The Legal News.

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THE LAW REPORTS.

The January parts of the series of Reports announced some time ago will be issued Dec. 6. They have been held back somewhat longer than at first proposed, partly because it was thought desirable to make the date of issue more nearly agree with the date which the numbers bear, and partly in order that some of the latest decisions of the Court of Queen's Bench sitting in appeal might be included in the first issues. We are grateful to a number of esteemed correspondents for the commendation they have bestowed upon our undertaking, and we have given due consideration to such suggestions as have been made. Of these the only one to which we need refer here was that the decisions of the City of Quebec should be included in the system. We do not think this advisable at present. A complete report of the Quebec cases would involve extra volumes and an additional staff of reporters at that city. We do not think it wise to imperil the success of the undertaking by giving it too great an extension at the outset. The Quebec cases, however, as far as they can be obtained, will be published in the LEGAL NEWS as heretofore.

PRISON DISCIPLINE.

The *Manitoba Law Journal*, in reference to the case recently noticed in our columns, points out that there does not appear to be any statute, order-in-council, or rule which assumes to permit the whipping of prisoners. The punishments enacted (under the authority of a local statute) for breaches of prison discipline, are (1) The hard bed; (2) Bread and water diet; (3) The dark cell, and ball and chain; (4) Chaining to the floor. Not only is corporal punishment not mentioned anywhere, but Rule 21 provides another punishment: "Prisoners attempting to escape and thereby endangering their lives will be subject, under the statutes, to a further term of imprisonment." The prisoner is, therefore, entitled to a trial before he can be punished for an attempt to escape. This is the course adopted in this Province. Several prisoners were tried for attempt to escape at the last term of the Court of Queen's Bench in this city. On conviction, they were sentenced to an additional term of imprisonment, with forfeiture of good conduct privileges.

Apart from this absence of authority there is the question whether the local legislatures have the right to make laws awarding hard labor, flogging or other degrading punishments. This question has already been discussed at considerable length in our pages. See pp. 49, 121, 169 and 177 of this volume.

THE "MIGNONETTE" CASE.

The following is the special verdict found in the case of Thomas Dudley and Edwin Stephens, tried before Baron Huddleston, Nov. 6, at the Exeter assizes:—

'That, on July 5, 1884, the prisoners, with one Brooks, all able-bodied English seamen, and the deceased, an English boy, between seventeen and eighteen, the crew of an English yacht, were cast away in a storm in the high seas 1,600 miles from the Cape of Good Hope, and were compelled to put into an open boat; that in this boat they had no supply of water and no supply of food, except two 1 lb. tins of turnips, and for three days they had nothing else to subsist on; that on the fourth day they caught a small turtle, upon which they subsisted for a few days, and this was the only food they had up to the twentieth day, when the act now in question was committed; that on the twelfth day the remains of the turtle were entirely consumed, and for the next eight days they had nothing to eat; that they had no fresh water except such rain as they from time to time caught in their oilskin capes; that the boat was drifting on the ocean, and was probably more than 1,000 miles from land; that on the eighteenth day, when they had been seven days without food and five without water, the prisoners spoke to Brooks as to what should be done if no succour came, and suggested some one should be sacrificed to save the rest, but Brooks dissented, and the boy, to whom they were understood to refer, was

not consulted; that on the day before the act in question Dudley proposed to Stephens and Brooks that lots should be cast who should be put to death to save the rest, but Brooks refused to consent, and it was not put to the boy, and, in point of fact, there was no drawing of lots; that on that day the prisoners spoke of their having families, and suggested it would be better to kill the boy, that their lives should be saved, and Dudley proposed if no vessel was in sight by next morning, the boy should be killed; the next day, no vessel appearing, Dudley told Brooks he had better go and have a sleep, and made signs to Stephens and Brooks that the boy had better be killed. Stephens agreed to the act, but Brooks dissented from it; that the boy was then lying in the bottom of the boat quite helpless, and extremely weakened by famine and by drinking sea water, and unable to make any resistance, nor did he ever assent to being killed; that Dudley, with the assent of Stephens, went to the boy, and telling him his time was come, put a knife into his throat and killed him; that the three men fed upon the boy for four days; that on the fourth day after the act the boat was picked up by a passing vessel, and the prisoners were rescued, still alive, but in the lowest state of prostration; that they were carried to the port of Falmouth, and committed for trial at Exeter; that if the men had not fed upon the body of the boy, they would probably not have survived to be so picked up and rescued, but would within the four days have died of famine; that the boy, being in a much weaker condition, was likely to have died before them; that at the time of the act there was no sail in sight, nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy or one of themselves, they would die of starvation; that there was no appreciable chance of saving life, except by killing some one for the others to eat; that assuming any necessity to kill any one, there was no greater necessity for killing the boy than any of the other three men; but whether, upon the whole matter, the prisoners were and are guilty of murder, the jury are ignorant, and refer to the Court.' The prisoners were then liberated on bail, themselves in 100*l.*, and one surety for each in a like amount, to appear at the assizes for Cornwall next after a decision of the Queen's Bench, if that Court consider the crime of murder has been committed. The record will be drawn up, and the Crown will apply for a writ of *certiorari* to remove it into the Queen's Bench Division, when it will be argued as a Crown motion.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1884.

Before DORION, C.J., MONK, TESSIER, CROSS and BABY, JJ.

GAUDIN (plff. below), Appellant, and ETHIER (deft. below), Respondent.*

Tithe—Right of curé—Purchaser of unthreshed grain.

Held, confirming the judgment of Chagnon, J., (6 Legal News, 165), that the tithe is due by the person who has harvested the grain, and not by him who has merely threshed and fanned it.

2. That the privilege of the *curé* for tithes on the crop subject thereto exists so long as it remains in the possession of the person who has harvested it, but ceases when the grain has passed into the hands of a third party in good faith for valid consideration.

Pagnuelo, Taillon & Lanctot for Appellant.

Paradis & Chassé for Respondent.

COUR DE REVISION.

MONTRÉAL, 31 mai 1884.

Coram SICOTTE, PAPINEAU, JETTÉ, JJ.

MORANDAT v. VARET.*

Capias—Déclaration—Exception à la forme—Délai.

Jugé : Que les délais pour faire une exception à la forme à un bref de capias et aux procédés faits sur icelui devaient compter seulement du jour du rapport fixé dans le bref, et non pas du jour où le bref avait été rapporté au greffe sur un ordre du juge.

* To appear in the Montreal Law Reports, 1 Q.B.

2. Que même dans le cas où le demandeur a déjà pris une saisie-arrêt avant jugement accompagnée d'une déclaration, le capias émané dans la même cause, pour les mêmes raisons, doit aussi être accompagné d'une déclaration.

C. A. Vilbon, pour le demandeur.

C. Lebeuf, pour le défendeur.

COUR DE REVISION.

MONTRÉAL, 27 oct. 1884.

Coram TORRANCE, DOHERTY, PAPINEAU, JJ.

LECLAIRE et al. v. FOREST.*

Composition et décharge—Caution solidaire.

Jugé: Que dans le cas de composition et décharge entre un débiteur et sès créanciers, lorsque l'acte a lieu non pas à raison de l'intention des créanciers de donner au débiteur le montant de ses créances, mais parce qu'ils ne peuvent pas avoir plus, la dette naturelle continuant à exister, la caution solidaire n'est pas déchargée.

T. & C. C. De Lorimier, pour le demandeur.

Mercier, Beausoleil & Martineau, pour la défenderesse.

COUR SUPÉRIEURE.

MONTRÉAL, 5 nov. 1884.

Coram MATHIEU, J.

TURGEON v. LA CITÉ DE MONTRÉAL.*

Changement de niveau d'une rue — Responsabilité—Dommages.

Jugé: Qu'une corporation municipale est responsable du dommage qu'elle cause à un propriétaire sur une rue dont elle change le niveau.

De Martigny & De Martigny, pour le demandeur.

R. Roy, C.R., pour la défenderesse.

COUR SUPÉRIEURE.

MONTRÉAL, 10 nov., 1884.

Coram LORANGER, J.

CAYIONETTE v. GIRARD.*

Acte des Licenses de 1878—Action sous les sections 95 et suivantes.

Jugé, 1. Que la désignation du défendeur comme hôtellier dans le bref de sommation, est suffisante aux termes du par. 4 de la 1ère sect. de l'acte des licenses de 1878.

2. Que la section 95 du dit acte s'applique non seulement aux personnes licenciées pour la vente des boissons enivrantes, mais aussi à celles qui en vendent habituellement sans licence.

3. Que l'action autorisée par les sections 96, 97 et 98 du dit acte est une action en indemnité d'un caractère purement civil, et est soumise aux règles ordinaires de la procédure.

4. Que cette action peut être indistinctement soumise à la cour ou à un jury, aux choix des parties.

5. Que le demandeur doit alléguer et prouver que le défendeur savait, au moment de la vente, que la personne à laquelle il avait vendu était la personne désignée dans l'avis qu'il a reçu.

Pelletier & Cie. pour le demandeur.

Mercier, Beausoleil & Martineau pour le défendeur.

COUR DE CIRCUIT.

MONTRÉAL, 8 sept. 1884.

Coram LORANGER, J.

OUIMET v. GRAVEL.

Lettre d'avocat.

JUGÉ: *Que dans l'espèce, le coût de la lettre d'avocat n'est pas exigible et ne peut être recouvré en justice du débiteur à qui elle a été écrite pour lui demander le paiement de sa dette.*

Par sa déclaration le demandeur allègue entre autres choses :

Que le défendeur lui est endetté de la somme d'une piastre et demie, pour le coût d'une lettre d'avocat qu'il aurait fait écrire au défendeur, son débiteur, par l'entremise de ses procureurs et avocats, messieurs Ouimet, Cornellier & Lajoie.

Que le défendeur s'est reconnu le débiteur du demandeur en payant la dette réclamée par la dite lettre, mais qu'il a refusé de solder le montant dû au dit demandeur pour honoraire sur la dite lettre.

Que pour se soustraire au paiement de la dite lettre, le dit défendeur a usé de fraude et de dol envers le commis du demandeur en

* To appear in the Montreal Law Reports, 1 S. C.

lui représentant qu'il y avait une convention entre le dit demandeur et le dit défendeur par laquelle ce dernier ne devait rien payer pour la dite lettre.

Que par ses fausses représentations le défendeur aurait réussi à obtenir du commis du demandeur une quittance finale de tout compte, tant pour la dette que pour les frais, et que la dite quittance est nulle et comme non avenue. Et pour ces raisons, le demandeur conclut à ce que le défendeur soit condamné à lui payer la dite somme d'une piastre et demie avec intérêt et dépens.

A l'encontre de cette action le défendeur a produit la défense suivante :

Que le demandeur n'a pas le droit de recouvrer en justice du défendeur le coût de la lettre qu'il allègue lui avoir fait écrire par ses avocats.

Qu'aucun article du tarif des avocats, ne leur accorde d'honoraire pour le coût des lettres ou avis qu'ils envoient aux débiteurs de leurs clients. Et il concluait, pour ces raisons, au renvoi de l'action.

Le demandeur ne fit aucune preuve de ses allégations ; mais il fut admis que la lettre en question avait été envoyée au défendeur, et entendu entre les parties que la question pure et simple de savoir si le coût de la lettre d'avocat pouvait être réclamé en justice, serait soumise au tribunal.

Lors de l'audition, le demandeur a cité au soutien de ses prétentions les jugements de cette cour rendus dans les causes suivantes : *Héroux* v. *Clément*, 10 R. L. 589 ; *Lamarre* v. *Augers*, 6 L. N. 8 ; *Michaels* v. *Plimsoll*, 27 L.C.J. 29 ; 3 L. N. pp. 25 et 37.

PER CURIAM. Les décisions ont varié sur cette question, et il est arrivé parfois que l'équité a fait fléchir la rigueur de la loi. Cela a eu lieu dans les cas où il y avait la preuve de rapports entre le débiteur qui avait reçu la lettre et l'avocat qui l'avait écrite, et que les services de ce dernier avaient été mis à contribution de quelque manière. Mais si le débiteur paie son créancier après avoir reçu la lettre sans s'être en aucune façon mis en rapport avec l'avocat, ce dernier est sans recours contre lui ; il n'y a eu là qu'un service gratuit quant au débiteur et il ne s'est établi aucun lien de droit entre eux. Dans l'espèce, c'est le créancier qui réclame la valeur de la lettre écrite par son avocat ; la même règle s'applique ; comme l'intérêt est le mobile de toutes les actions, on doit présumer que ce créancier a trouvé le sien, dans les ménagements dont il a usé envers son débiteur.

J'ai conféré avec quelques-uns des honorables juges qui ont rendu les jugements que l'on a cités à l'audience, et je suis autorisé à dire que les rapports de quelques-unes de ces causes ne sont pas en tous points exacts. Chaque cause présentait un état de fait particulier qui a fait prévaloir la raison d'équité.

Action renvoyée.

Ouimet, Cornellier & Lajoie, pour le demdr.
Robidoux & Fortin, pour le défendeur.
(J.G.D.)

COUR DE CIRCUIT.

MONTRÉAL, 3 nov. 1884.

Coram MOUSSEAU, J.

MÉTHOT v. JACQUES.

Locateur et locataire—Action en expulsion.

JUGÉ : 1o. *Que le fait de convertir un hangar en écurie, ne constitue pas une infraction au bail, alors même qu'il y est stipulé qu'il ne sera pas permis au locataire "de faire aucun "changement, démolition ou amélioration "dans les lieux loués, sans le consentement "exprès de la bailleresse."*

2o. *Que le fait d'avoir, en dépit de cette clause du bail, converti un hangar en écurie, ne constitue pas un changement de destination, mais ne fait qu'apporter une modification dans le mode d'occupation du dit hangar.*

3o. *Que la conversion du dit hangar en écurie, ne peut, dans l'espèce actuelle, donner lieu à la résiliation du bail, ce changement ne causant aucun préjudice à la demanderesse, et le défendeur étant tenu de remettre à la fin de sa jouissance les lieux dans le même état qu'ils étaient lorsqu'il en a pris possession.*

La demanderesse poursuit le défendeur en expulsion et au soutien de sa demande allègue :

Qu'outre l'obligation légale de faire servir les lieux loués aux fins pour lesquelles ils étaient destinés, il fut spécialement stipulé au bail par elle invoqué, "que le défendeur ne "ferait aucun changement, ou amélioration

" dans les lieux loués, sans sa permission " expresse et par écrit."

Que contrairement à cette stipulation, et à la loi, le défendeur aurait converti en écurie le hangar à lui loué, y aurait fait divers changements et déteriorations et gardé un cheval sans sa permission, employant ainsi le dit hangar pour des fins contraires à la destination pour laquelle il lui avait été loué.

Qu'en contravention au dit bail, il avait de plus embarrassé la cour de la maison à lui louée par la demanderesse, en y laissant ses voitures, et ce, au grand inconvénient des autres locataires qui s'en seraient plaints. Et elle concluait à la résiliation du bail et à l'expulsion du défendeur.

A l'encontre de cette action le défendeur a produit le plaidoyer suivant :

Qu'il est vrai que le défendeur occupe les lieux décrits en la déclaration en vertu du bail allégué en icelle, mais ce, en bon père de famille, suivant l'usage et conformément à la destination des lieux loués ; et que loin de les avoir déteriorés, il les a au contraire améliorés.

Que le mode et la manière dont le défendeur a joui des dits lieux, sont en tout point conformes aux stipulations du dit bail, de même qu'à la loi et aux coutumes et usages suivis parmi nous.

Que la demanderesse n'a pas d'intérêt, ni de juste raison, pour demander la résiliation du dit bail et que sa poursuite est purement malicieuse et vexatoire.

Que les changements faits par le défendeur au dit hangar, l'ont été pour lui permettre de jouir des lieux loués avec plus d'avantages pour lui-même et sans dommages pour la demanderesse, et n'ont fait qu'assurer davantage de sa part l'exécution pleine et entière du dit bail.

Que les améliorations faites par le défendeur, l'ont été au vu et su de la demanderesse, sans aucune objection de sa part, et ce, longtemps avant l'institution de la présente action.

Qu'entre autres obligations, le défendeur est tenu par la loi de remettre à l'expiration du bail les lieux loués, dans le même et semblable état qu'il les a reçus, chose qu'il ne manquera pas de faire ; et que partant l'action de la demanderesse est pour le moins prématurée. Et il en demandait le renvoi avec dépens.

Au soutien de ses prétentions le défendeur a cité les autorités suivantes : — Troplong, Louage, édition belge, Nos. 175, 306, 310, 311, 313 ; Agnel, Code manuel des propriétaires et locataires, Nos. 166, 334 ; Lepage, Lois des bâtiments, 2e partie, p. 186 ; Sirey, C. N. art. 1729, Nos. 15, 16, 17, 18, 19, 20, 21.

La Cour prit la cause en délibéré et après mûr examen de la question, donna raison au défendeur, et débouta la demanderesse de sa demande avec dépens.

Action renvoyée.

Z. Renaud, pour la demanderesse.

Augé & Lafortune, pour le défendeur.

(J.G.D.)

POLICE COURT.

MONTREAL, Nov. 18, 1884.

Before Mr. DESNOYERS, P.M.

THE QUEEN v. JUDAH.

False Pretences.

The following remarks were made by the Police Magistrate in committing the defendant for trial before the Court of Queen's Bench :—

The defendant is charged with having at Montreal, on or about the 11th day of April, 1882, by false pretences and with intent to defraud, obtained from George B. Burland, Esq., in money and in valuable securities, the sum of $25,000, the false pretences consisting in the verbal assertion made to complainant, through Mr. Withers, defendant's attorney, that he (defendant) had a good title to certain real property then offered as security for the advance of the said sum, and that such real property was clear of incumbrance ; and also consisting in the written assertion made by the defendant himself in the deed of obligation to complainant that the property mortgaged well and truly belonged to him, and moreover in the verbal reiteration made at the time of the passing of the deed that he (defendant) was the sole owner of said real property ; whereas in truth and in fact a portion of that real property (namely, three-eighths of the same) did not then belong to him, but belonged to his daughter, Madame Kilby.

As to the first part of the false pretences alleged, Mr. Withers, who acted as agent for

defendant, swears that he cannot remember the specific words used by the defendant to him as to his title, but he (Withers) thoroughly understood from the defendant that his title was perfect and clear of encumbrance. As to the second part of the false pretences alleged, Mr. Lighthall, notary, produces the original deed of obligation containing the assertion stated above, and says moreover that at the time of signing the obligation the defendant affirmed verbally that the property was his by good title.

As to the falsity of the assertion or pretence of the defendant that his title was good, and that the property, that is all the property, belonged to him, there cannot be any doubt. The property mortgaged was acquired during the community of property which has existed between the defendant and his late wife, and by the death of the latter *intestate*, as it was believed until recently, her children inherited her share. I will not dwell on this point, because it is so clear that the defendant's counsel themselves did not pretend to deny Mrs. Kilby's (Miss Judah's) title to a share of the property. In fact, the Superior Court of Montreal has already confirmed Mrs. Kilby's title to the three-eighths of property seized.

Was Mr. Burland's parting with his money and securities the result of the false pretences? I believe it was. There were other considerations in his mind. The opinion given to him by his notary, Mr. Lighthall, as to the validity of defendant's title no doubt was the principal one. The high position and character enjoyed by the defendant, and other considerations may have had their weight. But had Mr. Burland known that the defendant only owned five-eighths of that property, and had not Mr. Withers stated to him that defendant's title was perfect, that is perfect to the whole property, I am sure that Mr. Burland would not have parted with his money; he swears that himself positively, and it stands to reason that he would not.

Now, was the defendant animated with the intent to defraud when he obtained Mr. Burland's money? This is the delicate point in the case. It appears that in the year 1866, the firm of the late Sir George Cartier advised the Masson estate to advance a sum of money to the defendant on a property possessed by him in the same conditions as that now in question.

It appears also that in 1874 another eminent Queen's counsel of this city gave it as his opinion that defendant's title to a property possessed by him in similar conditions was good. From this it is claimed that the defendant was acting in good faith. We have no evidence whether the defendant ever disclosed to the firm of Sir Geo. Cartier, or the other eminent Queen's counsel, the facts as they were. Perhaps he never mentioned to these gentlemen any more than he did to Mr. Lighthall that the property offered as security had been acquired during the existence of his community of property, and that his wife was since deceased. Anyone examining defendant's title, his deed of purchase, the registrar's certificate, would come to the conclusion that the defendant was the owner, unless he were informed that since the purchase and the registration of the deed the position of the owner had been altered by the death of his wife. Such death does not appear at the registry office, and judging from the deed and registrar's certificate only, certainly the defendant would appear to be the only and real owner of the property. I admit that a careful examiner of titles would act wisely in ascertaining the status of the borrower; in fact, should enquire whether he is a married man or a widower, but if he forgets to do so, does the omission justify the applicant to affirm a fact which is not correct, viz., that he is proprietor of the whole estate whilst he is only part proprietor? Here the defendant is a lawyer of long experience, and it seems to me unreasonable—injurious in fact to his intelligence—to suppose that he did not know he had been married under the *régime* of community of property. But granted for a moment that he ignored it, or had lost sight of it, he was reminded thereof in two different circumstances at least. On the 1st of February, 1879, the defendant himself obtained a loan from the estate Masson, and in order to obtain that loan, his daughter (Mrs. Kilby) had to intervene in the deed of obligation, and in her quality as being the only surviving child issue of the marriage of the

said defendant with his deceased wife, Dame Elizabeth Schoyer, had to renounce to all the rights which she might have upon the thereby hypothecated lots of land, one of which had been acquired by defendant during his said marriage. Furthermore, he was advised by Mr. Cramp, advocate, about one year before obtaining the loan from Mr. Burland, that a community of property had existed between him and his late wife; and thereupon he gave in his own handwriting the name of Mrs. Kilby as the sole representative of his late wife and of his late son Alfred, to the Sun Insurance Company, from whom Mrs. Kilby was then obtaining a loan.

Now, at the last hour, it turns out that the late Mrs. Judah had made her will in due form of law before a notary, by which she bequeathed the usufruct and enjoyment of all her property to her husband, the defendant, during his lifetime, and after his death the usufruct and enjoyment of the same to her children during their lifetime, and after their death the right of property to her grandchildren. This will, which was made in the defendant's own office, seems to have been entirely ignored since, never was registered, and only came to light recently, having been filed in this cause by the complainant.

Its dispositions may explain perhaps why it has been left so long in oblivion. One thing is certain, however, if it had been disclosed to Mr. Burland, this gentleman would never have parted with his money, not even with Mrs. Kilby's intervention, because by the will it appears that she is not proprietor at all.

The case of *Rex* v. *Codrington* decided in England in the year 1825 has been cited as a precedent governing the present case. In that case it was held "that where the prisoner sold to the prosecutor a reversionary interest which he had previously sold to another, and the prosecutor took a regular assignment of it with the usual covenant for title, the prisoner could not be convicted for obtaining money by false pretences." There may have existed some circumstances to justify this decision, which do not appear in the report, but I must say that as it is, it seems to be rather a peculiar one. At all events it has been over-ruled, rightly I believe, in several more recent cases and particularly in the case of *Reg.* v. *Meakin*, reported in 11 Cox, p. 270. And if it had not been over-ruled I should certainly not take it upon myself, as examining magistrate, to be guided by that ruling. I readily admit that a mere defect in a deed or in a title, or an exaggeration of the value of real property could not bring the mortgages under the operation of the statute concerning false pretences. The recent decision of the Court of Queen's Bench, Montreal, in the case of *Reg.* v. *Brien dit Durocher* upheld that view. But here there is no question of defective title or exaggeration of value, there is an absolute want of title. The defendant says: I own that property, meaning all that property, whilst in truth he only owns five-eighths, and on that assertion he obtains the money. Is that not obtaining by false pretences? And if there could be a doubt whether this amounts to false pretences, there remains the following section of the consolidated statutes of Lower Canada, cap. 37, which cannot be got over: "114. Whoever pretends to hypothecate any real estate to which he has no legal title, shall be guilty of a misdemeanor, and being convicted, shall be imprisoned for a period not exceeding twelve months, and to a fine not exceeding one hundred dollars, and the proof of the ownership of the real estate shall rest with the person so pretending to hypothecate the same."

The strongest contention of the defendant's counsel at the argument was that whilst the complainant presses this charge of false pretences against the defendant, he at the same time contests in the civil court the right of Mrs. Kilby to the property seized, showing thereby inconsistency on his part. If Mr. Burland is right in his pretension in the civil court that the mortgage and the seizure are good, then he cannot claim that there were false pretences used.

I adopted this view to a certain extent and suspended my examination until such time as the civil court would have decided the question in the first instance. There was nothing new in this, a similar course had been followed by magistrates before, though not very frequently, both in England and in

Canada. I thought this was a fair and mild way of dealing out justice to the interested parties in this case, but it appears that the defendant did not so appreciate it, but manifested his displeasure by inspiring the public press to severely comment upon my decision. As I have no other motive than that of doing my duty, seeing that both parties are desirous that this case should proceed upon its merits at once, I have changed my determination and now proceed to dispose finally of the case.

Under all the circumstances related above I do not see how, as examining magistrate, I could take upon myself to absolve the defendant, how much soever I should have been pleased to do it. It is to be regretted that a newspaper in this city should have thought proper to publish such indelicate and malevolent remarks as were made in relation to this case whilst it is *sub judice*.

A fair criticism is allowed and always accepted with pleasure; but such strictures as the ones published can only have the effect of being painful to one who feels that he has conscientiously done his duty.

Davidson, Q.C., for the prosecution.
Doutre, Q.C., for the defendant.

CANADA GAZETTE NOTICES.

J. S. Ewart, S. C. Biggs, H. M. Howell, and J. A. M. Aikins, barristers, of Winnipeg, M., have been appointed Queen's Counsel. J. M. Hamilton, district judge of the provisional judicial district of Thunder Bay, O., has been appointed a local judge of the High Court of Justice for Ontario.

RECENT UNITED STATES DECISIONS.

Banks and Banking — Notes — Deposits—Special Deposits—Bills and Notes—Indorsers—Evidence.—Where a bank is the holder of a note payable at the banking-house, and upon maturity, the maker has a deposit in excess of the amount of the note, which deposit is not specially applicable to a particular purpose, the bank is bound to apply a part of said deposit to meet the note, and cannot elect to let the note go to protest and hold the indorser. Where such a course is taken the indorser is discharged from liability.

Where such a course was taken by a bank and the cashier of which was maker of the note in question, evidence was inadmissible in an action by the Bank against the indorser to show that the cashier had agreed in his official capacity that the indorser should not be bound, and further, in case the said agreement was unauthorized, to show that the bank was fully protected against loss by reason of stock owned therein by the cashier and by his official bond.— *Commercial National Bank* v. *Henninger*, (Supreme Court of Pennsylvania, March, 1884. 13 American Com. Record, 273.)

Fire Insurance—Void Policy—Change of Title of Insured Partnership Property.—Where one of the provisions of an insurance policy given to a partnership is that "If the title of the property is transferred, incumbered or changed, ... the policy shall be void," a dissolution of the partnership, and a sale by one partner to the other of his interest, is a change of title to the property, and will render the policy void. *Hathaway* v. *State Ins. Co.*, (Supreme Court of Iowa, July 1884. 13 Amer. Law Record, 290.)

GENERAL NOTES.

The *Law Journal* (London) has the following reference to the special verdict in the "Mignonette" case (p. 381):—

The course pursued by Baron Huddleston in the Mignonette case of directing the jury to find a special verdict, instead of directing them to find a verdict of guilty and reserving the point of law, has some important consequences. The indictment and special verdict will now be brought up by *certiorari*, and will be argued before a Divisional Court of the Queen's Bench Division. This may consist of all the judges of that Division, but judges of other Divisions may not sit as they may on the Court for the consideration of Crown Cases Reserved, which includes all the judges of the High Court. In the case of the Franconia, it will be remembered, Sir Robert Phillimore, the Admiralty judge, took part in hearing the appeal. On the other hand, there will be an appeal from the judgment of the Divisional Court on the special verdict to the Court of Appeal, and thence to the House of Lords. By the Judicature Act, 1873, s. 19, any judgment or order of the High Court may be appealed from 'save as thereinafter mentioned.' The only case at all like the present to which the exception can apply is that dealt with in section 47, which provides that 'no appeal shall lie from any judgment of the High Court in any criminal cause or matter save for some error in law apparent on the record.' The saving was probably intended to maintain the practice of appealing, as in *O'Connell's Case*, on writs of error; but the words are wide enough to include the present case. The special verdict is necessarily entered on the record, together with the judgment of the Divisional Court upon it; and if the judgment be wrong with reference to the special verdict, there will be 'error in law apparent on the record.' There is, we believe, no instance in modern times of a special verdict, and it is only since the Judicature Acts that such verdicts can be carried to the House of Lords, which thus may for the first time in its history have the opportunity of laying down a definition of murder.