérant que, quoique la lettre qui fait le sujet de la présente action ne doive pas être envisagée comme entrant dans la catégorie des communications spécialement protégées par la loi, comme confidentielles, l'intimé se trouve néanmoins justifié de l'avoir écrite et transmise à son adresse. Car la preuve fait voir que l'intimé a écrit cette lettre sans aucune intention malicieuse, mais seulement dans la vue de faire connaître au nommé Jeannot dit Lachapelle, à qui elle était adressée, les effets dangereux pour lui ainsi que pour l'Intimé, de certaines intrigues criminelles dans lesquelles l'appelant cherchait le concours du dit Jeannotte dit Lachapelle, à l'égard de la vente mentionnée dans cette cause. Considérant que quoiqu'il y ait erreur dans l'un des motifs, il n'y a pas mal jugé dans le jugement," &c.; Judgment confirmed with costs.

Dorion, Dorion & Geoffrion, for the Appellant.

Cartier, Pominville & Bétournay, for the Respondent.

COURT OF REVIEW.

Montreal, April 23, 1867.

DUBORD v. LANCTOT.

Revision of Judgments under the Municipal Act.

Held, (affirming previous decisions), that 27–28 Vict., cap. 39, does not give a right of revision of judgments under the Municipal Act.

This case had been inscribed by the defendant for hearing in review on a judgment rendered by *Monk, J.*

Carter, Q. C., moved to discharge the inscription, on the ground that inasmuch as there was no appeal in this case, (an action under the Municipal Act,) there could be no revision of the judgment.

Devlin, for the defendant:—The judgment of the Superior or Circuit Court, when inscribed for review, only becomes a final judgment when it has been confirmed or reversed in review.

[LORANGER, J. There is, I think, a judgment favorable to your pretension—*Johnston* v. *Kelly*, where the judges here held that there was a right of review from a judgment under the Insolvency Act, though there was no right of appeal.]

The judgment in the first instance does not become a judgment of the Court till it has been submitted to this Court. The appeal, after a case has been decided in this Court, is not from the judgment in review, but from the final judgment of the Superior or Circuit Court, as the case may be. Sec. 30 of cap. 39, 27–28 Victoria (1864), says that so much of any Act or Law as is inconsistent with the provisions of this Act, is hereby repealed. Now sec. 20 says, that in every case there shall be the right of review. I contend, therefore, that this gives me a right to have the judgment reviewed. This is not in reality an appeal, it is still the same Court.

[MONK, J. Your view is that it is the same Court, rectifying perhaps the error of its own judgment.]

Yes.

[BERTHELOT, J. When the judgment in *Taylor* v. *Mullin* was being considered, it was shown that there had been decisions at Quebec refusing the right of review in these cases.]

The right of review was granted in *Ex parte Beauparlant*, a case of *certiorari* (10 Jurist, 102.

[MONK, J. If the point were still open, and not decided by the Court of Appeals, I would be inclined to reconsider it. I must say I have great doubts about it.]

Mr. *Carter, Q. C.*, remarked that the judgment in this case merely rectified the procedure.

Mr. *Devlin*. But it is a judgment which cannot be remedied by the final judgment. The judgment complained of allowed the petitioner to supply the original *requête libellée*,

which was missing from the record, by a copy. It is one of those interlocutory judgments which cannot be remedied by the final judgment.

Judgment was given the following day granting the motion of the plaintiff to reject the inscription.

SUPERIOR COURT.

MONTREAL, 28th Feb., 1867.

ASHLEY HIBBARD v. BARSALOU ET AL., and W. R. HIBBARD, intervening.

Statement in Plea affecting a stranger to the record—Claim to intervene.

Held, that a person complaining of a statement contained in the pleadings in a cause, to which he is not a party, as false and calumnious, has no right to intervene for the purpose of having the passage complained of struck from the record.

Ashley Hibbard, the plaintiff, sued the defendants in an action of damages for £10,000, charging that the defendants conspired together to ruin him by unfounded indictments; that they procured a number of these to be found by grand jury, and preferred others that were returned "no bill;" that upon some of those found he, the plaintiff, had been acquitted, and upon the others *nolle prosequi* had been entered, &c., &c.

Defendants severed, and pleaded the usual pleas of reasonable and probable cause, absence of malice, &c., and that what they had charged against the plaintiff he had really been guilty of; that among other things he had misused the funds of "The Canadian Rubber Company." By their amended pleas they went further, to allege that W. R. Hibbard, (brother of the plaintiff), while managing the affairs of the said Company in 1863, also misapplied the funds of the Company, appropriated part of them to his own use, to the extent of over fourteen thousand dollars. There were four sets of pleas filed, all very much alike.

The case now came up on four petitions in intervention presented on the 26th of November, 1866, by William R. Hibbard, to be permitted to intervene in the suit.

The petitions, were, of course, nearly alike; one set forth the following grounds of intervention:—In 1863 and 1864, an incorporated Company, called the Canadian Rubber Company, existed at Montreal, of which Company, Murphy, one of the defendants, was a stockholder and director. Petitioner was a stranger to this suit, which was brought by Ashley Hibbard to recover damages from the defendants for malicious prosecution and other torts. In the fifth plea of the defendant Murphy, there occurred the following passage:—"That during the time of "said William R. Hibbard's management, "from 1863 to 1864, the said William R. "Hibbard, plaintiff's brother, did also mis-"apply the funds of the Corporation, appro-"priate part of the same to his own use, and "finally did bind the Company for his own "private use for large sums of money, to wit, "a sum of $1435.60, for which the said Com-"pany since obtained judgment before this "Court, to wit, on the — day of March last "past," which passage was by Murphy said to have been also contained in the pleas of the Canadian Rubber Company in a certain cause formerly pending between the present plaintiff and the Rubber Company, and the statement involved in it was affirmed by Murphy in his fifth plea to be true. The petition proceeded to allege that the petitioner was very much hurt in his feelings and in the estimation of his acquaintances by this passage of the plea, which passage the petitioner averred to be impertinent to the cause, false and calumnious, and meant to hurt the petitioner in his feelings, name and character, and did so hurt him, and would continue to do so day by day till suppressed or discontinued and apologized for. That the intervening party never heard of the said pleas of the said Canadian Rubber Company, in the other cause referred to. That the defendant Murphy could not claim to keep of record a statement falsely charging the petitioner with dishonorable misuse of funds of a public Company. That the statement complained of is a scandalous false statement of matters *étrangers à la cause, &c., &c.* Conclusion, that he be permitted to intervene in the cause, and that the Court

declare this part of the pleas calumnious, and order that it be suppressed as such, and as having no *rapport à la cause* between plaintiff and defendants.

The petition was filed on the 27th of November, 1866, and an argument took place as to whether it should be allowed.

Girouard, and *Cross, Q. C.*, for defendants, contended that only by action direct and principal could a party in the position of petitioner obtain his end; that he had not such an interest in this suit as to be entitled to intervene in it. Such an intervention was never heard of in Lower Canada. A pecuniary interest must be shown.

R. Mackay, for intervening party, contended that money interest was not the only one entitling to intervention. Shall it be said that a man having a fifty dollars of interest may intervene in a cause, but that where his character, worth to him thousands, is at stake, he may not? There is therefore *intérêt d'honneur*, entitling to intervention as well as pecuniary interest. The intervening party here is not to be referred to direct action only, against these defendants. This cause is the best one in which to get an order suppressing the *injures* complained of; the intervening party ought to be allowed a standing *in this cause*, to defend his character put in issue between plaintiff and defendants, and as to which they may make articulations, and go to *Enquête*.

In Carré and Chauveau, Qu. 1270, it is shown that a notary may intervene in a case between third parties to defend his *acte argué de faux*. It is said that he has an *intérêt d'honneur* to intervene. Though separate action may lie, intervention may lie too, certainly may lie if concluding only for suppression of *mémoires* or pleas as here. *Merlin*, cited in *Carré*, Qu. 1270 quater. *Bioche* agrees.

In view of these authorities these interventions of W. R. Hibbard have been advised. They purposely conclude only for suppression of portions of pleas objected to as calumnious, the intervening party reserving his recourse for damages, in other, or direct, action.

BERTHELOT, J. The interventions must be dismissed; the intervening party shows no interest such as we are accustomed to. He can get all he wants by another mode. Such interventions would lead to great confusion in causes.

Mackay & Austin, for the Intervening Party.

D. Girouard, and *A. Cross, Q. C.*, for the defendants.

MONTHLY NOTES.

COURT OF QUEEN'S BENCH.—APPEAL SIDE.

MONTREAL, Sept. 9, 1867.

RIMMER (defendant in the Court below) Appellant; and MCGIBBON (plaintiff in the Court below) Respondent.

Agreement to share costs.

This was an appeal from a judgment rendered in the Circuit Court by *Monk, J.*, on the 31st December, 1866, condemning the appellant to pay $106.53. The action was brought by the respondent for $106.53, the balance of an account. Defendant pleaded that the balance of $106.53 should be reduced by $15, the value of three cases of Old Tom gin not credited to him; and further, that the sum of $64.91 should also be deducted, this sum being the plaintiff's share of certain extra disbursements and fees paid by the defendant in and about the prosecution of a suit against one Morgan and others. The plea tendered the balance, after deduction of these sums, $126.62. Plaintiff answered that he never promised to pay a share of the costs in question as alleged by defendant. The parties went to proof, and it appeared that plaintiff, defendant, and Dow & Co., were interested in having certain transfers made by one Morgan (against whom they had claims) set aside, and the defendant brought an action against Morgan which was successful, but there were about $180 of untaxable expenses, a third of which, as he pretended, the plaintiff had agreed to pay. The plaintiff, when examined on *faits et articles*, stated the understanding to be this: he had promised to bear a share of the expenses, if the defendant should be unsuccessful, but not otherwise.

The defendant's plea being dismissed in the Court below for want of proof, he brought the present appeal.

DUVAL, C. J., said that the defendant had two offsets to the plaintiff's account. The first of these was with reference to some Old Tom gin. This was a small matter, but the evidence was not sufficient to establish the plea, and this pretension must be rejected. Then with respect to the costs incurred by the appellant for the benefit of the creditors generally, that rested on agreement. The plaintiff had been examined on *faits et articles*, and he stated the agreement to be this: that if the appellant was unsuccessful in the claim he was bringing, the plaintiff would pay part of the costs; but if he was successful, then he (Mr. McGibbon) would have to bring his own action and pay his own costs, and he never agreed to pay more. This would appear to be very reasonable indeed. Mr. Perkins, who acted as attorney for both parties, confirmed this. It was plain that the defendant could not set off these costs, because they were dependent on an agreement, and this agreement the plaintiff denied. Then again, the plaintiff would have a right to a bill of particulars quite different from that given by the defendant. The defendant should have given a detailed account of what he expended on each occasion. The judges were therefore of opinion that the Court below was right, and the judgment must be confirmed.

CARON, DRUMMOND, and BADGLEY, JJ., concurred.

W. H. Kerr, for the Appellant.

John Monk, for the Respondent.

[A case with some slight bearing upon the question here may be found in the Law Reports, 1 A. & E. 78, *The Kestrel*. In this case the plaintiffs were the first mortgagees of a vessel, and a decree had been made by consent that they should receive the sum claimed by them, and the "costs, charges and expenses properly incurred" by them as mortgagees. The registrar having taxed these costs as between party and party, and not as between solicitor and client, the plaintiffs asked for the revision of the taxation. The Court, however, held that the "costs, charges and expenses properly incurred," included only costs as between party and party, and affirmed the Registrar's taxation.—Ed.]

MCGEE (defendant in the Court below), Appellant; and LABELLE (plaintiff in the Court below), Respondent.

Delivery of Planks—Proof of Quantity.

The Plaintiff sued for $236.12, balance due for planks sold and delivered. Defendant pleaded that the $400 which he had paid more than covered the plaintiff's account, as the planks were inferior in quality, and deficient in quantity. Judgment having been rendered for the amount claimed, the defendant appealed, on the ground that the plaintiff had not sufficiently proved his case.

DUVAL, C. J., said that judgment had been rendered for the price of a quantity of planks sold. Two objections had been raised; one with respect to the quality, and another with respect to the quantity. With respect to the quality, that objection must be abandoned, because there was proof that the defendant was present at the delivery of the last load, and was quite satisfied with the quality. Besides, the price stipulated was of itself sufficient to show what was the understanding of the parties as to quality. Then with respect to the quantity, the plaintiff appeared to be an unsuspecting man who handed over his planks to the carters without keeping a very strict account of them, and the defendant seemed to have depended on his being unable to prove the quantity delivered. But fortunately for the plaintiff there was proof of the quantity delivered. For one of the carters said he had carted 15 loads of 75 planks each, and that he carted less than the others, because he was sick. If this were multiplied by four (the number of carters), it would apparently make more than the plaintiff claimed for. There was a reason for this: one of the other carters said he did not cart as much as the others, because he only commenced at three in the afternoon. Making a deduction for this, the Court came to the conclusion that the quantity charged was correct. In England it would be left to the jury to say whether it would be fair and equitable to allow the plaintiff the full amount of his claim. Here the Court had

the power of a jury, and it was of opinion that the plaintiff had made out his claim. The judgment, therefore, must be confirmed.

CARON, DRUMMOND, and BADGLEY, JJ., concurred.

M. Doherty, for the Appellant.

Leblanc, Cassidy & Leblanc, for the Respondent.

MESSIER (defendant in the Court below), Appellant; and DAVIGNON (plaintiff in the Court below), Respondent.

Promissory Note—Power of Attorney.

The plaintiff brought his action for a balance of $285 due on a promissory note for $600, payable 24 days after date, signed by one L'Esperance, attorney for the defendant. The plea was, want of consideration, and that defendant had no knowledge of the note in question before the institution of the action. Judgment was rendered by *Monk*, J., in the Superior Court, on the 31st of December, 1866, in favor of the plaintiff.

The defendant appealed, and submitted, 1st, That the note in question was signed by error by L'Esperance, and without the defendant's knowledge or consent. 2nd, That the plaintiff gave no value or consideration for it. 3rd, That the plaintiff had still in his hands the notes for the renewal of which he pretended the note in question had been given.

BADGLEY, J., said the case turned upon the authority of the attorney. The defendant never acknowledged the note, never saw it, never knew of its existence. The plaintiff never made any communication to him about it, nor did his attorney. The only question then was as to the power given by Messier to L'Esperance. The power of attorney was a special act before two notaries, and merely gave L'Esperance power and authority to raise money by loan. Now the note in question was acknowledged by L'Esperance, as a settlement of indebtedness from the defendant to the plaintiff, which act was not within the scope of L'Esperance's authority. The action, therefore, should have been dismissed. The *motivés* of the judgment are: Considering that the promissory note, the basis of this suit, was made by Edouard L'Esperance, as the attorney *ad negotia* of the defendant, in consideration of an indebtedness alleged by the plaintiff to be due to him by the defendant, and in settlement thereof: considering that the said note was made without the knowledge or consent of the plaintiff: considering that the said L'Esperance was actually under a special procuration which did not give him authority to make and sign the said note in settlement between the parties: considering that the act of the said L'Esperance as such attorney has never been recognized by the defendant, nor has he acknowledged the amount contained in said note due by him to the respondent, and that in consequence the action of the said plaintiff should have been dismissed by the Superior Court: considering that in the judgment of the said Superior Court there is error, &c.;—Judgment reversed, and action dismissed.

DUVAL, C. J., CARON, and DRUMMOND, JJ., concurred.

H. F. Rainville, for the Appellant.

Moreau & Ouimet, for the Respondent.

MUTUAL FIRE INSURANCE COMPANY (defendants in the Court below), Appellants; and LORRAIN (plaintiff *par reprise d'instance*), Respondent.

Insurance—Identification of object insured.

The present action was instituted by François Quenneville for £135 10s, namely, £50 insurance effected on a barn alleged to have been destroyed by fire, £75 for grain consumed with this barn, and £10 10s. for animals in it. The plaintiff had another barn insured for £25, and the difficulty arose from a doubt whether it was the £50 or the £25 barn which had been burned. On the 17th of April, 1865, judgment was rendered in the Superior Court by *Monk*, J., in favor of the plaintiff, he being of opinion that it was the £50 barn which had been destroyed. This judgment was confirmed in revision on the 28th of February, 1866, *Badgley*, J., dissenting. (This judgment will be found reported Vol. 1 of the *Law Journal*, pp. 116, 117, *Quenneville* v. *The Mutual.*) The defendants now brought the present appeal.

DUVAL, C. J., was of opinion that the judg-

ment should be reversed. There was an error as to the barn destroyed.

MONDELET, J., concurred with the Chief Justice.

DRUMMOND, J., observed that he did not consider the case so clear as the majority of the Court did. He had much doubt on the subject at the beginning. The evidence, however, appeared to favor the defendants; and by law the responsibility of the uncertainty must fall upon him who gave the description. It was the insured who gave the description, and it was his fault if it was vague.

JOHNSON, J., said that his judgment rested upon the fact that there was no proof that the thing insured had been destroyed by fire; on the contrary, the proof went to establish that it was another barn that was destroyed.

Judgment reversed. The *motivés* were : Considérant qu'il est acquis en preuve en cette cause que la grange qui a brulé est celle qui avoisinait la maison en bois érigée sur la profondeur de la terre de l'intimée, laquelle n'a été assurée que pour £25, et non pas la grange avoisinant la maison en pierre érigée sur le front de la terre de l'intimé, laquelle a été assurée pour £50, &c. Judgment reversed.

Dorion & Dorion, for the Appellants.

Leblanc & Cassidy, for the Respondents.

LAVOIE (defendant in the Court below), Appellant; and DEGUISE *dit* LAROSE (plaintiff in the Court below), Respondent.

Revendication—Illegal exaction of toll.

This was an action to revendicate a horse and cart under the following circumstances: —On the 26th of April, 1864, the plaintiff was driving to St. Martin, where he resides. He had just passed the Viau Bridge, over the Rivière des Prairies, when he was stopped at the extremity by the defendant (the keeper), who demanded from him 13 *sous* for the toll. The plaintiff tendered him ten *sous* as the toll for the bridge, but refused to pay the three *sous* demanded for the turnpike. The keeper refusing to let him pass, the plaintiff and his wife got out and walked home, leaving his horse and wagon with the tollgate keeper. A few days after he brought an action to revendicate these effects. The effects were surrendered, and the defendant pleaded that he never took possession of them, and was only acting in pursuance of the instructions of his employers.

Judgment was rendered in the Circuit Court on the 30th of April, 1866, by *Badgley*, J., who made the following observations:— This is an action of damages under the following circumstances. There is a bridge leading from this Island to Isle Jesus, at which there is a toll of ten *sous* to be paid. In 1862, certain proprietors, owners of the bridge, formed an association to construct macadamized roads leading from the bridge, and a charter was granted, authorizing the levying of a road toll of not more than one *sou* per mile. The plaintiff and wife one day had crossed the bridge, and on asking the toll collector what was the toll, were informed 13 *sous*, ten for the bridge and three for the road. Larose said, I will pay you ten *sous* for the bridge, but not three for the road, as you are not entitled to it. The toll keeper insisting, Larose wanted to go back, but the toll keeper then said: If you go back you must pay me ten *sous* more for the bridge. Larose then tried to turn round to return home, but the toll keeper seized his horse's head, and refused to allow him to go till he should have paid 13 *sous*. Finally, Larose left his horse and cart there, and walked back home. The toll keeper had a right to ask for 11 *sous* only, as there was only one mile of the macadamized road to be used, and if he had limited his demand to this the plaintiff would probably have paid it. In asking more the gate keeper was in the wrong, and his stopping the horse was illegal. The plaintiff has brought an action of revendication of his property, and claims damages. The property has been already restored, but as the defendant was in the wrong in attempting to exact more than was legal, judgment will go for $10 damages, with costs as of the lowest appealable class.

From this judgment the defendant instituted the present appeal.

DUVAL, C. J., after stating the facts of the case, said, it was evident that the keeper of the bridge had no right to the three *sous* de-

manded. This being the case he was wrong in stopping the plaintiff's horse, and the judgment must therefore be confirmed. It was a pity he had not been better instructed in his duties.

Drummond, Mondelet, and Johnson, JJ., concurred.

Cartier, Pominville & Bétournay, for the Appellant.

Loranger & Loranger, for the Respondent.

Gravelle (plaintiff in the Court below), Appellant; and Belanger (defendant in the Court below), Respondent.

Insulting language in a Magistrate's Court—Damages.

The plaintiff instituted an action for £50 damages, under the following circumstances: On the 14th of November, 1863, he made a complaint of trespass before a Justice of the Peace against the defendant and one Leblanc. The defendants were tried separately, and after the trial of the present defendant, Belanger, had terminated, and while the plaintiff was giving his evidence under oath in the case of the other defendant, Belanger interrupted him several times, accusing him of perjury. The plaintiff appealed to the magistrate for protection, and the magistrate reprimanded the defendant, but this did not prevent him from repeating his insults. The plaintiff subsequently instituted the present action for $200 damages, which was dismissed by the Circuit Court on the 30th November, 1865. The plaintiff now appealed.

Duval, C. J., after stating the circumstances, said the case was of some importance. If the Court were to confirm this judgment, the plaintiff would go out of Court branded as a perjurer. The evidence did not allow the Court to fix this bad character upon him. The judgment must be reversed. The Court would not award exorbitant damages, but the defendant must pay the costs. He would have stood in a better position, if, instead of repeating the insults, he had expressed his regret at the language he had used. As the costs would be considerable, the damages would be restricted to $20.

Mondelet, J., read the judgment of the Court, as follows:—Considérant que l'intimé, par ses injures proférées à l'égard de l'appelant et à son adresse, cour tenant, en présence de l'auditoire, et tandis que l'appelant rendait son témoignage en la dite Cour, s'est rendu coupable d'une conduite très-répréhensible et attentatoire au caractère et à la réputation de l'appelant, et rendant le dit intimé passible de dommages envers le dit appelant: considérant par conséquent qu'en déboutant l'action de l'appelant la Cour de première instance a erré, cette Cour infirme, &c. Judgment reversed, and defendant condemned to pay $20 damages, with costs of highest appealable class Circuit Court, and all the costs of the appeal.

Drummond, and Johnson, JJ., concurred.

Loranger & Loranger, for the Appellant.

Méd. Marchand, for the Respondent.

Venance Brunet *dit* L'Etang *et al.* (defendants in the Court below), Appellants; and Eustache Brunet *dit* L'Etang, *et al.* (plaintiffs in the Court below), Respondents.

Will before a Notary and two Witnesses—Dictation.

This was an appeal from a judgment rendered by *Badgley*, J., in the Superior Court, on the 30th of June, 1865. (Reported 1st vol. Law Journal, pp. 60, 61.)

The present respondents (two of the children) brought an action *en pétition d'hérédité* claiming from the appellants (the other four children) two-sixths of the succession of the late Eustache Brunet *dit* L'Etang, their father. To this action the defendants pleaded that their father had made his will before Valois, notary, and two witnesses, on the 27th of April, 1863, by which he bequeathed 3,500 francs to each of his two daughters; that Delina (one of the plaintiffs) had already received 2,400 francs, leaving a balance due to her of 1,100 francs. That the testator had bequeathed to Venance (one of the defendants), the emplacement on which the testator resided, with an island at the end of the parish of Pointe Claire; and that he had willed the remainder of his property to his four sons, who had taken possession, and had no account to render to the plaintiffs. The

plaintiffs then inscribed *en faux* against the will produced by the defendants. The principal *moyens de faux* were as follows:—1. The will did not contain the wishes of the testator, 2. It had not been dictated by him. 3. It was made by Valois, notary, according to instructions given to him by Venance Brunet, and without the participation of the testator. 4. At the date of the will, the testator was not of sound mind, memory, and understanding, but was laboring under a disease which had deprived him of his physical and mental powers, and he was not in a state to know what he was doing. 5. The testator did not dictate any of the dispositions of the will, but they were all *dictées et nommées* to the notary by Venance and Theodore Brunet. 6. The will was not dictated to the notary in the presence of witnesses. The inscription *en faux* having been maintained by the Court below, the defendants appealed.

Duval, C. J., said the judges of the Court were of a different opinion from the Superior Court, and thought that the testator was of perfectly sound mind, and that the will was made properly. The testator, in his honor's view of the evidence, understood perfectly what he was saying. He was a man of few words, but this did not show that he had not well considered what he was saying.

Mondelet, J., was also of opinion that there had been no sufficient grounds shown for setting aside the will.

Drummond, J., observed that here it was clearly proved that there was not a word written before the arrival of the notary. But, it was said, it was a will made interrogatively, that is, that it was made by question and answer. There was no doubt that one sort of will made by interrogatory was null; but there were two kinds of interrogatories, one leading questions, and the other direct enquiries for information. The latter was a mode of question not only permissible, but often absolutely necessary, without which it would be impossible for a notary to make a will. The judgment was as follows:—Considérant que les intimés n'ont fait aucune preuve légale des moyens de faux par eux produits au soutien de leur *inscription en faux* contre le testament solennel de feu Eustache Brunet dit L'Etang, lequel testament était invoqué par les appelants dans leur défense à l'action des dits intimés: Considérant que les appelants ont établi par une preuve suffisante que lors de l'exécution du dit testament le dit testateur était sain d'esprit et en état d'apprécier ses actes, et que les dispositions qui se trouvent au dit testament, loin d'avoir été écrites et mises au dit testament par le notaire Valois sur la dictation d'autres personnes par anticipation et hors la présence du testateur, ont été prononcées, déclarées et dictées par le dit testateur lui-même, comme ses dernières volontés, et écrites et redigées par le dit notaire en sa présence et en la présence de deux temoins idoines: considérant que dans le jugement il y a erreur, &c. Judgment reversed, and inscription *en faux* dismissed.

Johnson, J., concurred.

Dorion & Dorion, for the Appellants.

R. & G. Laflamme, for the Respondents.

RECENT ENGLISH DECISIONS.

Contract for Sale—Rights of Way and Water.—A. and B. were tenants of adjoining premises, under the same landlord. A. had a well upon his premises, from which B.'s premises were supplied with water by means of a pipe. Both premises, with others, were put up for sale by auction, in lots, one of the conditions being that each lot was subject to all rights of way and water and other easements (if any) subsisting thereon. A. and B. both purchased the lots of which they had been tenants. The vendor insisted that A. had purchased subject to B.'s right of water. A. filed a bill for specific performance of the contract, without any liability to such easement. *Held*, that B. had no easement or right of water, but merely a license from his landlord during his tenancy; and that A. was entitled to the relief asked. *Russell* v. *Harford*, Law Rep. 2 Eq. 507.

Production of Documents.—A case for the opinion of counsel, stated in reference to a separate litigation about the same subject-matter as the present dispute, and after it had arisen:—*Held*, privileged from production.

A letter written between co-defendants respecting a matter in litigation, with direction to forward it to their joint solicitor:—*Held*, privileged from production. *Jenkyns* v. *Bushby*, Law Rep. 2 Eq. 547.

Partnership—Business of Solicitor.—Where one of a firm of solicitors received from a client a sum of money for which a receipt was given in the name of the firm, stating that part of the money was in payment of certain costs due to the firm, and that the residue was to make arrangements with the client's creditors, and the solicitor misappropriated the money:—*Held*, that the transaction with the client was within the scope of the partnership business; and that the partners in the firm were jointly and severally liable to make good the amount:—*Held* also, that all the partners were necessary parties to a suit for that purpose. *Atkinson* v. *Mackreth*, Law Rep. 2 Eq. 570.

Corporate Plaintiff—Foreign State.—The United States of America suing in the Courts of England, and thereby submitting themselves to the jurisdiction, stand in the same position as a foreign sovereign, and can only obtain relief subject to the control of the Court in which they sue, and pursuant to its rules of practice; according to which every person sued in the Court of Chancery, whether by an individual, by a foreign sovereign, or by a corporate body, is entitled to discovery upon oath touching the matters upon which he is sued. Sir W. Page Wood, V.C., remarked in the course of his judgment:—"The question in this case is one in some degree novel, but the general principles applicable to it are sufficiently established. Where the suitor is an individual, although he may be the sovereign of a foreign country, and may of himself in reality represent the whole country of which he is sovereign, this Court has refused to acknowledge him when he comes here as a suitor in any other capacity than as a private individual. It has been determined by the highest authority that he must conform to the practice and regulations for administration of justice of the tribunals to which he resorts for relief; and, among other things, as was determined in *The King of Spain* v. *Hallett*, he is obliged to answer upon oath. It is also established that all persons sued in this country as a body corporate are amenable to the process of the Court, and must answer by one or other of their officers upon oath, inasmuch as it is considered essential to justice that answers shall be made upon oath. I say essential to the interests of justice, because I believe the only exception to this is in the case of the Attorney General, where I apprehend it arises from the dignity of the Crown, to which the Court is obliged to have regard, and, accordingly, officers of the Crown in this country are not put to make discovery upon oath........ What, then, is to be done in the case of a bill filed by a political body, such as the United States (not a physical but a metaphysical entity), proceeding as a sovereign state, and endeavoring to assert its rights in this country? Is there any reason why the defendant in the original suit should be deprived of those privileges which are enjoyed by every other party to a suit, or why either he or the Government suing here should not be dealt with according to the rules by which all other individuals, including the sovereign of any other state, must be dealt with when they seek to obtain relief in this Court? It appears to me there is no sound ground for saying that the rule is not to be applied. There may be difficulties in this case in selecting the person who is to make the answer. It is quite impossible, on any principle of analogy, to say that the President has been properly selected, or that he is the person for whose answer upon oath the United States must wait before they proceed in their original suit. I cannot make any order that the proceedings in the original suit be stayed until the President has put in his answer. No doubt ways and means are to be found for getting the discovery sought. I can do no more than make an order staying proceedings until the answer of the United States is put in." *Prioleau* v. *United States, and Andrew Johnson*, Law Rep. 2 Eq. 659.

Freight—Assignment—Priority.—The assignee of a particular freight who gave to the charterers notice of his security:—*Held*, entitled in priority to the general assignee of all freight to be earned by the same ship,

who was prior in date, but gave no notice, and took no steps to enforce his mortgage until after the particular assignee had given notice to the charterer, and the cargo had been in part discharged. *Brown* v. *Tanner*, Law Rep. 2 Eq. 806.

Will—Falsa Demonstratio.—If all the words of description are true, and correctly describe a thing certain, the Court will not presume that there is any error, so as to extend the meaning of the words to something not properly comprehended in the express words. In 1802, testator purchased an estate called A. farm, in the parish of R., in the county of H. In 1813 and 1815 he acquired adjoining land in the parishes of S. and B. in the same county, which was thrown into A. farm, and occupied therewith, and the whole thenceforth called A. farm. By his will, made in 1817, he devised all his estate, consisting of A. farm, in the parish of R., in the county of H., to trustees :—*Held*, that the land in the parishes of S. and B. did not pass by the specific devise. *Pedley* v. *Dodds*, Law Rep. 2 Eq. 819.

BANKRUPTCY—ASSIGNMENTS—PROVINCES OF QUEBEC AND ONTARIO.

NAME OF INSOLVENT.	RESIDENCE.	ASSIGNEE.	RESIDENCE.	DATE OF NOTICE TO FILE CLAIMS.
Alexander, William		S. C. Wood	Lindsay	Aug. 10th.
Allen, William	Montreal	A B. Stewart	Montreal	Sept. 11th.
Auger, Isidore		J. Amyrould	Granby	Sept. 2nd.
Belfry, Ira F.		Joseph Rogers	Barrie	Sept. 19th.
Bernard, Joseph Zéphirin	Wendover	N. B. Desmarteau	Montreal	Sept. 16th.
Blair, James		W. Collins	Walkerton	Aug. 26th.
Bond, Joseph	Smith's Falls	Wesley Tennant	Almonte	Sept. 18th.
Boyle, Arthur		W.A.Mittleberger	St. Catharines	Sept. 11th.
Corey Brothers	Stanbridge Station	Philip S. Ross	Montreal	Aug. 30th.
Coulson, Edward	Township of Blanshard	Thos. Miller	Stratford	Aug. 27th.
Cowan, Andrew		James Holden	Uxbridge	Aug. 27th.
Crosson, James	Cobourg	E. A. Macnachtan	Cobourg	Sept. 11th.
Duncan, William	Goderich	S. Pollock	Goderich	Sept. 12th.
Ernst, John (individually and as partner of John Ernst & Son		Alex. McGregor	Galt	Aug. 27th.
Fairman, James C.		S. C. Wood	Lindsay	Sept. 18th.
Fay, John	Montreal	T. Sauvageau	Montreal	Sept. 2nd.
Fraser, Francis	Montreal	John Whyte	Montreal	Sept. 10th.
Gates, Thomas Charles		Robert Watson	Montreal	Sept. 4th
Hayes, John Joseph (individually and as partner of Bury & Hayes	Montreal	A. B. Stewart	Montreal	Aug. 24th.
Huffman, Charles W		J. Parker Thomas	Belleville	Aug. 24th.
Hutchinson, Charles		Thos. Churcher	London	Aug. 24th.
Inman, James, of Inman Bros	Stratford	Thos. Miller	Stratford	Sept. 4th.
Jackson, Jonas Bertram		Richard Monck	Chatham	Aug. 23rd.
Jones, William		Joseph Hurssell	Cayuga	Aug. 26th.
Kerr, John William		John Barr	Hamilton	Sept. 11th.
Lamoureux & Frères	Montreal	T. Sauvageau	Montreal	Sept. 18th.
Langstaff, Miles		Richard Monck	Chatham	Sept. 7th.
Leriche, Alphonse (individually and as partner of Rapin & Leriche	St. Jean Chrysostôme	T. S. Brown	Montreal	Sept. 18th.
Leeper, R. D		Thomas McLean	Brantford	Sept. 13th.
Lindsay, James		John Stewart	Dunnville	Aug. 30th.
Lyon, Seth		R. M. Rose	Kingston	Sept. 7th.
Madill, Alexander		Margaret Madill	Peterborough	Aug. 26th.
Mayrand, George E.	St. Rémi	T. Sauvageau	Montreal	Sept. 7th.
Mathews, Edward		A. J. Donly	Simcoe	Sept. 10th.
McIntyre, John	Seaforth	S. Pollock	Goderich	Sept. 4th.
Morin, Edward	St. Anne de la Pocatière	T. Sauvageau	Montreal	Aug. 22nd.
Nestor, Cornelius		W.A.Mittleberger	St. Catharines	Sept. 14th.
Pawling, William		W.A.Mittleberger	St. Catharines	Sept. 11th.
Pelletier, Joseph	Sorel	G. I. Barthe	Sorel	Aug. 17th.
Phillips, William Magford		W. S. Williams	Napanee	Sept. 10th.
Pooley, Henry		C. S. Hayman	Toronto	Sept. 10th.
Robertson, John		A. W. Smith	Brantford	Aug. 22nd.
Robinson, Robert		George Stevenson	Sarnia	Aug. 24th.
Rowell, Joseph		Thos. Churcher	London	Aug. 31st.
Russell, George Hiram	Ottawa	Francis Clemow	Ottawa	Aug. 28th.
St. Jean, Louis G.	Montreal	T. Sauvageau	Montreal	Sept. 4th.
Schoenlank, Samuel		John Kerr	Toronto	Sept. 17th.
Shaw, Joseph E.	Gaspé Basin	JamesJ. Lowndes	Gaspé Basin	Sept. 5th.
Stephens, Charles Nelson		Joseph Rogers	Barrie	Sept. 4th.
Stevenson, Charles N.		W.A.Mittleberger	St. Catharines	Sept. 14th.
Whitworth, William Brown		George J. Gale	Owen Sound	Sept. 9th.