The Legal News.

Vol. IV. NOVEMBER 19, 1881. No. 47.

ESCHEAT.

An important question has been decided by the Supreme Court in the case of Mercer, in which judgment was rendered on the 14th inst. The question was whether the right of escheat pertains to the Dominion or the local Government. The case is from Ontario, where the decision was that the *droit de déshérence* is in the local Government. This opinion appears to have been sustained by Chief Justice Ritchie and Mr. Justice Strong, who dissented from the judgment rendered by the majority, composed of Justices Fournier, Henry, Taschereau, and Gwynne.

WOMEN IN OFFICE.

The courts of this continent have not unseldom to pass upon the questions which arise from the claims of women to be admitted to the professions and offices usually filled by the other sex. The Court of Common Pleas, in Pennsylvania, in deciding (in the case of *Evans* v. *Ives*) that a woman may act as arbitrator, has disinterred a quantity of lore on the subject, and shown that some women, at any rate, held important offices in the olden time.

"In West's Symboliography, 163, it is said that a married woman cannot be an arbitrator. This however is the rule of the civil law. Justinian says that it is contrary to the proper character of the sex to allow a woman to intermeddle with the office of a judge. Kyd's Awards, 71; Wood's Civil Law, 327. In Kyd on Awards, 70–1, it is said that an unmarried woman may be an arbitrator. To sustain this the author cites the *Duchess of Suffolk* case, 8 E. 41; Br. 37. In 2 Petersdorff's Abr. 129, it is said that it is no objection to an award that the arbitrator is a married woman. Gentlewomen have also held and exercised judicial authority. Annie, countess of Pembroke, held the office of sheriff of Westmoreland, and exercised the duties thereof in person. At the Assizes of Appleby she sat with the judges on the bench. Hargr. Co. Lit. 326; 8 Bac. Abr. 661. Her right to sit upon the bench as a judge will be fully understood when it is borne in mind the sheriffs at that time held court and exercised judicial power. Sheriffs had power to inquire of all capital offences, and issue process and enforce the same. But this power was afterward restrained. By Magna Charta, ch. 17, it was enacted: 'That no sheriff shall hold pleas of the crown.' 8 Bac. Abr. 688. Eleanor was appointed lord keeper of England. It would seem from the history of this noble woman that she actually performed the duties of lord chancellor in person. It is said of her that in the summer of 1235 King Henry appointed her lady-keeper of the great seal. She accordingly held the office nearly a whole year, performing all the duties, as well judicial as ministerial. She sat as a judge in the *Aula Regia*. These sittings were however interrupted by the *accouchement* of the judge when she was delivered of a daughter. After retiring from the bench, and the appointment of her successor, she was delivered of a boy, who afterward became Edward I of England. 1 Camp. L. L. Ch. 134–7. Without referring in any manner to Eve, the first arbitrator appointed in this world to decide the controversy about eating the forbidden fruit, or to the manner Deborah judged Israel, we are clearly of the opinion that under the act of 1836 a woman, married or single, may be appointed arbitrator, and may act as such, and make a valid award."

THE LATE MR. JOHN MONK.

A long familiar face has disappeared from Court circles. Mr. John Monk, admitted to practice in January, 1841, died during the present month. Mr. Monk, for a considerable time, had the largest practice in the Circuit Court that fell to the lot of any English-speaking member of the bar, a department of professional activity for which his great physical energy and buoyant disposition eminently qualified him. While loyal to his clients, Mr. Monk was too manly to take an unfair advantage of his opponent. To his juniors he was always kind and considerate. The result of many years of close industry and unremitting attention to business was the accumulation of a handsome competence which, unfortunately, he did not live to enjoy. His last years were clouded by ill-health and suffering, and death came at the early age of 62.

CORRESPONDENCE.

CROOKED COURSES.

To the Editor of THE LEGAL NEWS:

SIR,—I am glad to notice two letters bearing upon the subject of legal ethics in your last issue.

I take it for granted that in theory, at least, the traditions of the English and French Bars respecting the solicitation of work are still deemed worthy of respect, veneration and perpetuation. Let me, then, cite what I consider a gross breach of professional etiquette. Several firms in this city are the agents of Collection Concerns which employ canvassers to drum up business among merchants and others; the Collection Concern agreeing to charge no fees unless a collection is effected, on condition that a per centage be allowed the lawyers of the Concern—who in some cases are the principals—when the debt is collected. As I have said, I consider this "touting" totally unprofessional and undignified, and as I find that many of my clients are being allured into the offices of the advocates who run these machines, I have determined, should the Council of the Bar afford us no redress, to engage a brass band to play at my office door, and to invite passers-by to step in and get "first class law at bottom prices."

Yours truly,

THEMIS.

ADVOCATE AND ASSIGNEE.

To the Editor of THE LEGAL NEWS:

SIR,—I am sorry to trouble you again, but you have evidently mistaken the question referred to by me last week.

The question is not at all as to the winding up of a few estates under the old Act, but as to the right of an advocate to make a practice of touting for estates now, making use of his position as a lawyer to aid him in getting the estates, and of his position as "assignee in trust" to give himself all the law business arising out of them.

Your opinion on this practice would oblige quite a number, both of advocates and assignees.

Yours truly,

ADVOCATE.

MONTREAL, Nov. 16, 1881.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1881.

DORION, C. J., MONK, RAMSAY, TESSIER, CROSS, JJ.

CORPORATION OF VILLAGE OF L'ASSOMPTION (plff. below), Appellant, and BAKER (deft. below), Respondent.

Municipal corporation—Purchase on credit.

RAMSAY, J. This action was brought on a deed purporting to be a deed of sale from the Babcock Manufacturing Co., acting by its agent, Homer Baker, to the Municipal Council of the incorporated village of L'Assomption, acting by Moïse Chevalier, one of the councillors, of a Babcock fire engine. The price was to be $3,000 payable within the term of six months, to be computed from the 15th day of July then last past, with interest at 6 per cent. Under this contract the engine was delivered to the appellant, who refused, after some time, to pay for it, and Homer Baker in his own name, and as if he had been the real proprietor, and not the agent, as described in the deed, sued the appellant.

A variety of objections have been taken to the action, some of them of a technical character, others substantial. It is said that the deed is between the Municipal Council of the incorporated village of L'Assomption, and the Babcock Manufacturing Co., and consequently that the plaintiff has no interest to bring the action, and that the appellant is not a party to the contract. It is also contended that there was no lawful meeting of the council to authorise the purchase, and that the purchase was not made in the terms of the pretended resolution, but that authority was only to purchase from "Omer & Baker" and not from "Homer Baker."

These objections appear to me to be unfounded. There can be no doubt that the body purchasing was the corporation appellant, and that it is bound by the act of the Council, if the Council acted within its powers. Again, Homer Baker had a right to declare on the contract as having been conveyed to him, not as a factor but as owner. It would, therefore, only have been a question of signification. But in addition to this it seems to me article 1738 applies. It seems to me that the regularity of the proceed-

ings of the Council, acting colorably within its attributions, cannot be called in question by the Corporation, unless there has been some fraud in which the plaintiff was implicated. The delay of six months in the payment of the engine, subject to interest at six per cent., was no substantial deviation from the resolution. It was a stipulation in favor of the Corporation, which created no additional obligation. The Corporation might have paid at once. The difference between Homer Baker and Omer & Baker is not more than a clerical error, and where two languages are in use, may very well pass as *idem sonans*.

The substantial pleas to the action are:—1st. That the Council had no authority to bind the Corporation by such a contract; that they could only purchase for cash, or with cash on hand, or after having procured means to purchase by direct taxation.

There seems to be no sort of authority for these pretensions. The general authority to purchase fire-engines and machines for the extinction of fire, is especially given to village corporations by Art. 663 of the Municipal Code, and I can find no limitation to this general rule, either to the effect that the corporation must purchase with cash, or pass a by-law to provide for the payment. There is no general principle which prevents a corporation from buying on credit. It was said that the Government could not contract a debt without the authority of Parliament, and that therefore a corporation cannot. But this is an error. The Government can contract a debt without the authority of Parliament, and it is just because it can bind the public revenues that it is unconstitutional for Ministers to incur great expenditure without having the means provided beforehand. This principle has only been partially applied to corporations as matter of law, and for transactions beyond the ordinary scope of corporate undertakings, as, for instance, taking stock in a railway or any other enterprise.

The next objection is that the machine was worthless, or only worth $500 at most, and that the corporation had at once repudiated the contract on account of the worthlessness of the machine. This objection has necessitated our reading the voluminous evidence. I do not consider the case of Archambault and the Corporation of L'Assomption part of the evidence, or indeed that it has anything to do with the case. The respondent was not a party to that suit, in which no rights analogous to his were in issue. The evidence is extremely spun out, and if the control contemplated by law were exercised by the Judge presiding at enquête, we should have the administration of justice facilitated. The labor and difficulty of the Courts called on to appreciate the evidence would be decreased, and suitors would be saved great expense. It is no easy matter to winnow so small a quantity of wheat from such an enormous quantity of chaff. There are repetitions which might have been dispensed with, and there are repetitions which are needless. For instance, over and over again we are told the story of a little fissure in a brass moulding which could have nothing to do with the quality of the machine. The unimportance of the story was shown at once, yet it is insisted upon again and again as if it were a bit of evidence learned by rote. The real issue of fact is mixed up with another question, and that is whether it was prudent or wise of the corporation to buy a Babcock engine at all. Unless it could be proved beyond controversy that such an engine is totally useless as a fire-engine, in fact a fraudulent pretext for obtaining money, this would be no sort of defence to this action. But there is no such evidence in the record. On the contrary, appellant's first witness, Charles Garth, describes the use of such an engine, and says that the engine bought on his recommendation resembles the one in question. He is of opinion that it is only useful as an auxiliary, but he consider a Babcock to be very useful in towns or cities. His evidence negatives the idea that the Babcock is wholly unfit for the purpose for which it was sold. We next come to the evidence of the worthlessness of the Babcock in question. And here we are met by a proposition which was persistently urged on our attention at the argument. We were told that there was really no acceptance of the engine. As a matter of fact, it seems perfectly proved that the Babcock was received by the Council. It can scarcely be contended that the acceptance by the Council, in the absence of fraud, is not equivalent to an ordinary acceptance, and that by such acceptance the corporation is bound. In this case it seems per-

fectly clear that there was no fraud or connivance between the Council and the respondent, and the whole question, therefore, resolves itself into this—was the Babcock in question a merchantable machine of its kind? As I have already said, there is the receipt and delivery after trial, which was considered to be satisfactory. It is idle now to come and say that it was not a satisfactory trial. The difficulties at the trial seem to be sufficiently explained by the want of a drilled fire brigade, which, it appears, is required for the proper management of an engine of this sort, and material. We, therefore, come down to the question of general and special warranty. That the Babcock has not been used at fires in L'Assomption is neither here nor there in the argument; but it is contended that the engine is useless, that the truck looks well, but is badly made and of bad material; that the ladders and hooks are of the wrong sort of wood, and that these defects are covered over with paint, and the eye deluded with shining brass. In support of this, witness after witness is produced; all say the same things, or nearly so, with some intensification as the case proceeds, to cover over the cross-examination of the preceding witness. The general tenor of the evidence conveys the idea of an effort by the witnesses to get rid of a bargain which they find does not suit them. But when we come to the evidence of a witness like Mr. Louis Archambault, who is on his guard as to the value of words, we find the whole case fairly stated. He admits that a Babcock is useful in the extinction of fire. He did not think it useful in a fire such as that he saw, but he observed that the liquid extinguished the flames when it fell, but did not stop the fire, and why?—the liquid they had was exhausted. He admits that he said that the liquid, although in small quantity, had a great effect on the fire. And he frankly gives us the key of the whole contestation: "Cet instrument ne répond pas aux besoins du village de l'Assomption." And what has Mr. Homer Baker to do with that? This is the testimony of a vigorous opponent of those who purchased the Babcock. Again, no one pretends that the small Babcocks were not efficient. Mr. Moise Chevalier also tells us that when he was at the fire he observed: "*Que là où son jet (le jet du Babcock) atteignait, le feu s'éteignait.*" Mr. Levesque gives similar testimony.

Judgment confirmed.

Trudel, DeMontigny & Charbonneau for Appellants.

Greenshields & Busteed for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 23, 1881.

DORION, C.J., RAMSAY, TESSIER, CROSS, BABY, JJ.

REG. v. MALOUIN.

Reserved case—Speedy Trial Act.

The judge of sessions, trying cases under the Speedy Trial Act, has no power to reserve a case for the Court of Queen's Bench sitting in appeal and error.

RAMSAY, J. This is a case reserved by the Judge of Sessions at Montreal, the object being to obtain the opinion of the Court upon the question whether the Quarter Sessions can try a case of forgery created felony by statute. The first difficulty in the case is whether this Court has any jurisdiction under the statute to hear a case reserved by the judge of Sessions trying a case under the Speedy Trial Act. The Act makes that court a court of record, but describes it as proceeding *out* of Sessions. The Act which grants the criminal appeal is very special. It says "when any person has been convicted of any treason, felony or misdemeanor, at any criminal term of the said Court of Queen's Bench, or before any Court of Oyer and Terminer, gaol delivery or quarter sessions, the court before which the case has been tried, may, in its discretion, reserve any question of law which has arisen on the trial, &c." The question is whether the speedy trial court comes under any of these denominations. The Court is of opinion that the provisions of the law allowing a speedy trial in certain cases creates a new jurisdiction, and the law as to reservation of cases does not apply to it. The rule is that the appeal cannot be extended beyond the cases laid down. The court has therefore come to the conclusion that it has no jurisdiction to decide the question submitted. The reserved case must be sent back.

Ouimet, Q.C., for the Crown.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1881.

DORION, C.J., RAMSAY, TESSIER, CROSS, BABY, JJ.

DORION et al., (defts. below), Appellants, and LORANGER, Atty.-Gen. (plff. below), Respondent.

Acting as a corporation—C.C.P. 997.

The appeal was from a judgment of the Superior Court, Montreal, Torrance, J., March 15, 1881, declaring the appellants to have been members of a pretended corporation known as the "Silver Plume Mining Company," illegally formed, and prohibiting them from acting in future as members, directors or officers of such illegal corporation. The judgment of the Court below, which will be found at p. 108 of this volume, was unanimously confirmed.

Ritchie & Ritchie, for Appellants.

Barnard, Beauchamp & Creighton, for Respondent.

SUPERIOR COURT.

MONTREAL, October 29, 1881.

Before TORRANCE, J.

LAURENT v. THERIAULT.

Undischarged Insolvent—Costs.

The plaintiff's action was against an insolvent who had not obtained his discharge, for a debt incurred previous to the assignment.

PER CURIAM. The question here is simply whether plaintiff should have costs against the defendant who is an uncertificated insolvent under the Insolvent Act, 1875. Mr. Justice Mackay informed me that he had already granted a judgment in a similar case without costs. I shall follow his ruling here and let the plaintiff take judgment without costs.

Roy & Boutillier, for plaintiff.

T. & C. C. DeLorimier, for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 29, 1881.

Before TORRANCE, J.

BELANGER v. CONTANT, SMART, opposant, and plaintiff, petitioner, contestant.

Alteration of record—Rejection of additions.

This was a petition by plaintiff, complaining that certain words and figures had been unlawfully inserted in the opposition of Smart, after the filing thereof, and praying that said words and figures be rejected. The plaintiff had taken in execution four lots of land under the sub-division numbers 27, 30, 31, of official number 159 E, and official number 160 of the plans of the village of Côte de la Visitation. The complaint of plaintiff was that Smart, by his opposition filed on the 14th August, had opposed the sale of three of the lots, namely 27, 31, & 160, that subsequently to 8th September, 1880, the marginal note on the *verso* of first page of said opposition, namely "and of lot 30 of 159 E:" the marginal note of the *recto* of the second page of said opposition, namely "thirty and thirty one," and the marginal note on the *verso* of second page of said opposition, namely: "and of 30 of 159 E," had been illegally and fraudulently made and written since 8th September 1880, and all said words were false and forged, and that the figures 30 in the middle of the 10th line of the *recto* of the second page of said opposition were also false and forged: and made over the figures 27 since 8th September, 1880.

PER CURIAM. This is a matter of proof, and the evidence of Arthur B. Longpré and Alexis Brunet, two members of the bar, is positive as to the falsification. The petition is therefore granted.

A. B. Longpré, for petitioner.

C. S. Burroughs, for opposant.

SUPERIOR COURT.

MONTREAL, Oct. 29, 1881.

Before TORRANCE, J.

CREVIER v. LA SOCIÉTÉ D'AGRICULTURE DE BERTHIER.

Sale of horse—Action quanto minoris.

The action was to recover $224 alleged to be due on account of the sale of a horse. The sale was made on the 15th March, 1880, for the price of $575, of which $200 was cash, $200 in a year, and $175 in two years. The amount now claimed was the first instalment with interest, and acknowledged by a note signed by the President and Secretary of the Society. The plea was firstly that the society could not be liable on the note as by law it could not make a note; secondly, that there was a warranty and representation at the sale that the horse was only seven, and that he was free from vices, whereas he was eleven, and suffered from redhibitory vices.

PER CURIAM. The court has no difficulty in overruling the plea invoking the nullity of the note. The action is not on the note, but on the sale for a price of $575, and the note may be

used as evidence of the sale, which is also abundantly proved by witnesses. The serious question is whether the defendant has not been too late in pleading the redhibitory vices. The action was instituted in May, 1881, more than 14 months after the sale and delivery of the horse. He is kept by the society which claims that the price already paid, $200, is the full value of the animal, and that it should be discharged from the present claim. The evidence on the issue raised by the second plea, as to the warranty and representation, is very contradictory, but the court has no difficulty in overruling the plea of *quanto minoris*, as invoked too late. It is not to be supposed that an action for resiliation for redhibitory vices would lie in the present case after lapse of more than a year. C.C. 1530. The action *quanto minoris* has only the same duration. "Parmi nous," says Pothier, Vente, no. 233, "l'action *quanto minoris*, pour "raison des vices redhibitoires, se prescrit par "le même temps que l'action redhibitoire." Judgment for plaintiff.

St. Pierre & Scallon, for plaintiff.
Archambault, for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 29, 1881.

Before TORRANCE, J.

THE COLONIAL BUILDING AND INVESTMENT ASSOCIATION v. FLETCHER.

Building and Investment Association—Legality of Incorporation by Dominion Legislature.

The action was against a shareholder of 47 shares, to recover arrears of calls amounting to $16,490.81. Defendant pleaded that on the 9th November, 1877, he became transferree of 47 shares from William Rodden, on the representation that the association was solvent, and that there were no arrears due. That he had since discovered that plaintiff was not legally incorporated, and was insolvent, and the illegality was being tried by a petition (*quo warranto*) before Mr. Justice Caron. That, in fact, the association was illegal, and the calls could not be claimed. That at the date of the transfer, the association was insolvent to the knowledge of plaintiff and its officers, and said Rodden. That the transfer to defendant had been obtained by *dol* and fraud.

PER CURIAM. The plaintiff was incorporated by 37 Vic. cap. 103 of the Dominion Legislature. It is empowered to carry on business, and hold lands generally without any limit as to location, and the association may make, endorse and accept promissory notes and bills of exchange. By s. 17, no share shall be transferrable until all previous calls thereon have been fully paid in, but this is for the protection of the association. In the present case the evidence is that Rodden, Fletcher and the association agreed that the transfer should be made to Fletcher; and the latter knew precisely the position of matters, and was not in the least degree deceived. As to the insolvency, that is not proved. The demand now is for arrears accrued since Fletcher became shareholder, and he should pay. As to the illegality of the association, it is not proved, and it is not proved that the powers given to the association by the Dominion Legislature were beyond its powers, or any encroachment on the rights of the Provincial Legislature. The association had banking powers, and surely they were within the scope of the Dominion Legislature.

Robertson & Fleet for plaintiff.
Girouard & Wurtele for defendan .

SUPERIOR COURT.

MONTREAL, Oct. 29, 1881.

Before TORRANCE, J.

MACKAY v. FLETCHER, and ST. JULIEN et al., garnishees.

Execution—Agreement releasing claim on moveables —Interpretation.

The plaintiff had a judgment against defendant for $3,498.48. He seized in execution his moveables, and they were advertised to be sold on the 3rd February last. On the 1st February, plaintiff by his agent made an agreement with the defendant which was duly carried out in the following words:

RIGAUD, 1st February, 1881.

JOHN FLETCHER, Esq.

DEAR SIR,—In consideration from receiving from you the sum of three hundred dollars in notes endorsed by D. Brulé, Esq., at twelve, eighteen and twenty-four months, I hereby now release all claim to the moveables seized for my account by bailiff D. A. St. Amour, to be

sold at your domicile the 3rd instant, on account of said debt.

I am, dear Sir,
Your truly,
W. L. MALTBY,
Attorney for Edward Mackay.

Following this, on or about the 12th February, plaintiff lodged in the hands of several garnishees, an attachment against moneys of defendant in their hands for the entire amount of the judgment, without giving credit for the $300 secured by the notes mentioned above. The defendant therefore contested the attachment so far as the $300 were concerned, and asked that the attachment *pro tanto* be annulled.

PER CURIAM. The Court has no doubt as to the conclusion at which it should arrive. So far as the $300 were concerned, the letter suspended the execution of the judgment till the notes fell due. This is the legal effect of the agreement, whatever Mr. Maltby, the agent of the plaintiff, intended, for he says positively that the agreement was not to interfere in any way with the judgment. The contestation will therefore be maintained, and the seizure annulled so far as regards the $300.

Robertson & Fleet for Plaintiff.

Champagne & Nantel for Defendant.

RECENT DECISIONS AT QUEBEC.

Charter party—Larceny by bailee.—A difficulty having arisen between the shipper and the master of the vessel as to the exact quantity of goods shipped, each tendered a bill of lading in conformity with his pretensions as to the quantity of cargo received. A writ of revendication was then issued at the instance of the shipper to attach the cargo, and a guardian appointed by the sheriff. While the cargo was so under seizure and in charge of the guardian the master put to sea, but was overtaken and brought back to Quebec, on an accusation of larceny. *Held*, that, under the circumstances, there was no *animus furandi* and therefore no larceny, even *custodia legis*. 2. That the criminal law cannot be resorted to for the enforcement of claims, the proper legal remedy for which, if any, is a civil one.—*Reg.* v. *Sulis*, Special Sessions of the Peace. Opinion per Chauveau, J.S.P., 7 Q.L.R. 226.

Seduction—Damages.—Jugé, que les dommages réclamés par la fille séduite ne sont, à part les frais de gésine, dus que pour l'inexécution de la promesse en mariage que la séduction fait présumer, et que le concubinage pendant plus de trois ans de la fille avec son séducteur, et son allégation qu'elle n'a cédé la première fois que sur ses assurances qu'il n'y avait pas de danger pour elle, et qu'il la marierait si elle devenait grosse, détruisent cette présomption, et ne lui permettent pas de recouvrer plus que ses frais de gésine.—*Turcotte* v. *Nacké*, (Cour de Révision), 7 Q.L.R. 230.

Discontinuance—Congé défaut—Costs—Exception.—Failure to return the writ of summons is not a discontinuance within the meaning of Art. 453, C.C.P.—*Hossack* v. *Paradis*, (Court of Review), 7 Q.L.R. 234.

Attorney—Bailiff's fees.—An attorney *ad litem*, employing a bailiff to execute a writ, and making a special agreement with him as to his charges, without stipulating that he is not contracting for himself, becomes personally liable towards the bailiff.—*Panneton* v. *Guillet*, Circuit Court, Three Rivers; opinion by McCord, J. 7 Q.L.R. 250.

School Teachers—Engagement—Jugé, que les engagements des instituteurs sont des contrats subsistant tant que les commissaires ne leur ont pas signifié, deux mois avant leur expiration, qu'ils n'entendent pas les continuer; que cette décision des commissaires ne peut être adoptée qu'à une assemblée du bureau, et qu'elle doit être signifiée par écrit.—*Gauron* v. *Commissaires d'Ecole de St. Louis de Lotbinière*, Cour de Circuit, Québec, opinion by Casault, J.—7 Q.L.R. 251.

Offer of engagement—Acceptance.—An offer of engagement having been made to a school teacher by a corporation of school commissioners, without any limit of time for acceptance, and not having been withdrawn, the teacher could validly bind them, and effect the engagement by her verbal or written acceptance given at a regular meeting of the commissioners, about twelve days afterwards, notwithstanding that in the interval she had, in answer to a demand made to her by individual members of the corporation, refused to accept the offer.—*Devarennes* v. *Hallé et al.*, Court of Review, 7 Q.L.R. 252.

Saisie-arrêt avant jugement—Affidavit—Incertitude.—Jugé, qu'il n'y a pas d'incertitude dans

l'allégation que le défendeur a l'intention de frauder ses créanciers *ou* nommément le demandeur, et que la saisie-arrêt avant jugement, émanée sur une déposition qui ne pêche pas sous d'autres rapports, doit être maintenue.—*Arcand* v. *Flanaghan*, Cour de Circuit, jugement par Casault, J., 7 Q.L.R. 256.

RECENT ENGLISH DECISIONS.

Contract to compromise criminal prosecution—Larceny by bailee.—A having been arrested at the instance of B., on the charge of having committed the offence of larceny by a bailee, was brought up before a magistrate and remanded. A.'s wife then induced B. to withdraw from the prosecution, on A.'s wife agreeing to charge her separate real estate with the amount taken. The title deeds of the property were deposited at a bank in the joint names of the solicitors of the parties. A. being again brought before the magistrate, the latter having been informed of the terms, allowed the prosecution to be withdrawn. A.'s wife afterwards refused to perform her agreement. B. brought an action to enforce the charge, and A.'s wife counter claimed for a declaration that she was entitled to have the deeds delivered up to her. *Held*, that the agreement to charge the separate property was illegal and could not be enforced, and that the defendant was not entitled to the declaration for delivery of the deeds.—Larceny by a bailee is felony, but, if it had been a misdemeanor, the agreement to charge in consideration of the withdrawal of the prosecution would have been void.—*Whitmore* v. *Farley*, Court of Appeal, May 14, 1881.—45 L.T. Rep. (N.S.) 99.

Copyright—Newspaper.—A newspaper is within the Copyright Act (5 & 6 Vict. c. 45), and requires registration under that Act in order to give the proprietor the copyright in its contents, and so enable him to sue in respect of a piracy. Also, to enable the proprietor of a newspaper to sue in respect of a piracy of any article therein, he must show, not merely that the author of the article has been paid for his services, but that it has been composed on the terms that the copyright therein shall belong to such proprietor.—*Walter* v. *Howe*, L.R. 17 Ch. D. 708.

Principal and surety.—A. having borrowed a sum of money, which he failed to repay, his four sureties contributed equal amounts to make up the sum. Two of them, when becoming sureties for A, had, unknown to the other two, obtained from him an assignment of certain property as a security against any loss they might sustain in consequence. *Held*, that the other two sureties were also entitled to the benefit of the assignment. Where a surety obtains from the principal debtor a security for the liability he has undertaken, he is bound to bring into hotchpotch, for the benefit of his co-sureties, any benefit which he receives under the security; though he originally bargained with the principal debtor that he should have the security, and the fact of the bargain and of the security having been given was unknown to the co-sureties.—*Steel* v. *Dixon*, Chancery Division, March 29, 1881.—45 L.T. Rep. (N.S.) 142.

RECENT U. S. DECISIONS.

Contempt—Injunction—Violation by Corporation.—A railroad company was enjoined from discriminating against an express company, and certain rates were directed to be charged for express freight. *Held*, that the railroad company, a corporation, could be punished for violating the injunction, by a fine.—*United States ex rel. Southern Express Co.* v. *Memphis & Little Rock R. Co.*, 7 S.L.R. 472.

Damages—Surface water.—A city, in grading its streets and constructing gutters thereon for carrying off surface water, is not bound to provide against extraordinary storms, such as private persons of ordinary prudence do not usually anticipate and provide against.—*Allen* v. *City of Chippewa Falls*, 7 S.L.R. 479.

Directors, profit by, at expense of Corporation.—All arrangements by directors of a corporation to secure an undue advantage to themselves, at its expense, by the formation of a new company as an auxiliary to the original one, with the understanding that any of them are to take stock in it, and then that valuable contracts shall be given to it, in the profits of which they, as stockholders in the new company, are to share, are fraudulent and incapable of enforcement by the courts.—*Wardell* v. *Union Pacific R. Co.*, 7 S.L.R. 480.