The Legal News.

VOL. VII. FEBRUARY 9, 1884. No. 6.

PRIVILEGE OF COUNSEL.

The case of *Munster* v. *Lamb*, before the English Court of Appeal, to which we referred a short time ago (Vol. 6, p. 394), has been followed by a decision in the same sense by Mr. Justice Jetté in the Superior Court, at Montreal. In the case of *Gauthier* v. *St-Pierre*, a note of which will be found in the present issue, an advocate was sued for damages by a witness whom he openly charged with perjury, in a trial before the Recorder. The Montreal case was of a much milder type than the English one so far as the lawyer's words are concerned, for Mr. St-Pierre's client had specially instructed him to make the charge in the event of the witness stating a certain thing, viz, that his client, who was being tried for keeping a house of prostitution, had admitted to the witness that the charge was true. Mr. St-Pierre acted without malice, and the words spoken were connected with the case. There could be no doubt, therefore, that the case fell within the comprehensive rule laid down by the Master of the Rolls, who observed, in *Munster* v. *Lamb*: "It is better that the "rule should be made large, even though it "may be large enough to cover the case of a "man who acts with malice and is guilty of "misconduct."

Mr. Justice Jetté followed this decision, after establishing that the ancient as well as the modern law of France is precisely similar. So long as the words spoken are connected with the case in which the advocate is engaged, no action of damages will lie. It is for the presiding judge to restrain and rebuke counsel if they exceed the bounds of a fair defence and make use of language which is not inspired by a sense of duty.

DUPUY v. DUCONDU.

The decision of the Privy Council in this case, which will be found in the present issue, reverses the judgment of the majority of the Supreme Court, and restores the judgment of the Superior Court, unanimously affirmed in appeal by the Court of Queen's Bench. One of the "unsatisfactory results" noted in Vol. 5, p. 105, is thus obliterated, for by the decision of the Supreme Court the winning side had but three judges to sustain it, while there were seven on the losing side. Now the judges stand ten to three in favor of the successful party.

The decision of the Supreme Court, it will be remembered, excited some remark. We may refer particularly to Vol. 5, pp. 84, 91, 105, 128 and 130. It will be observed that the position taken by "R" in the communications which appeared in our columns has been completely sustained by the final judgment. The Judicial Committee declare two things: first, that the sale of a Crown Timber license does not carry with it a warranty that there has been no prior concession which interferes with the vendor's rights; and secondly, that in this particular case, the deed of October 1866, by which two licenses, representing 50 miles of limits, were transferred to make up the deficit in the licenses previously sold, did not contain any warranty except the obligation to deliver the licenses themselves.

NEW PUBLICATIONS.

MONTREAL CONDENSED REPORTS, Second Edition, revised by Mr. Justice Ramsay.—MONTREAL: A. Periard, Publisher.

This is the volume to which a brief reference was made last week. It embraces the reports and notes of cases contained in a work originally issued in 1854, under the editorial management of Messrs. T. K. Ramsay and L. S. Morin. The surviving Editor (Mr. Justice Ramsay) has revised the present edition, for the proprietor and publisher, Mr. Periard who has been induced to bring out a new edition by the fact that the work has long been out of print, and is still in much demand. The portion of the work known as the *Law Reporter*, consisting of articles and miscellaneous matters, has not been reproduced. Although the reports cover only 134 pages the number of cases is large, and many of them are still of considerable interest. Dur-

ing the period of its existence, this publication was the only work of the sort printed at Montreal, and the whole body of reports extant was quite insignificant. Since that time, however, as appears by a brief preface to the work contributed by Mr. Kirby, the number of volumes of provincial reports has been increased by 74.

The publisher has done his part well, the work being well printed and bound. The members of the profession will, no doubt, gladly avail themselves of the opportunity of adding to their libraries this valuable and interesting compilation, of which for many years it has been impossible to obtain a copy.

NOTES OF CASES.

COUR SUPERIEURE.

MONTRÉAL, 28 novembre 1883.

Coram MATHIEU, J.

BURY v. SILBERSTEIN.

Action pro socio—Demande dans un plaidoyer.

JUGÉ:—*Que l'on ne peut dans un plaidoyer à une action* pro socio *conclure à ce que le demandeur soit condamné à rendre compte ou à payer une somme d'argent, mais que cela doit se faire par demande incidente.*

L'action est *pro socio*, elle demande la dissolution de la société et à ce que le co-associé défendeur rende compte de son administration. Le demandeur conclut, en outre, à $2,-500 de dommages et à ce que la part du défendeur dans la société soit confisquée en sa faveur, le défendeur ayant, contrairement à l'acte de société, établi, à Montréal, un autre établissement semblable à celui de la société.

Le défendeur admet la dissolution de la société, accuse le demandeur d'avoir violé ses devoirs d'associé, et conclut au débouté de l'action, puis il demande à ce que le demandeur soit condamné à lui rendre un compte, et à lui payer une somme de $2,000, montant du capital investi par lui dans la dite société.

A ce plaidoyer, le demandeur répondit en droit: 1o. par une réponse partielle, que le défendeur ne pouvait dans un plaidoyer lui demander un compte; 2o. par une autre réponse partielle, qu'il ne pouvait pas non plus demander dans son plaidoyer une condamnation pour une somme de deniers, ce qu'il aurait dû faire, si dans les cas il en avait le droit, par une demande séparée; 3o. par une réponse totale, que le plaidoyer n'était pas une réponse à l'action, que le défendeur à une action *pro socio*, s'il plaide affirmativement, ne peut que refuser ou se soumettre à rendre compte, ou plaider qu'il a déjà rendu compte.

A l'argument, le défendeur objecta que le demandeur n'avait pas indiqué spécialement les allégations du plaidoyer auxquelles il répondait en droit, mais ne les avait indiqué que généralement.

Le jugement est comme suit:

"La Cour, etc....

"Sur la première réponse en droit produite par le dit demandeur à l'encontre de cette partie du premier plaidoyer du dit défendeur, dans laquelle le dit défendeur allègue qu'il a droit de réclamer du demandeur un compte des affaires que le demandeur a pu faire pendant l'existence de la dite société, en dehors des affaires de la société elle-même, et à cette partie des conclusions du dit plaidoyer, dans laquelle le dit défendeur demande que le demandeur soit condamné à lui rendre compte des profits réalisés par le dit demandeur en dehors des affaires de la dite société, et qu'à défaut par le demandeur de rendre le dit compte il soit condamné à payer au défendeur la somme de $5,000;

"Considérant que ces allégations du dit défendeur auxquelles la dite réponse en droit se rapporte ne sont pas faites dans une demande incidente, mais sont faites dans un plaidoyer tendant à faire renvoyer l'action du demandeur, et que dans une action intentée pour obtenir la dissolution d'une société ces allégations ne sont pas une bonne défense à l'action;

"Considérant que le défendeur n'offre pas non plus la somme réclamée en compensation des dommages réclamés par le demandeur; que la dite première réponse en droit du dit demandeur est bien fondée;

"A maintenu et maintient la dite première réponse en droit du dit demandeur, et a déclaré et déclare les allégations et les conclusions du dit premier plaidoyer du défendeur mentionnées dans la dite réponse en droit illégales et les rejette du dossier;

"Sur la deuxième réponse en droit du de-

mandeur à cette partie du premier plaidoyer du défendeur dans laquelle le défendeur allègue que sa mise dans les fonds de la dite société s'élevait à la somme de dix-sept cents à deux mille piastres, et à cette partie des conclusions par laquelle le défendeur demande que le dit demandeur soit condamné à payer au défendeur la somme de $2,000.00 pour la valeur des effets par lui mis dans la société:

"Considérant qu'un défendeur ne peut obtenir une condamnation contre le demandeur si ce n'est par une demande incidente et que le défendeur n'a pas fait telle demande incidente, et qu'il ne demande pas non plus à offrir la somme qu'il réclame en compensation de la somme réclamée par le demandeur;

"Considérant en outre que le dit défendeur n'a pas le droit de demander que le demandeur soit condamné à lui payer en deniers la valeur de sa mise dans la dite société, mais qu'il aurait seulement droit au partage des biens de la dite société et au paiement de la balance lui revenant après ce partage;

"Considérant que les allégations et la partie des conclusions du dit premier plaidoyer du dit défendeur auxquelles se rapporte la dite réponse en droit sont illégales;

"A maintenu et maintient la dite deuxième réponse en droit au dit demandeur et a déclaré et déclare les dites allégations et conclusions auxquelles la dite réponse en droit se rapporte illégales et les rejette du dossier, et a condamné et condamne le dit défendeur à payer au dit demandeur les dépens d'une réponse en droit, lesquels dépens sont distraits à MM. Barnard, Beauchamp et Creighton, Avocats du demandeur;

"Sur la troisième réponse en droit du dit demandeur à tout le premier plaidoyer du dit défendeur;

"Considérant que si les allégations qui ne sont pas rejetées tel que ci-dessus mentionné, dans le dit plaidoyer du défendeur ne sont pas suffisantes pour faire renvoyer l'action, cependant elles peuvent avoir quelqu'influence sur le montant des dommages que le demandeur pourrait obtenir contre le défendeur;

"A ordonné et ordonne preuve avant faire droit sur la dite troisième réponse en droit, dépens réservés."

Barnard, Beauchamp & Barnard, pour le demandeur.

Church, Chapleau, Hall & Atwater, pour le défendeur.

(J.J.B.)

SUPERIOR COURT.

MONTREAL, January 30, 1884.

Before TORRANCE, J.

CLENDINNENG v. EUARD.

Trade Mark—Prior use of design.

A person who copies the design of an article which has long been manufactured and in use in another country, and registers a trade-mark for the same in Canada under the Trade-Mark and Design Act, of 1879, is not entitled to protection.

This was an action of damages against a dealer in stoves, for alleged infringement of a trade-mark and industrial design registered as the property of plaintiff. It was in evidence that this trade-mark and design had been copied by plaintiff from and were identical with a stove manufactured by a firm of Eddy, Corse & Co., of Troy, N. Y., and sold throughout the United States of America, plaintiff having procured patterns of the same from Eddy & Co.; that this trade-mark and design were applied to stoves, and known and sold in the United States for years previous to the registration in Canada, and plaintiff copied his design and trade-mark from the stoves of Eddy & Co. Further, previous to the registration by plaintiff, defendants had imported from Eddy & Co. a stove similar in design, and used as a pattern, from which the stoves complained of were made.

PER CURIAM. I do not find any right in plaintiff. He is not the proprietor intended to be protected by the Act of 1879. He has no rights as against defendant. The action is dismissed.

Robertson, Ritchie & Fleet, for plaintiff.

Greenshields, McCorkill & Guerin, for defdt.

SUPERIOR COURT.

MONTREAL, January 30, 1884.

Before TORRANCE, J.

MARCHAND v. SNOWDON et al.

Capias—Probable cause.

The plaintiff was arrested on a capias, on the ground that he had refused to make any settlement of his debt; that he was about to sell his estate and to leave the country. It appeared that the plaintiff had called a meeting of his creditors and informed them of the proposed sale, to which the majority of those present agreed. Held, that there was not probable cause.

This was an action of damages for maliciously causing the arrest of plaintiff for a debt due by him of $200. The capias issued on the 11th November, 1881, on the affidavit of one Cleghorn, the book-keeper of defendants. He deposed that he had reason to believe and did believe that plaintiff was immediately about to leave the late Province of Canada, with intent to defraud his creditors, and his reasons for the belief were that plaintiff had informed him that he was about to sell his estate and effects and to take up his abode in Montana, in the United States. The plaintiff was arrested on the 11th November, 1881, contested the capias, and it was quashed on the 8th February, 1882.

PER CURIAM. The evidence shows that plaintiff being in a strait, notified his creditors, and met them on the morning of the 11th November, and after explaining matters to the creditors, proposed selling his stock to one Desjardins. This was agreed to by those present. One Poitras attended the meeting for defendants, though he did not express any opinion, and says in his deposition that his principals, the defendants, expressly forbade his consenting to anything for them. Plaintiff gave his creditors to understand that he would go to the States in January. It appears that Poitras reported the meeting to the defendants and plaintiff's intention to leave in January. Defendants immediately directed their book-keeper Cleghorn to have the plaintiff arrested as a debtor on the eve of absconding. Cleghorn, examined as a witness in the capias suit, says, from plaintiff never having stated that he would settle his account, and never having made any set time at which he was to settle, and from his conversation to the effect that he was going to leave the country, and from information that Cleghorn had, his assets would not cover his liabilities. These were the reasons for making the affidavit. Q. Are you quite sure that the petitioner (plaintiff) did not state the time at which he intended leaving this country to go to Montana? A. I know he did not state it to me. Q. Nor did he state it to any other of your informants to your knowledge? A. That I cannot state. Q. Well, they did not state to you that he had stated to them the time at which he was leaving? A. No. They did not state anything of the kind to me.

The conclusion of the Court is that the affidavit was made without probable cause for the arrest, and defendants, therefore, are liable in damages. These are assessed at the sum of $200.

T. & C. C. Delorimier, for plaintiff.

H. L. Snowdon for defendants.

J. L. Morris, Counsel.

SUPERIOR COURT.

MONTREAL, January 31, 1884.

Before JETTE, J.

GAUTHIER v. ST. PIERRE.

Professional Privilege—Words spoken by counsel during trial.

No action lies against an advocate for words spoken by him in the discharge of his professional duty before the Court, unless the words complained of are foreign to the case in which he is at the time engaged.

On the 6th October, 1882, the defendant Mr. St. Pierre, a member of the Montreal Bar, was engaged before the Recorder in the defence of a woman charged with keeping a house of ill-fame. Gauthier, the plaintiff, was the principal witness for the prosecution. Before the trial came on Mr. St. Pierre was informed that Gauthier was circulating a statement to the effect that the accused had admitted her guilt to him. Entertaining some doubt as to the correctness of this state-

ment Mr. St. Pierre communicated with his client, who emphatically denied the report, and added, "If the witness makes such a statement on oath he will be perjuring himself, and I authorize you to make a declaration to this effect before the Court."

The case came on for trial, and Gauthier did depose that the accused kept a house of prostitution, and that she had admitted the fact to him. Thereupon Mr. St. Pierre exclaimed: "*Ce que vous dites là est un mensonge; vous vous parjurez; vous êtes un parjuré!*"

On this Gauthier brought the present action, claiming $100 damages.

The defence was that the words were not used, but if they were, the defendant's privilege as counsel protected him; that what he said was stated in pursuance of instructions from his client.

Per Curiam. Notwithstanding the defendant's denial, it is established in evidence that he said, "*parjure*," or, "*vous vous parjurez.*" The Recorder made a note of the statement, and remarked to Mr. St. Pierre that he had no right to speak in that way. Other witnesses give the same version of what transpired. But the Recorder, though he considered the admission to be proved, gave the accused the benefit of the doubt, and discharged her.

The question is whether the defendant is liable to an action of damages for words spoken in the discharge of his professional duty. Grellet-Dumazeau, No. 884; Dareau, chap. 3, sec. 4, No. 4. The old French law allowed the advocate entire freedom in everything pertinent to the case, under the control of the presiding judge. Every Court has the right to check a lawyer if he indulges in too great license of expression.

The dispositions of the old French law are found in the modern law;—Grellet-Dumazeau, No. 887; Chassan, Délits et contraventions de la parole, No. 136. It is only where the slanderous expressions are foreign to the cause that an action lies.

The same principles prevail in England. In the case of *Rex* v. *Skinner*, more than a hundred years ago, Lord Mansfield laid down the rule in the clearest terms: "Neither party, witness, counsel, jury or judge can be put to answer, civilly or criminally, for words spoken in office." In the recent case of *Munster* v. *Lamb*, the doctrine is re-affirmed in the most positive manner.

In the present case, the words of Mr. St-Pierre were not foreign to the cause which was being tried, and therefore they could not give rise to an action of damages.

The following is the text of the judgment:

"La Cour, etc....

"Considérant que le demandeur poursuit le défendeur, avocat du barreau de cette ville, lui réclamant $100 de dommages-intérêts, à raison de certaines paroles injurieuses que le dit défendeur lui aurait adressées, le 6 octobre 1882, pendant une audience de la Cour du Recorder, dans une cause où le demandeur comparaissait comme témoin et pendant qu'il donnait sa déposition comme tel;

"Considérant que le défendeur a plaidé que les paroles qu'il a alors prononcées à l'adresse du demandeur, l'ont été dans l'exercice légitime de son droit professionnel, pour la défense des intérêts de la partie que représentait alors le défendeur et sur les instructions spéciales de sa cliente, et que par suite, il est protégé contre toute action telle que celle maintenant portée contre lui;

"Considérant que bien qu'il apparaisse en preuve, que le défendeur a prononcé, dans l'occasion en question, les paroles qui lui sont reprochées, il est constant néanmoins que ces paroles, loin d'être étrangères à la cause, s'y rapportaient au contraire directement; qu'elles ont été dites sincèrement et sans malice et d'après les instructions formelles de la partie que représentait le défendeur, et que, dans ces circonstances, l'abus de langage dont le défendeur est accusé n'était soumis qu'au contrôle exclusif de la Cour, devant laquelle il remplissait son ministère, et ne peut maintenant l'exposer à être recherché par action civile devant un autre tribunal;

"Considérant, en conséquence, que le défendeur est bien fondé à invoquer, dans l'espèce, le privilége et l'immunité que la loi accorde à l'avocat, pour la libre défense de son client;

"Maintient l'exception du défendeur et renvoie et déboute l'action du demandeur avec dépens." Action dismissed.

Champagne & Cornellier, for plaintiff.

St-Pierre & Scallon, for defendant.

PRIVY COUNCIL.

LONDON, November 27, 1883.

Before SIR BARNES PEACOCK, SIR MONTAGUE SMITH, and SIR ARTHUR HOBHOUSE.

DUCONDU et al., Appellants, and DUPUY, Respondent.

Sale—Timber licenses—Deficiency—Warranty.

A person sold his right and title to thirteen Crown Timber licenses. He was unable to deliver two of the licenses. To make up the deficiency he assigned two other licenses representing fifty square miles of limits. The second deed contained a warranty against all disturbance. Held, (reversing the judgment of the Supreme Court of Canada, 5 L. N. 72,) that the vendor was not liable to make good a title to the limits covered by the thirteen licenses further than the licenses made a title to them, and that the two licenses assigned by the second deed must be taken exactly as the two missing licenses were taken, viz., as conveying only such right, title and interest as the vendor had obtained from the Crown, and that there was no guarantee against a deficiency by reason of a prior grant.

The appeal was from a judgment of the Supreme Court of Canada, noted in 5 L. N. 72. The case is also referred to, in its different stages, at p. 350 of vol. 3, and pp. 72, 84, 91, 105, 106, 128, 130 and 153 of vol. 5.

PER CURIAM. On the 10th July, 1858, Edward Scallon, who is the predecessor in title of the appellants, contracted with one Benjamin Peck, the predecessor in title of the respondent, to sell to him certain property called timber limits.

The nature of a timber limit is this:—Annual licenses are granted by the Commissioner of Crown Lands to take possession of certain areas of land, to cut timber within those areas or limits. There is an express provision in the statute that if any license is found to cover ground already occupied by a prior license the subsequent license shall to that extent be null and void.

Such being the nature of the property, Scallon contracted to sell all the right and title obtained by him from the Crown. The purchase money was to be paid by instalments, and when the last instalment was paid the conveyance was to be completed by Scallon. The money was paid; and Scallon being dead, his heirs, the present appellants, executed a deed, dated the 16th March, 1865, for the purpose of completing the conveyance to Cushing, in whom Peck's interest was then vested. In that deed it is stated that they are acting in execution of the prior contract; and they convey and release, with a guarantee against disturbance, all the immovable property and rights which Scallon had promised. Then they proceed to describe it; and they describe it in precisely the same terms as are used in the contract of 1858. The property so described is said to be comprised in 13 different licenses, which purport to convey a title to an area of 256 miles.

Among those licenses are two, numbered 97 and 98, which purport to convey title each to an area of 25 miles on the Assumption River; and the heirs of Scallon declare that the licenses have been renewed up to that time by Peck and his representatives. It turned out that in point of fact Nos. 97 and 98 had not been renewed, and it seems doubtful whether they were in existence at the time of the contract of 1858. Mr. Fullarton has argued his case on the hypothesis, which he takes as most favorable to himself, that they were not in existence at that time.

On that discovery the parties come together again, and the heirs of Scallon agree to make good the loss accruing to the successors in title of Peck by the non-existence of licenses 97 and 98. The arrangement made by them is contained in a deed of the 22nd October, 1866, executed by one McConville, who for the present purpose is assumed to be the lawful agent of the appellants. The language used by the parties in that deed is, as stated in English, to the following effect:—After referring to the prior transactions, they say, "In virtue of that deed"—that is, the deed of 1858,—"Scallon was bound to sell "256 miles of limits for cutting wood on "Crown lands; and as there is found a "deficit of 50 miles to complete the said "quantity of 256 miles granted to Cushing, "McConville, in the name of his principals, "desiring to fill up the deficit which has "been found, has by these presents granted

"and conveyed, with warranty against all dis-"turbances generally, whatsoever they may "be, to Cushing, the said quantity of 50 miles "of limits on the said River Assumption, "described as follows in the English tongue." The description is contained in two other licenses, Nos. 25 and 26. License 25 is in these terms:—"Commencing at the upper "end limit No. 94 on the southwest side of "L'Assomption River, granted to late Ed-"ward Scallon, and extending five miles on "said River and five miles back from its "banks, making a limit of 25 square miles, "not to interfere with limits granted or to be "renewed in virtue of regulations." *Mutatis mutandis*, license 26 is in the same terms. The deed states that McConville has, for his principals, paid the sum of $500 to Cushing, on account generally of all claims which Cushing may have against the heirs of Scallon, and Cushing further declares that by reason of this deed he has nothing to claim, for any cause or reason whatever, against the heirs of Scallon; and a general release is given. McConville on his part gives a general release to Cushing for all claims by the heirs of Scallon.

It is on that deed that the present question arises. The difficulty which has arisen is this: that when the grantee, Cushing, came to work on the limits contained in the licenses 25 and 26 he was stopped by a man of the name of Hall, who claimed to be possessed of the same land in virtue of a prior license from the Crown. There has been a great deal of controversy as to whether the interference by Hall has been properly proved in this suit; but for the purposes of the present decision all that part of the case is assumed in favor of the respondents. Cushing could not get the benefit of all the land described in licenses 25 and 26, by reason of a prior grant to Hall. Cushing accordingly, or his assignee, Dupuy, the present respondent, sues the heirs of Scallon upon the warranty which he alleges that they have given for 50 square miles of timber limits. The question is whether the appellants have given a warranty for those 50 miles of limits absolutely, or only a warranty for the licenses which purport to give a title to the 50 square miles. It is a question of very considerable difficulty. The Courts in Montreal have taken one view, in favor of the appellants; and the majority of the Supreme Court has taken the other view, in favor of the respondent.

There has been a good deal of question, both in the Courts below, and at the bar here, whether it is proper to go behind the deed of October, 1866. It is quite plain what the course of a court of justice must be. In one sense we cannot go behind the deed of 1866; that is to say, the rights of the parties must be regulated by the construction of that deed, and of that deed alone. In another sense we have to go behind it, because the deed itself refers to prior transactions. It professes to be founded upon the liability arising out of those prior transactions; and a court cannot properly construe the deed without ascertaining what the position of the parties was at the time when they came to execute it. Now the position of the parties appears to their Lordships to be this: Scallon contracted to sell his right and title to the 13 licenses, which purport to contain 256 square miles. He was not liable to make good a title to the 256 square miles any further than the licenses themselves made a title to them. But he was liable to have and to deliver the licenses which he purported to sell. In point of fact he had not got two of those licenses, and when that fact is discovered his heirs come to make up the deficit, as they call it "*completer le déficit*;" that is to say, to do that which Scallon was bound to do. At that time Scallon was bound to make good in some way the loss sustained by the non-existence of licenses 97 and 98.

What then do the parties do? They make up the deficit by assigning two other licenses. They call it, "50 miles of limits described as follows." Even taking the word "limits" to be an ambiguous term, their Lordships are of opinion that "limits described as follows" must be taken to indicate the thing which is sold according to the description which is given. Into that description is imported the condition that the license sold is not to interfere with limits granted or to be renewed in virtue of regulations. Therefore the two licenses which formed the subject of the assignment of 1866 are to be taken exactly

as the two missing licenses which form the subject of the contract of 1858 were taken, viz., as conveying only such right, title, and interest as the vendors had obtained from the Crown. Now the guarantee can only extend to the thing that is sold, the very subject of the assignment. If the licenses 25 and 26 were not forthcoming, or if there was any defect in the title of the heirs of Scallon to those licenses, the guarantee might have some operation; but the licenses are forthcoming and have been handed over, and there is no guarantee against a deficiency by reason of a prior grant.

The result is, that, assuming the respondent to be right in all the issues raised by him with respect to the breach of the alleged guarantee, their Lordships are of opinion that no guarantee exists to cover that alleged breach.

Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the Supreme Court be reversed, and the decrees of the lower Courts restored. The costs of the Appeal will follow the result.

S. Pagnuelo, Q. C., and *Kenelm E. Digby* for appellants.

F. L. Beique and *M. Fullarton* for respondents.

THE LATE MR. JUSTICE DAY.

Judge Day, intelligence of whose death has been received from England, left the bench so long ago, that he is remembered as a lawyer and judge by comparatively few of the present generation. His name is associated chiefly with the work of codification, he being one of the three commissioners originally named to prepare the draft of the Civil Code of Quebec. He was also engaged as a Commissioner in the matter of the Canadian Pacific Railway charges, and acted in a public capacity on one or two other occasions since his retirement from the bench. He enjoyed a fair reputation as a judge though but few of his decisions have been handed down to us. As a citizen as well as a judge Mr. Day was generally esteemed, and as Chancellor of McGill University hè has taken some interest in educational matters.

GENERAL NOTES.

The vacancy on the Superior Court Bench at Rimouski, caused by the death of Mr. Justice Alleyn, has been filled by the appointment of Mr. J. A. Mousseau, Q. C.

The morning papers state that since the conclusion of the trial of Arabi prayers have been offered on behalf of the Queen in mosques in Cairo and in the provinces of Egypt, Her Majesty being referred to as "the Mirror of Justice." It is curious to observe that this title is given to the Virgin Mary in some Roman Catholic litanies, she being addressed as "Speculum Justitiæ."—*Notes and Queries.*

Less than forty years ago we saw fugitive slaves arrested in the city of Chicago, at the instance of their masters. The black man's mouth was closed, he could not even testify in court against a white man. Last night we saw a jury of twelve men, of one of the courts of record, in the Central Restaurant, getting their supper in charge of Bailiff Baird, a colored man. He was their only attendant to and from the court.—*Chicago Legal News.*

Comte Duteau de Grand Pré, Deputy Clerk of Appeals at Montreal, died January 20th. The deceased had been employed in the appeal office during 36 years. He was of somewhat eccentric character, though methodical and punctual in the performance of his duties. A good many years ago, he was accustomed to take repose in a coffin which he kept in his bedchamber, but one day this peculiarity nearly proved fatal, the lid, which closed with a spring, dropping while he was reclining within, and he was nearly suffocated before assistance arrived. He then ceased to use the coffin as a couch, but retained it in his house up to the time of his death, when it served for his burial. His appearance and costume were even more remarkable than his habits. He might have figured in a masquerade as a mediæval rustic, with very little alteration of his ordinary get-up.

A communication in a Toronto journal contains the following table of judicial salaries paid in other colonies under responsible government:—

	Pop.	Chief Justice.	Puisne Justice.
Victoria	906,225	$17,500	$15,000
N. S. Wales	840,614	13,000	10,000
Queensland	248,255	12,500	10,000
S. Australia	303,195	10,000	8,500
New Zealand	517,707	8,500	7,500
Tasmania	122,479	7,500	6,000
Cape Colony	1,249,824	10,000	8,750
Natal	400,676	7,500	6,000
The salaries in the other colonies are as follows:			
Jamaica	580,804	12,500	not given
British Guiana	257,473	12,500	7,500
Hong Kong	1,094,804	12,500	8,500
Straits Settlements	350,000	12,000	8,400
Ceylon	2,758,529	11,250	9,000
Windward Islands	285,000	10,000	not given
Fiji	12,500	10,000	do
Trinidad	153,128	9,000	6,000
Leeward Islands	118,000	7,500	6,000