The Legal News.

VOL. XII. AUGUST 31, 1889. No. 35.

COURTS OF APPEAL IN CRIMINAL CASES.

In the House of Lords, on August 15, Lord Fitzgerald, in asking whether the Government would take into consideration during the coming Parliamentary recess the question of constituting an effective Court of Appeal in criminal cases tried in the Superior Courts of criminal jurisdiction or at quarter sessions, and, if deemed expedient, present a measure to Parliament during the next session to effect that object, made the following observations: 'The absence of a Court of Appeal in criminal cases had for years been condemned, and by successive Governments. A commission sat in 1878, composed of Lord Blackburn (who presided), Mr. Justice Montague Smith, Mr. Justice Stephen, and Lord Justice Barry (of the Court of Appeal in Ireland) among other members. Their conclusion was unanimous that this blot upon the criminal jurisdiction of England, which did not exist in any other civilized country, ought to be removed. In addition, Sir J. Holker and Mr. Justice Stephen between them prepared a bill, which was presented to Parliament in 1878. Again, the Government of which Lord Herschell was Solicitor-General in 1880 presented a bill in the House of Commons having the same object, but it was not carried through. Recent circumstances had forced those questions on their attention. There was a remarkable contrast in that respect between civil and criminal jurisdiction. While life and liberty were left entirely at the mercy of the primary tribunal, civil rights of property were continuously protected and guarded. Upon a recent occasion there was a case before the House of Lords in which the sum in controversy between the parties was 11*l*. It had begun in the County Court, and had gone first to the Divisional Court, thence to the Court of Appeal, and finally to the House of Lords. Where a sum of 500 rupees was involved one of Her Majesty's subjects in India would be entitled to carry a case through the Courts in that country and finally to the Judicial Committee of the Privy Council. He did not conceal from himself that the subject was one of very great difficulty. The difficulties, however, were not insuperable, and he had brought the matter forward now with a view to its being considered during the recess. In the present state of things, when there was an appeal to the mercy of Her Majesty for the remission of a sentence, it was based on the supposition that the conviction was right. Her Majesty exercised her prerogative of mercy through the Home Secretary. The Home Secretary was not a judge, and he had not the power of a judge; he had not power to examine witnesses or to administer an oath; he carried on his inquiry or rehearing of a case as best he could, with the aid of the report of the judge before whom the trial had taken place. When he advised Her Majesty upon the subject he gave no reason whatever for his advice. The whole proceeding appeared to be anomalous, illogical, and in some respects unconstitutional. He would substitute for it, if possible, a Court of Appeal—appeal upon the facts and the merits, where, if a mistake had been committed, a new trial might be accorded, or, at any rate, right might be done according to law and justice. The time for action seemed to be opportune, because public attention had been directed to the subject, and no commission was required to obtain materials, which would be found in the report of the commission of 1878-79. While, no doubt, there were difficulties to be encountered in dealing with this subject, there was scarcely any one who doubted that the law of England ought to be altered. A bill was presented in 1878, and another in 1881; and the fault of the former probably was that it was too extensive and attempted to cover too much ground. A measure of a limited character ought to be passed at first, and he saw no impracticability in a measure of that kind being introduced and carried by the noble lord on the woolsack, whose experience specially fitted him for the task. There was a class of cases in which it was

possible for some compensation to be given to those who had been wrongly convicted, but no compensation could be given to the person unjustly executed. On these grounds he ventured to address to the Government the question of which he had given notice.'

The Lord Chancellor said that Sir G. Lewis's opinion on the general question was to be found in the speech he made in the House of Commons, given most exhaustively, and his judgment was positively and absolutely against such a Court of Appeal, and adverse to any such change in the law, which, as he pointed out, would render it much more difficult for the Crown to interfere in certain cases. I do not wish, for the reasons already given, to commit either the Government or myself to any abstract proposition on the subject. I only say it is a subject I would rather not discuss now with reference to any future alteration in the law. I trust that my noble and learned friend will consider that as satisfactory an answer as he was likely to get from Her Majesty's Government.

In the course of the discussion Lord Herschell said: 'I do not believe that the existence of a Court of Appeal would prevent erroneous convictions. It is only by reason of circumstances that afterwards come to light that we learn there has been a miscarriage of justice. No Court of Appeal could secure that in no case should an innocent person be punished; but there are cases where such a review would probably lead to the setting aside of a wrong verdict. I do not think it would be right to expect as much from a Court of Appeal as appears to be expected by some persons.'

Viscount Cross agreed with Lord Herschell in regard to the expectations from a Court of Appeal in criminal cases. As to the prerogative of mercy, there was, he believed, a feeling that the administration of justice by a Minister is not satisfactory; but it must be clearly understood that no Court of Appeal can exercise the prerogative of mercy, which must be retained by the Crown.

Lord Fitzgerald, in reply, said that the statement made by the Lord Chancellor had been so entirely unsatisfactory, inasmuch as it held out no hope that Her Majesty's Government would take any steps in this matter, that he had no alternative left but to announce that next session he should take upon himself the duty of introducing a bill dealing with the question, which he hoped would have the support of Her Majesty's Government.

The following letters have appeared in the *Times*:—

Sir,—I was not aware of Lord Fitzgerald's intention to bring forward last night the question of the institution of a Criminal Court of Appeal, otherwise I should have been in the House of Lords. Allow me to state that I have the strongest possible opinion that there should be such a Court. The first condition, in my opinion, is that the Court should be the strongest which can be invented. To insure this it should, as to its members, not be a varying Court, but should consist of judges nominated by the Crown once for all for life or until resignation. The number of the judges should be seven, with a quorum of five. The judges should be bound, in case of a conviction and sentence of death, at any inconvenience to other business, unless absolutely prevented, to attend in London within seven days after any such sentence, and in other cases at any time fixed by the president of the Court.

The second condition, in my opinion, is that the appeal should be as large as possible, on law, facts, and sentence, with the largest discretionary power as to any means by which, in the opinion of the Court, it could be assisted to arrive at a right, just, and merciful conclusion. Thirdly, it should be declared in the Act that the decision in each case must be made to depend on the circumstances of the particular case. Fourthly, in my opinion, the consideration of mercy arising from the particular circumstances—as, for instance, youth, extreme sickness, intolerable, though not legal exasperation, despair—should not be excluded from the power of the Court. Fifthly, the decision in any case should not necessarily be final, if after it new facts should arise or could be brought forward. Although I would allow the consideration of mercy to be given to the Court, I would not take away the prerogative

of mercy in the Crown, to be exercised beyond and above the power of the Court.

ESHER, Master of the Rolls.

Heath Farm, Watford, Aug. 16.

Sir,—Lord Esher writes to you that he 'has the strongest possible opinion that there should be a Court of Criminal Appeal.' I have the strongest possible opinion to the contrary. I do not say this to pit my opinion against his, but to show that it is not every one with some experience in the administration of the criminal law that thinks as he does, and to ask that public opinion may not be fixed till a fitting time and opportunity have enabled the matter to be properly discussed. I agree with the Lord Chancellor that the present is not a fitting time. I may, however, refer to an article by Mr. Poland, Q.C., in a publication called 'Pump Court.' Mr. Poland has more experience than all the judges and ex-judges combined, and is most strongly against such a Court, and gives most convincing reasons for his opinion

Your obedient servant,

BRAMWELL.

COUR DE MAGISTRAT.

MONTRÉAL, 2 mai 1889.

Coram CHAMPAGNE, J.

BERNARD v. LALONDE.

Mandat—Collecteur—Avocat—Frais de jugement—Désaveu—Ratification.

JUGÉ:—1o. *Qu'un créancier qui donne sa créance à collecter à un agent collecteur avec instructions de ne pas poursuivre et de ne lui faire encourir aucun frais, mais qui lorsqu'il acquiert la connaissance que l'agent a fait poursuivre et a obtenu un jugement en sa faveur contre le débiteur pour le montant de sa créance, conserve le bénéfice du jugement, ratifie par là l'acte de son mandataire;*

2o. *Que pour éviter la responsabilité des frais du jugement que l'agent lui avait fait encourir, le créancier devait renoncer au jugement et désavouer l'avocat qui avait obtenu le jugement.*

PER CURIAM.—Le demandeur, avocat, poursuit sur mémoire de frais taxé. Le défendeur plaide qu'il ne connait pas le demandeur et ne l'a jamais employé. La preuve établit que le défendeur a donné un billet à collecter à un agent collecteur pour le collecter lui-même sans l'autoriser à faire faire une poursuite. Il parait même que le défendeur ne voulait pas poursuivre. Le collecteur, toutefois, remit ce billet au demandeur qui a poursuivi, fait les déboursés et pris jugement en faveur du défendeur. Le collecteur a outrepassé ses pouvoirs en demandant au demandeur de faire cette poursuite, mais le défendeur parait avoir ratifié l'acte de son mandataire en conservant le bénéfice du jugement obtenu en sa faveur; et pour éviter de payer les frais réclamés, il aurait dû renoncer au jugement obtenu pour lui et désavouer le demandeur.

Jugement pour le demandeur.

Autorités:—Pigeau, vol. I, p. 880; *Carré & Chauveau,* vol. 3, p. 247.

J. A. Bernard, avocat du demandeur.
Loranger & Beaudin, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 9 mai 1889.

Coram CHAMPAGNE, J.

FAUTEUX v. WATERS.

Bail—Meubles garnissant les prémisses—Recours du locateur—Tiers.

JUGÉ:—1o. *Que dans un bail sous seing privé, une clause dérogeant au droit commun ne peut affecter que les parties qui l'ont consentie;*

2o. *Que si dans un bail le locataire consent à ce que dans le cas de non-paiement du loyer et d'abandon des lieux, le propriétaire pourra, sans procédés judiciaires, s'emparer des meubles garnissant les prémisses, ce dernier ne pourra exercer ce droit qu'en autant que les dits meubles ne seront pas passés en la possession d'un tiers de bonne foi auquel le locataire les aurait transportés.*

PER CURIAM.—Le demandeur a loué une maison à un nommé Owens par bail sous seing privé pour un an à raison de $8 par mois. Dans ce bail se trouve la clause suivante: "Que si le locataire laisse les lieux "loués, trente jours après son départ, le bail- "leur aura le droit de s'emparer de tout

"meuble, effet et animaux qui seront sur la "propriété louée et de les vendre pour se "payer de ce qui lui sera dû de loyer." Owens est parti pour New-York, et après son départ, il a écrit au défendeur, à qui il devait, d'aller dans la maison (lui indiquant où il trouverait la clef), et de prendre les meubles qui avaient été achetés de lui et n'étaient pas encore payés. Le 3 avril, le défendeur a enlevé ces meubles valant $30; et le 15 avril, le demandeur a pris la présente action directement contre le défendeur lui demandant de rapporter les meubles ou de lui payer un mois de loyer qui lui est dû par Owens. Ce bail est sous seing privé, et les clauses qui y ont été insérées ne lient que les parties contractantes; et bien que le privilége du locateur prime celui du vendeur, le demandeur ne pouvait exercer son privilége que par saisie-gagerie par droit de suite dans les délais voulus par la loi.

Action deboutée avec dépens.

M. Laferrière, avocat du demandeur.

J. J. Bates, avocat du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 16 mai 1889.

Coram CHAMPAGNE, J.

STUART *et al.* v. DUSSAULT *et vir.*

Femme séparée de biens—Responsabilité—Insolvabilité du mari—Promesse de payer.

JUGÉ:—*Que lorsque pour les choses nécessaires à la vie, le marchand ne peut pas établir l'insolvabilité du mari, et que le crédit a été donné à la femme, il n'a pas de recours contre elle, quand même la femme aurait subséquemment promis de payer, cette promesse est nulle et sans effet.*

PER CURIAM.—Les demandeurs poursuivent la défenderesse seule pour un compte de pain, alléguant l'insolvabilité du mari, et que la dette a été contractée par la femme après sa séparation de biens judiciaire, et que de plus, elle aurait reconnu la dette et promis la payer. La femme plaide que c'est une dette de son mari et qu'elle n'est pas tenu de la payer. La preuve établit que c'est une dette du mari, et ne fait pas voir l'insolvabilité du mari. La femme n'est responsable du paiement d'un compte fait pour la subsistance de la famille que lorsque le mari est insolvable et que le crédit a été donné à la femme; et la promesse de payer faite par la femme après sa séparation de biens en justice est nulle et sans effet.

Action déboutée avec dépens.

Autorités:—C. C., art. 1301; *DeLorimier*, vol. 10, p. 302; *Larose* v. *Michaud*, 21 J. p., 167; *Hudon et Marceau*, 23 J. p., 415; *Paquet* v. *Guertin*, 2 Leg. News, p. 211; *Backlau* v. *Cooper*, 3 Leg. News, 128; *Bruneau* v. *Barnes*, 3 Leg. News, 301; *Gauthier* v. *Arres*, 3 Leg. News, 349; *Brown* v. *Guy*, 5 Leg. News, 111; *Lefebvre* v. *Guy*, Déc. Cour d'Appel, vol. 3, p. 255.

McCormick & Duclos, avocats des demandeurs.

M. Lavallée, avocat des défendeurs.

(J. J. B.)

JUDGES WHO HAVE NOT RETIRED.

A London news agency circulated a rumor to the effect that the Master of the Rolls will resign his position before the Long Vacation, and that he will be succeeded by the Attorney-General. The statement should be read with a great deal of reserve. Lord Esher has already been retired at least four times —by the newspapers. Just before the Long Vacation the legal atmosphere of the east-end of the Strand becomes charged with rumors, and the ubiquitous reporters of the law courts are busy with their speculations. Months back they started the canard that the Lord Chief Justice was anxious to retire, and he was only prevented from doing so by the fear that Sir Richard Webster would be promoted to his position. Lord Coleridge has taken up a strong position on the Home Rule question, and it is well known that he has not viewed Sir Richard's conduct of the Parnell Commission with particular favor. But for none of these reasons does he still retain the most lucrative judicial appointment next to the Lord Chancellorship. The explanation of these unfounded and somewhat absurd rumors is that judges are in the habit of retiring during the Long Vacation, and immediately a member of the bench is entitled to his pension the gossips begin to

make free with his name. They do this on the assumption that when a judge's term of service has expired he is anxious to wipe the dust of the law courts from his feet, and retire to the enjoyment of his well-earned pension. This is not by any means the rule, and indeed, excepting in cases of old age or failing health, judges stick to their posts long after they have "served their time." The life of a judge must be an agreeable one, as we rarely hear of one retiring, except under urgent physical circumstances, until he can do so full of honors.

A judge is entitled to retire on a pension after a service of fifteen years. Five members of the High Court of Judicature have served that time and are entitled to the pension. They are Sir James Hannen (President of the Probate, Divorce and Admiralty Division); Lord Esher (Master of the Rolls); Mr. Justice Denman, Baron Pollock and Lord Chief Justice Coleridge. Hence we may expect the usual paragraphs to go the round of the London papers during the next fortnight, on the possibility or the probability of some of these gentlemen vacating their distinguished posts.

Sir James Hannen was appointed twenty-one and a half years ago. He has untied more matrimonial knots than any man in Great Britain, but he will be more conspicuously mentioned in history in connection with the Parnell commission. As this inquiry is adjourned over to the next sittings, it is clear that Sir James does not contemplate immediate retirement. The President's salary is no more than that of his coadjutor, Mr. Justice Butt, or any of the common-law judges.

Lord Esher was promoted from the common-law side of the courts to the virtual presidency of the Appeal Court. He attains his majority this month. Of a spirited temperament, Lord Esher sometimes gets a little impatient with vacillating counsel. He has a large development of the humorous faculty, possesses keen perspicacity and legal acumen, has an intuitive grasp of technique, and a splendid physique. In his youthful days he was a noted athlete. He was famous for his skill in rowing, and between 1840 and 1845 he was thrice a member of the Cambridge crew. He stands six feet in his stockings, is in robust health, and the rumor which yesterday found its way into some papers is but idle conjecture. As Master of the Rolls he draws £6,000 a year.

Next to Lord Coleridge Mr. Justice Denman is senior *puisné* judge. His health has not been of the best lately. He is in his seventieth year, and earned his retiring allowance in October two years ago. Baron Pollock is sixty-six, and was entitled to retire last January twelvemonth. He is not quite so good of hearing as he used to be. If there are any vacancies during the ensuing Long Vacation caused by the retirement of full-service judges, one or both of the last-named will disappear from the list.

Lord Coleridge draws the highest salary among what may be called the regular judges, his services being appraised at £8,000 a year. For forty years Lord Coleridge has been the political friend and admirer of Mr. Gladstone, with whose Home Rule proposition he is in hearty accord. He is a fearless, intrepid, conscientious judge. He only sat in Parliament eight years—viz, 1865 to 1873 —but in that short time he successfully graduated through the solicitor-general and attorney-generalships. In 1873 he declined the mastership of the rolls, but in the same year was appointed Chief Justice of the Court of Common Pleas on the death of Sir William Bovill; and nine years ago he succeeded Sir Alexander Cockburn as Lord Chief Justice of England.

In February next Mr. Justice Field will be entitled to leave the bench, and as he is exceedingly deaf, he will probably avail himself of his pension at an early date. If you met Sir William Ventris Field in the Strand, you would hardly think that the light step and the jaunty air belonged to a man who six years ago attained the "allotted span." Sir William is very jealous of the honor of solicitors. He was articled to a firm of solicitors himself in the '30's, and later on was a member of the firm of Thompson, Debenham & Field.

Baron Huddleston, who received a judgeship in the same year as Mr. Justice Field, has been on the sick list for some months, and several more or less veracious statements

have appeared with reference to his pending retirement. He will probably however retain the office for another six months. Sir John Walter Huddleston is the last of the Barons of the Court of Exchequer. When he travelled the Oxford circuit he appeared in almost every case of importance, and particularly distinguished himself for his splendid defence of Cuffy the Chartist, of Mercy Newton in her three trials, of Mrs. Firebrace in the Divorce Court, and of Pook for the Eltham murder. He also assisted Sir Alexander Cockburn in the prosecution of Palmer, the notorious poisoner. As a politician, he was a most unsuccessful candidate for parliamentary honors. Six times he was defeated at the poll, but was eventually successful at Canterbury, and again at Norwich.

Mr. Justice Manisty and Mr. Justice Hawkins were both appointed to the judicial bench thirteen years ago. Sir Henry Manisty is the son of a late vicar of Edlingham, and a most extraordinary travesty of justice was brought to light several months back. Some years ago two men were indicted before Sir Henry for burglary and attempted murder at the very vicarage in which Sir Henry was born. The men were found guilty, and Sir Henry sentenced them to penal servitude for life. When the men had "done" several months other men confessed to the crime, and were eventually convicted, the wronged men being released and compensated by Parliament. Sir Henry tried the actions for libel against Lord Chief Justice Coleridge, brought by the man who sought to be, and now is, the chief's son-in-law. The jury awarded the plaintiff £2,000 damages, but the judge reversed the decision and entered the verdict for the defendant. This action caused some surprise, which was not lessened by the report that Lord Coleridge and Mr. Justice Manisty were not on terms of personal friendship at the time. Sir Henry is in his eighty-second year. His hearing is not so very good, but he is a painstaking and industrious judge.

Mr. Justice Hawkins is as well known at Epsom as he is at the Old Bailey. He is a great authority on all matters concerning the turf, and is a prominent member of the Jockey Club. He long ago earned the title of "hanging judge." It is said he has sent more people to the gallows than any other man living in the same period of time. It is noticed that when a wretch is before him on the capital charge he is exceedingly temperate in tone and language, but he observes an inflexible firmness after the verdict. As a counsel he had a distinguished career. He appeared for Simon Bernard, who was tried as an accessory to the conspiracy against the life of the Emperor Napoleon in 1858. He was in the great Roupell cases; he led the defence in the famous convent case—*Saurin* v. *Starr*; and when the present leader of the House of Commons seat was petitioned against he saved it for him. As a piece of masterly cross-examination, the way in which he handled Mr. Baigent in the first Tichborne trial stands almost unrivalled. When the claimant was prosecuted by the crown Mr. Hawkins led for the crown; and the Gladstone and Von Reable cases were among his victories in the Divorce Court. Before he was elevated to the bench he held a general retainer for the Jockey Club. On the bench he is noted as the manufacturer of indifferently good jokes. Sir Henry recently followed the example of his distinguished chief and married a young and pretty lady. He usually wears a brown jacket, and a silk hat far back on his head. To see him and Baron Huddleston leaving the law courts and walking arm in arm through Holywell street is a sight for the gamin.

Mr. Justice Stephen, who tried Florence Elizabeth Maybrick for the murder of her husband, was raised to the bench in 1879. He was a great criminal lawyer, and the most successful of his books, which has become a standard work, is "The Law of Evidence." He speaks as if he had adopted Demosthenes' recipe for stuttering.

The other members of the common-law bench are Justices Mathew, Cave, Day, Smith, Wills, Grantham and Charles. Sir James Charles Mathew was promoted from the junior bar; Sir Lewis William Cave edited, in conjunction with Mr. Bell Stones, "Practice of Petty Sessions;" and Sir John Charles Day edited "Common Law Procedure Acts," and "Roscoe's Nisi Prius;" Sir A. L. Smith is a member of the Parnell com-

mission; Sir William Grantham was well known as a politician, and Sir Arthur Charles is one of the youngest judges of modern times.

There are only two ex-members of the judicial bench alive. Sir James Bacon is ninety-one, and continued in harness until three years ago. When he retired there was an unique scene in the Chancellor's Court. The attorney-general and most of the leading members of the bar said "*au revoir*" to him in neat and touching speeches. Sir William Robert Grove was an eminent electrician before he was promoted to the bench. He contrived the powerful voltaic battery which bears his name. He was Professor of Experimental Philosophy at the London Institution, and his address on the "Continuity of Natural Phenomena" before the British Association in 1866 demonstrated that the changes in the organic world, in the succession of organized beings, and in the progress of human knowledge, resulted from gradual minute variations. He made several discoveries in electricity and optics.

When a judge retires from the bench he does so in an unostentatious manner, generally writing to the lord chancellor to be relieved during a vacation, and at the next sittings a new judge takes his place, and is formally congratulated by the bar.—*Herald* —(*London Edition.*)

THE MAYBRICK CASE.

In Mr. Maybrick's case the proximate cause of death was clearly gastro-enteritis and irritative fever. But what was the cause of the gastro-enteritis? In our opinion the defence were in error when they endeavoured to establish as two distinct and alternate hypotheses *quoad* the cause of death—gastro-enteritis and arsenical poisoning; for arsenic poisons primarily and chiefly by setting up gastro-enteritis. The total amount of arsenic existing in the body *post mortem* was calculated at something under two grains, or in itself nearly a fatal dose; but this would probably be—especially considering that the stomach and its contents contained no arsenic—only a fractional amount of what was taken, seeing how rapidly the poison is eliminated. As proof of this assertion we quote the following statements, made at a trial, by Professor G. F. Parker, of Yale College: "It (arsenic) is eliminated from the liver, and may entirely disappear in from eight to fifteen days after being taken; depending on the quantity and other circumstances." "It is not a cumulative poison." "Persons have died from the primary effects of arsenic in eight days, and no trace of the poison has been found in the body on analysis." On this head we must subscribe to Dr. Stevenson's testimony of opinion. He is *facile princeps* amongst contemporary toxicologists, a man of unrivalled experience in this special department of medical science, of world-wide reputation. There remains for consideration the questions, Was the arsenic administered by design or taken by accident? and if by design, Was it taken by Maybrick himself or at the hands of his wife? The circumstantial evidence is too strong to seriously entertain the theory of accident. Look at it from whatever point we may, we are bound to face the assumption—nay, even accept it—that Mr. Maybrick was not cognisant of what was destroying his life. We can have no desire that the royal prerogative of mercy should not be exercised in this case, but as a duty to the living relatives of the deceased, to a painstaking, fearless, and honest jury, and to one of the greatest ornaments of the English bench, we solemnly assert as our unbiassed opinion that the verdict arrived at in Mrs. Maybrick's trial was warranted by the evidence.—*The Lancet.*

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*DECISIONS AT QUEBEC.**

Bail—Résiliation—Diminution de loyer—Dommages-Intérêts—Arts. 1612, 1614, 1616 *et* 1641 *C. C.*

Jugé:—1o. Le locataire qui est troublé dans la jouissance de la chose louée, par des actes légitimes du Gouvernment, mais qui n'en est pas absolument privé, n'a droit qu'à une diminution de loyer, et ne peut demander la résiliation du bail.

2o. Le locateur n'est pas tenu des dommages-intérêts résultant du trouble provenu

* 15 Q. L. R.

d'une cause étrangère qui ne peut lui être imputée.—*Ritchie* v. *Walcot*, C. S., Larue, J., 16 avril 1889.

Res Judicata—Discontinuance—Contract of Sale —Arts. 1241 *C. C., and* 451 *C. C. P.*

Held :—1. A judgment maintaining a dilatory exception to an hypothecary action for balance of a price of sale, cannot be invoked as *res judicata* in answer to a personal action brought to recover the same, particularly where circumstances affecting the relations between the parties are alleged to have arisen in the interval between the institution of the two suits;

2. The filing by a plaintiff of a *retraxit* of his action, duly served on the defendant, operates discontinuance of the suit, and it is not necessary that a judgment should be rendered thereon;

3. The failure of the seller to deliver an especially important portion of the property sold, and to intervene, to protect the title given by him, in suits pending to his knowledge between the purchaser and third parties attacking it, is a sufficient ground of refusal by the purchaser to pay the price, until delivery be perfected and the trouble, as to title, arising from the suits, be made to cease.—*Regina* v. *Atkinson*, S. C., Andrews, J., May 4, 1889.

Garantie—Action directe du garanti contre son garant pour frais—Art. 1511 *C.C.*

Jugé :—Le garanti qui n'a pas mis son garant en cause, qui a défendu seul et a été condamné, peut se faire rembourser par son garant, sur action directe, les frais faits jusqu'au moment où il a pu mettre ce dernier en cause, mais il ne peut recouvrer ceux encourus après cette date.—*Gagné dit Belleavance & Hall*, en appel, Dorion, J. C., Tessier, Cross, Bossé, Doherty, JJ., 4 mai 1889.

*Chemin Public—Prescription—*18 *Vict., Cap. C. Sect.* 41.

Jugé :—Pour qu'un chemin reçoive l'application de la 18 Vic., Cap. C., Sec. 41, il faut qu'il ait été en usage pendant au moins dix ans et sans aucune contestation quelconque.

Quære, ce statut est-il resté en force depuis la promulgation du Code Municipal?—*Fortin & Truchon*, en appel, Tessier, Cross, Church, Bossé, Doherty, JJ., 6 déc. 1888.

Règlement Municipal—Promulgation—Art. 697 *C. M.*

Jugé :—La promulgation d'un règlement municipal est censée avoir été suffisamment faite jusqu'à l'allégation du contraire, et la partie qui se contente de répliquer généralement à un plaidoyer fondé sur un règlement qu'on allègue avoir été dûment promulgué, n'est pas reçue à invoquer contre sa partie adverse l'absence de preuve de cette promulgation.—*Bégin & La Corporation de Notre Dame du Sacré Cœur*, en appel, Dorion, J. C., Tessier, Cross, Church, Bossé, JJ., 5 fév. 1889.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 24.

Judicial Abandonments.

Julie Deschênes, *marchande publique*, Montreal, Aug. 22.

Fortin & Morency, St. Léon de Stadon, Aug. 19.

Abel Valin, contractor, Montreal, Aug. 17.

Curators appointed.

Re M. Bonhomme, St. Etienne.—Kent & Turcotte Montreal, joint curator, Aug. 20.

Re Wm. Boutelle and Boutelle & McCurdy.—J. J. Griffith, Sherbrooke, curator, Aug. 20.

Re John G. Darling.—James Steel, Montreal, curator, Aug. 13.

Re Malvina Dubois (F. Arpin & Co.).—C. Desmarteau, Montreal, curator, Aug. 20.

Re Auguste Gendron.—C. Desmarteau, Montreal, curator, Aug. 20.

Re Eusèbe Huet.—C. Desmarteau, Montreal, curator, Aug. 20.

Re Pierre Leonard. — C. Desmarteau, Montreal, curator, Aug. 20.

Re H. Potvin, Ste. Louise.—H. A. Bedard, Quebec, curator, Aug. 19.

Re J.A. Placide Renaud, Drummondville.—Bilodeau & Renaud, Montreal, joint curator, Aug. 21.

Re Peter F. Ronkendorf.—D. H. Loynachan, Montreal, curator, Aug. 7.

Re Soucy & Duperré, saddlers, Quebec. — H. A. Bedard, Quebec, curator, Aug. 20.

Dividends.

Re D. Desjardins.—First and final dividend, payable Sept. 12, C. Desmarteau, Montreal, curator.

Re Gélinas & Paquette.—First and final dividend, payable Sept. 14, T. Gauthier, Montreal, curator.

Re Ferdinand Genest — First and final dividend, payable Sept. 14, T. Gauthier, Montreal, curator.

Re Pierre Leroux.—First and final dividend, payable Sept. 10, C. Desmarteau, Montreal, curator.

Separation as to Property.

Thaïs Boucher vs. Anselme Poulin, trader, Iberville, Aug. 19.

Zanaïde Brisson vs. Dolphis Desjardins, tailor, Montreal, Aug. 2.

Marie Zoé Zéphirine Lalime vs. François Xavier Mayotte, notary, Montreal, Aug. 19.

Separation from bed and board.

Martha Irwin vs. Thomas McCullough, farmer, township of Clifton, Aug. 14.