THE LEGAL NEWS.

EDITED

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VOL. VI

MONTREAL:
THE GAZETTE PRINTING COMPANY
1883.

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TABLE OF CASES

REPORTED, NOTED, AND DIGESTED

IN VOL. VI.

ERRATA.

P. 44.—For "Superior Court" read "Supreme Court."
P. 104 and P. 113.—For "Lord Justice Stephen," read "Mr. Justice Stephen."
P. 165.—For "Doe *v.* Roe," read "Gaudin *v.* Ethier."
P. 306.—For "Grevy" read "Grey."
P. 323.—For "Compulsory *litigation*," read "compulsory *liquidation*."
P. 326.—For "L. N. 90," read "6 L. N. 90."
P. 344.—For "Court of *Review*," read "Court of *Queen's Bench*."
P. 381.—For "To *this* colleagues," read "To *his* colleagues."
P. 398.—Supply date, "Montreal, Nov. 30, 1883," to case of *Ontario Bank* v. *Foster*.

The Legal News.

VOL. VI. JANUARY 6, 1883. No. 1.

ACTIONS OF DAMAGES.

A few days ago, a learned Judge of the Superior Court, who has recently been appointed to the Montreal district, expressed some surprise as well as regret at the large number of actions of damages, which, within a very short time, had been brought under his notice. The damages are claimed usually for slander, or libel, or malicious issue of *capias*, or criminal prosecution. Even a slight affront, or a blow given in the heat of an altercation, often provokes one or more lawsuits. It has been supposed in some quarters that the people of this Province were especially inclined to this class of litigation. We see, however, that even in England, where the expense of legal proceedings might be supposed to check foolish ventures in the law courts, actions of damages are fast multiplying. For example, a club difficulty has just occurred in London. Two brothers of Mr. Chamberlain, President of the Board of Trade, were put up as candidates at the Reform Club. In consequence of a statement circulated by Mr. Lennox Boyd, a member of the Club, to the effect that these gentlemen had been guilty at Melbourne of conduct which called for the attention of the committee of the Melbourne Club, the candidates were blackballed. Mr. Boyd gave his authority for the report, Sir Robert Torrens, K.C.M.G., who on being applied to, persisted in the statement. Thereupon the blackballed candidates have each taken an action for £5,000 damages for libel and slander against Mr. Boyd, and we presume there will be other actions against Sir R. Torrens. The *Times*, referring to the difficulty, observes:—

"We may be pretty sure that, whatever turn the evidence takes, the dispute will prove not to be one which can be discussed with much profit in a court of law. Indeed, the case seems to be typical of a class of litigation which is so rapidly multiplying as to call for observation. In other days when men said unpleasant things of others at clubs and were called to account by those whom they aspersed, the matter was recognized to be purely private, and certainly not needing the interposition of lawyers, and all the machinery and publicity of a trial. If the offence were grave, they agreed to meet some morning. Their seconds, without any fuss, arranged the details; and the principals settled their disputes at an early hour in a quiet corner. It was thought bad taste to let the public into the secret of such quarrels. Men do not now settle their differences with pistols at Wormwood Scrubbs or Wimbledon, and there is no reason why the practice should be revived. But it would not be amiss if the old habit of reticence were to return, and there were a disposition to keep out of courts nice questions of honour which the rough processes of law cannot satisfactorily settle. Where are we to stop if questions about eligibility to a club are to be the subjects of litigation? We may see rival philosophers, opposing schools of theologians, and political leaders appealing to British juries. As to the merits of the dispute between Messrs. Chamberlain and Mr. Boyd, we entertain no opinion. But from the nature of the quarrel there can be but little doubt that it is a mistake to make it the subject of an action in the Queen's Bench Division. People will never be out of litigation if they fly to law whenever they hear that an annoying story about them is in circulation."

DESPATCH OF BUSINESS.

The words spoken by a man who has fought a good fight, and is laying down the burdens which he has long carried well, must always command some attention. The valedictory of Chief Justice Sharswood, the esteemed president of the Supreme Court of Pennsylvania, who has just retired from office after a long and honorable service, is not an exception. In his parting words to the bar of Philadelphia, the Chief Justice modestly disclaims the brilliance and profundity of learning which had been ascribed to him. "With an able, faithful and honorable Bar such as this," he said, "it is by no means wonderful, as Lord Campbell seems to have thought it was, with how little knowledge of law a man may make a great judge. Indeed it may be questioned whether great learning is a desirable quality in a judge. He is apt to wish to display it on all occasions by elaborating long and tiresome opinions and delivering charges unintelligible to juries."

This is the reflection of one who has been over thirty years on the bench, and it is not

wanting in wisdom. Treatises are out of place in the judgments of a court working at high pressure; they may safely be left to the commentators and text-writers.

The Chief Justice next referred to the necessity of rapid work which had been imposed upon him:

"You can easily perceive what injustice was done to suitors 'clamoring for justice,' as the old books have it, by such interminable delays, and how often hope deferred made the heart sick. I saw many sad instances in my brief practice, and carried a deep sense of it with me when I went on the bench. It was a common saying that it was better for a man to abandon a cause however good than to go to law. In 1848, when I was appointed president of the District Court, after three years' experience as an associate, I found the trial list of that court to consist of more than 1,600 cases. I determined, with the concurrence of my associates on the bench, to make the attempt at least to break it down. It was pretty hard work for three men, but with the hearty co-operation of the Bar it was accomplished. In six or seven years the list was reduced to about 600, and there it remained though the business of the court had largely increased—the suits on the appearance docket alone having run up from 2,000 a year to 6,000 and 8,000. I have sometimes been haunted with the fear, that in riding this hobby so hard—driving trials so fast—injustice must have been done to suitors in many cases. It was, however, a choice between two evils—for it is with the administration of justice as with everything else, there is nothing perfect under the sun. It is, indeed, a most difficult problem with any court to reconcile that speed which is necessary to prevent such delay as practically amounts to a denial of justice with the care, study and deliberation required to arrive at the proper determination of important questions. *Festina lente* is the simple rule; but, in its application—*hic labor, hoc opus est.*

"When I took my seat on the Supreme Bench in 1868, the whole number of cases on the argument list for the four districts, Eastern, Western, Northern and Middle, was 660; the cases argued or submitted that year were 375. The list was fearfully growing, rolling up like a great revolving snow ball, not only by *remanets* from one year to another, and the increased business of the people, particularly the coal and oil operations of the western counties, but from constant additions to the jurisdiction by the Legislature, who never seemed to think that the court had business enough. By laws then existing, it was incumbent on the court to write and file not only an opinion in every case, but upon every point made in every case. These laws, however, were never very strictly observed. When the court thought that the judgment below was right, and ought to be affirmed, they managed, as Judge Kennedy once told me, "to hop, skip and jump" over the errors assigned. When this legislation was repealed in 1871, and the duty of writing and filing opinions confined to reversals, the practice was adopted, that whenever a judgment or decree involving no new principle was affirmed unanimously, to dispose of the case by a *per curiam*, stating briefly the grounds of the decision. They might be disposed of by a simple affirmation. These "per curs.," as they are termed, are not so easy as perhaps they seem, and I should like to see the gentlemen that I occasionally hear laugh at them, try their hands in writing them. We are told by Chief Justice Gibson that this was the practice of the court under Chief Justice Tilghman before these laws were passed. Let me mention, in defence of it, that Lord Bacon in his proposition for the amendment of the law, recommended, and Chancellor Kent said, wisely recommended, that "*homonymiæ*," as Justinian termed them, that is, cases of mere iteration and repetition, "should be purged away from the books," because they do more harm than good. The law now prohibits any case to be published in the regular State reports, which is not ordered to be so by the court. Such, however, is the eagerness of the profession for the latest decisions, that these cases are still reported somewhere, and will continue to be so.

"In 1876 the hour list was adopted. The operation of it was undoubtedly beneficial in disposing of cases and diminishing *remanets*. Yet, from other causes to which I have adverted, the list continued to increase. In 1879, when I succeeded to the chief justiceship, the number had reached 1,339, the largest which had ever been. It was a year of very hard work, as you may judge when I tell you that the arguments were 860. Since then, however, it has been gradually but slowly decreasing. I will not weary you with figures. In the present year the whole number was 1,029; arguments 716."

NEGLIGENCE.

A curious case of negligence was decided by the general term of the New York City Marine Court, in *Keily* v. *Cotton* (Int. Rev. Rec., Dec. 4, 1882). The defendants, who are dentists, undertook to extract a tooth while the patient was under the influence of an anæsthetic, called laughing gas. In extracting the tooth the forceps slipped and part of the tooth went down the plaintiff's throat, causing coughing and vomiting, which continued at intervals for about four weeks, at the end of which time, in one of these attacks of coughing, the tooth was thrown up and relief followed in due course. *Held*, that the defendants owed extraordinary care, and the question of negligence was for the jury. The Court said: "The defendants knew that the plaintiff, while under the influence of an anæsthetic, had no control of his faculties; that they were powerless to act, and that he was unable to exert the slightest effort to protect himself from any of the probable or possible consequences of the operation which they had undertaken to perform. He was in their charge and under their control to such an extent that they were required to exercise the highest professional skill and diligence to avoid every possible danger, for the law imposes duties upon men according to the circumstances in which they are called to act. In this case skill and diligence must be considered as indissolubly associated. The professional man, no matter how skillful, who leaves an essential link wanting or a danger unguarded in the continuous change of treatment is guilty of negligence, and if the omission results in injury to the patient, the practitioner is answerable. The quantum of evidence necessary to make out a *prima facie* case of negligence is very slight in some cases, while in others a more strict proof is required. Often the injury itself affords sufficient *prima facie* evidence of negligence. Thus, a bailee who returns in an injured condition an article which has been loaned to him is, by this very condition, called upon for an explanation; for a presumption of fault must arise therefrom against him. Although the mere happening of an accident is not in general *prima facie* evidence of negligence, yet the accident may be of such a nature that negligence must be assumed, from the unexplained fact of the accident happening. Thus B., while walking in a street in front of the house of a flour dealer, was injured by a barrel of flour falling upon him from an upper window; it was held that the mere fact of the accident was evidence to go to the jury in an action against the flour dealer. *Byrne* v. *Boadle*, 2 H., etc, 722; 33 L. J. Ex. 13; see also, *Scott* v. *London Docks Co.*, 3 H., etc., 596; 34 L. J. Ex. 17, Ex. Ch. There was evidence offered by the plaintiff showing that while the defendant drew the tooth the forceps slipped. This fact, combined with the unusual circumstance that the tooth went down instead of coming up, was sufficient to carry the case to the jury upon the question of negligence. The trial judge held that while the affirmative was upon the plaintiff to prove negligence, the fact that the defendants, instead of taking the plaintiff's tooth out, let it go down his throat, was sufficient evidence to carry the question of negligence to the jury, to the end that they might determine whether in the light of all the circumstances the defendants had exercised the skill and care which the exigencies of the case required. This ruling was correct."—*Albany Law Journal.*

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 7, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

BLAKE, Appellant, & WADLEIGH, Respondent.

Capias—Affidavit.

An affidavit for capias, under C.C.P. 798, in which, as to the alleged secreting, the deponent swears: "Le déposant est informé d'une manière croyable, a toute raison de croire et croit vraiment en sa conscience que le dit O. B. a caché et soustrait et est sur le point de cacher et soustraire avec l'intention," &c., is sufficient.

RAMSAY, J. This action has come before us in a very inconvenient form. The appellant's factum contains neither the judgment of the Court below, nor the evidence, and only a few lines which have served rather to confuse us than to render us any service. We are all to reverse the judgment, but for different reasons. I shall endeavour to explain the view which leads me to the conclusion that the judgment should be reversed. I think the affidavit is bad on the face of it. Much obscurity is created by confusing

the articles of the Code of Civil Procedure, relating to attachment of goods and *capias*. It is hardly possible to have drawn these articles more imperfectly. All the difficulties of the old statutes have been aggravated by the attempt to introduce the more chaste style of codification. It appears to me that the only way of dealing safely with these articles is by treating each independently. This is evidenced by the cases that have been cited on this appeal. We have been referred to the cases of *Griffith & McGovern*, of *Brooke & Dallimore*, of *Drapeau & Pacaud*, and of *Croteau & Demers*.

It is one of the inconveniences of having to speak in remote places, that as there are no reports traditionary rumour takes their place. It appears I gave the first judgment in *Griffith & McGovern*. I maintained the affidavit solely on the ground that it was in the terms of form 45. I never said that the affidavit pursued the terms of article 834. As in this case, it plainly did not follow the terms of the article. In Review this judgment was reversed, as the affidavit did not accord with the terms of the code. This decision is reported 16 L. C. J. p. 336. The case, however, went to appeal, and there the judgment of the Court of Review was reversed. The same question arose in the case of *Brooke & Dallimore*, (6 Rev. Leg. 657), and the reversal in appeal of *Griffith & McGovern* was referred to by Mr. Justice Sanborn, who was attorney and counsel for the unsuccessful party. In the cases of *Drapeau & Pacaud*, and of *Croteau* v. *Demers*, these former cases were referred to; but I don't think either of them in point, for the Court only decided that the article 798, C. C. P., did not require the deponent to give reasons for his belief. I quite agree to this doctrine, but it does not meet this case.

Art. 798, C. C. P., has two categories, one for leaving the province, and the other for secreting. We have nothing to do with the former of these. The latter is in these words: "Or upon an affidavit establishing, besides the existence of the debt, as above mentioned, that the defendant has secreted or made away with, or is about immediately to secrete or make away with his property and effects with such intent."

The affidavit is in these words: "Le déposant est informé d'une manière croyable, a toute raison de croire et croit vraiment en sa conscience que le dit O. B. a caché et soustrait et est sur le point de cacher et soustraire avec l'intention," &c. Now I think it cannot be seriously contended that this affidavit is supported by the words of the Code. But it is said there is a jurisprudence based on inferences. I don't think there can be any inference. The statute gives an extraordinary remedy on making an affidavit to establish a certain fact. Nothing else will suffice. It is for this reason I am to reverse.

The majority of the Court thought the allegations of the affidavit had been disproved, and therefore that the judgment maintaining the *capias* should be reversed. The article of the Code did not require any particular form for the affidavit,—all that was required was that it should establish the fact that defendant had secreted or was about to secrete, and that this was sufficiently done by the deponent swearing to his belief.

Judgment reformed.

COURT OF REVIEW.

MONTREAL, Dec. 29, 1882.

TORRANCE, RAINVILLE, BUCHANAN, JJ.

PIGEON v. THE MONTREAL & SOREL RAILWAY CO.

Action en réintegrande.

This was an action *en ré-integrande*. The plaintiff complained that the defendants had by violence taken possession of his land, to the damage of $200. The defendants pleaded that they had taken possession of the land with the consent of the plaintiff. The action was dismissed. The Court held that it was proved that the defendants had entered into possession with the consent of the plaintiff, and that the land was bought by the company for a sum of $17; that therefore the present demand was inadmissible.

TORRANCE, J. In arriving at this decision, the Court had used its right of appreciating the evidence put before it, and we see no error. In the words of Pigeau, 2nd Tom. 131: "La réintégrande a lieu quand il y a spoliation par voie de fait." There was here no spoliation and no *voie de fait*.

Judgment confirmed.

Geoffrion & Co. for plaintiff.

Kerr & Carter for defendant.

JUDICIAL REFORM.

The report of the proceedings at the sittings of the General Council of the bar of the Province of Quebec, held in Montreal on the 8th, 9th, 26th and 27th of December, 1882, and at which several resolutions were adopted which will be submitted to the Quebec Government as important amendments to the legal procedure of the Province, has just been completed by the General Secretary of the Council. At these four sittings there were present Mr. William White, Bâtonnier of Sherbrooke, and Bâtonnier-General of the Province; Hon. H. G. Malhiot, Bâtonnier of Three Rivers: Mr. W W. Robertson, Bâtonnier of Montreal; Hon. R. Laflamme, Q. C., delegate of Montreal; Mr. H. C. Cabana, delegate of Sherbrooke; Mr. L. N. Denoncourt, Q. C., delegate of Three Rivers, and Mr. S. Pagnuelo, Q. C., General Secretary.

FIRST SITTING.

On the 8th of December the Council went, upon invitation, into the Chambers of the Judges of the Superior Court, Montreal, and there met the Hon. Justices Torrance, Rainville, Jetté, Papineau, L. O. Loranger and Doherty, and the Hon. T. J. J. Loranger, Commissioner for the codification of the statutes. A general discussion was engaged in upon the different questions of judicial reform, principally upon the composition and organization of the Superior Court and the Court of Review, upon the mode of trying cases and of taking evidence, upon the advisability of having the Superior Court and Court of Appeal to sit permanently by abolishing terms, upon judicial statistics and the imperfect mode in which they are prepared and published, upon the advisability or necessity of bringing all the judges of the Superior Court to reside in the principal cities, and thence going on circuit as a condition of the plurality of Judges sitting in the Superior Court and as a means of expediting business in Montreal. After a general discussion on these matters the Council adjourned to their own room, and then the sitting was adjourned until next day.

SECOND SITTING.

On the 9th of December the Council resumed its sittings with the same members present, and with the Hon. T. J.J. Loranger, Commissioner, upon invitation.

After routine business,

Hon. Mr. Loranger gave explanations upon his report to the Government, and stated that the causes of complaint arose mostly from the slowness of trials, the increase of costs which followed, the too great number of degrees of jurisdiction, and the trivial interest of many cases taken in or evoked to the Superior Court. He proposed to abolish, first, the Court of Review; secondly, the statutory appeal to the Privy Council, and thirdly, to abolish evocations from the Circuit Court to the Superior Court, and to determine the value of immoveables in all real or mixed actions. He proposed to have oral trials for all cases in the Circuit Court under $100. Evocations, he said, were the result of the effect given to a decision as *res judicata*. In France and at Rome, the judges were the same for great and petty cases. Here, it was different. By means of oral trial in all cases under $100, it would be impossible to say that the issue was the same. When evocation shall take place, it shall be only after the filing of the pleas. He proposed to abolish all appeal from interlocutory judgments, and to abolish also the reasons of appeal and factums.

The CHAIRMAN observed that it would be better not to try too radical changes, and to restrict new legislation to the most pressing wants, and communicated amendments suggested by the Bar of Sherbrooke.

The Secretary remarked that the Council had not the time to enter into all the details of a new code of procedure, and that it was necessary to restrict the discussions to the most important features, and to ask that the legislature at its next session should adopt the important and pressing reforms that the Council would suggest, leaving to the codifiers to mature the draft of re-organization or reformation of the Courts and of the code of procedure which should be adapted to the new state of things.

The following resolutions were proposed and unanimously adopted:—

1. Proposed by Mr. W. W. ROBERTSON, seconded by Mr. H. C. CABANA, "That the system of permanent sittings of the Courts be adopted, so that every juridical day in the year be a day for hearing subject to the Council of the Bar of the District, together with the residing judge, determining special days when the Courts shall sit; all questions of procedure, with the exception of the taking of evidence and hearing at the same time may be had in Chambers on any of the days not fixed for evidence and hearing at the same time.

2. Proposed by Mr. H. C. CABANA, seconded by Mr. W. W. ROBERTSON, "That the existing system of taking evidence be changed and a sufficient number of competent official stenographers be appointed in every District, whose duty it shall be to take evidence *au long* in all

cases to the end that all the Superior Court cases may be tried in the presence and under the direction of the Court; that the stenographer's record be extended only in cases of appeal (or at the request of either party, at their own expense), and then at the original expense of the appellant, who shall be bound to print a case for appeal, the cost to be reimbursed in the event of the judgment being reversed.

3. Proposed by Hon. R. LAFLAMME, seconded by Mr. W. W. ROBERTSON, "That a party may be examined as a witness in his own behalf at the commencement of the evidence.

This resolution was carried on division, the Hon. Mr. Malhiot voting against it.

4. Proposed by Mr. DENONCOURT, seconded by Mr. CABANA, "That all cases between $100 and $200 be taken in the Superior Court, and that all such cases now pending be transmitted to the Superior Court of the district."

5. Proposed by Mr. PAGNUELO, seconded by Hon. Mr. LAFLAMME, "That the appeal be taken on a simple inscription, and on security being given according to the usual mode; that a counter appeal may be taken without cost on a simple notice from the respondent; that there be paid the Prothonotary $5 to prepare and transmit the record, and to receive the security and $5 in stamps for the Government on the inscription; that afterwards there shall be paid only $10 in appeal upon the final judgment and 50 cents on each motion or petition, and no other disbursements shall be required on appeal; that the reasons of appeal be abolished, but the factum preserved."

6. Proposed by Mr. PAGNUELO, seconded by Hon. Mr. LAFLAMME, "That every party condemned by default to appear or plead, may proceed against such judgment, whether taken in term or vacation, according to Articles 484 and following of the Code of Procedure."

7. Proposed by Mr. ROBERTSON, seconded by Mr. CABANA, "That the plaintiff may give his affidavit when he takes his action or at any time afterwards, and inscribe afterwards for judgment on such affidavit when judgment may be taken on such affidavit."

8. Proposed by Mr. PAGNUELO, seconded by Hon. Mr. LAFLAMME, "That it is advisable to repeal the statute which abolishes appeal from judgments of the Court of Review confirming the judgment in the first instance."

The Council then adjourned until the 26th December.

THIRD SITTING.

On the 26th of December the Council resumed, when the same persons were present.

After routine business,

It was proposed by Hon. Mr. MALHIOT, seconded by Hon. Mr. LAFLAMME, and resolved, "That the following be added to the sixth resolution of the 9th of December:—

"But no opposition to judgment shall be "allowed in any case unless the party con- "demned swears that he has a good defence to "the action, which defence shall be set out, and "that he has been prevented from filing such "defence by surprise, fraud or for other just "cause which shall be considered just and "sufficient."

FOURTH SITTING.

At the last sitting on the 27th of December,

It was proposed by the Hon. Mr. LAFLAMME, seconded by Mr. ROBERTSON, and resolved, "That it be provided by an express disposition of the Code of Procedure for the introduction of *referé* or summary proceedings in Chambers, as established by Articles 806 and following of the French Code of Procedure, for all cases of urgency or requiring celerity, or where there will be occasion to give provisional orders upon the difficulties relating to the execution of judgments. The following shall be considered as urgent affairs within the jurisdiction of the Judge in Chambers, leaving to his appreciation the other cases:—

"1. Proceedings for sale for false bidding.

"2. Proceedings to obtain possession of an immovable sold by the Sheriff, or other sale of the same nature.

"3. Difficulties between solicitors and clients upon questions of fees.

"4. The refusal of a notary to obey an order to deliver copy of an unregistered deed, or of a deed not completed.

"5. Contestations on the affixing of seals.

"6 Questions arising out of the making of an inventory.

"7. Urgent measures and authorizations for the administration of community property, of succession, and of partnerships, when partners disagree.

"8. Questions about notices to resiliate leases or about making sub-leases, managing or selling a stock in trade, administering provisionally a succession.

"9. Difficulties arising at or after a sale of movable property after the death of the owner, such as oppositions to the sale, a revendication of some of the effects.

"10. All proceedings by experts, in order to determine the state of an immovable, nomination of surveyors for determining bounds or metes.

"11. Oppositions to judgments, seizures and sale.

"The judge may allow to summon parties in all such cases, either to the Court House or to his own house, or at an hour determined by him, and even on holidays. Orders in Chambers shall not prejudge the case, they shall be executory provisionally, with or without security as the Judge may order. They shall not be susceptible of opposition. In a case where an appeal lies, such appeal may be taken without

delay, but shall not be allowed 15 days from the date of the execution of the order of the denunciation. The appeal shall be adjudged summarily and without writings."

Proposed by Mr. PAGNUELO, seconded by Mr. CABANA, and resolved, "That in all cases requiring celerity, and in all urgent suits, the Judge may determine summarily the delay of summoning parties, which may be from day to day and from hour to hour. The defendant shall always, upon the Judge's order and after a simple notice, have the right to force the plaintiff to return the writ before the day set out in the writ for its return, under such penalty as the Judge may determine, and even under pain of non-suit."

Proposed by Hon. Mr. LAFLAMME, seconded by Mr. DENONCOURT, and resolved, "That the Articles of the Code of Procedure, referring to garnishments before judgment, conservatory seizures and others of the same nature, also to *capias*, be amended so that the Judge may, upon the deposition which he shall hold sufficient, allow provisionally the issuing of such seizure or of a *capias* with or without security on behalf of the plaintiff, saving the right to the defendant to contest summarily such proceedings upon a simple notice given from day to day or from hour to hour to the plaintiff or his attorney, and saving the right of the judge to revoke the order given, or to permit or to accept such security which he shall hold sufficient, or to give provisional possession of the effects seized to one or other party without prejudice to appeal to the court, which appeal shall be decided summarily."

Proposed by the Hon. Mr. LAFLAMME, seconded by Mr. CABANA, and resolved, "That the system of a single Judge in the first instance is the only one desirable and practicable."

Proposed by the Hon. Mr. LAFLAMME, seconded by Mr. PAGNUELO, "That in our present system of procedure, the Court of Review is necessary."

Mr. CABANA proposed an amendment, to which Mr. PAGNUELO proposed an amendment to the amendment. Afterwards, objection was taken to the amendment of Mr. Cabana as being irregular, and it was ruled out of order by the Chairman, upon which Mr. Pagnuelo withdrew his amendment.

It was then moved in amendment by the Hon. Mr. MALHIOT, That the principal motion be amended by adding thereto the following words:—"That it is necessary that the Court of Review shall sit five times a year at Three Rivers to hear the cases inscribed from the Districts of Three Rivers, Richelieu and Arthabaska, and five times a year in the city of Sherbrooke for the cases inscribed in the Districts of St. Francis, Bedford and Beauce."

Upon the vote being taken, the amendment was lost on the following division:—

Yeas—Hon. Mr. Malhiot, Messrs. Cabana and Denoncourt.

Nays—Hon. Mr. Laflamme, Messrs. Robertson, Pagnuelo and White (chairman).

The main motion being now brought up, it was proposed in amendment by Mr. WHITE, "That the Court of Appeal in this Province would be sufficient for all the purposes of review and appeal, if procedure in Appeal were simplified and rendered more expeditious and less costly; that the Court of Appeal should be presided over by four Judges only, and in case of an equal division amongst them, the original judgment should be confirmed."

This amendment was also lost upon the following division:—

Yeas—Hon. Mr. Malhiot, Messrs. Cabana and White.

Nays—Hon. Mr. Laflamme, Messrs. Robertson, Denoncourt and Pagnuelo.

The main motion was then put and carried on the same division.

It was then proposed by the Hon. Mr. MALHIOT, "That in order to save costs to parties and to obviate the serious inconveniences which are felt from the accumulation of affairs in the Court of Review at Montreal, it is advisable that the Court of Review shall sit five times a year at Three Rivers for hearing cases inscribed in Review in the Districts of Three Rivers, Richelieu and Arthabaska, and an equal number of sittings at Sherbrooke to hear cases inscribed in the Districts of St. Francis, Bedford and Beauce."

Upon this motion being put, the vote stood:—

Yeas—Hon. Mr. Malhiot, Messrs. Cabana and Denoncourt.

Nays—Hon. Mr. Laflamme, Messrs. Robertson, and Pagnuelo.

The CHAIRMAN (Mr. White) gave his casting vote in favor of the motion, which was carried.

Mr. PAGNUELO proposed "That the Court of Review should be composed during, at least, a year, of a Judge of the Superior Court residing in Montreal, a Judge residing in Quebec, chosen by the Judges of those districts, and of a third Judge from the rural districts, chosen by the two first-named from time to time as they would sit in Quebec or in Montreal; that the said Court should sit permanently say four days a week, according to the number of cases before the Court and until the roll is exhausted. Its judgment should be rendered without delay or on short delay."

This resolution was carried on the following division:—

Yeas—Hon. Mr. Laflamme, Messrs. Pagnuelo, Robertson, Cabana and Denoncourt.

Nays—Hon. Mr. Malhiot.

It was proposed by Mr. PAGNUELO, seconded by Mr. DENONCOURT, and unanimously resolved, "That before judgment and before *délibéré*, if there is occasion for *délibéré*, the judge of the Superior Court and the judges in Review and

in Appeal, shall settle amongst themselves on the bench, together with the counsel of the parties, who shall have a right to make suggestions, a statement of the questions of fact and of law which arise in the case, beginning with the questions of fact. The deliberations shall be held as much as possible and the questions decided in that order. This statement of facts shall not be final, but may be revoked or changed during the *délibéré*. Every judgment shall decide in a categoric manner the points of fact and of law, the solution of which is essential to the trial, beginning with the points of fact, and shall consider questions of law only if the decision of the fact does not carry the judgment."

Proposed by Hon Mr. LAFLAMME, and resolved, "That the terms of the Court of Appeal be abolished, and that the said Court do sit almost permanently in Montreal, say four days a week, with the exception of four terms in Quebec, of the long vacation, and after vacation from Christmas to the 15th January, and that the Criminal Court should never be an impediment to the sittings of the Court of Appeal."

Mr. WHITE proposed "That the Court of Appeal be composed of four Judges, and that in cases of an equal division the judgment in the first instance be confirmed. This rule to apply only to the merits of appeals."

This motion was lost on the following division :—

Yeas—Messrs. White, Pagnuelo and Cabana.

Nays—Hon. Messrs. Laflamme and Malhiot, and Messrs. Robertson and Denoncourt.

It was proposed by Mr. PAGNUELO, and unanimously resolved, "That a Judge of Appeal in Chambers may give such order as he shall think proper in reference to questions of procedure or requiring celerity, saving the right to a summary appeal to the tribunal upon a simple notice."

Proposed by the Hon. Mr. LAFLAMME and resolved, "That every appeal from interlocutory judgments be decided summarily and without proceedings upon a simple inscription."

The question of the nomination of official stenographers, of their salaries and of the examination which they shall pass, being presented to the Council, it was resolved that discussion on the matter be postponed to the next sitting.

It was also resolved that the resolutions adopted be published in the newspapers, and the Secretary was instructed to write to the Premier of the Province, requesting him to take charge of the bill for amending the Act incorporating the Bar of the Province, conformably to the resolutions adopted on the 26th July last.

The sittings of the Council were adjourned to Quebec during the first days of the next session of the Legislature, when the Council shall be called together by the Bâtonnier.

CORRESPONDENCE.

LAWYER'S LETTER.

To the Editor of the Legal News:

DEAR SIR,—On the 4th inst., Judge Loranger decided in a case of *Margaret Lennox* v. *Angus Thom* (C.C.M.) the vexed question as to who should pay the costs of a lawyer's letter, when the claim was paid on the receipt of the letter and before suit brought.

The Judge at the argument requested Mr. Hutchinson (Macmaster & Co. for defendant), and myself (for plaintiff), to send up any former decisions on the subject we might find, as he wished to consult them and his brother Judges in the matter, and give a decision on the point which might be considered a final one.

After doing so he decided in favor of the plaintiff, holding the debtor liable for the costs of the letter.

If you think this sufficiently important to occupy a place in your valuable journal, I trust you will insert it; as I have been requested by numerous members of the Bar to have the case reported.

Yours faithfully,

CHAS. RAYNES.

Montreal, Dec. 20, 1882.

GENERAL NOTES.

The Parliament of Canada meets for the despatch of business on Thursday, 8th February.

Mr. Lewis Wallbridge, of the Ontario bar, has been appointed Chief Justice of the Court of Queen's Bench for Manitoba, with the title of "Chief Justice of Manitoba," in the place of the late Chief Justice Wood.

A legal journal in Toronto (*not* the *Canadian Law Times*) which has had a good deal to say (and very properly too) about unprofessional advertising, proclaims itself, in an announcement in *Littell's Living Age*, as "the ONLY legal periodical of ANY importance in the "Dominion." Without going beyond Toronto, we should be inclined to judge that the *Canadian Law Times* is at least of equal, if not greater, importance. Unprofessional advertising is no doubt a grave impropriety, but lying is a vice, for which rather a serious penalty is enacted : *Vide* Revelation xxi. 8.

The death of M. Lachaud, the eminent French advocate, is announced. M. Lachaud was born in 1818, and admitted to the bar in 1846. He acquired a reputation for eloquence in the celebrated case of Madame Lafarge. He was counsel for Lamirande, whose extradition from Canada created so great a sensation. He defended Marshal Bazaine before the Council of War which condemned that General to death for surrendering Metz to the Prussians. M. Lachaud assumed the defence of prisoners notoriously guilty, and trusted a good deal to rhetorical tricks to influence the jury.