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LEGISLATION.

The enormous cost of legislation by parliaments is not its greatest drawback. The imperfection of the work may be reduced to a *minimum*, without much difficulty. The great danger consists in the proneness of such bodies to be carried away by hastily conceived opinions. The difficulty in dealing with this is, that the motives which prompt enthusiasm are generally respectable. Philanthropists constantly and it may almost be said, systematically disregard two considerations, which it is important to keep always in mind. First, an abstract truth is not always practically applicable. Second, the surface view is seldom correct. This is impliedly admitted in the familiar expressions: "such and such a view is a superficial one,"—"it does not go to the root of the question."

"Errors, like straws, upon the surface flow:
He who would search for pearls, must dive below."

The bills presented to parliament every session furnish examples which strikingly illustrate this danger. Many of them are strangled by the tactics of those who, having the direct responsibility of results, are interested in stopping bad measures; but some arouse sympathies, and enlist interests, which are not subject to such control. In addition, there is the not unnatural desire to show something done, as a return for the cost of all this machinery. This last snare is quite as great for the dignified pieces as for the pawns.

The present session has not been lacking in the suggestion of perilous legislation. The three bills to which it is intended, now, to direct attention particularly, have met with serious support from members whose influence is not only great, but generally deserved.

The first in the order of date of presentation to the house, is the bill to amend the law of evidence in criminal matters, by making the person charged, and his wife, or her husband, as the case may be, a competent witness on every hearing, at every stage of such charge. The bill provides that the person charged cannot be compelled to be a witness on any such hearing, or the wife or husband, without the consent of the person charged.

No statistics are produced to establish that the law as it stands works injustice. It is pure theory, and two arguments—only two—are urged in support of this fundamental change in the criminal law.

The first is, that the evidence of the accused is admitted as to assaults, and that therefore it should not be refused as to greater offences. There are certain arguments which do not merit a formal refutation, although they may have influence with a certain class. We may say of this one, with Rabelais:—"Ainsi (Antiphysie) * * tiroyt tous les folz et insensez en sa sentence, et estoyt en admiration à toutes gens exceruelez et desguarniz de bon jugement et sens commun."

The other argument is, that although the person charged will not be believed, it is fair to give him the right to swear to his story, as it is *his only chance*. This may be called the sporting argument. Don't shoot a bird sitting, a hare in her form, or a stag at gaze.

It is not intended to answer such trivial arguments, advanced to overwhelm the experience of the civilized world; but there is a consideration which has not been put forward, and it may have weight with those who are not too fatuous to listen to reason.

It is evidently meant, by this proposed law, to confer benefits on the accused. By an amendment to the bill, the member for West Huron admits, that his proffered gifts conceal a real danger. Evidently it is an advantage to the self-confident man, particularly if guilty; it is a manifest disadvantage to a timid one, no matter how innocent. But, to go to the root of the question, the great objection to making a person charged with crime a witness in his own case depends on a dogma of the English criminal law, which assumes that a man should not be compelled to criminate himself, because it would be a violation of the natural right of self-defence. If this be sound as a moral rule, it justifies the false oath, precisely as it justifies the plea of "not guilty," and therefore the solemnity

of the oath is at an end. If this dogma be ill-founded in morals, then it must be admitted that, whether the person charged is allowed to be a witness or not is a mere matter of convenience. In the latter case, however, the French system is infinitely preferable to the disjointed and irrational one proposed here. It is worthy of note, that obviously, by the terms of the bill, and more particularly, by its terms as amended, Mr. Cameron and the majority of the House of Commons never contemplated for an instant upsetting the English idea that a man should not be compelled to criminate himself: on the contrary they re-affirm it.

The bill, "An Act concerning Insolvency,' is a measure with the dangers of which we are familiar. Twice within the last thirty-six years, have laws of this sort been abrogated under a perfect storm of execration and abuse. It was a common joke after the old law was repealed, that there would be no new law on the subject till the insolvent interest became formidable. The authors of the present bill were aware of the suspicions naturally attaching to bankruptcy and insolvency legislation, and to disarm distrust, they have invented the novel device of prefixing a chapter of general remarks on its principles and provisions. There is no objection to a preliminary statement of principles, but the pompous exposition before us advances no principle about which any reasonable man ever had the least doubt. The principle it would have been interesting to have had laid down is as to whether it is intended by the bill to give a protection to the creditor, or a favour to the debtor. On this point the general remarks are ominously reticent. The only defensible principle of legislation as to insolvent estates, is to give the cheapest and most expeditious mode conceivable of paying the creditor what is due to him. It is sometimes said, that if the debtor gives up all his property, he has a right to be discharged from further liability. He has no such right. In giving up what will pay his creditor, he merely surrenders that which is not his. Another argument is, that if there be an insolvent act the creditor knew when he gave credit that the law would probably discharge his debtor if he became insolvent This argument is almost facetious. It would justify the abolition of every civil remedy. But, in any case, if that be the justification, Mr. Billy's bill should not apply to any debt created before its enactment. Such a rider would considerably decrease the enthusiasm in favour of a new "Act respecting Insolvency." Lastly, there is the old argument of the favour to be accorded to trade and commerce, owing to its risk, which no prudence could foresee. Insurance and improved appliances have removed any shadow of reason for this plea, rather specious than real at any time.

An Act respecting the Electoral Franchise contains clauses more profoundly dangerous to society than either of the bills referred to. With his usual amiability, and good taste, the member for Ottawa County has thrown such a halo round the objectionable clauses as nearly to silence their most determined adversary. It is a subject, however, about which there can be no compromise. They are introductory of the greatest revolution ever proposed in the social order. To say that it is to go no further than giving the right to unmarried women to vote is a mere pretext. Every right must follow in the wake to all women, married or single. The next cry will be, "how can you refuse, to the mother of a family the right you grant to every shrewish old maid." There is no honest purpose to be served in disguising the issue. These clauses, if passed, would form a direct and an important step towards destroying the family, by changing the relation of the sexes, and thus overthrowing the headship of the husband. This is in violation of the experience of the world, civilized and uncivilized, in all ages; and it is in directly in opposition to the teaching of the New Testament—particularly if we leave unmodified the interesting and novel doctrine of *l'influence indue*, as preached by the Supreme Court. From the predications of that learned body, let us turn to one of St. Paul's. In the same chapter in which he commands wives to be in subjection unto their husbands, he gives this advice, which should be pondered over by those who have, not so much the privilege of legislating as the responsibility of legislation:

"Let no man deceive you with vain words": neither the accomplished and persuasive Premier, nor yet the genial and tender King of the Gatineau.

R.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 7, 1885.

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

BARRAS (Petitioner in Prohibition), Appellant, and THE CORPORATION OF THE CITY OF QUEBEC, (Defendants below), Respondents.

29 *Vic.*, c. 57, *s.* 29, *ss.* 78—*Navigation of River St. Lawrence—Interference with ice-bridge at Quebec.*

HELD:—1. *That the Legislature of the heretofore Province of Canada had power to authorize the Corporation of Quebec to make by-laws prohibiting under a penalty any interference with the ice-bridge across the River St. Lawrence, or with the ice stopping and forming a bridge, even by a steamer navigating the river.*

2. *That the Recorder of Quebec has jurisdiction to try complaints of violation of the by-law made under the authority above mentioned.*

The appeal was from a judgment of the Superior Court, Casault, J., maintaining a demurrer. The appellant was prosecuted before the Recorder's Court of the City of Quebec, for damaging and breaking up the ice which was forming a bridge near Cap Rouge, the petitioner being the person in command and in charge of a steamboat called the Prince Edward.

Thereupon he petitioned for a writ of prohibition, alleging that in issuing the summons and in calling upon him to defend himself from the above charge, the Recorder's Court was exceeding its jurisdiction. Among other reasons were the following: (3) Because the River St. Lawrence is a navigable river, within the ebb and flow of the tide, upon which all Her Majesty's subjects have a right to navigate at all times and seasons in such manner as they may choose. (4) Because the Corporation of the City of Quebec has no right whatever to pass a by-law pretending to restrict the right of Her Majesty's subjects to freely navigate the River St. Lawrence at all times and seasons as they may choose. (5) Because the only body having a legal power to regulate and control the navigation of the St. Lawrence, near the City of Quebec, is the Quebec Harbour Commissioners, who have passed no by-law creating any such offence as that charged in the summons.

To this petition the Corporation demurred, on the ground that the statute and by-law were valid, and the right of navigation was subject to restrictions lawfully placed thereon.

The Superior Court maintained the demurrer and dismissed the petition, for the following reasons:—

"Considérant que la législature de la ci-devant Province du Canada avait le pouvoir de conférer à la corporation de la cité de Québec, celui de faire des règlements pour défendre, sous peine d'amende, d'empêcher, de quelque manière que ce fût, la glace de s'arrêter et de former un pont sur la fleuve St. Laurent, ou de casser, briser ou endommager le pont déjà formé et arrêté, et que le règlement fait à ce sujet par le Conseil de la dite Corporation, est en tout conforme à la loi;

"Considérant que le Recorder de la cité de Québec avait juridiction pour connaître de la plainte portée contre le requérant, pour violation du dit règlement, et que les moyens de prohibition invoqués par le dit requérant ne sout pas fondés en droit, la défense en droit est maintenue," etc.

This judgment was affirmed in appeal.

RAMSAY, J. (diss.)—This case gives rise to a question of conflict of authority. The Corporation of Quebec has authority of law by its charter (29 Vic., c. 57, s. 29, ss. 78), "To prohibit any person from preventing, in any manner whatever, the ice from stopping and forming a bridge on the River St. Lawrence, from Montmorency river, as far as and comprising the place called *Cap Rouge* on the said river, or from breaking, shattering or damaging in any manner whatsoever, all such ice or ice bridge formed or stopped in the said limits," and to punish by a penalty. It has exercised this power by passing a By-law in the terms of the

statute; and it now seeks to recover the penalty against the appellant, for that he being in command of a steamboat called the "Prince Edward," "did damage the said ice so stopped and formed in a bridge as aforesaid on the said River St. Lawrence, in the manner following, to wit, by then and there causing the said steamboat 'Prince Edward' to ply through the said ice and shatter the said ice so stopped," &c.

Appellant contends that the complaint sets forth that he was navigating a steamer, and that in so doing he shattered the ice, and that this is not within the statute, which does not authorize the Corporation of Quebec to interfere with the navigation, and therefore he seeks to have the Recorder prohibited. This prohibition has been set aside on demurrer. I think the judgment bad. The navigation of the St. Lawrence is provided for by another statute and different arrangements altogether, and the object of the law was not to allow the Corporation of Quebec to interfere with the navigation of the St. Lawrence, but only to prevent people interfering with the solidity of the ice bridge, and in fact the statute cited in support of the jurisdiction does not expressly give the Corporation such power. It will perhaps be said that it is not within the powers of the Corporation to stop navigation, but that whether navigation or not is a matter of evidence and does not affect the jurisdiction which is vested in the Recorder. This distinction might be very good if the complaint had been drawn, so as to disguise the facts complained of. Very properly this has not been done, and the complaint is that a steamer "plying" in the river and through the ice, shattered the ice stopped, &c. I do not for an instant question the right of the Corporation to stop a malicious interference with the ice bridge, which is a means of communication provided by nature, but I think that the principal use of a great navigable river is for the purposes of navigation, and not for the temporary and almost accidental use as a frozen road, or bridge; and at all events, the prohibition should not have been set aside on demurrer, especially in face of the fact that the complaint unexplained, implied that the steamer was navigating the St. Lawrence. I am to reverse and to maintain the prohibition.

The majority of the Court were of opinion that the right of crossing the river on the ice during the winter is a public right, and could not be interfered with by anybody. The ice formed a natural highway, and the protection of it was not an interference with navigation. Further, it did not appear by the complaint that it was for purposes of navigation that the appellant damaged the ice-bridge.

Judgment confirmed.

J. Dunbar, Q.C., for Appellant.
L. G. Baillargé, Q.C., for Respondent.
Pelletier & Chouinard, Counsel.

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*SUPERIOR COURT—MONTREAL.**

Partner — Illegal conversion of partnership funds to pay private debt of partner—Rights of co-partners.—Held, where a partner sent a draft for £1,000 out of the partnership funds for the purpose of paying his own separate debt, that the act was an illegal conversion of the funds, and that the other partners were entitled to attach the money in the hands of the person to whom the draft was transmitted, and to prevent him from applying it to the payment of the separate debt in accordance with the instructions received by him from his principal.—*Hannan et al.* v. *Evans et al., and Butler, T.S.*

Séquestre—Reddition de compte—Contestation—Substitution de procureur.—Jugé, Que l'avocat dans une demande en reddition de compte a mandat pour représenter l'oyant compte sur la contestation de ce compte, lequel ne pourra être contesté par un autre avocat qu'après que ce dernier aura été dûment substitué au premier.—*Poirier* v. *Laberge, et Resther, Ség.*

Acte électoral de Québec—Liste électorale—Devoirs du secrétaire et du maire—Solidarité—Pénalité—Interprétation.—Jugé, 1o. Que le maire d'une municipalité ne peut être poursuivi en recouvrement de la pénalité imposée par l'Acte Electoral de Québec, pour ne pas avoir transmis dans les délais un double de la liste des électeurs au régistrateur, tant que le secrétaire-trésorier n'a pas entièrement

*The above cases will be reported in full in the Montreal Law Reports, 1 S.C.

complété cette liste, la négligence du maire, et partant sa responsabilité, ne commençant qu'à cette complétion.

2o. Que lorsqu'un statut décrète qu'à défaut de remplir certains devoirs, chacune de deux personnes pourra être condamnée à payer une somme de $200 d'amende, on ne peut les poursuivre séparément pour $200 chacune, mais qu'il faut prendre une seule action pour une dette de $200 contre les deux ensemble.—*Berthiaume* v. *Sicotte.*

Billet—Timbres—Garantie—Vice apparent—Etendue de la garantie—Mise en demeure—Frais.—Jugé, Dans une action en garantie:—1o. Que celui qui transporte un billet insuffisamment timbré n'est pas tenu de garantir le porteur, vû que ce défaut est un vice apparent qui ce dernier a pû et dû connaître lorsqu'il a acquis le billet.

2o. Que lorsque le cessionnaire d'un billet promissoire appelle en garantie son cédant sur le plaidoyer de libération d'un des endosseurs, il a droit de demander que le prix d'achat qu'il a payé lui soit remis, et ce qu'il aura reçu d'un autre endosseur ne pourra être compté en déduction, mais, à son tour, il doit offrir de remettre le cédant dans la même position où il était avant le transport.

3o. Que quoique le garant ne puisse répondre à l'action en garantie en alléguant le mal fondé des moyens opposés au garanti, néanmoins lorsque les parties auront lié contestation sur la vérité même de ces moyens, la Cour de Révision ne pourra pour cette raison seule, modifier le jugement rendu en première instance.

4o. Qu'aucune dénonciation n'est requise avant l'action en garantie, la mise en demeure se faisant par l'action même.

5o. Que quoiqu'en Révision, comme en Appel, la question des frais soit secondaire, cependant, lorsqu'elle implique la violation d'un principe, les tribunaux ne doivent pas l'écarter, et, dans ce cas, un jugement pourra être réformé sur ce point seul.—*Lamarche* v. *La Banque Ville Marie.*

Créances non échues—Nantissement de créances—Tierce-opposition—Défense en droit.—Jugé, Que l'on peut validement transporter des créances non-échues, et le transport ne fût-il fait que comme sûreté collatérale, les créanciers du cédant ne peuvent demander à être colloqué au marc la livre.—*De Bellefeuille* v. *Ross et vir, et Stearns et al., T.S.*

Taxes pour construction d'église—Evocation—Droits futurs.—Jugé, Qu'une action réclamant le premier paiement d'une répartition pour la construction d'une église, laquelle répartition est payable en douze versements annuels, ne peut être évoquée à la Cour Supérieure de la Cour de Circuit comme affectant des droit futurs, ce dernier tribunal seul ayant jurisdiction.—*Les Syndics de la Paroisse de Ste. Cunégonde* v. *Coursol et al.*

Saisie-exécution—Licence d'auberge—Contestation—Frais.—Jugé—1o. Qu'une licence pour vendre des boissons énivrantes, n'étant que la preuve écrite d'un droit confié à une personne par l'autorite compétente, et la loi ayant pourvu à un mode spécial de transporter le droit lui-même, le créancier ne peut la saisir en exécution d'un jugement, comme il peut le faire pour les titres mentionnés aux articles 557 et 565 du Code de Procédure Civile.

2o. Qu'un créancier est justifiable de contester une opposition faite par une femme mariée, qui fait le commerce sous le nom de son mari, à une saisie pratiquée contre ce dernier; et que, dans le cas où l'opposition serait maintenue, chaque partie devra payer ses frais, le créancier ayant pu être trompé et croire à la fraude.—*Van de Vliet* v. *Féniou, et Féniou et al.*, oppts.

Action qui tam—Affidavit irrégulier.—Jugé—1o, Que l'absence, la nullité ou l'insuffisance de l'affidavit requis pour intenter une action *qui tam* sont des matiéres d'ordre public, et peuvent être invoquées en tout état de cause, sans être plaidées, le juge devant, s'il était nécessaire, en prendre connaisance *ex officio.*

2o. Que l'affidavit nécessaire pour l'émanation du bref dans une action *qui tam* doit faire apparaître la cause de l'action, il ne suffit pas de référer au chapitre du statut.—*Matte* v. *Davis.*

Rapport d'experts—Homologation—Irrégularités.—Jugé, Que les tribunaux doivant autant que possible accueillir favorablement les rapports d'experts, et ne les rejeter qu'en autant qu'il y a eu des irrégularités et des illégalités de nature à porter préjudice aux parties.—*Cannavan et vir* v. *Bryson es qual.*

Action en dommage—Mineur émancipé—Action pour injures.—Jugé, Qu'un mineur émancipé par mariage peut, sans l'assistance de son curateur, intenter les actions mobilières, et, par suite, poursuivre en dommages pour injures.—*Miller* v. *Cleroux.*

Action en dommage—Femme séparée de biens—Marchande publique—Autorisation — Exception à la forme.—Jugé, Que la femme séparée de biens et marchande publique peut poursuivre en dommages pour des faits relatifs à son commerce sans être autorisée par son mari ou par le juge.—*Methot et al.* v. *Dunn.*

Compensation—Drafts received before insolvency.—Held—1. Where one bank, creditor of another bank for the amount of a note discounted for it, received from the bank indebted to it (then solvent) sundry drafts for collection: that compensation took place in favor of the creditor from the moment of delivery of the drafts, and therefore the latter was not bound to bring back to the estate what it received on account of the drafts after the insolvency of the debtor bank.

2. That compensation did not take place in favor of the creditor for the amount of a draft received from the debtor bank within 30 days before the commencement ot the winding-up order.—*Exchange Bank of Canada* v. *Canadian Bank of Commerce.*

Tutelle—Homologation—Age— Incapacité.—Jugé—1o. Que l'âge peut être une raison pour refuser la tutelle d'un mineur, mais n'est pas une cause d'exclusion.

2o. Que l'incapacité d'un homme, pour être une cause d'exclusion de tutelle, doit être telle qu'elle le rend inapte à conduire ses affaires et celles d'autrui.—*Lebeuf* v. *Daoust.*

Comparution — Signification d'icelle au demandeur.—Jugé, Qu'une comparution dont le demandeur n'a pas reçu copie ou qui ne lui a pas été signifiée est irréguliere; et qu'il sera permis au demandeur sur motion de procéder par défaut, nonobstant la production d'une semblable comparution.—*Pipe* v. *Crevier.*

Chèque— Acceptation— Gérant de banque.—Jugé, Qu'en loi et suivant les usages du commerce, l'acceptation d'un chèque ou d'un autre effet de commerce par un gérant de banque, avec la condition d'en effectuer le paiement à une date subséquente, est légale et dans les limites des pouvoirs d'un tel gérant.—*La Banque du Peuple* v. *La Banque d'Echange.*

Saisie-arrêt—Distraction de Frais.—Jugé.—Que la distraction des frais en faveur des procureurs n'empêche pas la partie qu'ils représentent d'être créancière de la partie condamnée aux dépens, et d'agir contre cette dernière si les procureurs ne le font pas, surtout lorsque ceux-ci ont été préalablement payés par le créancier.—*Bissonette* v. *Dunn, & McDonald, T.S.*

Douaire— Cession— Cessionnaire en cause—Suspension des procédés.—Jugé, Que lorsqu'il appert au dossier que le demandeur a cédé ses droits et n'est que le prête-nom du cessionnaire, le défendeur pourra sur motion faire suspendre tous les procédés jusqu'à ce que le cessionnaire, véritable demandeur, ait été mis en cause.—*Bondy* v. *Valois et al.*

Cour du Recorder—Défense en droit—Certiorari.—Jugé, Qu'un jugement rendu par la Cour du Recorder renvoyant une défense en droit n'est pas susceptible d'appel par *Certiorari.—Beaudry* v. *La Cité de Montreal.*

Dette de la communauté—Usufruitier—Capitaux—Entretien et éducation—Compensation.—Jugé—1o. Que le légataire ou donataire universel en usufruit est tenu personnellement, vis-à-vis des créanciers, des dettes de la succession, même des capitaux, et que la contribution aux dites dettes par les nu-propriétaires dans les proportions fixées par la loi doit être établie entre eux et l'usufruitier, ne

regarde pas les créanciers et n'empêche pas leur recours.

2o. Que le père est tenu en loi à l'entretien et à l'éducation de son enfant, et que ni lui, ni ses représentants ne peuvent opposer les dépenses faites pour ces objets, en compensation à une dette légitimement due à l'enfant. —*Boileau* v. *Seers*.

COUR DE CASSATION (FRANCE).

PARIS, mars 1885.

DIÉNAÏDE v. LES CHEMINS DE FER DE L'ÉTAT.

Transport de marchandises—Itinéraire—Tarif.

Jugé :—Qu'une compagnie de chemin de fer qui reçoit mandat de transporter des marchandises sans que l'expéditeur désigne l'itinéraire à suivre, doit, en principe, les transporter par la voie la plus courte. Il y a pourtant exception dans le cas où l'expéditeur a requis l'application d'un tarif spécial déterminé, ou d'un tarif commun ou même encore celle du tarif le plus réduit, si cette réquisition implique l'emploi d'un itinéraire plus long quoique moins coûteux. Toutefois cette exception elle-même doit se restreindre à de justes limites. Ainsi, elle s'appliquera incontestablement, si la compagnie expéditive, possédant plusieurs tarifs spéciaux plus ou moins réduits avec des itinéraires différents, le transport doit s'effectuer uniquement sur son propre réseau ;

Elle s'appliquera encore en cas de désignation précise d'un tarif commun, entre la compagnie, qui commence le transport, et celle qui doit le continuer ; mais si la marchandise doit emprunter des réseaux de deux ou plusieurs compagnies et que l'expéditeur se borne à requérir l'application du tarif le plus réduit, on ne saurait exiger de la première compagnie, qu'elle recherche parmi les tarifs étrangers à son propre réseau, celui qui procurerait le plus d'économie à l'expéditeur même au prix des lenteurs d'un parcours plus ou moins allongé. C'est, en ce cas, à l'expéditeur lui-même de faire cette recherche et de désigner l'itinéraire qu'il croit devoir être le plus profitable. S'il ne l'a fait, et que la marchandise ait suivi la voie la plus directe, il ne saurait s'en plaindre comme d'une faute de la compagnie ou d'une infraction aux conditions de la lettre de voiture.

(*Rapport de Maître Albert : Chambre Civile de la Cour de Cassation. Journal de Paris.*)

(J.J.B.)

THE INDORSEMENT OF BILLS OF LADING AS SECURITY.

The decision of the House of Lords in the case of *Burdick* v. *Sewell*, 54 Law J. Rep. Q.B. 156, reported in the March number of the Law Journal Reports, puts an end once for all to a discussion which has divided the judges. Mr. Justice Field, at the trial of the action, in an elaborate judgment, held that a person with whom a bill of lading indorsed in blank had been deposited by way of securing an advance was not an 'indorsee to whom the property passed,' that the right of suit and liabilities arising out of the contract were not, under the Bills of Lading Act, 1855, s. 1, vested in him, and that, therefore, he was not liable to the shipowner for the freight. In the Court of Appeal, Lord Justice Bowen agreed with this decision, but the Master of the Rolls and Lord Justice Baggallay dissented from it. The House of Lords consisting of the Lord Chancellor, Lords Blackburn, Bramwell and Fitzgerald, were unanimous in favour of revising the decision of the majority of the Court of Appeal. The decision is, no doubt, in favour of facility in obtaining advances upon the security of bills of lading, as it relieves those who make the advance from the immediate danger of finding themselves with a liability on their hands instead of a security. In this sense it facilitates business, but it must not be taken to have finally disposed of all the questions which may arise. For example, can the depositee of bills under these circumstances give a good title to a purchaser without the concurrence of the depositor and indorser, and has the depositee an insurable interest, to the full amount of the value of the goods? These are questions which may give rise to some litigation in the future.

After the full and minute judgments of the Lord Chancellor and Lord Blackburn, the searching verbal criticism of the section by Lord Bramwell and the unanimous decision of the House of Lords, the only doubt which

lingers in the minds of lawyers arises from the fact of the difference of opinion expressed by the Master of the Rolls, whose opinion on questions of mercantile law, from his vast familiarity with the subject and his great business capacity, is of the greatest weight. The Master of the Rolls in the Court of Appeal did not rest his judgment on any verbal criticism of the section like the difference between 'a property' and 'the property' which commended itself to Lord Bramwell and Lord Justice Bowen, or upon any analysis of the decisions such as that which the Lord Chancellor and Lord Blackburn applied to the case. Still less was there good foundation for Lord Bramwell's surprise 'at the contention of the Master of the Rolls, as he has always so ably and powerfully contended that mercantile laws, contracts, and usages should be as free as possible from technicality.' It would not be very difficult to show that the opinion of the Master of the Rolls was due to this feeling, but that the decision of the House of Lords has the effect, to some extent at least, of introducing technicality. The view adopted by the Master of the Rolls had, at all events, its own simplicity. It gave the indorsee of a bill of lading a clear position, and enabled him, if necessary, to pass on a good title to a third person, and prevented the necessity of any inquiry being made upon the transfer of a bill of lading, whether the transferor had bought the goods or had only lent money on them. It may be that the balance of convenience lies in favour of the decision of the House of Lords, but more confidence would be felt in this decision if it had more fully dealt with the inconveniences pointed out by the Master of the Rolls. In fact, the reader will rise from the perusal of the opinions delivered with somewhat vague notions as to the precise position of the depositee. Mr. Justice Field and Lord Justice Bowen were of opinion that he is a pledgee, and Lord Blackburn, Lord Bramwell, and Lord Fitzgerald seem to adopt this view. The Lord Chancellor, however, makes him a pledgee and something more. He says that 'the indorsee, by way of security, although not having the property passed to him absolutely by the indorsement and delivery of the bill of lading when the goods are at sea, has a title by means of which he is enabled to take the position of full proprietor upon himself, with its corresponding burdens, if he thinks fit.' If so, is he not rather a mortgagee with power to take possession than a pledgee?

It may well be that the weight of the inconveniences to the indorsee by way of security arising from the anomalous position now given him is less than the obstruction to business which would arise by making him liable to pay freight, because the position is generally quiescent. He has the bills of lading, and he has the insurance on the goods, and if the ship goes to the bottom he obtains the amount of his advance from the insurers. If the ship and goods arrive safely, the borrower in ordinary course redeems the bill of lading and deals with the goods as he pleases. Suppose, however, the value of the goods has gone down below the sum advanced, and the borrower leaves the lender to do as he pleases, and will not help. Then, if the Lord Chancellor be right, he can convert himself into full proprietor; but if it be true that he is a pledgee he can give no title, and has no power of sale, at all events without applying to a Court of law. The decision, therefore, is not in all its aspects favourable to the lender. Perhaps the inconvenience which may arise is a small matter not of frequent occurrence, but it would be as well if the House of Lords had more fully considered its bearing in the interpretation of the section.—*Law Journal* (London.)

RECENT ONTARIO DECISIONS.

Patent of Invention—35 *Vict.* (*Can.*), *C.* 26—*Delivery of Model.*—*Held*, that 35 Vict. (Can.), ch. 26, does not require delivery of a model prior to the issue of a patent of invention. In this case, after the granting of the patent, the commissioner wrote to the applicant that the patent had been granted, and that it would be forwarded on receipt of the model, which was sent, and the patent was then forwarded. *Semble*, that delivery of the model prior to the grant of the patent was dispensed with, merely requiring it to be sent before the patent could be forwarded.—*Regina* v. *Smith*, Queen's Bench Division.—21 C.L.J.