The Legal News.

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APPEAL BUSINESS.

The statistics of the business before the Court of Queen's Bench sitting in appeal, for the year 1880, contain some figures of interest. It appears that the total number of appeals in civil matters during the year for the District of Montreal was 150, of which 148 were from judgments of the Superior Court, and 2 from judgments of the Circuit Court. The districts from which the appeals came are as follows:—Montreal 122; Ottawa 7; St. Francis 9; Richelieu 3; Bedford 4; St. Hyacinthe 3; Iberville 2. There were also 3 criminal cases. The number of judgments rendered in 1880 was 116; 87 confirmed and 29 reversed.

At Quebec the total number of judgments rendered was 69; 45 being confirmations and 24 reversals.

The following table shows the totals:—

Civil Cases, Montreal.

S. C.	Confirmed	85
	Reversed	26
C. C.	Confirmed	2
	Reversed	3
	Total	116

Civil Cases, Quebec.

S. C.	Confirmed	40
	Reversed	22
C. C.	Confirmed	5
	Reversed	2
	Total	69

Criminal Cases, Montreal.

Confirmed 3

Criminal Cases, Quebec.

Confirmed 1

Under the head of judgments confirmed are included all cases where the judgment is reformed without the respondent being condemned to pay costs; and under judgments reversed are included reversals of decisions in Review, though the original judgment is restored.

We will give in another issue an alphabetical table of all the judgments rendered in the District of Montreal during 1880, with the result.

RIGHTS OF LESSEES.

An interesting question relating to the rights of lessees, where the premises leased are sold by sheriff's sale during the term of the lease, has recently been much discussed before the Superior Court. Two decisions on the subject have been rendered by the same judge. In *Desjardins* v. *Gravel*, (noted at p. 39) Mr. Justice Papineau held that the lessee has no right to make an opposition *a fin de charge* to a sale under execution; and in another case of *McLaren* v. *Kirkwood*, noted in the present number, the same Judge has granted a summary petition for a writ of possession, presented by the purchaser at sheriff's sale, for the expulsion of the tenant before the expiration of his lease. The latter case was very fully argued by Mr. Bethune, Q. C. for the petitioner, and by Mr. Kerr, Q.C., for the tenant, and the judgment contains an elaborate examination of the law. The argument and the judgment are to appear in full in the *Jurist* reports. The decision in the first case does not seem to admit of much doubt, but the question presented in *McLaren* v. *Kirkwood* is one of greater difficulty, and it is to be regretted, perhaps, that it is not to be discussed at present in a higher court, no appeal having been taken from Judge Papineau's decision.

COURT OF QUEEN'S BENCH.

MONTREAL, December 21, 1880.

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

THE QUEEN v. LEVI ABRAHAMS.

Obtaining money by false pretences—Several counts in indictment—Power of Attorney-General to delegate authority to present indictment to Grand Jury.

This was a case reserved by the Chief Justice at the September (1880) term of the Court of Queen's Bench, Crown side, at Montreal.

The defendant, Levi Abrahams, was indicted for obtaining money by false pretences. The indictment contained four counts. By the first count the defendant was charged with having obtained by false pretences, $20 from one Thomas Preddy. By the second he was charged with having obtained $20 from one James Heaton. By the third, with having obtained $10 from Thomas Preddy. And by the fourth, with having obtained $10 from

James Heaton. Each count alleged that the money was obtained, by false pretences, on the same day (25 Sept. 1880).

A true bill having been found by the grand jury, the defendant moved to quash the indictment. (1) Because the defendant was charged with four distinct offences, which could not be joined in the same indictment. (2) Because the indictment had been submitted to the grand jury without the preliminary formalities required by sect. 28 of the Criminal Procedure Act of 1869 (32 & 33 Vict., c. 29) having been observed.

The Chief Justice allowed the case to proceed, intimating that he would reserve the questions raised, should the defendant be found guilty.

The defendant was convicted on the two last counts only.

The following questions were reserved:—

1. Whether the Attorney-General could delegate his authority to direct that the indictment be laid before the grand jury, and whether the direction as given on the indictment was sufficient to authorize the grand jury to enquire into the charges and report a true bill.

2. Whether if the indictment was improperly laid before the grand jury, it should have been quashed on the motion made by the defendant.

3. Whether the several counts could properly be included in the indictment.

4. Whether the rulings on the above questions are correct, and whether there was sufficient evidence of false pretences to justify a conviction on the third and fourth counts.

As to the first and second questions, the indictment was submitted to the grand jury by the following direction appearing on the face thereof:—"I direct that this indictment be laid before the grand jury. L. O. Loranger, Atty-General, by J. A. Mousseau, Q.C., C. P. Davidson, Q.C." Messrs. Mousseau and Davidson were the two Queen's Counsel authorized to represent the Crown in all the criminal proceedings during the term.

As to the fourth question, the evidence adduced at the trial was to this effect: That Preddy and Heaton went, on the 25th Sept. 1880, to the defendant's shop in St. James Street, and that the defendant sold them for $20, they paying $10 each, two railway passes, representing to them that they were valid passes, and would enable them to travel by the Grand Trunk Railway, from Montreal to Chicago. One of the passes was issued by the Grand Trunk Railway Co., authorizing A. Carey and one to travel on the Grand Trunk from Montreal to Port Huron, and was to expire on the 30th Sept. 1880. The other pass was issued by the Chicago & Grand Trunk Railway Co, and authorized A. Carey and one to travel on their road from Port Huron to Chicago. This pass had already expired before it was sold by the defendant. It was also proved that after having sold the passes, the defendant told Preddy and Heaton, before they left the shop, that one of them would have to take the name of Carey, to which no objection was made. Preddy and Heaton swore, however, that they did not understand the meaning of this until after leaving the shop, when they looked at the passes and found they were not transferable. They then made inquiries, and were informed the passes were valueless.

Held, [Dorion, C.J., and Cross, J., dissenting] that the authority under the statutory provision in question is not one which can only be exercised by the Attorney or Solicitor-General personally, but may be delegated to any counsel authorized to represent the Crown in proceedings before the Criminal Court.

2. [By the whole Court], that the several counts could properly be included in the same indictment. *Reg.* v. *De Castro*, (see 3 Legal News, pp. 376, 393.)

3. [By the whole Court], that on the evidence the case was properly left to the jury.

Conviction affirmed.

C. P. Davidson, Q.C., for the Crown.
Keller, for the defendant.

SUPERIOR COURT.

MONTREAL, Nov. 30, 1880.

Before JOHNSON, J.

De BELLEFEUILLE et al. v. LA MUNICIPALITÉ DU VILLAGE DE ST. LOUIS DU MILE END.

Municipal Corporation—Quasi Contract.

A corporation can come under a liability by a quasi-contract, in the same manner as an ordinary person, and therefore a municipal corporation which avails itself of, and is benefited by, services rendered in procuring its act of incorporation is liable for such services.

JOHNSON, J. The defendants are a corporate body created by 40 Vic. c. 29. Some of the in-

habitants of the old municipality, as it appears, wanted to have it divided into two, and petitioned Parliament for that purpose, and got the present statute passed, employing the plaintiffs professionally to get it done; and it is for these services rendered before the Act of incorporation, that the action is brought against the new corporation. There is no doubt that the services were well and effectively rendered; but the corporation answers the action by pleading, 1st, by a *défense en droit*, and, 2nd, by a peremptory exception, that it had no existence as a corporation, at the time the services were rendered; and that the plaintiffs were really employed by the gentlemen individually who got this Act passed, and have no recourse except against them personally; and they, the defendants, having at that time no existence, could neither themselves employ nor authorize others to employ the plaintiffs. It was contended for the plaintiffs that there had been a *quasi*-contract; but it was answered no, because there was nobody capable of *quasi*-contracting; there was no person at all either capable or incapable of contracting. This corporation (which if it had existed at the time would have been a person in law) had not then been created, and it was not merely the case of capacity or incapacity of an existing person, but the very existence of any party, person or corporation whatever, whether capable or incapable of contracting.

The plaintiffs cited articles 1041 and 1042 of the C. C. They are founded on the authority of Pothier and of Marcadé. The text of the articles is as follows. Article 1041 says: "A person capable of contracting may, by his lawful and voluntary act, oblige himself toward another, and sometimes oblige another toward him, without the intervention of any contract between them." Art. 1042 reads: "A person incapable of contracting may, by the *quasi*-contract of another, be obliged towards him."

It could be plausibly argued that both these articles seem to contemplate merely the capacity or incapacity, if not to contract, at all events to be bound. This is the first and obvious meaning, no doubt. Pothier's language in the example he gives is this: No. 128 Ob.:. "Il est clair que les fous, les insensés, les enfans, ne sont pas capables de contracter les obligations qui naissent des délits ou des quasi délits, ni de contracter par eux-memes *celles qui naissent des contrats*, puis qu'ils ne sont pas capables de consentement, sans lequel, il ne peut y avoir ni convention, ni délit ou quasi délit: *mais ils sont capables de contracter toutes les obligations qui se contractent sans le fait de la personne qui la contracte.* Par exemple, si quelqu'un a géré utilement les affaires d'un fou, d'un insensé, d'un enfant, cet enfant, cet insensé, ce fou, contracte l'obligation de rembourser cette personne de ce qu'il lui en a couté pour cette gestion."

Pothier's language is here admittedly inaccurate. The idiot cannot strictly contract an *obligation*, because consent is necessary. He can come under a liability—an *engagement* as some commentators call it, because the reason given in Pothier is that the *quasi* contract results from a fact, and not from a consent, and so the infant or the idiot could be bound though they had given no consent; but, it is said, they must have had an existence of some sort—incomplete if you will (undeveloped, perhaps, is the scientific word). Here it is contended that the undeveloped corporation which used the plaintiffs to obtain a state of full development for them were without power to consent, and not only without power to give any kind of consent, but without any form or kind of existence, inchoate or otherwise. Now, though the law, in its terms, and Pothier in his examples, says the incapacity of the idiot will not exclude obligation under a *quasi* contract, is that the whole extent of their meaning? The law makes the *quasi* contract to spring not from capacity or completeness of power, but from a fact—a benefit; therefore if the defendant has power to be benefited it would seem it ought to be bound. There is a special allegation in the declaration, and it is also repeated in the special answer to the exception, and I think it has great force, that the defendant has availed itself of the Act of Parliament got by the plaintiffs' professional exertions; so that this would change the aspect of the question; and it would no longer be whether a *quasi* contract can oblige an incapacitated person, or even an incompletely existing or organized body of persons; but whether the assumption, adoption and use by an existing person or body of persons of what was got for them by the services of another, renders him or them liable for the price or value of those services. Here there was, indeed, no body of persons having a com-

plete corporate existence at the time the services were rendered, and possibly there may have been no *quasi* contract to bind the non-incorporated party at that time; though there may be now to bind an existing party who could not then consent, but has since received the benefit. But call it what you please, it is a liability which may be assumed at all events: and which may result as well from that assumption as from an original contract or *quasi* contract. In England, in equity, a corporation is held liable for the acts of those who procured its incorporation, even to the extent of agreements which such persons may have made with third parties. Surely then, a corporation is bound in some form towards those to whom it owes its very existence, if not by the legal fiction of the *quasi* contract, at least by the fact of its own assumption and acceptance and use of the powers got for them by the labors of the plaintiffs. I am by no means clear that there was not here a *quasi* contract under the authority of Pothier's examples. The liability attaches in those cases because the parties could not create it for themselves. What reasoning separates those instances from the present one? for even a vacant succession can be bound by a *quasi* contract. In the 1st vol. of the English Railway and Canal Cases, p. 129, there is one reported of *Edwards et al.* v. *The Grand Junction Railway Co.* The point was the liability of the company, after incorporation, for what had been agreed to on their behalf before incorporation. I think this is a much stronger case for the plaintiffs than that one was; but even there, the language of the Vice-Chancellor (and his judgment was confirmed in appeal) was very plain. He said:—"I think that where parties are going before Parliament for the purpose of being incorporated, a door would be open to great frauds if bargains made by persons acting as their agents, when they are in a scattered and individual state, were not binding on the company when incorporated." That, as I have said, was not the point that comes up here; but it was a stronger point for the corporation; yet they were held to bargains made while they were in "a scattered and individual state," and I see no reason why the present defendants should not also be so held.

As to the existence then of a *quasi* contract in this case, though there may possibly be some doubt, I incline to say there was one. I see some authors in discussing this question prefer the term "*engagement*" in some cases where the will of the parties is no element, and where the obligation arises from a mere fact (see Laurent, vol. 20, art. 305 to 309). In one place this writer asks: "Pourquoi la loi fait-elle naitre des obligations d'un fait? nous avons déjà indiqué le motif général; c'est ou l'utilité des parties interessées, ce qui est aussi un intérêt général, ou une considération d'équité." Apart, however, from the question of *quasi*-contract, the obligation of the defendants is supported by the principle I have before adverted to, that they have taken and used what was got by the plaintiffs' services, and they cannot make profit at their expense.

Judgment for plaintiff.

De Bellefeuille & Bonin for plaintiffs.

Alphonse Ouimet for defendant.

SUPERIOR COURT.

MONTREAL, Jan. 15, 1881.

Before PAPINEAU, J.

NEVEU v. RABEAU, and NEVEU, T. S.

Contestation of declaration of garnishee—C. C. P. 862, 864.

The declaration of a garnishee cannot be contested without leave of the Court, but such leave may be granted even after the delays have expired, on payment of costs.

Motion by T. S., that contestation of declaration of T. S. filed in the cause by plaintiff be rejected, because not filed within the delays, and leave of the Court not having been obtained.

PAPINEAU, J. La présente cause est accompagnée de saisie-arrêt avant jugement. Le tiers saisi a fait une déclaration. Le jugement a été prononcé sur la demande principale. Un peu plus de 8 jours après le jugement, le demandeur, sans la permission de la cour, a produit une contestation de la déclaration, et l'a signifiée au T. S. en lui donnant avis d'y répondre dans les délais voulus par la loi. Le tiers saisi fait motion pour rejeter cette contestation. La motion est bien fondée en vertu des Arts. 862 et 864 C. P. C., et elle est accordée. Si le demandeur avait demandé permission de laisser sa contestation dans le dossier en payant les frais de la motion, la cour

l'eût accordée, parceque dans une autre cause cette permission a été accordée plus d'un an après jugement, et même cette permission a déjà été accordée après jugement semblable à celui présentement rendu.

Ge ffrion, Rinfret, Dorion & Laviolette for T. S. *R. & L. Laflamme* for plaintiff contesting.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before PAPINEAU, J.

MCLAREN et al. v. KIRKWOOD, and BROOKE, petr. for writ of possession.

Sheriff's sale—Right of Purchaser to expel the Lessee.

The petitioner Brooke, had purchased at sheriff's sale an immoveable situate in St. Antoine ward, Montreal. Not being able to obtain delivery of the property, he demanded it of the sheriff (under C. C. P. 712), and the sheriff having given a certificate of the refusal to deliver, the petitioner now asked for a writ of possession. This petition was served upon the defendant, and also upon William Blackman, the lessee in possession.

The lessee, Blackman, opposed the granting of the order, on the ground that he had leased the property under a notarial lease, which being continued by *tacite reconduction* for one year, would not expire until 30th April, 1881; that the sheriff's sale had not the effect of terminating the lease, and he had a right to remain in possession until 1st May next.

The COURT granted the petition, referring, among other articles, to C.C. 1663: "The lessee cannot, by reason of the alienation of the thing leased, be expelled before the expiration of the lease, by a person who becomes owner of the thing leased *under a title derived from the lessor*," &c. C.C. 2128 says: "The lease of an immoveable *for a period exceeding one year* cannot be invoked against a subsequent purchaser unless it has been registered." These articles, it was held, did not apply to a sale by a sheriff. The lessee's right is personal and is to be exercised against the lessor, and when the latter ceases to have any right in the property, the lessee's right also comes to an end. The lessee no doubt is exposed to injury where the lessor becomes insolvent, as is usually the case when his property is sold by sheriff's sale, but this inconvenience is no ground for setting aside the law. Petition granted.

Bethune & Bethune, for petitioner.

Kerr, Carter & McGibbon, for the contestant Blackman.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before JOHNSON, J.

GRAND TRUNK RAILWAY CO. v. CURRIE.

THE SAME v. HALL et al.

Liability of purchaser to pay interest on purchase money when the property is mortgaged for a larger sum than the price due.

JOHNSON, J. The question raised in these two cases is whether the purchaser of real estate is bound to pay interest on his purchase money, when the property is mortgaged for a larger sum than the price due.

Art. 1535, C. C, says:—"If the buyer be disturbed in his possession, or have just cause to fear that he will be disturbed by any action hypothecary or in revendication, he may delay the payment of the price until the seller causes such disturbance to cease, or gives security; unless there is a stipulation to the contrary."

Here there is no stipulation to the contrary, therefore the purchaser is entitled to delay payment of the price until the plaintiff causes the mortgages to be erased. But the plaintiffs do not claim the purchase money. They claim payment of the interest thereon; and the question is whether a purchaser may delay payment of the interest as well as of the price itself. This is no new question. In France, whence we borrowed our article 1535, it seems to suffer no difficulty. Here there have been various decisions of more or less authority in various cases, but still the main principle seems never to have been shaken except in the case of *Dorion* v. *Hyde*, and though I myself sat in that case, I must say that in the light of subsequent decisions, I think it was wrong. That case occurred fourteen years ago, and the Judges who sat were the late Judge Caron, Judge Duval, Judge Drummond, and myself as Judge *ad hoc*. Certainly the reasoning of Judge Caron was very convincing then, but, as Judge Dorion said in *Hogan* v. *Bernier*, the reasoning is not supported by authority, and is opposed to authority.

It was said that the case of *Dorion* v. *Hyde* had never been overruled. This is a mistake; not to speak of *Hogan* v. *Bernier*, in which it was overruled admittedly, and, to my mind, with commanding ability and decisive reason and authority, by one of the ablest judicial mind, that ever adorned this Bench;—a judgment, too, which was subsequently confirmed unanimously in review (*Hogan* v. *Bernier*, 21 L. C. J. p. 101): besides that case, I say, *Dorion* v. *Hyde* was overruled in a case that was not mentioned at the Bar;—the case of *Parker* v. *Felton* (21 L. C. J., p. 253), where, though the action was different from this, it was clearly held that the balance of the purchase money itself is the only amount for which the purchaser can claim security. In the case of the *G. T. R. Co.* v. *Martin*, decided by Judge Rainville in the C. C. on the 18th of March, 1879, the rule now contended for by the plaintiff was maintained. In four other cases of the same plaintiffs v. McGuire, Walker, Slater and Jones, on the 13th September, 1880, Mr. Justice McKay held the same thing. As to the reasoning on the subject, it is, as I have said, exhausted in the case of *Hogan* v. *Bernier*. The whole hing is comprised in two or three plain principles. In the first place the law gives the purchaser no right to get back again any part of the price he may have already paid, on account of apprehended trouble. It simply gives him the faculty of delaying payment of the price. If he choose to pay trusting to the seller's solvency, there is an end of the question. He has not chosen to use a faculty given to him for his protection; and there is no authority to extend it to other cases. We must remember that by the old French law, the purchaser could not refuse to pay on account of mortgages in such a case as the present. Of course if there was a warranty of *franc et quitte*, and the property turned out to be mortgaged, the purchaser could complain that he had been deceived, and he could break the sale; but it was different where the seller only covenanted to hold harmless. As long as the purchaser was not troubled, he could not refuse to pay, even if he was sure that sooner or later he would have to pay the mortgages. He had to wait till the trouble came, and then he could call upon his vendor to make it cease, or indemnify him. The obligation of the seller was simply that he would maintain the purchaser in quiet possession. (Pothier, Vente No. 1, *Talbot* v. *Beliveau*, 4 Quebec L. Rep., p. 104.) In the present case, and in the present state of the law, and the decisions on this subject, I am not justified in treating it otherwise than settled by authority in favor of the plaintiff's contention. I do not refer, *in extenso*, to all the cases; but there was the case of *McDonnell & Goundry*, which is a very important one. It was different in the main object of the action from this, and depended on an express stipulation, and other facts not presented here; but in giving judgment, the Chief Justice said (22 L.C.J., p. 222): "The appellant is entitled to retain the principal; but not the interest, which represents the rents, issues and profits," and his Honor cited Sirey, Dalloz, Duranton and Troplong, which have been cited in the present case. There is an earlier case also; *Dinning* v. *Douglas*, 9 L. C. Rep., p. 310. In that case it was held by Chief Justice Lafontaine, Aylwin, Duval and Meredith, JJ., that "a purchaser enjoying the property purchased, and withholding the purchase money until his vendor shall have complied with a judgment ordering him to remove certain oppositions, is bound to pay his vendor the interest, as it becomes due, even though the latter may have failed to remove the opposition in compliance with the judgments against him." The interest then in both these cases is due, and it only remains to see how much it is. In the case of Currie receipts lost at fire at Point St. Charles reduce the amount to $67.50; in the other case judgment for the amount demanded, $273.71.

Duhamel & Co. for plaintiffs.
Bethune & Bethune for defendant Currie.
Davidson & Cushing for defendants Hall et al.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before TORRANCE, J.

LEROUX v. VICTOR HUDON COTTON CO.

Damages—Negligence—Personal Injuries.

TORRANCE, J. This was an action of damages for personal injuries. On the 3rd April last, plaintiff had entered the yard of the company, and was proceeding to the office in search of employment, when an empty barrel, weighing some 60 or 70 pounds, was thrown out of an upper window of the factory, and struck him on

the body, throwing him down and breaking his left shoulder blade and his sixth rib. He was in bed three weeks under the care of Dr. Demers. The demand is for $5,000. The defendants do not admit any liability, but tender $300 besides costs.

There can be no doubt as to the liability of the defendants. The plaintiff was lawfully on the ground, could not be regarded as a trespasser, and it was gross carelessness on the part of the foreman, to throw down the barrel where it could strike a passer-by. It is true, he says, he looked up and down before throwing down the barrel, but it is evident that he looked without seeing, for the man was there and was knocked down. The Court has to estimate these damages. There is the doctor's bill, $30 ; there is loss of time while the man was in bed and unable to work, and there is the question as to whether the man has been permanently injured and his ability to gain a livelihood has been lessened. The opinions of the doctors differ on this point. The medical testimony for the plaintiff is to the effect that in his calling of a carpenter his ability has been lessened; but, on the other hand, evidence as reliable has been adduced by the defendants, to the effect that the accident has left behind it no evil effects. The Court allows in all the sum of $500. In its estimate, it has had the benefit of the opinion of Dr. Hingston, whom it appointed to make an examination of the person of plaintiff. Journal du Palais, A.D. 1872, p. 558. The amount awarded is made up as follows:—Doctor's bill, $30 ; loss of wages for the first three months, $80 ; for the second 3 months, $60 ; for the third three months, $40 ; for the fourth quarter, $20 ; for the second year, $60 ; for the third year, $30 ; and the balance of $180 is exemplary damages. This amount is not liable to seizure, and the plea is overruled.

E. U. Piché, for plaintiff.
Béique & Co. for defendant.

CIRCUIT COURT.

[In Ejectment.]

MONTREAL, Nov. 30, 1880.

Before JETTE, J.

THE LIFE ASSOCIATION OF SCOTLAND v. DOWNIE.

Leased premises used for purposes of prostitution—Lease rescinded.

By deed of lease passed March 29, 1880, before Levy, N.P., the plaintiffs leased to defendant, for the term of one year from 1st May last, the two upper flats of the building known as the Life Association of Scotland building, situated at the corner of St. James street and Place d'Armes Hill, in the city of Montreal.

On the 20th Nov. 1880, the plaintiffs instituted an action to rescind the lease. The declaration alleged, "that for several months past the defendant had permitted the leased premises to be, by day and night, the resort of loose, idle and disorderly persons, and to be used for purposes of prostitution, to the great injury of the plaintiffs, and to the scandal of all peaceable and respectable persons residing in the vicinity." The declaration concluded by praying for the rescission of the deed and the ejectment of the defendant from the premises.

The COURT gave judgment according to the conclusions of the *demande*.

Ritchie & Ritchie for plaintiffs.
D. Major for defendant.

COMMUNICATIONS.

CAPIAS.

Au Rédacteur du LEGAL NEWS :

MONSIEUR,—Dans le district de Québec, il y a divergence d'opinions sur l'application de l'article 824 du code de procédure civile, *qui permet au défendeur emprisonné sur capias d'obtenir son élargissement en fournissant deux cautions qu'il ne laissera pas la Province du Canada.*

Un juge a prétendu que cet article 824 ne s'appliquait qu'au cas où l'affidavit dirait *que le défendeur était sur le point de quitter la Province du Canada ;* et si l'affidavit alléguait seulement *que le défendeur a caché, ou soustrait, ou est sur le point de cacher ou soustraire ses biens et effets* (sans mentionner qu'il est sur le point de quitter la Province du Canada), le défendeur ne pourrait pas alors être élargi sous le cautionnement mentionné en l'article 824.

Bien des membres du Barreau de Québec vous seraient obligés si vous aviez la complaisance de mentionner dans le "Legal News" ce qui se pratique à Montréal à ce sujet, et les raisons de cette pratique.

January 23, 1881. C.

[Perhaps some of our readers may be able to state whether they have heard of such a distinction.]

RECENT ONTARIO DECISIONS.

Insolvent Act of 1875—*Secured creditor.*—A creditor, who holds security from the insolvent at the time of his insolvency, cannot realize on the security and rank on the estate for the balance of the debt, as the assignee has thus no opportunity of taking the security at a valuation for the benefit of the creditors.—*In re Beatty*, (Court of Appeal, Dec. 20, 1880.)

Attorney and Client—Principal and Agent.—W. & Co., attorneys in the Province of Quebec, requested the defendant, an attorney in the Province of Ontario, to take proceedings to collect the amount due on a promissory note, of which certain clients of theirs, living in the Province of Quebec, were the holders. The defendant issued the writ in the name of B. & Co., and endorsed thereon his own name as attorney. He, however, never had any communication with them, treating W. & Co. as his principals, and he credited them with the amount of the note when collected. *Held*, that the plaintiff, who was assignee of B. & Co., was entitled to collect the amount of the judgment so recovered from the defendant; the rule that the town agent of a country principal is not responsible to a client of the latter not being applicable, as it was held that W. & Co. were the plaintiff's agents to retain the defendant to act as their attorney, and the relation of attorney and client was, therefore, created between them. —*Ross* v. *Fitch* (Ct. of App., Dec. 20, 1880.)

Promissory Note — Double Stamping. — The plaintiff objected to purchase a note from one C., on the ground that it was insufficiently stamped, whereupon C. affixed double stamps and then transferred it to the plaintiff, who did not notice that C. had omitted to cancel the stamps, until some time afterwards, when his attorney mentioned it to him, when he at once double stamped it, and cancelled the stamps in accordance with 42 Vict. c. 17, s. 13. *Held*, that the evidence showed that the plaintiff took the note in the full belief that it had been properly double-stamped by C., who was, at the time, the holder, and that he was entitled to cure the deficit, by double-stamping.—*Trout* v. *Moulton* (Ct. of App., Dec. 20, 1880.)

Fraud—Principal and Agent.—The plaintiff applied to the defendants through W., their agent, for a loan, and requested them, by his application, to send the money "by cheque, addressed to W." In accordance with their custom to make their cheques payable to their agent and the borrower, to insure the receipt of the money by the latter, the defendants sent W. a cheque payable to the order of himself and the plaintiff. W. obtained the plaintiff's endorsement to the cheque, drew the money, and absconded. The plaintiff swore that he did not know that the paper he signed was a cheque, and there was no evidence to show that he had dealt with W. in any other character than as the defendant's agent, through whose hands he expected to receive the money. *Held*, that W's duty to the plaintiff was to endorse the cheque to him, or to see that the money reached his hands, and that the defendants, who had put it into his power to commit the fraud, must bear the loss occasioned by their agent.—*Finn* v. *Dominion Savings & Investment Co.* (Ct. of App., Dec. 27, 1880.)

Promissory Note—Defence of Forgery—Expert Evidence—New Trial refused.—In an action, by an innocent holder against the endorser of a promissory note, the defendant pleaded that the alleged endorsements were forgeries. On the first trial the jury disagreed, and on the second found for the plaintiff. No expert was called at either trial, and the Court refused a new trial to enable such evidence to be given.—*Moser* v. *Snarr* (Q.B., Nov. 22, 1880).

GENERAL NOTES.

A letter, printed in some recently published memoirs, contains the following amusing example of attorneys' charges for election work:—"A scamp of an attorney, who thrust himself into some trifling employment in Sir Francis Burdett's celebrated contest for Middlesex, on sending him his bill, after charging for a journey to Acton, and another to Ealing, &c, closed as follows:—'To extraordinary mental anxiety on your account, £500.'"

The *Albany Law Journal* unintentionally misquotes us on the subject of Clerical Interference in Elections. We did not say "that a priest may *properly* tell his "people from the pulpit how they should vote;" but, stating what had been held by the Courts, that "a "clergyman may, *if he thinks proper*, counsel his flock, "privately, or even from the pulpit, to vote as he "would have them vote;" that is, that the law does not prohibit him from going to this extent, and that this *per se* will not constitute a ground in law for annulling the election.