The Legal News.

Vol. XI. DECEMBER 22, 1888. No. 51.

A curious case of breach of promise—*Joslin* v. *Baxter*—was before the Court of Queen's Bench in England, on the 5th December. The case had been adjourned from a previous day, to give the plaintiff an opportunity of considering an offer made in Court by the defendant to marry her at once. The plaintiff's counsel stated that his client still refused to accept the defendant's offer, as she did not consider it *bonâ fide*. The Judge said that the plaintiff could not maintain her action unless she was willing to perform her part of the contract; but he left the question of *bona fides* to the jury, who found a verdict for the plaintiff for £10. The learned Judge left plaintiff to move a Divisional Court for judgment, and made an order depriving her of her costs.

With reference to investments by trustees in colonial stocks, which Sir Charles Tupper is endeavoring to have officially authorized, Mr. T. F. Uttley writes to the *Law Journal*, as follows :—"The colonies are said to be much aggrieved at the new order of the Supreme Court which excludes colonial stock from the investments which may be made by trustees. The reasons are suggested to be that as colonial stocks can only be purchased at a premium and might be paid off in a few years at par, the beneficiaries would lose the difference between the price; but this objection applies also to other stocks in which trustees can invest, and prudent investors generally protect themselves against any possible loss by laying by out of their yearly interest a certain amount to cover or to redeem the loss of the premium according to the number of years in which the loan is to run. It is also considered objectionable that many of the stocks in the new order are subject to the provision that no investments are to be made in them unless they are not liable to be redeemed for fifteen years from the date of investment. It is noteworthy that colonial stocks, like those of Canada, New South Wales, Victoria, the Cape, and others, give a higher return than many other investments that trustees are empowered to make."

Liquidators and experts, especially where they have a chance to regulate their own fees, are usually disposed to entertain a somewhat extraordinary opinion of the value of their services. A provisional liquidator to an insolvent company, recently claimed in this city three guineas and a-half per day for his time, but as it appeared that a considerable part of his work was of a nature that might easily have been done by an ordinary book-keeper at $800 or $900 per annum, the Court reduced the amount to seven dollars per day, and this was maintained in appeal. The three liquidators of the Central Bank at Toronto were not so moderate in their ideas, their bill being $56,345, which has been cut down to less than $20,000 by the decision of the master-in-ordinary. A medical man, asked recently for his opinion about the proposed site for a hospital, was equally airy in his estimate of the value of his services. The attempt of experts to realize a little fortune out of a casual job will hardly be sustained by the Courts—more especially while the judges are made to realize that their own labours are far from being extravagantly rewarded.

PRIVY COUNCIL.

London, July 31, 1888.

Coram The Earl of Selborne, Lord Watson, Lord Hobhouse, Sir Barnes Peacock, Mr. S. Woulfe Flanagan.

Singleton et al. v. Knight et al.

Partnership—Authority of Partner—C. C. 1855.

C., one of three copartners, without the knowledge of his partners, lent a sum of money to K., upon condition that K. was to pay 6 per cent. interest, and that C.'s firm should receive one-half of the profits of K.'s business. K. paid interest, but no profits.

Held :— *That C.'s copartners were not bound by the contract, as one partner in a business has no authority to enter into a partnership with other persons in another business, and C.'s partners had not derived any benefit from his act.*

SIR BARNES PEACOCK :—

This is an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec, appeal side, affirming a judgment of the Superior Court, by which the action of the plaintiffs, the now appellants, was dismissed with costs. There are, therefore, two concurrent judgments upon the question at issue between the parties.

The suit was brought in September, 1882, and the plaintiff's charge was : "That in and since the year 1869, the defendants Alfred Frederick Augustus Knight, George Josiah Cook, and John Larkin Cook, and the late Jas. William Cook, in his lifetime, the said Messrs. Cook trading under the name, style, and firm of Cook & Brothers, carried on business at Quebec as timber merchants, in co-partnership, under the name, style, and firm of A.F. A. Knight." The declaration also stated that James William Cook had died, and that certain persons were by his will appointed as his executrix and executors, and then it proceeded to state, "That the said executrix and executors took possession of the said estate under the said will, and after the death of the said James William Cook, the said business and co-partnership of the said Alfred Frederick Augustus Knight, George Josiah Cook, John Larkin Cook, and James William Cook, trading under the name and firm of A. F. A. Knight, was continued and carried on with the legal representatives of the said James William Cook until the year 1877." So that the charge was that the partnership between Knight, James William Cook, George Josiah Cook, and John Larkin Cook, was also continued with the addition of the executors of James William Cook in his place, and that they were also partners. Then it stated that "the said defendants Alfred Frederick Augustus Knight, George Josiah Cook, and John Larkin Cook were, together with the legal representatives of the late James William Cook," indebted to the plaintiffs in certain sums of money.

The ground upon which it was contended that George Josiah Cook, and John Larkin Cook had become liable as partners with Knight was that James William Cook, who was a partner with George Josiah Cook, and John Larkin Cook, in the year 1869, lent to Knight a sum of $100,000 for the term of five years, upon condition that Knight was to pay 6 per cent. interest for the money advanced, and also, that the firm of Cook and Brothers should receive one-half of the profits of Knight's business. The contract itself was not produced, but evidence was given by George Josiah Cook and other witnesses, from which it may be assumed for the present purpose that a contract was proved to have been entered into by James William Cook to the effect already stated.

Both the Courts dismissed the plaintiff's claim, upon the ground that, even assuming the alleged contract to have been executed by James Willliam Cook—George Josiah Cook and John Larkin Cook were not bound by it, as one partner in a business has no authority from the other partners to enter into a partnership with other persons in another business. It was contended that George Josiah Cook had ratified the agreement, and that he, if not John Larkin Cook, had become liable as a partner. The Courts found that George Josiah Cook had not ratified the agreement, and that even if he had ratified it, it did not bind him to a partnership such as that which was alleged in the declaration, or such as would make George Josiah Cook liable as a partner with Knight and James William Cook. If George Josiah Cook ratified the agreement, it was only an agreement by which James William Cook, George Josiah Cook, and John Larkin Cook, were jointly to participate in the profits of Knight; they were not, by reason of that agreement, jointly liable, because one of them, John Larkin Cook, at all events, had never ratified or entered into the agreement, or ever authorized James William Cook to enter into it on his behalf.

It is contended now that even though John Larkin Cook was not liable, a decree may be given against George Josiah Cook, because he had ratified the agreement. One of the sections of the Civil Code of Lower Canada was cited, No. 1831, to show that participation in profits creates an obligation to participate in losses. The section is :—"Participation in the profits of a partnership carries with it an obligation to contribute to the losses. Any agreement by which one of

the partners is excluded from participation in the profits is null. An agreement by which one partner is exempt from liability for the losses of the partnership is null only as to third persons." In the present case there was no participation in the profits; no one of the partners of Cook and company received any portion of the profits of Knight's business, and Knight never treated Cook and company as partners, nor ever rendered them an account of the profits. He rendered merely an account of the loan and of the 6 per cent. interest.

But the Code of Lower Canada does not stop at section 1831. It proceeds to point out, in chapter 2, what are the obligations and rights of partners among themselves, and shows what, even if they had received the profits, would have been the rights and obligations of the Cooks, as between them and Knight, Chapter 3 speaks of the obligation of partners towards third persons; and section 1855 proceeds:—"A stipulation that the obligation is contracted for the partnership binds only the partner contracting, when he acts without the authority, express or implied, of his copartners; unless the partnership is benefited by his act, in which case all the partners are bound." Now, what benefit did Cook and company derive by the act of James William Cook? They derived no benefit so far as profits were concerned, because, as already stated, they received no profits. Knight did not consider that he was a partner with them by reason of the contract which he had entered into with James William Cook, and which had not been authorised or ratified by either of his other partners. It is said that George Josiah Cook read the contract, about 1873 or 1874, and that he did not give notice to Knight or to anybody else that he did not consent to the arrangement which James William Cook had entered into. But to whom was he to give notice? Knight had never stated that he considered the contract binding on him. John Larkin Cook had never become bound. Why, then, should George Josiah Cook give notice to Knight in 1874, that he did not consider himself bound as a partner by the agreement which his brother James William Cook had entered into in 1869, when Knight had never rendered an account of profits or ever shown that he treated him as a partner. There was no necessity for George Josiah Cook to give such notice, even if he read in 1874 the agreement that was entered into in 1869.

Further, it was said that by a letter which Cook and company wrote in 1876, they acknowledged their liability. Now, that letter was not an acknowledgment of their liability; on the contrary, they were proceeding to enter into a contract, binding themselves, not for their own debt, but for the debt of Knight. They say:—"With reference to the amount due to you by Mr. A. F. A. Knight, we will see it settled on the following conditions," &c. They do not say, "With reference to the debt which we owe to you as partners with Knight, we will settle it." Dunn and company never said, "You are liable yourselves; you are now proposing to guarantee Mr. Knight's debt, but it is your own debt, you are partners with Knight." There was nothing of that sort; they assented to the fact that it was Mr. Knight's debt, and not the debt of A. F. A. Knight including the Cooks.

Their Lordships, therefore, are of opinion, that the lower Courts came to a right conclusion in holding that there was no partnership, and that neither George Josiah Cook, nor John Larkin Cook, were liable in the action, and they will humbly advise Her Majesty that the decision of the Court of Queen's Bench be affirmed, and that the appeal be dismissed.

The appellants must pay the costs of this appeal.

Appeal dismissed.

G. Irvine, Q. C., Bompas, Q. C., and *Graham* for appellants.

Sir Horace Davey, Q.C., Bossé, Q. C., and *Fullarton*, for respondents.

COUR SUPÉRIEURE.

ST-HYACINTHE, 19 juin 1888.

Coram TELLIER, J.

BRAUREGARD v. DAIGNEAULT.

Paroles injurieuses—Dommages.

JUGÉ:—*Qu'une personne qui accuse une autre publiquement d'avoir rendu sous serment un compte faux, et d'avoir diverti d'un inventaire et recelé des biens appartenant à des*

mineurs, peut être poursuivie pour dommages à la réputation, et outre les dommages réels, elle peut être condamnée à des dommages exemplaires comme réparation civile. Montant de dommages exemplaires accordés dans l'espèce: $50.00.

Voici le jugement:—

"La Cour, etc....

"Considérant que le demandeur a prouvé que le neuf de janvier dernier, en la paroisse de Notre-Dame de Bonsecours, le défendeur, dans un moment de grande colère, a dit au demandeur, en présence de témoins, que dans l'inventaire que ce dernier avait fait faire auparavant, des biens de sa communauté avec feue Antoinette Daigneault, il n'avait pas rendu, sous serment, un compte fidèle et exact de tout ce qu'il y avait, qu'il avait un joli tas de blé et qu'il n'en avait montré que quatre minots, et d'autres paroles au même effet, faisant entendre et comprendre que le demandeur avait, lors du dit inventaire, diverti ou recelé des biens et spécialement du blé au préjudice de son enfant;

"Considérant que le défendeur a proféré ces paroles, sans motif légitime, dans le cours d'une querelle qu'il a lui-même alors faite au demandeur, au sujet d'un couvre-pieds et dont il a profité pour l'injurier et satisfaire au sentiment de haine qu'il nourrissait contre lui depuis quelque temps, avec une malice qu'il n'a pas cachée dans son témoignage en cette cause;

"Considérant que le défendeur, alors qu'il était encore sous l'effet de la colère dans laquelle il est entré dans cette querelle, s'est vanté à deux personnes d'avoir injurié comme susdit le demandeur, et qu'il a là et alors répété devant ces deux personnes, les dites accusations qu'il venait de porter contre le demandeur;

"Considérant que le défendeur dans sa défense nie avoir adressé au demandeur les paroles et propos qui lui sont reprochés par l'action, et qu'il se contente d'ajouter en icelle, que si toutefois il a pu dire, dans l'excitation, quelques paroles blessantes à l'adresse du demandeur, elles n'étaient nullement de nature à lui causer dommage ni à affecter son honneur, sans offrir aucune réparation quelconque;

"Considérant que ces paroles du défendeur ont été dites dans la colère, qu'elles ne paraissent pas avoir été suivies de repentir, et qu'elles étaient de nature à nuire au demandeur dans sa réputation et son honneur;

"Considérant que bien que le demandeur n'ait pas établi avoir souffert des dommages réels ou spéciaux par suite des dites paroles du défendeur, il a néanmoins droit à une réparation civile que la Cour fixe à une somme de $50, rejette la défense et condamne le défendeur à payer au demandeur la dite somme de $50, avec intérêt à compter de ce jour, et les dépens, etc."

Beauchemin & Mallette, avocats du demandeur.

A. Girard, avocat du défendeur.

(J. J. B.)

COURT OF QUEEN'S BENCH—MONTREAL.*

Testamentary executor—Account—Legatee.

Held, that after a testamentary executor has been discharged by a deed signed by all the legatees, an action against him praying for an account, brought by one of the legatees who joined in the discharge, and without asking that the discharge be set aside, will be dismissed.—*Newton & Seale*, Dorion, C. J., Tessier, Cross, Baby, Church, JJ., Sept. 17, 1887.

SUPERIOR COURT—MONTREAL.†

Responsibility—Accident caused by dogs barking at horses—Art. 1055, *C.C.—Damages.*

The plaintiff was driving along the highway after dark, with two horses led by a halter, the end of which he held round his hands. The led horses, being startled by the barking of dogs which ran out from a farmhouse, jerked the rope suddenly, and the plaintiff's hands were seriously injured:

HELD:—That a dog, although a domestic animal, brings his owner no special privileges of exemption, and the defendant, being guilty of negligence in allowing his dogs to be at large upon a public road, was responsible under Art. 1055 C. C., for the injury to plaintiff.—*Vital* v. *Tétrault*, Davidson, J., Nov. 21, 1888.

* To appear in Montreal Law Reports, 4 Q. B.
† To appear in Montreal Law Reports, 4 S. C.

QUEEN'S BENCH DIVISION.

LONDON, Nov. 30, 1888.

REGINA v. WILLIAMS.

Habeas Corpus—Principles of Court in Granting.

William Ruby Thompson, a child of nine years old, was admitted into a Protestant charitable institution on the application of his mother. He had been christened a Roman Catholic. His mother belonged to that faith, and his father, who had died before his admission to the Protestant school, had also belonged to it, but neither parent had practised their religion for many years. Whilst in the Cancer Hospital the mother came under the influence of Roman Catholic friends, in consequence of which she applied for her child to the authorities of the Protestant school for the purpose of having him removed to a Roman Catholic school. The authorities having refused, she applied for a writ of *habeas corpus*. Her application was heard before CHARLES, J., at Chambers, who refused it on the ground that it was not for the benefit of the child that it should be removed from the school where it then was. She subsequently obtained a rule *nisi* in the Queen's Bench Division.

Archibald, in showing cause, contended that by the Judicature Act, 1873, s. 25, the Court in cases of this kind were bound by the rules that guided the Court of Chancery in similar matters, and that the case came within the principle of *Stourton* v. *Stourton*, 26 Law J. Rep. Chanc. 354; 8 De G. M. & G. 760, where it was held inadvisable, the child having been brought up for some years as a Protestant, to allow the father to remove it into his own custody for the purpose of having it brought up a Roman Catholic. The principles applied then in Chancery apply now to motions for *habeas corpus* in the Queen's Bench Division.

R. S. Wright (*St. John Clerk* with him), *contra*, was not called upon.

The COURT (LORD COLERIDGE, C. J., and MANISTY, J.) held that none of the cases in Chancery were in point. The child had only been one year and three months at the school. In the case cited the child had been left alone for nine years. Nothing short of proof that there was danger of the child being immorally or otherwise wickedly brought up, could justify the Court in depriving the mother, who since the death of the father was its legal custodian, of its custody.

Rule absolute.

—*Law Journal.*

QUEEN'S BENCH DIVISION.

LONDON, Oct. 25, 1888.

MATHEWS v. THE LONDON ST. TRAMWAYS CO.

Negligence—Collision of omnibus and Tramway Car—Both Drivers to Blame—Injured Person not Identified in respect of Negligence of Drivers.

This was a motion by the plaintiff for a new trial upon the ground of misdirection, and that the verdict for the defendants was against the weight of evidence. The plaintiff's action was for compensation for injuries sustained by him in a collision between an omnibus, on the outside of which he was seated, and a tramway car of the defendant company. It appeared that the omnibus was coming down hill from Highgate on the proper side of the way, and that the tramway car was coming in the opposite direction. A handcart was standing by the kerb on that side of the road down which the omnibus was coming, and so diminished the space that the driver of the omnibus, in order to pass it, had to pull on to the lines of the tramway. The driver of the tramway car pursued his course, and a collision occurred, in which the plaintiff was thrown off the outside of the omnibus and injured. At the trial before FIELD, J., and a special jury in June last, the learned judge asked the jury whether the sole cause of the accident was the negligence of the driver of the tramway car. Upon this the jury found for the defendants. After this finding the further question was left whether the accident would not have happened but for the negligence of both omnibus and tramway car. Upon this question the jury were unable to agree.

Kemp, Q. C., and *Vaughan Williams*, in support: The language of the learned judge was misleading, and calculated to make the jury suppose that any negligence at all on the part of the omnibus driver would disentitle the plaintiff to recover. Since the decision of the House of Lords in *Mills and*

others v. *Armstrong and others; The Bernina*, 57 Law J. Rep. P. D. & A. 65; L. R. 13 App. Cas. 1, this was not the case.

Tindal Atkinson, Q. C., and *Atherley Jones* opposed.

The COURT (POLLOCK, B., and MANISTY, J.) held that the manner in which the case was left to the jury was not satisfactory; the direction, since the decision of the House of Lords in the case cited, should have been: 'Was there negligence on the part of the tramway-car driver which caused the accident? If so, it is no answer to say that there was negligence on the part of the omnibus driver.' Accordingly there must be a new trial.

—*Ib.* Motion for new trial granted.

*DECISIONS AT QUEBEC.**

Lien of Bank on its stock—Application of payments—Claim against joint debtor.

Held, 1. Under R. S. C., ch. 120, sec. 59, a bank has a lien on the stock held in it by a member of a firm for a debt due to it by such firm.

2. When a debt is due a bank, and the debtor acquires stock in the same, such stock is at once affected by the lien of the bank, and monies realized by the bank out of such stock may be applied by it to the payment of said debt, in preference to another debt contracted subsequently by the same debtor.

3. Under the common law of this Province, a creditor claiming against the estate of a joint debtor, is bound to give credit for whatever he may have received from his other joint debtors.—*In re Chinic*, insolvent, & *The Union Bank of Canada*, claimant, S. C., Andrews, J., Sept. 10, 1888.

Assurance—Hypothèque subséquente—Deuxième assurance.

Jugé, 1. Plusieurs assurances distinctes peuvent être constatées dans une même police, et dans ce cas, les unes peuvent être affectées par des causes qui n'affectent pas les autres.

2. En dehors de conventions formelles, l'assuré n'est pas tenu de dénoncer à l'assureur le fait qu'il a consenti, subsequemment à l'assurance, une hypothèque sur l'immeuble assuré, ou sur lequel se trouvent les choses assurées.

3. En l'absence de convention à cet effet, l'assuré n'est pas tenu de dénoncer à l'assureur une deuxième assurance effectuée sur les biens assurés.—*Richmond, etc. Fire Ins. Co. & Fee*, en appel, Dorion, J. C., Tessier, Baby, Church, JJ., 6 oct. 1888.

Prescription—Interruption—Acte authentique—Arts. 2260, 2264 et 2265 C. C.

Jugé, la courte prescription interrompue par la passation d'un acte authentique qui constate la dette, ne recommence pas à courir par le même temps qu'auparavant, et l'acte authentique a l'effet de substituer la prescription de trente ans à celle dont la dette était originairement frappée.

Par CASAULT, J.—Un acte reçu par notaire avant la mise en force du code du notariat, n'est pas authentique s'il n'est pas daté, et l'acte qui commence par les mots "Pardevant le notaire, etc." avec un P majuscule, sans aucune reférence à une date mise en chiffres pour l'année et le jour du mois, au haut de la page sur laquelle commence l'acte, n'est ni daté, ni authentique.—*Dumas* v. *Coté*, en révision, Casault, Caron, Andrews, JJ., 29 sept. 1888.

COUR D'APPEL DE PARIS (2e CH.)

6 avril 1887.

Présidence de M. DE THEVENARD.

BAILLEAU et RADU v. EDGARD JOUBERT et HONS-OLIVIER.

Conseil judiciaire—Demande en dation—Effet rétroactif—Fraude—Emprunt—Nullité—Qualité pour agir.

Si à la différence de l'interdiction, la dation d'un conseil judiciaire n'a pas d'effet rétroactif sur les actes antérieurs, cette règle ne saurait recevoir d'application quand il résulte de l'ensemble des faits de la cause que les actes antérieurs ont eu pour but de faire fraude à la loi et d'éluder à l'avance les conséquences de la nomination du conseil.

Par suite peut être annulé l'emprunt contracté par un prodigue au cours de l'instance en dation de conseil judiciaire, alors que cet

* 14 Q. L. R.

emprunt n'est point justifié et que le capitaliste a dû connaître la situation légale de son emprunteur.

Et la nullité de cet emprunt peut être demandée par celui qui poursuit la nomination du conseil.

MAY RAILWAY COMPANIES EXPEL PASSENGERS?

One of the most annoying incidents in a railway journey is the loss of a ticket; and it is made more acute by the arbitrary manner which railway officials assume in virtue of the accident. Even if the passenger, as too often happens, to save trouble, pay his fare over again, he is treated with impatience by the ticket-collector and with black looks by his fellow-travellers, who are being delayed. If he does not pay, or is without his purse, unless he is a very well-known person, the usual course hitherto has been to turn him out of the carriage with ignominy, detain him until his train has gone, and leave him stranded away from his destination. It has been an article of faith with railway officers, from the chairman to the ticket-collector, that this way of dealing with the matter is just and lawful, and the railway solicitor when appealed to has whispered the comforting words, *Wood* v. *Leadbitter*. The case of *Butler* v. *The Manchester, Sheffield, and Lincolnshire Railway Company*, 57 Law J. Rep. Q. B. 564, in the Court of Appeal, will rudely dispel these notions, which were sufficiently rooted to be accepted by Mr. Justice Manisty at the trial at Leeds. All the judges of the Court of Appeal agree that *Wood* v. *Leadbitter* has no application whatever, and that the company's by-laws, even assuming them to have any force, do not authorise turning passengers adrift. The decision turned entirely on the meaning of the by-laws, and assumed, by way of argument, a great deal in favour of the railway company which is not law. The only word said in favor of them was by Lord Justice Lindley, who confessed a doubt whether railway companies are not occasionally placed in great difficulties by reason of the unscrupulousness of some persons, and reserved his opinion whether a by-law might not be framed to justify them in doing what was done in the present case. As to this doubt, it is not shared by Lord Justice Lopes; and as to the difficulties in which railway companies are placed, it is not easy to see them. If a fraud is being committed, they no doubt have a right to act as they do, but, like everyone else, if they make a mistake they must take the consequences.

The facts of the case were of a very familiar type in railway litigation. Mr. Butler paid the company half-a-crown for a ticket from Sheffield to Manchester and back by an excursion train. He gave up one half, and on his return-half being demanded he found himself without it. Mr. Butler gave the ticket-collector his name and address and explained the facts, but would not pay the 3s. 5d. demanded of him, being the full third-class fare from Manchester to Sheffield. Thereupon he was removed from the carriage, detained for some time, and eventually turned off the company's premises. The ticket had on it the usual 'See back,' supplemented by an indorsement that it was issued subject to the conditions contained in the company's time-tables, which duly displayed the familiar series of by-laws. Among these was, of course, the intimation that any traveller without a ticket shall be required to pay the fare from the station whence the train originally started. This by-law appears to be still sanctioned by the Board of Trade, although it is obviously unreasonable and contrary to law, and has been so pronounced. It never could have been the intention of Parliament to allow railway companies to fine a passenger who travels from Willesden to Euston to the extent of the fare from Edinburgh. The continued vitality of this by-law is an illustration of the helplessness of the travelling public in the hands of the railway companies. Even if it were reasonable, it would not be binding on the passenger as part of the contract, as it is equally well established that taking a ticket with a mere reference of this kind does not incorporate the by-law in the contract. These points were not dwelt upon in the judgment of the Court, but if possible a still weaker point in the company's case was fixed upon—namely, that the by-law did not profess to authorise the removal of a passenger as a penalty for its infringement. Such an authority was professed to be

given in the case of illicit smoking, drunkenness, and such eccentricities as insisting on travelling on the roof, in the guard's van, or on the engine. The company's defence was somewhat mixed. A contract arising from the by-law or implied from the contract of carriage was set up, but even assuming its existence, it would only give the company a right to damages for the breach of it by the passenger, and would not justify them in turning the passenger out of the carriage or off the premises.

The only plausible defence of the company lay in *Wood* v. *Leadbitter*, 14 Law J. Rep. Exch. 161, the well-known case of the ticket for a grand stand, which was held merely to constitute a revocable license and not to be a grant of a temporary easement. The railway company could only rely on this case in their character as proprietors of the soil. It is possible that they are entitled to rely on it to the extent that removing the plaintiff was not a trespass in the strict sense of the term. A person who sits in the carriage of another, whether the carriage is in the high road or on the land of the owner of the carriage, may be removed from it by the owner using, as in this case, only necessary force; but while the act does not amount to a trespass or assault, it may amount to a breach of contract if there is a contractual relation between the parties. Railway companies are carriers first, and proprietors of land secondly. If they break their contract of carriage by any act which is justified in their character of proprietors, they must pay damages, not for assault, but for breach of contract, which comes to the same thing. The plaintiff in the case under discussion brought his action for an assault and false imprisonment, and in so far as there was detention, no doubt there was a trespass; but the case is an authority where there is no detention and where the act amounts to a breach of contract only, and can be justified from the proprietor's point of view. In such a case it is well to frame the claim for a breach of contract, with, perhaps, a claim for an assault in the alternative. This distinction was in the mind of Lord Justice Lindley when he made an even more disturbing suggestion than that as to the potentiality of the by-law-making powers of railway companies—namely, that even *Wood* v. *Leadbitter* is "no authority that an action will not lie for breach of a contract to give an easement." Could it be said that the contract in that case was not a contract concerning an interest in land in the words of the Statute of Frauds? On the other hand, it cannot be said that a contract to carry from London to York concerns an interest in land at all.—*Law Journal* (London).

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Dec. 15.

Judicial Abandonments.

Emelina Sylvestre (Georges Lemieux & Co.), Fraserville, Dec. 10.

O. Edouard Gagnon, trader, Baie St. Paul, Dec. 13.

Balzamire Guay, (F. Guay & Cie.), dry goods, Quebec, Dec. 6.

Clara S. Morency, trader, Sherbrooke, Dec. 12.

William J. Rabbitts, Montreal, Dec. 6.

Curators appointed.

Re A. Bellefeuille, an absentee.—C. Desmarteau, Montreal, curator, Dec. 12.

Re J. O. Boucher.—A. A. Taillon, Sorel, curator, Dec. 3.

Re P. C. D'Auteuil, dry goods.—H. A. Bedard, Quebec, curator, Dec. 10.

Re Philias Dubé.—M. Deschênes, Fraserville, curator, Dec. 7.

Re David Ethier.—C. Desmarteau, Montreal, curator, Dec. 12.

Re David A. Hawes.—C. Desmarteau, Montreal, curator, Dec. 5.

Re P. A. Leduc.—Kent & Turcotte, Montreal, joint-curator, Dec. 12.

Re Maxime H. Loranger, Sherbrooke. —J. McD. Hains, Montreal, curator, Dec. 10.

Re Adelard Payette.—J. Cartier, Jr., Montreal, curator, Dec. 12.

Re Sylvain Turcotte.—C. Desmarteau, Montreal, curator, Dec. 5.

Re Charles Wilson.—Kent & Turcotte, Montreal, joint-curator, Dec. 12.

Dividends.

Re Emmanuel Beauchemin.—Final dividend, payable Jan. 2, 1889, V. Gladu, St. François du Lac, curator.

Re Vital Bergeron, Montreal.—Dividend, payable Jan. 7, Kent & Turcotte, Montreal, joint-curator.

Re G. Champoux & fils.—First and final dividend, payable Jan. 4, C. Millier, Sherbrooke, curator.

Re Frs. X. Crevier.—First dividend (10c.), payable Dec. 31, W. A. Caldwell, Montreal, curator.

Re Ludevine Larue (J. H. Chagnon), Sorel.—Dividend, payable Jan. 7, Kent & Turcotte, Montreal, joint-curator.

Re Grignon & Levesque.—First and final dividend payable Dec. 31, W. A. Caldwell, Montreal, curator.

Re Tellier, Charland & Co., Sorel.—Dividend, payable Jan. 3, Kent & Turcotte, Montreal, joint-curator.

Separation as to property.

Rose Delima Charrette vs. Pierre Pauzé, Jr., trader and contractor, Iron Side, Dec. 3.

Eliza Tougas vs. Narcisse Racine, Montreal, Nov. 14.

Eugénie Villeneuve vs. Joseph Anasthase Thouin, hotel-keeper, Montreal, Dec. 12.

Minutes of notaries transferred.

Minutes of late D. F. de St. Aubin to Joseph E. Gagnon, N. P., St. Jérôme de Matane.