The Legal News.

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SEIZURE OF IMMOVABLES.

The judgment in *Corbeil* v. *Charbonneau*, noted in the last volume of the Legal News, p. 381, has been reversed by the Court of Review. The question was whether immovables could be seized under a writ of *saisie-arrêt avant jugement*. The Court of Revision holds that the words *biens et effets*, employed in Art. 834 of the Code of Procedure, do not include immovables.

MENTAL SUFFERING AS AN ELEMENT OF DAMAGES.

In a recent issue of the *Albany Law Journal*, a number of authorities are collated on a point of considerable interest, viz., the appreciation of mental suffering as an element of damages in actions of negligence. "There can be no doubt," says the writer, "that mental suffering forms a proper element of damage in actions for intentional and wilful wrong, and in actions of negligence resulting in bodily injury; but whether it forms an independent ground of action, disconnected from these facts, is more doubtful.

"In *Sorelle* v. *Western Union Tel. Co.*, Texas Commission of Appeals, June 14, 1881, 4 Tex. L. J. 747, it was held that injury to feelings resulting from disappointment and grief at not being present at a relative's funeral, caused by neglect of a telegraph company in failing to deliver a message, constitutes general damages. In this case the message showed on its face the nature of the summons. The court said: 'It appears to us that the natural consequence of a failure to promptly transmit and deliver a message like that in this case, and under the circumstances shown in appellant's petition, is to produce the keenest sense of grief incident to a sad disappointment. For it is a principle of our nature, implanted in the bosom of every reasonable being, not devoid of human sensibilities, to promptly pay the last tribute of respect to the mother who bore and fostered us; and to be thwarted in the discharge of this duty, prompted as it is by natural desire, by the willful fault or neglect of one whose business it is to communicate the news, and who has received his compensation therefor, in the very nature of things, is calculated to, and will, inflict upon the mind the sorest sense of disappointment and sorrow.'

"In Shearm. & Redf. on Neg., in speaking of telegraphs, it is said: 'Delay in the announcement of a death, an arrival, the straying or recovery of a child, and the like, may often be productive of an injury to the feelings, which cannot be easily estimated in money, but for which a jury should be at liberty to award fair damages.'

"But in *Wyman* v. *Leavitt*, Maine Supreme Court, 23 Alb. L. J. 253, it was held that anxiety in respect to one's personal safety is not a proper ingredient of damages in an action of negligence for an injury caused to property alone by blasting. The court there said: 'We have been unable to find any decided case which holds that mental suffering alone, unattended by any injury to the person, caused by simple actionable negligence, can sustain an action.' 'If the law were otherwise, it would seem that not only every passenger on a train that was personally injured, but every one that was frightened by a collision or by the train's leaving the track, could maintain an action against the company.' In the principal case two Texas cases are cited as authority, but in both of them there was injury to the person. *Canning* v. *Williamstown*, 1 Cush. 451; *Lynch* v. *Knight*, 9 H.L. 598; *Johnson* v. *Wells*, 6 Nev. 224; S.C., 3 Am. Rep. 245, seem opposed to the doctrine of the principal case. *Canning* v. *Williamstown*, however, was founded on a statute providing only for injury to the person, and *Johnson* v. *Wells* seems overruled in *Quigley* v. *Railroad*, 11 id. 350.

"Mr. Wood says in a note, in his edition of Mayne on Damages, p. 74: 'We do not apprehend that the rule has any such force as to enable a person to maintain an action when the only injury is mental suffering, as might be thought from a loose reading of loose dicta and statements of the courts in some of the cases. So far as I have been able to ascertain the force of the rule, the mental suffering referred to is that which grows out of the sense of peril, or the mental agony at the time of the accident, and that which is incident to and blended with

the bodily pain incident to the injury, and the apprehension and anxiety thereby induced. In no case has it ever been held that mental anguish alone, unaccompanied by an injury to the person, afforded a ground of action.' Mr. Sedgwick seems to take the same ground. Meas. Dam. 544, note; and app. 551, he says: 'It is evident that the injury here becomes of a very metaphysical character.' Shearman & Redfield say, in their work on Negligence, § 606 *b*: 'The mental suffering which may be allowed for is only such as arises from the plaintiff's reflections upon what he personally has to endure, or anxiety for his escape.'

"In *Logan* v. *Western Union Tel. Co.*, 84 Ill. 468, an action by a father against a telegraph company, for negligence in failing to deliver a telegram sent by him to his son summoning the son home to the death-bed of his mother, it was held that the plaintiff was entitled to recover at least nominal damages, including the the price paid the company to send the dispatch. Nothing beyond this was considered.

"Judge Thompson says (Carriers of Passengers, 571): 'Whether mental anguish caused neither by fear nor bodily injury—such for example, as arises from the indignity of ejection from a train without violence—is an element of compensatory damages, is a question upon which the authorities are not quite fully agreed.' 'That injuries done can have no adequate redress in money, or that damages may be difficult of estimation, is no reason why pecuniary relief may not be granted as a compensation.' But this line of cases is different from those of negligence, because in them the act complained of is intentional, although without bodily injury; and besides, there is a physical constraint which amounts to assault or trespass.

"The case of *DeMay* v. *Roberts*, *ante*, 23, is distinguishable from the principal case, perhaps, because although there was no intentional injury, and the injury was wholly to the feelings, yet there was an intentional act, namely, the entry into the house, which under the circumstances was a trespass.

"In the principal case the court added the following judicious warning: 'It should be remarked that great caution ought to be observed in the trial of cases like this, as it will be so easy and natural to confound the corroding grief occasioned by the loss of the parent or other relative, with the disappointment and regret occasioned by the fault or neglect of the company, for it is only the latter for which a recovery may be had, and the attention of juries might well be called to that fact.' This shows the danger of the holding. It is difficult to draw the line between the grief of bereaved affection and the disappointment occasioned by not being able to attend the funeral."

APPOINTMENTS.

The last issue of the *Canada Gazette* contains the names of twenty-three gentlemen, all of Ontario, appointed by the Deputy of the Governor General, to be Her Majesty's counsel. The following is the list: Richard Martin, Hamilton; Samuel Smith McDonell, Windsor; Hon. Alexander Morris, Toronto; Allen R. Dougall, Belleville; John Charles Rykert, St. Catherines; John Creasor, Owen Sound; Samuel Jonathan Lane, Owen Sound; Thomas Wardlaw Taylor, Toronto; George D'Arcy Boulton, Toronto; Henry Burkett Beard, Woodstock; Byron Moffatt Britton, Kingston; William Lount, Barrie; William H. R. Allison, Picton; Robert Smith, Stratford; Hon. William McDougall, C.B., Ottawa; James Kirkpatrick Kerr, Toronto; Thomas Deacon, Pembroke; Alexander Shaw, Walkerton; George Dean Dickson, Belleville; John McIntyre, Kingston; Adam Hudspeth, Lindsay; John Edward Rose, Toronto; Charles Moss, Toronto.

BREACH OF PROMISE.

[Concluded from p. 268.]

4. *Promises to Marry, as affected by the Statute of Frauds.*—Treating promises to marry like all other contracts, we find old authorities assuming that, where the contract is not to be performed within a year, it is void under the Statute of Frauds unless expressed in writing. Thus, if A., in January, 1880, promises to marry B. in February, 1881, B. cannot feel sure that the engagement binds, unless the promise is put in black and white.

But the latest cases incline to construe the statute so as not to affect promises to marry, but promises in consideration of marriage, such as marriage settlements. Where A. promises to marry B. within thirteen months, two years, etc., such a promise does not come under the

statute at all, for it is capable of being performed within a year, and that is enough. An agreement to marry may commonly be regarded as a continuing contract by mutual consent, and hence, unaffected by the statute.

5. *At what Time a Promise to Marry may be regarded as broken*—If a person engaged to marry B., marries C. instead, such party puts it out of his or her power to fulfill the former engagement, and B. may sue at once for breach of promise. If, again, the wedding with B. was fixed for a certain day, and A. inexcusably fails to appear, B., who was ready, may treat the contract as broken. And modern precedents, moreover, both in England and the United States, favor the rule, that a breach of contract arises upon a positive refusal to perform, although the time specified for performance has not yet arrived. Hence, where parties had engaged to marry "in the fall," fixing no day, and the man, in October, announced his determination not to perform the contract, it was held that the woman might bring her action immediately.

But, on principle, some tender should precede all such common-law suits; and the plaintiff (due allowance being made for the natural modesty of the sex) ought to allege and prove an offer and refusal. Readiness, however, is held to be enough on a woman's part, since it is for the man *ducere uxorem*.

6. *Rescission of a Contract to Marry*—A mutual release from a marriage engagement is the true way for parties to get rid of it. They who enter into such a promise mutually, have mutually the power to rescind. But such a release must have been fairly and honorably procured, in order to avail the party who sets it up. The man or woman who breaks off an engagement discharges the other party; but the latter has the option of treating this as a breach, and making it the foundation of a suit for damages. The reasons upon which the defendant seeks to justify breaking it off, may, however, be shown, in mitigation of damages. Release of the promise, like the promise itself, may usually be by word of mouth.

7. *When Promises to Marry are against Public Policy.*— If there is any one thing that a woman clearly understands, it is that a man who is already married is not at liberty to take her to wife. The thought of making a marriage under such circumstances is a moral sin, while the passionate compact to do so, when opportunity shall occur, not only places the promising parties in a most perilous relation towards one another, but doubly exposes the conjugal party, whose rights obstruct their inclination, to wanton and wicked sacrifice. And yet, so blind is jealousy, or the guilty passion, that we find woman, in two States, fighting her way to the tribunal of last resort, quite recently, for the purpose of compelling a fickle man to pay damages, who had agreed, when married, to marry the plaintiff as soon as death or divorce should rid him of his wife. It is well that in both these States (New Jersey and Illinois) the agreement was pronounced contrary to public policy, and void. (*Noice* v. *Brown*, 39 N.J.L. 228; *Paddock* v. *Robinson*, 63 Ill. 99.)

But guilty complicity is what excludes the plaintiff, and, hence, one may doubtless sue for breach of promise, if ignorant, at the time of the engagement, that the defendant was already married. In Tennessee, this reservation has been indulged to a grave latitude. A married man courted a young woman, who supposed him single, offering himself by letter. She accepted in form; whereupon he confided to her at once, in his next epistle, that he had a wife then living, from whom he expected to procure a divorce, on getting certain papers passed. Instead of repudiating the contract, inquiring into the affair for herself, or keeping in reserve, as a woman should, she encouraged his love, pressing him fervently to hurry up those papers. He could not procure the divorce, because he had no grounds for one, and then she sued him for his breach of promise. The plaintiff was an intelligent and well-educated person. And yet it was held that, not being *in pari delicto*, she could maintain her action upon the offer she had accepted while supposing him single, and that her subsequent knowledge of his marriage could only be set up in diminution of damages.

No action can be maintained for breach of a promise of marriage, made in consideration of illicit sexual intercourse between the parties.

On the whole, we may question whether this right to sue for breach of promise of marriage is not productive of more evil than good. It is admitted that only one sex makes practical use of such a remedy, though its logical appli-

cation should be mutual; and of that sex, moreover, but few of the finer-grained. It is admitted, too, that the marriage state ought not to be lightly entered into; that it involves the profoundest interests of human life, transmitting its complex influences direct to posterity, and invading the happiness of parents and near kindred; that the step, once taken, is well nigh irrevocable. From such a standpoint, we view the marriage engagement as a period of probation, so to speak, for both parties—their opportunity for finding one another out; and if that probation results in developing incompatibility of tastes and temperament, coldness, suspicion, an incurable repugnance of one to the other, though all this may impute no vice to either, nor afford matter for judicial demonstration, duty requires that the match be broken off. What, then, shall be the consequence to the party who takes the initiative? Analyze our reported breach of promise cases, and you will see that the fair plaintiff is frail on the point most essential to womanly self-respect, in the majority of instances: that she has unwisely granted to her lover the indulgences of a husband, or that she was a soiled dove when he offered himself, or, more brazen still, that she had been loose with other men, while plighted in affection. That the man's virtue, in such cases, will usually bear comparison, we need not contend, since, in practice, it is not he that invites litigation. In the interests of morality, then, and for the sake of compensating the innocent few, who complete this record, and whose vows, moreover, were made in a befitting spirit, should so much festering corruption be yearly exposed to a jesting community, under the misnomer of a blighted affection? Are the fallen victims to passion to represent the victims of exalted love? Courts have found it necessary of late to insist, emphatically, that a man is not bound by a contract to marry a lewd woman, which he entered into in ignorance of her character. This stricture, however, by no means debars all the lewd women from suing for breach of promise, nor even all the impenitent. And, however honorably one may have acquitted himself of an imprudent engagement, before its consummation, the right which is conceded him by law, of showing a justification by way of mitigating damages, does not cover the case; for, letting alone the difficulty of proof, most men would rather pay hush-money than have the whole story of a love-folly trumpeted in the newspapers.

Seduction furnishes another and, properly speaking, quite a distinct case from the loss of a marriage opportunity. For this offence, so revolting to every instinct of manly honor, a moral and physical wrong renders it proper that the victim should have some right of action. But, instead of taking seduction as the time-honored appendage to breach of promise, and other collateral suits, it seems fitter, as some of our States now provide by law, to make seduction a distinct and independent ground for action. Where, too, a man, whether under promise to marry or not, gets a woman with child, she should have some sort of legal recourse, for the child's sake, if not her own. In this latter case, and, indeed, in the former, a criminal magistrate will feel that the law does its best, when, by a judicious exercise of influence, he can prevail upon the guilty pair to unite in marriage; for thus the lesser scandal is permitted, in order to avoid the greater.—*James Schouler in Southern Law Review.*

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Nov. 30, 1880.

RAINVILLE, PAPINEAU, LAFRAMBOISE, JJ.

DUPUY v. MCCLANAGHAN.

[From S. C., Montreal.

Rent paid in advance—Rights of hypothecary creditor.

A tenant, who in good faith has paid rent in advance to the proprietor, his lessor, cannot be compelled to pay the rent a second time in the event of the insolvency of the lessor before the expiration of the term so paid for in advance, and the proceeds of the property being insufficient to pay the hypothecary creditor in full.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Jetté, J., June 30, 1880. (See 3 Legal News, p. 340).

The judgment in Review was as follows:—

"La cour....

"Considérant que le loyer réclamé par le demandeur pour le bénéfice des dits créanciers appartenait aux créanciers chirographaires et à la masse de la faillite;

"Considérant que le failli avait le droit de se faire payer le dit loyer d'avance, au moins jusqu'à la date de la vente de l'immeuble par le syndic, et que tel paiement liait les créanciers du dit failli, à moins qu'il n'y eût fraude ;

"Considérant que les créanciers hypothécaires n'ont aucun privilége sur les loyers perçus par le syndic jusqu'à la vente ;

"Considérant qu'il y a erreur dans le dit jugement du 30 de juin 1880, infirme et annule le dit jugement, et procédant à rendre celui qu'aurait dû rendre la dite cour en cette instance, maintient l'exception du défendeur, et déboute le demandeur ès qualité de son action, avec dépens," etc.

Judgment reversed.

Abbott, Tait, Wotherspoon & Abbott, for plaintiff.
Doherty & Doherty, for defendant.

COURT OF REVIEW.

MONTREAL, April 29, 1881.

TORRANCE, PAPINEAU, JETTE, JJ.

[From S.C., Montreal.

CORBEIL et al. v. CHARBONNEAU et vir, and MARTINEAU et al., T.S.

Saisie-arrêt before judgment—Immoveable—C. C. P. 834.

The immoveables of the debtor cannot be legally seized under a writ of saisie-arrêt before judgment.

The judgments inscribed in Review were two: one rendered by the Superior Court, Rainville, J., Nov. 19, 1880 (see 3 Legal News, p. 381), and the second rendered by the same Court, Johnson, J., Jan. 31, 1881 (see 4 Legal News, p. 60).

The judgment in Review was as follows :—

"La cour, etc....

"Considérant qu'en pratique la saisie avant jugement des immeubles réels n'a jamais été en usage dans la jurisprudence française telle qu'introduite et suivi dans cette province ;

"Considérant de plus que la loi statutaire et le code de procédure civile n'ont pas autorisé la saisie avant jugement des immeubles réels dans cette province ;

"Considérant par conséquent qu'il y a erreur dans les sus-dits jugements du 19 de Novembre 1880, et du 31 de janvier 1881, en autant qu'ils ont rejeté la requête de la défenderesse demandant la nullité de la saisie faite de l'immeuble en cette instance ; casse et annule les dits deux jugements, et procédant à rendre le jugement que la dite cour supérieure aurait dû rendre sur ce point, maintient la dite requête de la défenderesse en autant qu'elle demande la nullité de la saisie du dit immeuble, et déclare en conséquence la saisie avant jugement du dit immeuble pratiquée en cette cause nulle et de nul effet, et en donné mainlevée à la défenderesse, avec les dépens de la dite requête devant la cour supérieure et les dépens de la présente révision contre les demandeurs contestants," etc.

Judgment reversed.

Dalbec, for the plaintiffs.
Loranger, Loranger & Beaudin, for the defendants.

COURT OF REVIEW.

MONTREAL, April 29, 1881.

SICOTTE, J., RAINVILLE, J., BUCHANAN, J.

GAGNON v. LALONDE.

Interlocutory Judgment—Review.

A judgment on a petition to be appointed judicial guardian is not susceptible of revision.

The judgment in Review was as follows :—

"La Cour....

"Considérant que le jugement dont on demande la révision est un jugement interlocutoire rendu sur une requête faite pour obtenir que le défendeur soit nommé gardien judiciaire des biens saisis suivant l'art. 204 du C.C. et 987 du Code de procédure, et que d'après l'article 494, tel qu'amendé par les différents actes de la législature de Québec, il n'y a pas révision de tel jugement : cette cour renvoie l'inscription en cette cause, chaque partie payant ses frais en autant qu'il s'agit d'une action en séparation de corps et de biens.

Loranger & Co. for plaintiff.
A. Mathieu for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 26, 1881.

DORION, C. J., MONK, RAMSAY, CROSS and BABY, JJ.

THE MUNICIPALITY OF CLEVELAND et al. (plffs. below), Appellants, and THE MUNICIPALITY OF MELBOURNE AND BROMPTON GORE, (intervenants below), Respondents.

Toll bridge—32 Vict. c. 15, (Quebec).

An Act of the Local Legislature authorizing the Lieutenant-Governor to forfeit the right of exacting tolls on a toll bridge, (for default to make repairs), and to transfer the property to others, is not ultra vires.

The action was brought in the Court below by the appellants, three corporations, viz., the municipality of the township of Cleveland, the municipality of the village of Richmond, and the municipality of the village of Melbourne, against one Holmes, their tenant, and his sureties, for $144.16, being one month's rent of the tolls and toll house of the toll bridge across the St. Francis River, between the villages of Richmond and Melbourne.

The respondents, the Township of Melbourne and Brompton Gore, intervened, claiming to be owners of one undivided half interest in the bridge, and they put in issue the appellants' title and possession of the bridge in question. The bridge had been granted to the municipalities of Melbourne and Cleveland, but subsequently requiring repairs, the grant was revoked by the provincial executive, and a grant made to the appellants, who undertook to make the necessary repairs. The Court below, (Circuit Court, St. Francis, Doherty, J.) maintained the intervention, on the ground that the order in Council was *ultra vires*.

RAMSAY, J. The first question that is raised on this appeal, is as to the nature of the title conveyed by the order in Council, of the 21st November, 1857, to the then municipal Councils of the townships of Cleveland and Melbourne, as then constituted, *auteurs* of the parties now appellants and respondents.

On reference to the sections of the statute, under the authority of which this order in Council was passed, (12 Vic., cap. 5, sects. 12 and 13), it appears evident that the government of the then Province of Canada had full power to alienate completely, and without any restriction whatever, in favour of any district or municipal Council, or other local authority or company, any public roads, harbors, bridges or public buildings. The words of the statute are "to grant (and by so granting to transfer and convey)." The crown could of course limit the estate so conveyed, but whatever right was so conveyed became the property of the grantee, and this grant could not be revoked without the consent of the grantee "attested by signature or seal, or both, as would be sufficient to make any deed or agreement, the deed or agreement of such grantee." (Sec. 13.)

In the order of Council, granting this bridge to the councils of the townships of Cleveland and Melbourne, it does not appear that there was any right reserved by the Provincial government to revoke this particular grant, and indeed no such pretension is put forth. It was, however, contended at the argument that the crown had a right to take any property for public uses; that it had, therefore, the right to resume the possession of this bridge without process of law, and that the local government, inheriting this right, might enter upon any property and take possession of it, of its own authority. The Court disposed of this proposition at the argument, and it is unnecessary to refer to it again.

The question in dispute between the parties really turns on the action of the local government of Quebec, under the terms of the 32 Vic., c. 15, Sec. 190.

By that act it is provided that the commissioner of public works, may make or cause to be made a report of the state of any toll bridge, and he may on any such report, order the bridge to be repaired within a certain time, and if it be not so repaired, then the proprietor of the bridge shall forfeit the right of exacting tolls, for passage on the bridge and all other privileges conferred upon him by the act respecting such bridge. Then sub-section 5 continues that "from the day of the publication of such proclamation, the bridge mentioned therein shall become the property of the Province, and the Lieutenant-Governor in Council may transfer the property therein and the control thereof, either to the municipality in which the same is situate, or to any other neighboring municipality, together with all the rights and privileges which the former proprietor thereof enjoyed, and upon such transferee becoming bound to perform upon such bridge the work ordered by the commissioner, and to keep the same for the future in good repair."

It is contended by respondents that this Act only applies to toll-bridges forming part of the public works of the Province, that a local Act cannot deprive a person of his property without process of law, and that this Act cannot affect the bridge in question, as it falls under the control of the Dominion Parliament. The legisla-

tion in question is perhaps of very questionable policy, but it is not the province of the courts to guide the policy of the legislature. They may consider the reason of a law to interpret its doubful provisions, or to give effect to the manifest intentions of the legislator, but they have no right to suspend the operation of an act clearly expressed.

In this case I cannot think there is any ambiguity in the language of the statute. It applies to "any toll-bridge," and it specially refers to toll-bridges the property of which is not vested in the government of the province. In sub-section 3, we find that by proclamation the bridge may be declared to be closed, "and the proprietor thereof to have forfeited the privilege of exacting tolls for passage over the same, together with all other privileges conferred upon him by the act respecting such bridge." And again in sub-section 5, we have it enacted that "From the day of the publication of such proclamation, the bridge mentioned therein shall become the *property* of the Province," etc. It was not then a public work in the sense of a Provincial work, before that. It was treated of as a public work because it was a work the owner of which had special privileges, because of its being a work for the public use.

I don't think any legislature has the *right* to deprive a person of his property, but by the theory of the constitution it has the *power*. In a word, it is assumed that the legislature is the judge of the morality of its own legislation.

It seems to me that this bridge and the rights conveyed by the order in council are "property in the Province," in fact it is the starting point of the respondents' argument, that the statute is an interference with vested rights of property. Again it is property held by a municipal institution in the Province. Further it is a matter of a merely local nature. And lastly, I don't see anything in the enumeration of the legislative powers of Parliament to except the toll-bridges belonging to municipalities from the control of the local legislatures.

A technical point was raised by appellants that the grant was to the councils of the municipalities of Cleveland and Melbourne, and that the intervening parties have no interest in the contest, that even if they represent the municipality of the township of Melbourne they don't represent the council. There is nothing in that. The grant to the council was in compliance with the terms of the 12 Vic., and it was a grant to the council which only existed as the agent or representative of the municipality.

The judgment is reversed.

The judgment in appeal is as follows:

"The court, etc.

"Considering that under the provisions of the statute of the Province of Quebec, of the 32nd year of the Queen's reign, ch. 15, it is in effect provided that the commissioner of public works may make or cause to be made a report of the state of any toll-bridge, and that he may, on any such report, order the bridge to be repaired within a certain time, and if it be not so repaired, then the proprietor of the bridge shall forfeit the right of exacting tolls for passage on the bridge, and all other privileges conferred upon him by the act respecting such bridge. And whereas it is further provided by the said act that, 'from the day of the publication of such proclamation, the bridge mentioned therein shall become the property of the 'Province, and the Lieutenant-Governor in 'council may transfer the property therein, and 'the control thereof, either to the municipality 'in which the same is situate, or to any other 'neighboring municipality, together with all 'the rights and privileges which the former 'proprietor thereof enjoyed, upon such transferee 'becoming bound to perform upon such bridge 'the work ordered by the commissioners, and 'to keep the same for the future in good repair.'

"Considering that the action in this cause refers to a toll-bridge, within the Province of Quebec;

"Considering that the Lieutenant-Governor of the Province of Quebec in Council has, by the authority conferred on him by the said statute transferred the property of the said bridge and the control thereof to the appellants;

"Considering that the said act only affects property and civil rights in the Province of Quebec;

"Considering that there is error in the judgment rendered by the Circuit Court sitting at Sherbrooke in the district of St. Francis, on the 13th of December, 1879, doth set aside the said judgment, and proceeding to render the judgment which the said Circuit Court should have rendered, doth dismiss the intervention of the said respondents with costs

on the intervention in Court below, and costs of this appeal."

Judgment reversed.

Ives, Brown & Merry for appellants.
Hall, White & Panneton for respondents.

RECENT DECISIONS AT QUEBEC.

Justices of the Peace—Jurisdiction.—Le plaignant poursuit les défendeurs pour avoir illégalement et malicieusement coupé du bois sur sa propriété, et en contravention aux dispositions de la sect. 26 du statut 32-33 Vic., ch. 22. Les défendeurs plaident non-coupables, ajoutant que comme membres de la tribu des Hurons dont forme aussi partie le plaignant, ils ont droit de couper du bois sur la propriété de ce dernier. Ils ne produisent aucun titre qui mentionne ce droit ou qui y réfère en aucune manière.

Jugé.—Que ce tribunal (Sessions de la Paix), a droit d'entrer dans la preuve de propriété pour s'enquérir si la défense est faite *bonâ fide.*—*Picard* v. *Groslouis et al.*, (Chauveau, J. S. P.) 7 Q.L.R. 131.

Saisie-Arrêt—Jurisdiction—Contestation of declaration of tiers-saisi.—La contestation de la déclaration du tiers-saisi est une instance séparée et distincte de celle sur laquelle a été prononcé le jugement que la saisie-arrêt exécute, et lorsque cette contestation demande contre le tiers-saisi une condamnation au paiement d'une somme dont le montant, formé du capital, des intérêts et des frais dus au saisissant, excède la juridiction de la Cour de Circuit, elle doit être renvoyée à la Cour Supérieure.—*Wright* v. *Corp. de Stoneham et Tewkesbury*, et *McKee*, T. S., (S. C., Casault, J.), 7 Q.L.R. 133.

Officers of Courts of Justice—Litigious debt—Nullity.—1. La défense que fait l'art. 1485 C.C. aux officiers attachés aux tribunaux, d'acquérir des droits litigieux qui sont de la compétence du tribunal dans le ressort duquel ils exercent leurs fonctions, est d'ordre public, et crée une nullité qui doit être proposée, mais qui n'a pas besoin d'être demandée par des conclusions spéciales.—*Coté* v. *Haughey*, (Court of Review), 7 Q.L.R. 142.

2. L'achat d'une dette qui a été payée mais dont il n'y a pas de quittance est, pour l'acquéreur qui a été informé du paiement, celui d'une dette litigieuse.—*Ib.*

3. La preuve testimoniale du paiement, quoiqu'insuffisante pour établir l'extinction d'une dette excédant $50, suffit pour en déterminer le caractère litigieux.—*Ib.*

Registration—Seizure.—The seizure of real estate does not prevent the effectual registration of a deed executed before the seizure.—*Drouin* v. *Hallé & Langlois*, opposant, (Superior Court, Meredith, C. J.), 7 Q.L.R. 146.

Legacy, Revocation of—Reddition de compte—Curator.—The testator by his will in 1833, bequeathed to some of his children certain seigniories. Out of the proceeds he paid his debts, and invested the balance.

Held, 1. That under the old law the sale by the testator of the seigniories which were the subject of the legacy in question in this cause, had not, considering the circumstances under which it was made, the effect of defeating that legacy.

2. That the curator to a vacant estate sued *en reddition de compte* could not, under the circumstances, pray for the dismissal of the plaintiff's action on the ground that another similar case, still pending, had been previously instituted against him by another of the interested parties.—*Fraser* v. *Pouliot et al.*, (Superior Court, Meredith, C. J.,) 7 Q.L.R. 149.

RECENT UNITED STATES DECISIONS.

Fire policy.—Notice of loss.—Waiver.—1. Notice to the local agent of a fire company by whom the insurance was effected, in a few days after such loss, and by him communicated immediately to the company, satisfies the requirement of the policy that persons sustaining loss should "forthwith" give notice thereof to the company. (2) Where, shortly after the fire, the adjuster of the company visits the scene of the casualty, inspects the premises and makes a (declined) offer of compromise, and afterward the company furnishes to the assured blank proofs of loss, which are filled up in the presence of its officers, it is not error to leave it to the jury to infer, in the exercise of their best judgment, a waiver of strict proof of loss. Collins v. Ins. Co., and Willis v. Ins. Co., 79 N. C. 279, 285, cited and approved. (North Carolina Sup. Ct., Jan. 1881.) *Argall* v. *Old North Star Ins. Co.*, 84 N. C., 355.

False pretence.—What necessary to constitute.—To sustain an indictment under the statute for obtaining goods by false pretence, there must be a false representation of a subsisting fact, etc. State v. Phifer, 65 N. C. 321. The statement of an opinion, even if false, will not sustain such an indictment. To say that the eyes of a horse are sound is merely the expression of an *opinion*, but to say "that there never has been anything the matter with the eyes of the horse," is the statement of a *fact*, which if false is within the statute and indictable. North Carolina Sup. Ct., January, 1881. *State of North Carolina* v. *Hiffner*. (84 N. C. 751.)