The Legal News.

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SECURITY FROM INSOLVENTS.

Three decisions have been recently given which throw light on the latter part of Section 39 of the Insolvent Act. This section gives the assignee the exclusive right to sue for the recovery of all debts due to the insolvent, and to take, both in the prosecution and defence of all suits, all the proceedings that the insolvent might have taken for the benefit of the estate. The assignee "*may* intervene and represent the insolvent in all suits or proceedings by or against him, which are pending at the time of his appointment;" and the section then proceeds to enact that "if after an assignment has been made, or a writ of attachment has issued under this Act, and before he has obtained his discharge under this Act, the insolvent sues out any writ, or institutes, or continues any proceeding of any kind or nature whatsoever, he shall give to the opposite party such security for costs as shall be ordered by the Court before which such suit or proceeding is pending, before such party shall be bound to appear, or plead to the same, or take any further proceeding therein." It is this clause which the Courts have had to interpret in the decisions referred to.

The first case was that of *Mackinnon & Thompson*, decided by the Court of Queen's Bench in Appeal at Montreal, noted on page 494. In this case Mackinnon had been condemned in the Court below, and desired to appeal from the judgment. But in the meantime the plaintiff had become an insolvent, and the defendant naturally wished for security for costs in the event of his getting the judgment set aside. The assignee, it will be noticed, "may" intervene, but is not compelled to do so. Where he does not choose to do so, the opposite party is left with the insolvent as his adversary. The Court of Appeal unanimously held in the case cited, that the appellant was not entitled to exact security from the insolvent, so long as the latter was not taking any proceeding to push on the case.

Two other decisions by the Superior Court at Montreal are noted in the present number of this journal. In *Marais* v. *Brodeur*, an action on a note, Judge Jetté held that an insolvent (the maker, not sued) may intervene in the case simply to take up the *fait et cause* of the defendant, who was the endorser, and defend himself from liability, without giving security to the plaintiff. In the other case, *Beausoleil* v. *Bourgoin*, the same Judge held that an insolvent defendant, who has filed an opposition to a judgment against him, cannot, without giving security, call upon the plaintiff to declare whether he admits or contests the opposition.

These decisions are important because we do not notice any reported cases bearing upon the clause in question. Mr. Clarke, in his interesting work, mentions the case of *Lee* v. *Moffatt*, 6th Upper Canada Practice Reports, p. 284, in which an insolvent, who filed a bill to set aside an attachment, and made the assignee a defendant, was required to give security for the assignee's costs; but the point there was obviously different.

MOOT COURTS.

We are pleased to notice that the system of Moot Courts, as commonly practised in the law schools of the United States, is being introduced into the McGill Faculty of Law; and although the innovation is made by the students themselves we understand that the project receives the hearty endorsation of the Faculty. "Mootings" have been found by experience to be a valuable aid in producing good pleaders, and we trust that the efforts of the promoters to give our students the advantages of the exercise may be successful.

THE BALLOT.

In the case of ballot-box stuffing, in which Forget and five others were accused of putting illegal ballots into a ballot-box and taking legal ballots out, Judge Ramsay prefaced his address to the Jury with some observations regarding the ballot. "With a laudable desire to put an end to all election frauds and all acts of an improper influence," the Judge observed,

"the Legislature of this country has heaped repressive statute on statute until, at last, we have arrived at this ingenious contrivance, the ballot-box. It is very curious, indeed, that practical men such as our legislators generally are, should have required the test of actual experience to apprise them of the danger of this peculiar and very un-English mode of ascertaining the public will. The principle of the ballot box has been long discussed. Fifty years ago, the very inconvenience which we find now before us, and which has kept us here so many days, was foretold. It is impossible to conceive that members of Parliament were convinced that so absurd a scheme could lead to any good result. The only way we can account for its having been admitted in England and here is that members of the Legislature yielded to outside pressure and were afraid to say what they really thought, for fear of being accused of a desire to favor election frauds. But no accusation could be more unfounded, for they are the very people who suffer most acutely from such frauds."

The ballot system is open to very serious objections. Not least among them is that it may affect and even reverse the real expression of the electoral mind, because so many ballots marked with honest intentions may be thrown out for informalities as actually to change the result of the election. The counting by a large number of persons, styled deputy returning officers, can never be very safe or satisfactory. The system becomes still more obnoxious when it is found to open the door to such gross frauds as were detected in the Jacques Cartier election. But on the other hand, it must be admitted that it does away with a great deal of the excitement that used to attend elections. People do get excited still, but it is excitement after the result is proclaimed, and does not lead them to interfere with the progress of the voting.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, Nov. 13, 1878.

JETTÉ, J.

MARAIS v. BRODEUR, and BRODEUR, intervening.

Intervention—Security for Costs—Art. 29, *C. C.—Insolvent Act*, 1875, *Sect.* 39.

An intervening party residing beyond the limits of the Province, and an insolvent under the Insolvent Act, who intervenes merely as the *garant* of the defendant and for the purpose of taking up the *fait et cause* of the latter and defending the action brought against him, is not bound to give security for costs.

The intervening party, who was the maker of a note on which the defendant was sued as endorser, desired to intervene for the purpose of taking up the *fait et cause* of defendant and showing that the note was given without consideration.

The plaintiff asked that the intervening party be ordered to give security for costs, both as being domiciled in the United States, and as being an undischarged insolvent.

The Court held that Art. 29 of the Code did not apply to a case like this, where a debtor simply sought to defend himself. And so long as he was merely on the defensive section 39 of the Insolvent Act did not apply.

Motion rejected.

Bertrand for the plaintiff.

Ouimet & Co. for the defendant and intervening party.

BEAUSOLEIL v. BOURGOIN et al., and BOURGOIN et al., opposants.

Security for Costs—Insolvent Act, S. 39—*Opposition.*

A defendant who has become an insolvent under the Insolvent Act, cannot call on the plaintiff to declare whether he admits or contests an opposition filed by him to the execution of a judgment against him, without giving security for costs.

The plaintiff being called upon to declare whether he admitted or contested the opposition, moved that the opposants be previously required to give security for costs, they having become insolvent since their opposition was made. The opposition, which was made by the defendants, sought to set aside the seizure, for irregularities in the bailiff's proceedings.

The opposants objected that being defendants they were not bound to give security.

JETTÉ, J., held that as the opposants were endeavoring to force the plaintiff to proceed, Sect. 39 of the Insolvent Act applied.

Motion granted.

Geoffrion & Co. for plaintiff.

Loranger & Co. for defendants and opposants.

Montreal, Nov. 11, 1878.

TORRANCE, J.

McCALLUM v. HARWOOD et al.

Peremption—Elected Domicile—Service.

An action was pending in the District of Montreal, and no proceedings having been taken for three years, the defendant moved for *péremption d'instance*. The plaintiff's attorney *ad litem* resided in an adjoining district, and the service was made personally upon him there. *Held*, that this was a good service, though the plaintiff's attorney had elected a domicile in the District of Montreal where service could be made.

Peremption granted.

Trenholme for plaintiff.
Bowie for defendant Harwood.

Montreal, Nov. 13, 1878.

TORRANCE, J.

PRENTICE v. THE GRAPHIC COMPANY.

Security for Costs—Temporary Absence—C. C. 29.

Held, that a plaintiff temporarily non-resident will not be held to give security for costs under C. C. 29; the Court, before ordering security, must be satisfied that the non-residence is more than temporary.

TORRANCE, J., in rejecting the motion for security, referred to a case of *Cole* v. *Beale*, 7 Moore 613, in which Lord Chief Justice Dallas said "that it was incumbent on a defendant to make out a clear case of permanent residence abroad, either actual or intended, to entitle him to call on the plaintiff to give security for costs, and that an affidavit founded on a mere belief was not sufficient for this purpose."

Motion rejected.

J. L. Morris for plaintiff.
S. Bethune, Q. C., for defendants.

Montreal, Nov. 18, 1878.

TORRANCE, J.

BOUSQUET v. BROWN.

Review—Deposit.

Held, that a party inscribing in review is entitled to a return of the deposit so soon as the judgment has been reversed in his favor.

The plaintiff, inscribing in review, having obtained a reversal of the judgment, moved for an order upon the Prothonotary to return the deposit.

The Prothonotary objected that 15 days had not elapsed since the date of the judgment; and further that he was not bound to return the deposit until it was established that the defendant would not appeal to the Queen's Bench, or until that Court had confirmed the judgment in Review.

TORRANCE, J., granting the plaintiff's motion, said that, desirous of securing uniformity in the holdings of the Court, he had conferred with his brother Judges, and had also communicated with the Chief Justice at Quebec. The Prothonotary of the District of Quebec informed the Chief Justice that his practice was to return the deposit without delay as soon as the inscribing party had succeeded in Review. The Judges in Montreal were all agreed that the deposit should be returned.

Motion granted.

P. H. Roy for plaintiff.

A GLIMPSE OF THE COURTS IN RIO DE JANEIRO.

While in Rio de Janeiro last August I visited the courts of justice. My friend first took me to a judge at Chambers. The audience room is very neatly furnished: the entrance is through curtain doorways, and there is no slamming nor squeaking of doors; all is quiet and decorous and comfortable; a portrait of the Emperor of Brazil hangs over the judge's chair: this court corresponds to the Special Term of the New York Supreme Court; the judge tries the cause, in the first instance, without a jury; a jury is only employed here in criminal cases, never in civil. The courts, as a rule, are in poor buildings, but have pleasant suites of rooms. The Supreme Court of the Empire is a Court of Appeal; it never tries cases, but only reviews them, and confirms them or sends them back for new trial. There is an intermediate court called the Court of Appeals, which hears the first appeal from the trial judge. I saw the Supreme Court sitting; there are seventeen judges, all old men, wearing heavy cloth gowns, and each one with a snuff-box and large colored silk handkerchief before him; they sit around one large table, the chief justice at the head, and hanging

above him a portrait of the Emperor in military costume. These judges argue with each other, in banc, upon printed appeal books; they seem to take sides like counsel, differing warmly. Each case is decided by a majority vote. In this court there is no oral argument by counsel allowed, except in *habeas corpus* cases; all others are submitted on printed points, and no counsel are present. Lawyers are divided into solicitors and counsellors; the latter must be doctors or bachelors of law; a doctor or bachelor may be a solicitor, but not *vice versa*; doctor is a merely honorary title; but only a doctor can wear a ring with a ruby in it, on the third finger of the left hand. A doctor of medicine can wear an emerald ring.

Solicitors study five years for their degree of bachelor, and must wait three years more for the degree of doctor. I visited the Orphans', or Probate Court; the crier seemed to do most of the business there. There, too, is a portrait of the Emperor over the judge's head. Then I went to the Police Court, and witnessed the jury trial of a negro slave, accused of assault with intent to kill. The district attorney made a fine speech, very well delivered; he was dressed in a silk gown or surplice, with a long lace tie with broad ends; he acted well; and with his cast of feature, and style of insinuating to the jury, would make a splendid Iago. There are two district attorneys in Rio, each getting $2,000 a year, and working every other month; in their off months they can practice for themselves. When the witness for the prosecution was sworn every person in the court room rose, to show respect for the oath. The judge wears a heavy cloth gown. There is no portrait of the Emperor in this court; where the jury exist the people rule. It was a good looking jury. Only one witness was called for the prosecution; as he told what he saw of the assault, the accused hung his head and looked guilty; his counsel was paid by his owner, probably $250. The defence did not cross-examine nor produce any witness in this case. The district attorney, when addressing the jury, stood by the side of the judge. The prisoner's counsel stands in a detached pulpit, at the opposite end (from the judge) of the table, where the jury sit. I was told that this gentleman before me was the best criminal lawyer in Rio. He lately received one fee of $10,000 to defend an accused planter. He certainly made a splendid speech in this case, which I easily understood, even with my limited knowledge of Portuguese, because of his deliberate, rotund and finished delivery. It was a magnificent speech as a piece of oratory. He began by saying that this is not a trial of the accused by his peers, "for you are freemen and gentlemen, but the prisoner is a miserable slave; therefore, stamp on him! Crush him! Give a great victory to progress and civilization by taking vengeance on this poor serf! Vengeance, for what? Because when he was struck, he struck in return. But *you* are not his peers; he has no wife—he can have none; tear his woman from his arms—treat them like beasts! He has children—but they are not his by law; away with him to prison for twenty years, for what can a slave's unlawful children care for him?" It was fine. Then he attacked the indictment, or accusation, and finally settled down to lead the jury quite away from the actual issue and to interest them in side points. But all in vain. The stupid negro sitting there hanging his head was too heavy a weight, and the jury brought him in guilty, and fixed the sentence (which duty here devolves upon them) at the full term, twenty years at hard labor, as asked by the public prosecutor, and the owner lost her slave and her expenses.

One of the pleasantest features in the Brazilian court rooms was the courtesy and consideration for each other on the part of the gentlemen of the bar; it was a delightful contrast to the jostling and disrespect which prevail in New York city, in crowded chambers especially.—GEO. W. VAN SICKLER in *Albany Law Journal.*

RECENT UNITED STATES DECISIONS.

[Concluded from page 540].

Illegal Contract.—1. By an agreement between A. and B. Coal-mining Companies, B. agreed to take at a fixed price all the coal which A. might wish to send to a certain district, not exceeding a certain amount per month, which amount was much less than A.'s monthly produce; and A. agreed to sell no coal to any other party to come into that district. *Held*, that the contract was unlawful as in restraint of trade; that it was entire, and that the promises were dependent; and that A. could not recover the price of coal delivered under the contract, though it had

refused to carry out the contract fully.—*Arnott* v. *Pittston & Elmira Coal Co.*, 68 N.Y. 558.

2. Defendants covenanted, in consideration of $50, to dig a ditch through plaintiff's land, and also to cause proceedings to be stayed on an indictment pending against plaintiff for creating a nuisance. *Held*, that the whole covenant was unlawful, and that no action would lie for a breach of either branch of it.—*Lindsay* v. *Smith*, 78 N. C. 328.

3. A promise of a married man to marry when a divorce shall be decreed in a suit then pending between himself and his wife, is void as against public policy, and no action lies for a breach of it.—*Noice* v. *Brown*, 10 Vroom, 133.

Indictment.—1. An indictment for burning a house, with intent to defraud the insurers, describing them only as "the A. Insurance Company," is bad; for, if the insurers are a corporation, that fact must be averred; and, if they are a voluntary association, their individual names must be set out.—*Staaden* v. *The People*, 82 Ill. 432.

2. Indictment not signed by the prosecuting officer *held* sufficient.—*State* v. *Reed*, 67 Me. 127.

3. Indictment for murder, describing the assault, and charging that, of the mortal wound inflicted by the prisoner, the deceased did [then and there] instantly die, *held* good, if the words in brackets were inserted; but bad, if they were omitted.—*State* v. *Lakey*, 65 Mo. 217; *State* v. *Steeley*, ib. 218.

4. Indictment for aiding to escape from jail a prisoner committed on a charge of felony, *held* good, without showing what particular felony the prisoner was charged with.—*Stark* v. *Addcock*, 65 Mo. 500.

Insurance (Fire).—1. A policy was conditioned to be void, if at any time during its continuance the buildings insured should become vacant or unoccupied. The buildings were vacant when the policy was issued, and the insurers knew the fact; afterwards they were occupied, and were again vacated before a loss happened. *Held*, that the insurers were liable.—*Aurora Ins. Co.* v. *Kranich*, 36 Mich. 289.

2. Insurance was made on a building which stood on leased land, which fact was not expressed in the policy; and this, by a condition in another clause of the policy, made the insurance void. But the insurer's agent knew the fact before the policy was issued. *Held*, that the condition was waived. (Three judges dissenting.)—*Van Schoick* v. *Niagara F. Ins. Co.*, 68 N. Y. 434.

Insurance (Life).—1. The assignee of a policy of life insurance cannot recover on the policy, if he has no insurable interest in the life. (One judge dissenting.)—*Missouri Valley Life Ins. Co.* v. *Sturges*, 18 Kans. 93.

2. A life-insurance policy provided that, if, after the payment of two or more annual premiums, the policy should at any time cease by reason of non-payment of premiums, then, upon surrender of the policy within a year from such time, a new policy should be issued for a sum proportionate to the premiums actually paid. The policy lapsed by a non-payment of premium; but was never surrendered, nor was a new one issued. *Held*, that a proportionate sum was nevertheless recoverable; and this whether the assured died before or after the expiration of a year from the lapse.—*Dorr* v. *Phœnix Ins. Co.*, 67 Me. 438; *Chase* v. *Phœnix Ins. Co.*, ib. 85.

Interest.—A promissory note bearing interest at a rate greater than that allowed by law, in the absence of special agreement will bear interest only at the legal rate, as damages, after maturity.—*Duran* v. *Ayer*, 67 Me. 145; *Eaton* v. *Boissonault*, ib. 540.

Judgment.—1. J. S. died seised of land, which his heirs sold, reserving a lien for the purchase-money. Afterwards, creditors of J. S. filed a bill in the United States Circuit Court, making all but one of the heirs parties, and by virtue of a decree made in that suit the land was sold for payment of the debts of J. S. *Held*, that the heir, who was not a party to that suit, was not bound by the decree from enforcing his lien in a State court.—*McPike* v. *Wells*, 54 Miss. 136.

2. In ejectment, the defendant claimed title under a deed of the administrator of J. S., appointed by the Probate Court of C. County. *Held*, that the plaintiff could not show that the Probate Court had not jurisdiction to make such appointment, because J. S. did not reside in C. County. (Overruling former decisions.)—*Johnson* v. *Beazley*, 65 Mo. 250.

Larceny.—1. A. stole goods in New York, and sent them into Massachusetts by an agent,

not an accomplice in the theft. *Held*, that A. was indictable for larceny in Massachusetts.—*Commonwealth* v. *White*, 123 Mass. 430.

2. Indictment for larceny of "five fish," not showing that the fish were reclaimed or confined, *held*, bad.—*State* v. *Krider*, 78 N. C. 481.

Libel.—"J. S. was accused of stealing a horse; he sued the accuser, and a verdict was found for the defendant." *Held*, that the printing and publishing of these words was actionable.—*Johnson* v. *St. Louis Dispatch Co.*, 65 Mo. 539.

Limitations, Statute of.—1. An action was brought on an official bond, in the name of the State, at the relation of one who was adjudged to have no interest entitling him to sue; and an amendment was made by filing a new complaint, with a different relator; in the mean time, the statute had run from the commencement of the original suit. *Held*, that the action was barred.—*Hawthorn* v. *The State*, 57 Ind. 286.

2. A note was made payable thirty days after demand; no demand was made for more than six years and a half. *Held*, that an action on the note was barred by the statutory limitation of six years.—*Palmer* v. *Palmer*, 36 Mich. 487.

3. An indictment is not demurrable on the ground that the offence charged appears on the face of the indictment to be barred by the Statute of Limitations.—*Thompson* v. *The State*, 54 Miss. 740.

Malicious Prosecution.—One who maliciously and without probable cause procured an inquisition of lunacy to be prosecuted against another, who was found by the jury to be of sound mind, was *held* liable to the alleged lunatic for all damages suffered by him, in excess of taxable costs.—*Lockenour* v. *Sides*, 57 Ind. 360.

Mandamus.—Provision is made by statute to enable a party tendering a bill of exceptions, which the judge refuses to allow, to prove the truth of his exceptions. A judge having refused to allow a bill of exceptions, *held* that he was not compellable by *mandamus* to do so, the party grieved having another specific remedy under the statute.—*State* v. *Wickham*, 65 Mo. 634.

Master and Servant.—An inspector of machinery employed by a railroad company negligently failed to discover and remedy a defect in a brake, whereby a brakeman was injured. *Held*, that the inspector was not a fellow-servant of the brakeman, and therefore that the company was liable to the latter for the negligence of the former.—*Long* v. *Pacific R. R.*, 65 Mo. 225.

Mortgage.—1. A., for the purpose of enabling B. to raise money for him, made a promissory note, payable to the order of B., and secured by mortgage duly recorded. B. wrongfully pledged the note, without indorsing it, for his own debt to C., and afterwards assigned the mortgage and another note, procured from A. by fraud, to D. for value. *Held*, that C. was not, in the absence of fraud on the part of D., entitled in equity to an assignment of the mortgage.—*Blunt* v. *Norris*, 123 Mass. 55.

2. The holder of a note payable to his own order, and secured by mortgage duly recorded, indorsed the note to A., and afterwards assigned the mortgage to B., together with a note similar in terms to that described in the mortgage. Both A. and B. were *bona fide* purchasers for value. *Held*, that A. was entitled in equity to an assignment of the mortgage from B.—*Morris* v. *Bacon*, 123 Mass. 58.

3. A. made a note to B., and assigned to him a mortgage and a note indorsed in blank, purporting on its face to be secured by it, "the same being collateral to" A.'s note. The assignment was duly recorded; B. afterwards, by an assignment in like words duly recorded, assigned the mortgage to C. and indorsed A.'s note to him; and subsequently indorsed the mortgage note to D., and fraudulently assigned the mortgage to him on a separate piece of paper. *Held*, that C. was entitled in equity to an assignment of the mortgage note from D.—*Strong* v. *Jackson*, 123 Mass. 60.

4. A second mortgagee, whose mortgage is duly recorded, may maintain an action against one who impairs his security by removing fixtures, claiming them under a subsequent chattel mortgage made by the mortgagor; and in such action the plaintiff need not prove that the defendant had actual notice of his mortgage, or intended to injure him, nor that the mortgagor is insolvent.—*Jackson* v. *Turrell*, 10 Vroom, 329.

5. A mortgagee, after condition broken, not in possession, cannot replevy a chattel which was a fixture and subject to the mortgage, and which has been wrongfully severed and removed by the mortgagor or his assigns.—*Kircher* v. *Schalk*, 10 Vroom, 335.

Municipal Corporation.—1. A city was authorized by statute to make and maintain reservoirs and hydrants "in such places as may be deemed proper." A building in the city was destroyed by fire, which might have been extinguished but for the neglect of the city in cutting off the water from a hydrant near by. *Held*, that the owner of the building had no cause of action against the city.—*Tainter* v. *Worcester*, 123 Mass. 311.

2. A city was authorized by statute to purchase a ferry, and run it "in such manner and upon such rates of ferriage as the board of aldermen shall from time to time determine." The city purchased the ferry, and afterwards the council voted to run it free of toll after a certain future day. *Held*, (1) that the vote was illegal; (2) that, on application made before the day fixed, a *mandamus* should be granted to compel the city to collect tolls.—*Attorney-General* v. *Boston*, 123 Mass. 460.

3. A city was authorized by statute to issue bonds to a certain amount. *Held*, that it might issue bonds to a greater amount, to pay for necessary street improvements, though no such power was expressly given by its charter. (Three judges dissenting.) *Williamsport* v. *Commonwealth*, 84 Penn. St. 487.

Negligence.—Action to recover for injuries caused by the falling of defendant's wall on plaintiff, while engaged in removing a wall on the adjoining estate, very near to, but distinct from, defendant's wall. It appeared that both walls belonged to buildings which had been burnt six months before, and were left standing to a height of ten or fifteen feet, with rubbish piled nearly to their top. It did not appear that defendant's wall was dangerous, or could have fallen while both buildings stood, or while they remained as they were after the fire; or that defendant had notice, or was bound to know, that the wall on the adjoining estate had been, or was to be, removed. *Held*, that the action was not maintainable.—*Mahoney* v. *Libbey*, 123 Mass. 20.

2. Plaintiff, while passing along a highway, was injured by the fall of a brick from a wall which defendant was building. *Held*, that defendant was liable, if he was negligent in not providing safeguards or barriers for the protection of passers-by, though his servants were not negligent in handling the bricks.—*Jager* v. *Adams*, 123 Mass. 26.

3. An inspector of coal oil branded empty barrels "approved," and left them with a manufacturer, who filled them with oil below the test, and sold them to a dealer, who sold to A. some of the oil, which exploded when used to fill a lamp, and killed A.'s wife. *Held*, that the inspector was liable to a suit on his official bond for A.'s benefit.—*St. Louis County* v. *Fassett*, 65 Mo. 418.

4. In an action at common law to recover for injuries caused to plaintiff's vessel by a collision arising from the negligence of those in charge of defendants' vessel, it appeared that the former did not carry the lights prescribed by act of Congress. *Held*, that this was not conclusive evidence of negligence; and that evidence that she did carry such lights as were usually carried by vessels in these waters was admissible, not to excuse the plaintiff, but to show negligence in the defendants who had knowledge of the usage.—*Hoffman* v. *Union Ferry Co.*, 68 N. Y. 385.

Officer.—1. The office of clerk of a city court was usurped by one who claimed under an appointment by the court, which appointment was not authorized by law; and he held the office *de facto*, and drew the salary, which by law was payable quarterly by the city, until he was ousted by *quo warranto* at the suit of the clerk *de jure*. *Held*, that the latter could not afterwards recover of the city the salary paid to the usurper.—*Dolan* v *New York*, 68 N. Y. 274.

2. A city officer was nominated by the mayor and confirmed by the common council; he ought, by law, to have been appointed by the mayor alone. *Held*, that the appointment was well enough. (One judge dissenting)—*People* v. *Fitzsimmons*, 68 N. Y. 514.

3. In a *quo warranto*, the question was whether the term of office of the defendant, who held an office tenable for three years, had expired. *Held*, that the term began to run

when the defendant was appointed, and not when he qualified.—*Haight* v. *Love*, 10 Vroom, 476. (Court of Errors affirming judgment of Supreme Court in s. c. ib. 14.)

Ordinance.—By the Constitution, all fines collected "for any breach of the penal laws" are devoted to a public use. *Held*, that fines imposed for breach of a city ordinance were not within this provision.—*Fennell* v. *Bay City*, 36 Mich. 186.

Payment.—Money was lent on bond and mortgage, the mortgagor's attorney drawing the papers and paying over the money to the borrower. The borrower paid one instalment of interest to the attorney, by whom it was remitted to the lender, and afterwards the borrower, before the bond was due, paid the principal of it to the attorney, who had no authority to receive it, and had not the papers in his possession, and who embezzled the money. *Held*, that the borrower was not discharged.—*Smith* v. *Kidd*, 68 N. Y. 132.

Pledge.—1. In an action by payee against maker of a promissory note, the maker cannot set off or recoup the value of property pledged by him to the payee as collateral security for the note, and stolen from the payee; even if the latter was negligent in keeping the property.—*Winthrop Bank* v. *Jackson*, 67 Me. 570.

2. The A. bank deposited bonds with the B. bank as security for its over-drafts. A. became insolvent, and on a settlement and closing of business was found indebted to B. Afterwards, bills drawn by A. before the insolvency and settlement were presented for acceptance. *Held*, that B. was entitled to be paid the balance due out of the proceeds of the bonds, in preference to the holders of the bills.—*Garvin* v. *State Bank*, 7 S. C. 266.

Railroad.—1. A railroad ticket from Portland to Boston, *held*, not good for a ride from Boston to Portland.—*Keeley* v. *Boston & Maine R. R. Co.* 67 Me. 163.

2. By statute, a railroad company, by whose negligence any person is killed, is liable to a penalty recoverable by indictment to the use of his next of kin. *Held*, that a company which had mortgaged its road was not indictable under the statute for the negligence of the servants of the mortgagee in possession.—*State* v. *European & North American R'y Co.*, 67 Me. 479.

Religious Society.—Where it appeared that there were trustees of a church, and there was no further evidence as to who had power to make contracts for the church, *held*, that the minister could not employ a sexton so as to bind the church for his wages.—*St. Patrick's Church* v. *Gavalon*, 82 Ill. 17.

Sale.—1. Trover for a machine. Defendant claimed it under a sale and delivery by the owner, made on condition that the title should not pass till the price was paid in full; plaintiff, under a mortgage from the same owner, made after the conditional sale to defendant, and after the price was partly paid, but before it was paid in full. *Held*, that the plaintiff was entitled to recover.—*Everett* v. *Hall*, 67 Me. 497.

2. Defendant ordered goods of plaintiffs, who delivered them to a carrier for him, but gave no notice that they had filled the order; and the goods never reached him. *Held*, that he was liable to plaintiffs for the price. (One judge dissenting.)—*Ober* v. *Smith*, 78 N. C. 313.

3. An agreement was made for the sale of "500 barrels of strained rosin." The buyers selected and took away that number out of a larger number of barrels of rosin belonging to the sellers. Afterwards, they discovered that some of the barrels contained rosin not strained, but of an inferior quality. *Held*, (1) that a warranty was implied on the part of the sellers that the rosin should be strained rosin; (2), that the act of the buyers in selecting the barrels was no waiver of the warranty.—*Lewis* v. *Rountree*, 78 N. C. 323.

4. A. bought and paid for 200 bushels of corn, part of a lot of 500 bushels owned by B., who agreed to retain the 200 bushels till they were in a condition to keep well, and then to deliver them to A. While the corn remained undivided, an execution against B. was levied on the whole of it. *Held*, a valid levy as against A.—*Hires* v. *Hurff*, 10 Vroom, 4.

Set-off.—Where a special tribunal and process were prescribed by law for enforcing claims against the State, *held*, that the defendant in a civil action brought by the State could not set off a demand against the State, growing out of

a distinct transaction.—*Raymond* v. *The State*, 54 Miss. 562.

Statute.—The court refused to declare a private statute void, without further evidence than the agreement of counsel that it was passed without the notice required by the Constitution.—*Gatlin* v. *Tarboro*, 78 N. C. 119.

Surety.—1. The official bond of a sheriff was conditioned that he should account for moneys collected by him within a certain time. Afterwards, the time was extended by statute. *Held*, that the sureties on the bond were not discharged.—*Prairie* v. *Worth*, 78 N. C. 169.

2. Action against the sureties on an official bond. Plea, that before the making of the bond the officer had held the same office, and had embezzled moneys, and was a defaulter; of all which the obligee at the time of making the bond had notice, but the sureties had not. *Held*, good.—*Sooy* v. *The State*, 10 Vroom, 135.

Tax.—1. By force of an amendment to a city charter, changing the limits of the city, lands which were subject to a lien for unpaid city taxes were brought outside the new city limits before the day fixed for their sale. *Held*, that the lien was lost.—*Deason* v. *Dixon*, 55 Miss. 585.

2. The Constitution provides that all property shall be taxed in proportion to its value. A statute enacted that every owner or harbourer of any dog should pay one dollar for the privilege of keeping him. *Held*, that dogs were not property, nor such payment a tax, within the meaning of the Constitution—*Ex parte Cooper*, 3 Tex. Ct. App. 489.

3. A foreign coal-mining corporation sent coal by rail through the State to tide-water, whence it was shipped to other States. All its business was done at an office in another State, where all orders were taken. *Held*, that the State could not tax it, either on the coal awaiting shipment at tide-water, or on that delivered from its cars in the State, direct from the mines, on orders transmitted through the foreign office.—*State* v. *Carrigan*, 10 Vroom, 35.

Trespass.—One who was in possession of land, under a parol contract to purchase it, dug clay from open pits on the land, and made it into bricks. *Held*, that he was not liable as a trespasser for so doing, though he afterwards failed to carry out his contract to purchase.—*Beattie* v. *Connolly*, 10 Vroom, 159.

Trust.—Testator gave lands to a charitable use, under the direction of a trustee, to be appointed by a court. When the will was made, that court had no power to appoint a trustee for that purpose; but, before testator died, such power was conferred on the court by statute. *Held*, that the court might appoint a trustee.—*Mann* v. *Mullin*, 84 Penn. St. 297.

Verdict.—A jury, by consent of parties, returned their verdict to the clerk of court, and separated. The next morning, it was discovered that the verdict was for the plaintiff, not specifying any sum; whereupon the court reassembled the jury, and they found a proper verdict. *Held*, regular.—*Maclin* v. *Bloom*, 54 Miss. 365.

Warranty.—Land was conveyed with warranty; afterwards, the State, having title paramount, sold the land. *Held*, that the grantee might abandon the land, and sue on the covenant, though he had not been evicted or molested by the State or its grantee.—*Green* v. *Irving*, 54 Miss. 450.

Way.—A statute permitting owners of coal-beds on both sides of any stream to have a right of way either over or under such stream, between such coal-beds, for the purpose of mining the same, *held*, unconstitutional.—*Waddell's Appeal*, 84 Penn. St. 90.

Will.—1. By statute a nuncupative will is valid if made in the last sickness of the testator. *Held*, that it need not be shown, to establish such a will, that the testator had not time to make a will in writing, or that he had no hope of recovery.—*Harrington* v. *Stees*, 82 Ill. 50.

2. A testator erased certain clauses in his will, with the intent of revoking them only. *Held* (1), that the whole will was not revoked; (2), that those clauses were; (3) that the property covered by them, in the absence of any thing in the will showing a contrary intention, passed by a general residuary clause.—*Bigelow* v. *Gillott*, 123 Mass. 102.

3. A will written and signed with a pencil, *held*, valid.—*Myers* v. *Vanderbilt*, 84 Penn. St. 510.

CURRENT EVENTS.

ENGLAND.

THE LATE LORD CHELMSFORD. — Frederic Thesiger, one of the sons of the late Mr. Charles Thesiger, Collector of Customs in the Island of St. Vincent, was born in July, 1794. He entered the Royal Navy as a midshipman on board Her Majesty's ship Cambrian, and as a boy of thirteen witnessed the second bombardment of Copenhagen by the expedition under Sir James Gambler. The death of his uncle and his elder brother, and the destruction of his father's property in St. Vincent by a volcanic eruption, imposed upon Frederic Thesiger the duty of retrieving the family fortunes, and accordingly he determined to abandon the naval for the legal profession, and in 1818 he was called to the bar by the Society of Gray's Inn. His career as a junior barrister was remarkably successful, and in 1834 he became enrolled on the list of Queen's counsel. The Dublin election inquiry which resulted in the unseating of O'Connell and Ruthven, afforded an opportunity for the display of his sagacity and ability, which firmly established Mr. Thesiger's reputation, and he was urged to enter the Parliamentary arena. In 1840 he unsuccessfully contested Newark, but a few weeks later he was elected for Woodstock which he represented until 1844, when, having been appointed Solicitor-General, he became member for Abingdon. In the following year, on the death of Sir William Follet, he was appointed to the office of Attorney General, which he vacated on the resignation of Sir Robert Peel in 1846. The accident of a day or two deprived him of the Chief Justiceship, which became vacant by the death of Sir Nicholas Tindal, and which fell into the patronage of the new government. From February to December, 1852, Sir Frederic Thesiger again held office as Attorney-General, and when the conservatives came into power in 1858 he abandoned a splendid practice at the bar in order to become Lord Chancellor with a peerage as Lord Chelmsford. He again succeeded to the woolsack on the return of Lord Derby to office in 1866. In February, 1868, he retired and was succeeded by Lord Cairns. From the year 1840 down to his accession to the Chancellorship there was scarcely an important case in which the name of Sir Frederic Thesiger did not appear on either the one side or the other. His name will be remembered as a leader in the trial of "Tom Provis" for those daring and ingenious forgeries by which he endeavored to establish himself as heir to the estates and baronetcy of the late Sir John Smyth of Long Ashton, near Bristol—a trial exceeded in notoriety only by the more recent trial of Arthur Orton; in the strange action for libel brought by Achille against Dr. Newman, in which he was for the prosecution; in the extraordinary issue directed out of Chancery in respect of the last will and testament of the Duchess of Manchester, and in the prosecution of the directors of the Royal British Bank in 1857. One of the most important decisions which marked his Chancellorship was that of the great Shrewsbury peerage case.

TREASURE TROVE. — The *Solicitor's Journal* calls attention to the singular state of the law as regards treasure trove. Treasure trove, as Coke says, "where any gold or silver, in coin, plate or bullion, hath been of ancient time *hidden*, wheresoever it be found, whereof no person can prove any property, doth belong to the king or to some lord or other by the king's grant or presumption;" and it is the duty of the coroner to inquire who are the finders of treasure trove, and where it is, and whether any one be suspected of having found and concealed a treasure—which, saith an old statute of 4 Edw. 1, "may be well perceived where one cometh riotously haunting taverns and hath done so of a long time." Concealment of treasure trove is, it appears, punishable by fine or imprisonment; but it has been laid down that "the taking of goods whereof no one had a property at the time cannot be *felony*; and, therefore, he who takes any treasure trove * * * before [it has] been seized by the persons who have a right thereto is not guilty of felony." 2 Hawk. P. C. 149. But the better opinion seems to be that, although the sovereign or lord has no definite property in treasure trove till he has seized, yet the true owner, though unknown, who has lost the money, may still have a property in it. 2 East's P. C. 606. And it is, of course, clear that unless the appropriator has reasonable grounds for supposing that the owner cannot be found, his taking the

treasure may amount to larceny. Where this is not so, obvious difficulties arise as to proof of felonious taking, but an ancient judge appears to have felt no hesitation in laying down the rule that larceny may be committed by stealing goods, the owner of which is unknown, because, as he sagely remarked, the felony would otherwise go unpunished, "*que serra un graunde mischiefe en le ley.*"

FRANCE.

THE SENATORIAL ELECTIONS.—A curious constitutional point, says the *Manchester Guardian*, is being raised in France with respect to the partial elections which are approaching for the refilling of seventy-five senatorial seats. The constitutional law passed in February, 1875, simply provided that a third of the Senate should retire every three years. The government, in virtue of this rule, have fixed the elections for the 5th of January, in order to have everything ready for the session which begins a few days later. Many of those, however, whose seats are thus affected, knowing that in the present temper of the country they have no chance of re-election, deny that the vacancies will occur so soon. It is true that they have sat for three parliamentary years—that is to say, for three sessions; but they will not have sat for three natural years till the 8th of March, that being the third anniversary of the meeting of the Senate.

CANADA.

STENOGRAPHERS' FEES.—In a communication from a "Stenographer" to a daily journal, the following are given as the rates of remuneration in the places mentioned. "Ontario:—Salary $1,500 per annum for official reporters. When not regularly appointed, a reporter, when employed, is paid $5 per diem and expenses, for note taking, and when notes are transcribed, for each copy he receives 10c per folio. As three copies are usually required in appeal cases, and manifolding paper is used, the remuneration is practically 30c per folio and $5 per diem and expenses.

Illinois—Ten dollars per diem and 25c per folio for transcribing.

California—Ten dollars per diem and 20c per folio for transcribing.

England—A guinea per diem (two guineas if the sitting be a long one) and 8d per folio of seventy words for transcribing.

Nebraska—Salary $1,000 per annum, and 10c per folio for transcribing.

New York—District courts, salary $2,000 per annum; Supreme, Superior and Common Pleas courts, salary $2,500 per annum; Surrogate court, salary $3,000 per annum; Circuit courts, $5 per diem and expenses, and 10c per folio for transcribing.

New Jersey—$10 per diem, and 10c per folio for transcribing.

Iowa—$8 per diem, and 10c per folio for transcribing.

Wyoming Territory—Salary. $2,500 per annum, and mileage at 10c per mile when reporting district courts, and 15c per folio for transcripts. The reporter must pass a strict examination, and be a thoroughly expert reporter before he can be appointed.

Ohio—Ten dollars per diem, and eight cents per folio for transcripts."

UNITED STATES.

THE STEWART REMAINS.—The curious assertion has been made by the newspapers that because the Stewart *cadaver* was stolen for purposes of blackmail, the law provides no penalty. Admitting the alleged purpose to have been the real one, the case would still fall within 2 R. S. 688, § 13, which imposes both fine and imprisonment for removing dead bodies, "for the purpose of selling the same" or "from mere wantonness." The purpose alleged was to extort money from the friends of the deceased, or, in other words, to compel them to buy back the *cadaver*, a "purpose of selling" within the statute. But aside from this, the wrongful removal of a dead body was an indictable offence at common law. In *Regina* v. *Sharpe*, Dearsley and Bell, 160, a man was indicted and convicted of a misdemeanor, for disinterring and removing, without authority, the body of his mother, and the conviction was sustained, although the removal was properly and decently made, and for the purpose of burying the body by the side of the prisoner's father, recently deceased. See also *Regina* v. *Feist*, id, 590; *Commonwealth* v. *Cooley*, 10 Pick. 39. In 4 Black. Com. 236, 237, stealing a corpse is mentioned as a matter of great indecency; and the law of the Franks is mentioned, which directed that a person who had dug a corpse out

of the ground in order to strip it, should be banished from society, and no one suffered to relieve his wants till the relatives of the deceased consented to his re-admission. It was a felony at common law to steal the shroud or apparel from a dead body. 1 Hale's P. C. 515; 1 Russell on Crimes, 629; 3 Dane's Abr. 13. And it is so, also, under the statutes of this State.—*Albany Law Journal.*

SWITZERLAND.

A SINGULAR CLAIM FOR DAMAGES.—The Geneva correspondent of the *London Times* says, that a strange lawsuit has arisen out of the late manœuvres of a portion of the Swiss army, near Morat. During the operations Herr Muller, ex-judge and commandant of a battalion in the Steinhausen brigade, recommended his men to abstain from drinking the beer of the Bohlen brewery, on the ground that it was likely to injure their health and render them less able to support the fatigue of marching and the weight of their accoutrements. The proprietor of the brewery, feeling himself much aggrieved at this order, and on the plea that it has operated greatly to his detriment, has brought an action against Herr Muller, laying his damages at a rather considerable sum. The beer, which has been submitted to analysis, is pronounced by experts to contain no ingredients injurious to health. On the other hand it is contended that when an officer on service orders or advises his men in good faith to abstain from the use of such food or drink as he may think likely to impair the value of their services to the State, it is not right that he should be exposed to the annoyance of an action at law, much less that he should be liable to be mulcted in heavy damages. The case excites much interest among officers in the army of the Confederation.

GENERAL NOTES.

The U. S. Commissioner of Patents reports 14,100 patents granted for the year ending June. Receipts, $734,888. Expenditures, $665,906; 1,505 trade-marks were registered.

CONCEALED ASSETS.—I once held some shares in a joint stock bank (limited). The directors wishing to launch into a system of finance, persuaded the shareholders to turn the concern into an unlimited bank. I sold out at once. The system did not answer, and within a couple of years the bank was in liquidation. I was called upon to show cause why I should not be placed on the list of contributories. I had not much difficulty in doing this, for as it happened, I could prove that I had sold my shares in good faith and in good time. But one of my companions in misfortune had not been quite so prompt in getting rid of his shares, and the Bankruptcy Commissioners added his name to the list. A question arose as to his power to pay. A. pleaded poverty, of course. He had not a shilling in the world. "You seem to enjoy good health," said the solicitor to the estate. "Yes, tolerable." "Good appetite?" "Yes, nothing to complain of." "Do not suffer from indigestion?" "Not much." "Ah! I see you have a fine set of teeth—your own, of course?" "Yes." "Come, now, what did you pay for them?" The poor contributory turned pale, and appealed to the Commissioner to protect him against importunate questions. "You can easily answer the question," said the Commissioner, coldly, and the tormentor calmly repeated it. "What did you pay for that set of teeth—40, 50, or 60 guineas? It is no good fencing with the question. I intend to have an answer. Sixty guineas?" The contributory drew himself up, indignantly pursing his lips, and refused to answer. "Fifty guineas?" More pantomime. But at last the answer came in a tone of indignant scorn, "Fifty-five guineas." "And how long have you had these teeth?" "Only the day before yesterday." "And you purchased them after you had notice of your liability as one of the shareholders of the bank?" "Yes." "That will do," said the solicitor, triumphantly. "You can take out your teeth and hand them over to the official assignee. They constitute one of the assets of this bank." And the poor man left the Court *sans* teeth, a sadder, but I hope a wiser man. I do not use false teeth, but I have never touched a share in an unlimited bank since, and wishing to keep my own teeth I do not think I shall.—*Mayfair.*

RHETORIC AT THE BAR.—Lord Ellenborough had a sovereign contempt for rhetorical flights. "It is written in the large volume of nature," said a barrister. "At what page?" gravely inquired the judge, taking up his pen.