The Legal News.

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APPEAL BUSINESS.

After our last issue was ready for press, we received an article from Mr. Justice Ramsay on the subject of the Court of Appeal. This, as well as a second and third communication on the same question, will be found elsewhere. The advantage of having on such excellent authority a frank statement of the difficulties which embarrass the Court in the performance of its duties must be universally admitted. The term system may have worked passably well at a time when there were seldom more than eight or ten appeals to be disposed of at a sitting. But it is well known that the business of the Court has expanded enormously within the last twenty years, and this expansion is likely to continue in equal ratio as the wealth and trade of the Province grow. And not only the number of causes, but the difficulty and complication of the questions involved are greater. Thus it has come to pass that a system which occasioned no practical inconvenience once, is about the worst that could be imagined in the present state of affairs. Mr. Justice Ramsay has offered suggestions with a view to promote the despatch of business, and to relieve both bench and bar from obstructions that now exist. Whatever difference of opinion may arise as to details of the proposition, we believe the suggestions in the main present a scheme alike feasible and inexpensive, and we are aware that this opinion is shared by several prominent members of the bar.

SALE OF STOLEN GOODS.

A case of conflict between the law of the State of New York and that of this Province came before the N. Y. Court of Appeals last month. The facts, as appears by the abstract of the case (*Edgerly* v. *Bush*) in the *Albany Law Journal*, were as follows: Personal property belonging to A, a citizen of New York, who had acquired title there, was taken without the consent of the owner from the State of New York to Lower Canada, where it was purchased by B for value and without notice of the rights of A, from a trader in property of like kind, who had it in his possession. By the law of this Province, the purchase of personal property from a trader dealing in similar articles confers a good title. B conveyed the property to defendant, who brought it again into New York, where his domicile was. In an action by A against defendant for a conversion of the property, it has been held by the N. Y. Court of Appeals (June 1, 1880) that the title of A was superior to that of defendant, and the title of B, acquired under the law of Lower Canada, would not be recognized. Though a transfer of personal property valid by the law of the domicile is valid everywhere, as a general principle, there is to be excepted, in the opinion of the Court, that territory in which the property is situated and where a different law has been set up, when it is necessary for the purposes of justice that the actual situs of the thing be examined. *Green* v. *VanBuskirk*, 7 Wall. 139. "Yet statutes have no extra-territorial force, and where they are permitted to operate in another State through comity, they will not be so allowed to the inconvenience of the citizen or against the policy of the State. It would be to the contravention of that policy and to the inconvenience of the citizens of this State, if its courts should give effect to the statutes of Lower Canada in respect to purchases from traders to the divesting of titles to moveable property, acquired and held under the law of New York, without the assent or intervention, and against the will of the owner under that law. Notions of property are slight when a *bona fide* purchaser of stolen goods gives a good title against the original owner. Kent, C. J., in *Wheelwright* v. *DePeyster*, 1 Johns. 471. It is not required to show comity to that extent. The case of *Cammel* v. *Sewell*, 5 H. & N. 728, was concerning property sold in Norway, which had not been in England until after that sale, and had never been in possession of the English owners. See, as sustaining the case at bar, *Greenwood* v. *Curtis*, 6 Mass. 358; *Taylor* v. *Boardman*, 25 Vt. 581; *Martin* v. *Hill*, 12 Barb. 631; *French* v. *Hall*, 9 N. H. 137; *Langworthy* v. *Little*, 12 Cush. 109. Such cases as *Grant* v. *McLachlin*, 4 Johns. 34, and *The Helena*, 4 Rob. Ad. 3, do not conflict. In them there were, in the foreign country, legal proceedings *in rem*, or analogou

thereto, so that the question was as to respect for the judicial proceedings of another country. Order of General Term reversed and judgment on report of referee ordered."

A MEMORANDUM ABOUT THE COURT OF QUEEN'S BENCH.

I.

It is generally admitted, that the Court of Queen's Bench, with its terms, as at present organized, is unable to deal with the work before it. If any evidence of this were required it is to be found in the fact that there were about 120 cases ready for hearing in the District of Montreal in the March term of 1874, and that to-morrow we shall find ourselves in face of a roll of 84 cases. Of these cases we shall probably hear 30. In a little over six years we have therefore only made up our lee-way to the extent of 36 cases. Evidently this is too close to be pleasant. Again there are only two terms of the criminal court, and they have expanded into terms of from five to six weeks.

The practical question that presents itself is as to the remedy to be applied. It is impossible to devise a remedy without having some positive knowledge as to the cause of the complaint. If a court cannot keep down arrears, it is at once proposed to name more judges, and the superficial observer is immediately satisfied with this expedient. If, really, the judges of the Queen's Bench had too much to do, an addition to their number might perhaps be necessary. But I contend that the five judges ought to be able to do all the work before them, and are able to do it, if the Government and Legislature were content to give them leave to manage their time according to the requirements of suitors. In a word the real difficulty arises from the existence of terms on the appeal side, and from their infrequency on the Crown side of the Court.

It is perhaps not very easy to explain to non-professional people in what the inconvenience of terms in a Court of Appeal consists. The advocates practising before the Court only feel a portion of it, directly. With some reluctance, I have come to the determination to tell the public how it affects us. For doing so, I shall offer no apology, further than to say: First, that I have pressed on the attention of the executive during the last three or four years the imperfections of the present system, and, not being a radical reformer, I have accompanied my criticisms with suggestions of amendments of a very simple kind, which, I venture to affirm, would enable five judges to dispose of all the appeal cases likely to arise in the Province for the next twenty years. Second, that a change is now contemplated which if anything aggravates the evils of the present system, and adds a new one.

As I have said, the fault on the appeal side is the term. The term is a necessity where you have assizes and jurors. There is no such necessity for a Court of Appeal, which sits in only one or two places, or indeed for any Court that has a permanent seat. Again the inconvenience felt by judges in appeal does not affect the judge hearing the case at length. The latter is at once seized of the whole case, while the judges of appeal only hear an abstract argument. By the operation of terms they are compelled to sit and listen to, we shall say, 50 cases without having an opportunity of coming to a conclusion as to any of them. Immediately after the hearing the factums are consigned to a bag, to be considered at leisure later. The mass by the end of the Montreal term is enormous. The last March terms resulted in a block of printed matter 11½ inches thick. To any one accustomed to intellectual labour, it must be manifest that this mode of presenting matter for consideration is about the most unsatisfactory that can be conceived. I do not allude to the physical prostration owing to the mental strain of a term of three weeks, for no one who has not experienced it can possibly realize it, but let me ask what the result would be of the professors of a college lecturing the students on all the branches of their studies continuously from ten in the morning till four in the afternoon during three weeks, and then sending them off for ten weeks to digest what they had heard, or rather what they had been told. It is true we are not youths, and we are supposed to have a general knowledge of the law; but it would be a foolish vanity to pretend that the great mass of cases which go to appeal do not present questions which, if not entirely new, have, from their combinations, all the difficulty of a new subject.

This is not, however, the weakest point of

our system. The judges disperse, and diligently, I doubt not, peruse the two large volumes of cases submitted to them; but they never meet again till the first day of the next of these terribly fatiguing terms, during which they have to hear fifty new cases, and to deliberate on the fifty old cases in which the judgments have to be rendered.

The new bill proposes to name a sixth judge, so as to enable the Court to have five appeal terms of fifteen days, and four criminal terms, a year. Of course this will enable the Court, without extra labour to each judge, to dispose of one-fifth more cases than at present; but it in no way gets rid of the gorge of cases at one time or of the hasty *délibérés*.

It has the further inconvenience of creating two possible contradictory decisions on each question in appeal. To this, I may add, it charges the revenues of the country with an additional salary, half of which would be much better laid out in giving the judges clerks to relieve them of the drudgery of writing and copying they now have to do, and which is not given to them owing to the expense!

The scheme I have proposed, and which has met with the concurrence of the Bar (see last edition of Mr. Wotherspoon's Code, p. v. of Preface), is: to make the quorum of the Court four, without any faculty to name a fifth judge, the judgment being either confirmed where there is an equal division of opinion or a re-hearing in Chambers before the fifth judge, to abolish all terms, and to permit the Court to sit on such days at Quebec and Montreal, during eight or nine months of the year, as the Court or judges shall from time to time fix and appoint.

By this plan the judges will have an opportunity of becoming acquainted with the factums before the hearing, and they will be enabled to dispose of the cases almost invariably within a few days of the hearing and after an effective deliberation. The Bar will also be relieved from attending in Court for the chance of having their cases heard. It will also allow of there being one judge always at liberty to hold the Criminal terms, of which, I think, there ought to be at least six a year in Montreal.

T. K. RAMSAY.

Montreal, 10th June, 1880.

II.

I wrote the previous remarks on the sittings of the Court of Queen's Bench on the eve of the last term, but was prevented by other matters from sending them for publication. The results of the term were even less satisfactory in one sense than usual. Of the eighty-four cases on the roll we only heard twelve. This was, to some extent, due to the fact that we heard a greater number of cases than usual in March, consequently the delivery of judgments occupied nearly three days. In addition to this, a reserved case and several applications for *habeas corpus* took up a great deal of time. These things will always more or less derange calculations as to the rate at which work can be disposed of; but the term system, by accumulating such incidental obstructions to the ordinary course of business, aggravates their inconvenience.

Since I wrote, a very sensible letter from Mr. Pagnuelo has appeared in the *Gazette*, warning the Legislature of the evils of proceeding with their unconsidered scheme. He points out two objections of a formidable character: First, that the term scheme is bad, and that any pretended advantage to be derived from it would not be felt till after the next session of Parliament, when the salary of a sixth judge of Appeal had been provided for. Second, that the nomination of a sixth Judge of Appeal would permanently embarrass Government in carrying out the reforms required in the whole of our judicial organization. My present remarks will apply to the former of these objections only. The proposition to increase the number and to protract the length of the terms is totally delusive. It fills the eye of an uncritical public; but it does not do the one thing needful—it does not give the judges of the Court of Queen's Bench greater facility for getting through their work than they have at present. A term of fifteen days is just four days worse than a term of eleven days, if the term system is objectionable for a Court of Appeal; and a similar remark may be made of five terms instead of four. The whole question, then, is whether the term system is the proper one for a Court of Appeal. This is the real issue, and I intend to deal with it. With local prejudices and personal predilections I don't intend to cope. Counter-

mining the burrows of moles is not a useless occupation, but for it I feel no inclination.

The great use of an Appeal Court is to afford suitors an opportunity of exposing their cases with greater care, and having them adjudicated upon with greater deliberation, than is possible in a Court of first instance. If, from press of business or mismanagement of its time, the Court of Appeal is hurried in its hearings and in its deliberations, it is almost useless, and when in such case its decision is that of a simple majority, it is no better than the decision of one man. It is very different if the argument and deliberation are both complete, for then you have the mature opinion of three judges at least, and the legal presumption, that the judgment is right, is established on a highly probable, if not on an absolutely certain basis. I do not propose to argue that it is mismanagement of our time to squeeze into the limits of a term the hearing of new cases, the deliberation on the old, the preparing, or at all events the completing, of the notes of judgment, and the delivery of judgments. Any one who does not see this without persuasion, must be either destitute of experience or unable to appreciate its results. Five terms of fifteen days each will only alter matters to this extent: that we shall have five times a year instead of four times, one third more cases to be heard, and a third more cases jostling each other *en délibéré*, adding to the general confusion, and rendering the preparation of written opinions more impossible than at present.

The only hope I see is that the badness of the measure now before the legislature may lead to some change in practice, which it is not easy at present to foreshadow. This is not a very promising way of considering the matter, but it is all the consolation we can expect, for the measure is sure to pass. The luxury of creating a new office is too dear to the Governmental heart to be readily abandoned. With a bad measure the sixth judge is almost a necessity; with a good measure no apology can be offered for his existence.

It would be easy for any one to work out the scheme I have proposed, but to avoid misunderstanding I add a possible calendar, which would give the facilities required.

Term: February, March, April, May, June, October, November, and December. Vacation: January, July, August, and September.

During term the Court of Appeals should sit four days a week during six months in Montreal, and four days during two months in Quebec. This would give sixty-four days for hearing cases against forty, as at present, in Montreal, and thirty-two as against twenty-eight in Quebec. Then by having four judges to hold the Court instead of five, one judge would always be at liberty to hold the criminal terms, of which there should be six terms a year in Montreal.

T. K. RAMSAY.

St. Hugues, 8th July, 1880.

III.

In my previous communications, I have drawn attention to the inconvenience of the present system of terms in the Court of Appeal, and to the fact that if the term system is bad, the bill now before the legislature is simply a perseverance in and an aggravation of a bad system. Avowedly, Mr. Loranger's bill requires the appointment of a sixth judge. This is an admission of a serious difficulty. It charges the revenues of the country with a costly encumbrance, for the principal effect of appointing a sixth judge will be to render the jurisprudence of the Court of Appeal more uncertain. What the amount of the charge will be it is impossible to say, for it was emphatically declared by Sir John Macdonald in the House last session that during the vacation the Government would re-consider the question of judicial salaries. Probably it is not intended to decrease them. But it is said that the question of cost is not considered at Quebec as the judges' salaries fall on the Dominion Treasury. This is a short-sighted calculation. The cost of governing each Province is easily distinguished, and if we absorb our fair proportion of the public income for what is useless, we shall find it impossible to obtain what we really require.

I have said there should be six Criminal terms at least in Montreal, but in making six Criminal terms it is to be understood that the General Sessions should be abolished. By Mr. Loranger's bill it is proposed to make four terms of the Queen's Bench and to retain the two Sessions of the Peace. I am at a loss to see what is gained by having two Criminal

courts of almost equal jurisdiction. The four terms of the Queen's Bench and the two Sessions of the Peace will cost as much as six terms of the Queen's Bench. If it is intended by this division to relieve the judges of the Queen's Bench, the object can be attained more effectually by qualifying the judges of Sessions and the Recorder to sit in the Criminal Court. The Central Criminal Court in London is not always held by the judges of the Queen's Bench. Indeed I should further assimilate the Criminal courts in Montreal and Quebec to Central Criminal courts, by allowing all accused persons committed for trial in the rural districts to be tried at one or other of these places, unless earlier (*nisi prius*) tried in their own district. The effect of this change would be to extend the advantages enjoyed in the larger districts to the other districts, and greatly to decrease the costs of criminal justice.

T. K. RAMSAY.

St. Hugues, 9th July, 1880.

NOTES OF CASES.

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SUPERIOR COURT.

MONTREAL, June 30, 1880.

CORISTINE v. MONTREAL CITY PASSENGER RAILWAY COMPANY.

Street Railway Company—Liability for Damages caused by uneven road bed—"Rule of the road."

The demand was in damages for having caused the loss of plaintiff's horse, and damage to his sleigh and harness on the 19th December last, by obstructions caused by defendants in the streets of the city, namely, St. James street, at the corner of Place d'Armes. The defendants pleaded that the damage arose from the want of skill of the driver of the plaintiff's horse and his want of care and rashness.

TORRANCE, J. The accident occurred on the 19th December, 1879. There were a few inches of snow on the ground, but the railway track of defendants had been cleared of snow to allow of their cars being run on the rails. The servant of plaintiff, Benjamin Archambault, was driving Mr. Coristine's sleigh through the square north towards the Bank of Montreal. He had taken the west side of the square. The roadway there has the railway on its eastern side, leaving a clear roadway in the street between the rails on the east and the footpath on the west. This width of roadway continues till the railway turns into St. James street westward, where the railway approaches within about eight feet of the footpath. It would appear that the servant of plaintiff, in charge of his horse and sleigh, was approaching St. James street at a gentle trot, when just as he came to the turn, or in the act of turning, he noticed a sleigh coming in the opposite direction from St. James street. It was the duty of the servant to take the right side of the street, to make way for the other sleigh. He accordingly pulled his horse to the right, and attempted to cross the railroad track. At this point the street level had been disturbed by the removal of the snow from the track, and unfortunately the sleigh of Mr. Coristine was overturned, the horse took flight, precipitated himself violently against the post-office building opposite, and disappeared down St. François Xavier street. The damages were not small. The horse died of his injuries a day or two afterwards, the sleigh was broken to pieces, and the harness broken. Were the defendants to blame? Was the servant to blame? The Company say that they in all respects fulfilled their contract with the city, and the roadway was level and unimpeded; that the servant was careless and violated a By-law of the city in attempting to trot round the corner (By-law p. 221, n. 31), and furthermore, he was on the wrong side of the road and had no business to be where he was when he attempted to cross the rail track. That he was breaking the rule of the road. Mr. Coristine replies that By-law of the city (265) for the establishment of the Railway, No. 11, says that the rail to be used shall be the flat rail of Philadelphia, which was not done; that the charter of the company, 24 Vic., c. 84, s. 5, enacts that "the rails of the railway shall be laid flush with the streets and highways, and the railway tracks shall conform to the grades of the same, so as to offer the least possible impediment to the ordinary traffic of the said streets and highways," that he had a right to the whole street, and if the projection had not been there, the accident would not have happened. I would here remark as to the rule of the road, that it does not

mean, and cannot reasonably mean, that a carriage shall not go on the left side of the street, and I agree here with the plaintiff, that he had a right to the whole street so long as he did not interfere with the rights of others. The rule of the road means that carriages coming in opposite directions shall keep out of each other's way—that is all. I find, then, as a matter of fact, that the Company had not, at the time of the accident, the road-bed flush, as it ought to have been, and they had, likely unavoidably, made it unequal, in order to clear away the snow from the track, but if any one suffers thereby, they must answer for their own act. I do not think it necessary here to decide whether the Company used the flat rail of Philadelphia, as stipulated. There remains the point raised by the Company, that the by-law 31, prohibiting trotting round the corners, had been violated. That may be, but it was a matter between the city corporation and the servant. I do not see that it caused or contributed to the accident, which I find arose purely and naturally from the company clearing away the snow from the rails and destroying the even surface of the road bed, by which the sleigh was upset.

I would here call attention to the by-law 265, section 25, "The said company shall be liable for all damages arising either from the construction of the said railway, or from the works they shall cause to be done in the streets, or from the manner the cars or sleighs used by them shall be run or driven, or from the obstacles or obstructions they may cause in the streets, or from their violation of any one of the conditions imposed by the present by-law, or from any other cause whatsoever." I don't say that the company was here wilfully negligent, but there are points of time in the traffic of the cars and sleighs between summer and winter, when the carriages are changed from wheels to runners, when accidents appear to be very likely to happen. Such an accident has happened here, and they should necessarily answer in damages. I assess these as follows:— Value of horse $250, sleigh $65, and harness $14.25, in all $329.25.

Macmaster, Hall & Greenshields for plaintiff.

Abbott, Tait, Wotherspoon & Abbott for defendants.

BARTHE v. DAGG.

Damages for criminal prosecution—Want of probable cause.

The action was in damages for having begun a malicious criminal prosecution against the plaintiff. The plaintiff was arrested, and after examination of the facts by the magistrate was discharged.

The defendant pleaded that plaintiff on the 11th of February, 1879, falsely represented to her that he had bought for her 25 shares of Bank of Montreal stock; that he had loaned to her $6,787.50 to make this purchase, and on this false pretence had induced her to transfer to him as collateral security 12 shares of the stock of the Eastern Townships Bank on the 13th of February, 1879.

TORRANCE, J. The difficulty between the parties has arisen out of disputed accounts. It is true that on the 11th of February, 1879, the plaintiff began a series of speculative stock transactions as a broker acting on behalf of the defendant. On that day, he addressed to her a broker's note, informing her that he had that day purchased for her 25 shares of the Bank of Montreal stock, and had lent her $6,787.50 to be returned to him at a future date, and she was to give as collateral security for this loan the stock in question and 12 shares Eastern Townships Bank to be transferred on the 13th February, 1879. On this representation the 12 shares were transferred as collateral security. In point of fact the 25 shares had not been bought by the broker, but were only bought on the 15th February, four days later. I cannot help noticing the fact that the speculative transactions for the defendant were unprofitable to her, and there was a dispute between them as to the settlement of accounts arising out of a number of stock transactions extending over several weeks. The dispute culminated in the criminal prosecution complained of in the declaration. On the 15th April, 1879, the defendant by her son, William Campbell, laid a charge before a magistrate, that the plaintiff on the 13th February, 1879, induced her to transfer to him twelve shares Eastern Townships Bank stock on the false representation contained in his note of the 11th February, that he had bought for her twenty-five shares of Bank of Montreal stock.

I have not to find here whether there was malice on the part of the defendant in making this charge, but whether there was want of probable cause. Technically the broker's note contained an untrue statement, namely, that he had bought the stock on the 11th, and perhaps technically the false pretence did exist. But did it really exist? If we look at the agreement between the parties, we see that they were agreed that the 25 shares of bank stock should be bought by Barthe and 12 shares transferred as security by Mrs. Campbell. All this was done. What right, then, had Mrs. Campbell to complain of Mr. Barthe, two months afterwards, that he got the 12 shares on a false pretence, causing his arrest and examination and detention before the magistrate for four weeks? The plaintiff explains that the stock was not really bought on that day, because he had not yet received the security of the 12 shares, and he was responsible for the loss if there had been a rise in the 25 shares before he got possession of them for the defendant. It is also to be considered that the transactions between the plaintiff and defendant were of a confidential character, and I do not believe that the real grievance of the defendant was that the stock had not been purchased on that day. No complaint was made then or long subsequently. My conclusion is, looking at the relations of the parties, that the charge was made by the defendant unjustifiably to coerce the plaintiff into a settlement of accounts, the real grievance being something else,—a statement from her broker which showed losses and not gains. The defendant having under color of this charge caused the arrest and imprisonment of the plaintiff, it was an abuse of the process of the court—without probable cause, and the damages are assessed at $200 and costs.

Keller & McCorkill for plaintiff.

Lebourveau and *M. M. Tait* for defendant.

BANK OF MONTREAL v. MACLACHLAN et al.

Promissory note—Claim of holder against Endorser of composition for maker—Lien de droit.

This was a demand to recover from the defendants the sum of $1,455.03. The circumstances were peculiar. In the year 1877 the plaintiffs were holders of four several notes for $822.16, $619.75, $1,417.26 and $1,298.12, made by the firm of Robert Dunn & Co., and endorsed by one John Fraser. Dunn & Co. went into insolvency, and James Court was appointed their assignee on the 14th of August, 1877, and John Fraser went into insolvency and Thomas Darling was appointed his assignee on the 15th of January, 1878. Both these assignees were made defendants in the present action. On the 2nd of October, 1877, the insolvents Dunn & Co. made a composition with their creditors and were duly discharged. By this composition they undertook to place in the hands of Mr. Court, their assignee, notes for the amount of their composition, endorsed by the firm of McLachlan Brothers & Company, to the amount of thirty-five cents in the dollar, and in the terms of the deed the estate was transferred by Mr. Court to John S. McLachlan, one of this firm, on the 31st of October, 1877. On the 7th of May, 1878, Mr. Court called the attention of the defendant, John S. McLachlan, to the fact that the Bank of Montreal had filed a claim against Dunn & Co. as makers of the above four notes, $4,157.29 in all, on which the composition notes endorsed would be $1,455.06, and informed him that if this claim and that of Mr. Aitken were adjusted, there would be no obstacle to delivering over the notes reserved for John Fraser's claim. This claim amounted to $7,928.81, including the notes for $4,157.29 held by the Bank, but it had been dismissed on the ground that the notes were accommodation notes. TORRANCE, J. So far as the Bank was concerned, Fraser's claim might have been dismissed against Fraser, because the Bank, and not John Fraser, was the holder of the four notes for $4,157.29. The composition was only carried out by the notes endorsed by McLachlan Bros. & Co. being delivered to the assignee for the benefit of the parties concerned, but the Bank not having filed a claim in time, their claim was included in the notes given for the Fraser claim. They now seek to get the benefit of the indorsement *pro tanto* on the Fraser notes, and they are certainly the only parties entitled to it. The defendants contend that there is no *lien de droit*, no binding link between them and plaintiff, and that their indorsement was only in favour of Fraser, whose claim did not exist. But it is certain that though the claim of Fraser did not exist for an accommodation note, the claim on the same paper did

exist in favour of the Bank, as *bona fide* holder. The composition covered this claim and the assignee only transferred the estate on receiving the indorsement of the defendants McLachlan & Co. That indorsement is valueless in favour of Fraser, but why should it not be good in favour of the Bank? On every consideration of equity it should hold good in favour of the Bank. The demand of the Bank, therefore, that the amount of the composition for 35 cents, so far as their four notes are concerned, should be transferred from Fraser to them, appears to me a perfectly legitimate one, and should be granted.

T. W. Ritchie, Q. C., for plaintiffs.

Robertson & Co., for defendants.

DEVLIN v. BEEMER.

Commission for obtaining security for contract—Failure to earn commission where contract is void.

The demand was to recover from the defendant $413.86 as commission due to plaintiff for the half-year beginning 15th December, 1879, for obtaining the security of his wife for defendant to the Government of Quebec for the execution of a contract for the erection of a bridge over the Chaudière at Ottawa. The defendant pleaded that the contract was *ultra vires* of the Commissioner who had signed it on behalf of the Government, by non-observance of the formalities required by 32 Vic., c. 15, s. 14, and, moreover, the Legislature in July had refused to ratify the contract, and therefore the security was a nullity, and further that the surety died shortly after the execution of the contract, and her security for the second year could not, therefore, be given, which was the year in question.

TORRANCE, J. The plaintiff cites against the irregularity of the contract, the Statute of Canada 42 Vic., c. 56, but that merely authorizes the Commissioner to make the contract, without ratifying acts already done, and it could not neutralize the requirements of the Quebec Act, which required the signature of the Secretary as well as of the Commissioner. I hold that the formalities required by the Quebec Act have not been observed by the Commissioner, and therefore that the security had not been validly given, and in consequence no commission has been earned.

Plea maintained and action dismissed.

Girouard & Co. for plaintiff.

Carter & Co. for defendant.

RECENT U. S. DECISIONS.

Judge—Relationship to Attorney.—The fact that the attorney of one party was a son of the judge before whom the action was tried, *held*, not to disqualify the judge from sitting as such upon the trial of the cause. *Sjorberg* v. *Nordin*, 5 Northwestern Reporter, 677.

Divorce — Habitual Drunkard — Cruelty. — A man who has a fixed habit of drinking to excess to such a degree as to disqualify him from attending to his business during the principal portion of the time usually devoted to business, will be regarded as an habitual drunkard. There may be legal cruelty sufficient as ground of divorce without any actual personal violence. Conduct that endangers, either apparently or in fact, the physical health or safety, to a degree rendering it physically and mentally impracticable for the party endangered to perform the duties imposed by marriage, will constitute cruel and inhuman treatment. — *Wheeler* v. *Wheeler*, 5 Northwestern Reporter, 689.

Elevators—Mixing Grain.—Where grain in an elevator is mixed in a common mass with that of other owners, and of a like grade and kind, the depositors become tenants in common of the mass, according to the quantity owned by each, with a right of severance at any time. The owner of the elevator does not acquire title to the wheat deposited because he may own a portion of the common mass, nor because the wheat in the elevator may all have been shipped out and replaced by other wheat.—*Nelson* v. *Brown*, 5 Northwestern Reporter, 719.

Insurance—Temporary vacation of premises.—Where a policy of insurance provided that the same should be void if the premises became vacant and unoccupied, *held*, that a mere temporary absence of the occupants, as where they were called away to visit a sick relative, would not render the policy void.—*Stupetzki* v. *Transatlantic Fire Insurance Co.* (Supreme Court, Minnesota, April 21, 1880.)