The Legal News.

VOL. VIII. JANUARY 17, 1885. No. 3.

The Supreme Court of Canada, on the 12th instant, pronounced the Dominion License Act of 1883, known as the McCarthy Act, to be *ultra vires* as regards the regulation of retail licenses. This decision, which was given upon the reference provided for by the Act of last session, is based, apparently, upon the judgment of the Privy Council, in *Hodge* v. *Reg.* (7 L. N. 18.) The history of the matter is briefly this: When the decision of the Privy Council in *Russell* v. *Reg.* (5 L.N. 25, 33) was pronounced, it was supposed to be conclusive authority for assuming that the whole subject of the liquor traffic was given to the Dominion Parliament, and consequently taken away from the Provincial Legislatures. The McCarthy Act of 1883 was thereupon enacted by the Parliament of Canada. When the case of *Hodge* v. *Reg.* was carried to the Privy Council, their lordships disavowed the interpretation which had been placed upon their previous decision. The judgment in the *Hodge* case says (7 L.N. 23): "Their lordships consider that the powers intended to be conferred by the Act in question (the Ontario Act of 1877) when properly understood, are to make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., licensed for the sale of liquors by retail, and such as are calculated to preserve in the municipality, peace and public decency, and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the Dominion Parliament." The effect of this decision was to make it doubtful whether the Parliament of Canada had not legislated *ultra vires* in passing the McCarthy Act, and the Supreme Court, on special reference, now holds that the Act is in effect *ultra vires*, except so far as relates to the licensing of vessels and wholesale licenses, and also, except so far as relates to the carrying into effect of the provisions of the Canada Temperance Act of 1878.

Among other decisions of the Supreme Court rendered on the same day are the following:—*Morse* v. *Martin*, (5 L.N. 99), appeal of plaintiff dismissed with costs; *Sulte* v. *City of Three Rivers*, (5 L.N. 330), appeal dismissed with costs; *Charlebois et al. & Charlebois*, and *Charlebois & Charlebois*, (5 L.N. 421), appeal in each case dismissed; *Gingras & Symes*, (7 L.N. 126) appeal dismissed; *City of Montreal & Hall*, (6 L.N. 155), appeal dismissed; *Stevens & Fisk*, (6 L.N. 329), judgment reversed; *Cholette & Bain*, (7 L.N. 220), judgment reversed, and election annulled.

We are pleased to notice that Canadian decisions are read with care in Missouri. Our learned contemporary the *American Law Review*, not only examines the questions decided but, apparently, has leisure to detect typographical errors. He has discovered a misprint which occurs in a reference in a Quebec report published some ten years ago; but oddly enough, our contemporary in correcting this error, himself misprints the title of the case, and changes "Dansereau" to "Dausereau." The learned critic, therefore, hardly commends himself to the office of proof reader.

There is some pertinence in the following remarks of the *Law Journal* (London):—"Perhaps the worst of the evils of a Court of Appeal in arrear, is that the judges work under pressure. Lord Justice Bowen, a short time since, appealed to the bar to co-operate with the judges in clearing the list by shortening their arguments. We are sorry for the necessity for this request, because so soon as a Court of Appeal begins in any way to hurry its work, so soon does it begin to be inefficient as a Court of Appeal. A Court of Appeal ought to hear everything which can be said. Assistance might be rendered by succinctness of argument, but harm rather than good would be done by omitting anything."

Mr. Justice Papineau, on the 17th instant, in *Exchange Bank* v. *Burland*, decided that shareholders who are depositors cannot offset their deposits against double liability calls by the liquidators. There are so many persons interested in this decision, that we print the text of the judgment in the present issue.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 6, 1884.

Before DORION, C. J., MONK, RAMSAY, CROSS and BABY, JJ.

LA CORPORATION DE LA CITÉ DE QUÉBEC, Appellant, and PICHÉ, Respondent.

Illegal arrest—Damages—Probable cause.

Held, 1. *That where a corporation is sued for illegal arrest by its officer, it is sufficient for the defendant to show that the officer had probable cause.*

2. *Where a person not licensed to sell was arrested while writing down orders for the house which he represented, that the police officer had probable cause for the arrest, under a by-law of the corporation forbidding to sell without license.*

RAMSAY, J. This is an action of damages for illegal arrest. It is objected on the part of the corporation that neither by their servants nor by any act of theirs was the respondent arrested; that the sergeant who made the arrest was not their officer, but that he acted under the law, or what he conceived to be the law, and that he alone is responsible. The whole nature of the case contradicts this pretention. Piché was arrested under a by-law of the corporation, and he was held a prisoner not until he was punished for an infraction of the law, but until he was induced to satisfy the corporation by taking out a license. In fact the cost of a license was extracted from him under durance by the corporation, and he was then set at liberty by order of one of the council. It seems, too, that the mayor set the policeman on to the work—"il n'a pas ordonné l'arrestation, il a seulement attiré l'attention de la police sur un fait dont il avait été informé." It seems then to be not only an unreasonable pretext, but one highly imprudent for the corporation to urge.

The next point is as to the form of the judgment. It enters into no detail as to what constitutes the damages, except that the sum of $150 to be paid to respondent was "as and for damages in the premises," "for the causes stated in the declaration." It is then simply a condemnation for the damages the respondent had suffered.

The only questions then that remain are as to the legality of the arrest. Respondent does not contest the validity of the by-law or the authority to make it; but he says, I was not within its terms. He says, I was not selling and the by-law forbids me "to sell," offering to sell is harmless. It is also contended that he had no authority to sell or even to offer to sell; that as a commercial traveller he could only be liable for selling by sample, and that in fact he did none of these things. It seems to me that it is unnecessary for the merits of the present suit to decide these fine distinctions. It is not necessary that respondent should have been guilty, but that his acts were of such a nature as to give the sergeant, acting honestly in the discharge of his duty, probable cause for the arrest. He was arrested as he was writing down orders in the book from Mr. Parent, on the house which Mr. Piché represented. It seems to me that this was probable cause under the statute and by-law, and that it left only a legal question to be decided, about which the constable knew nothing. He is therefore protected, and consequently his act cannot be a tort by the corporation.

Judgment reversed.

SUPERIOR COURT.

MONTREAL, Jan. 17, 1885.

Before PAPINEAU, J.

THE EXCHANGE BANK OF CANADA v. BURLAND.

Bank in liquidation—Action by liquidators for calls—Rights of depositors.

Held, that a depositor who is also a shareholder of a bank in liquidation under the Banking Act and which was insolvent when it suspended payment, is not entitled to offer the amount of his deposit in compensation of calls made upon his stock by the liquidators under the double liability clause of the Banking Act, Sect. 58 *of* 34 *Vict. cap.* 5.

The judgment explains the case:—

"Considérant que les liquidateurs nommés en vertu de la 45 Vict., ch. 23, pour liquider les affaires de la Banque demanderesse poursuivent, au nom de celle-ci en vertu de l'autorité qui leur est conféré sous le même statut, le défendeur en sa qualité d'actionnaire

dans le fonds-capital de la dite banque, en recouvrement de quatre versements appelés suivant la loi, exigibles de lui en vertu de la 58e section du statut 34 Vict., ch. 5;

"Considérant que le défendeur plaide qu'à la date de la suspension de paiement par la dite banque le 15 de septembre 1883, il était créancier de celle-ci d'une somme de $6,623.04, montant d'argent par lui déposé antérieurement, avec droit de retirer le tout ou partie, à sa volonté, sur présentation de ses chèques, et qu'il a droit d'offrir en compensation et qu'il a offert en compensation des dits versements appelés ses chèques à prendre à même le montant du dit dépôt, pour rencontrer et payer les dits versements, et que les liquidateurs ont même accepté son chèque pour le premier des dits versements et lui en ont donné un reçu qu'il a produit avec son plaidoyer;

"Considérant que les demandeurs ont répondu que le reçu en question avait été donné par erreur de droit et sans autorisation de la cour, et que la créance du défendeur ne pouvait pas compenser sa dette;

"Considérant qu'il est prouvé que la dite banque a suspendu paiement le quinze de septembre 1883, qu'elle n'a pas été capable de reprendre paiement dans les quatre-vingt-dix jours suivant ni depuis, qu'elle était en faillite, et qu'elle a été mise en liquidation par jugement de cette cour en date du 5 de décembre 1883;

"Considérant qu'en vertu des sections 20 et 21 du dit statut, 45 Vict., ch. 23, le défendeur, à compter de la date du dit jugement de mise en liquidation, n'avait plus le droit d'exiger le paiement de sa dite créance si ce n'est concurremment avec tous les autres créanciers de la banque;

"Considérant que la créance du défendeur, par le fait de la faillite de la banque, est devenue sujette à réduction, au marc la livre, comme toutes les autres créances contre la banque;

"Considérant que le défendeur n'a pas mis en question par sa défense la légalité des appels de versements faits par les liquidateurs;

"Considérant que les versements réclamés par la présente poursuite sont exigibles immédiatement et intégralement à tel point que tout défaut, par le défendeur ou tout autre actionnaire, de satisfaire à ces demandes de fonds, dans le temps voulu par la loi, peut entraîner la déchéance de leur droit à aucune partie de l'actif de la banque, et que ces versements doivent être demandés pour satisfaire à toutes les dettes et engagements de la banque, sans attendre la perception des créances qui lui sont dues, ou la vente d'aucun de ses biens ou de son actif;

"Considérant que la créance poursuivie et la créance offerte en compensation ne sont pas également exigibles et au même temps, et qu'elles ne peuvent pas être compensées l'une par l'autre;

"Considérant que sous ces circonstances le reçu donné par les liquidateurs au défendeur, pour le premier versement réclamé n'aurait pas dû être donné et pourrait causer du préjudice aux autres créanciers de la banque si le montant entier en était crédité à présent, au défendeur, de même que si le montant de son dépôt était présentement employé à compenser les autres versements, et que cela serait contraire à l'esprit comme à la lettre de la loi;

"La Cour renvoie les défenses du défendeur comme mal fondées en droit comme en fait, et condamne en conséquence le défendeur à payer à la demanderesse la dite somme de $3,500 avec intérêt sur $500 à compter du 31 de mai 1884, sur $1,000 à compter du 30 de juin 1884, sur $1,000 à compter du 30 de juillet 1884, jour de l'échéance respective des dits versements, le tout avec dépens," etc.

Judgment for plaintiff.

Greenshields, McCorkill & Guerin for the plaintiff.

Bethune & Bethune for the defendant.

COUR DE CIRCUIT.

MONTRÉAL, 29 décembre 1884.

Coram MOUSSEAU, J.

PERRIER et al. v. MARY QUINN.

Assumpsit pour épiceries—Marchande publique—Renonciation à communauté—Maîtresse de pension.

JUGÉ: 1. *Qu'une maîtresse de pension est une marchande publique.*

2. *Que la femme marchande publique ne pour-*

rait se dégager de son obligation personnelle même en renonçant à la communauté, sauf le recours contre son mari ou sa succession. Elle est alors dans le cas d'une femme qui a souscrit une obligation avec l'autorisation du mari.

Les demandeurs réclament de la défenderesse la somme de $18.52, pour des épiceries achetées par cette dernière du vivant de son mari. Elle tenait une maison de pension et son mari vivait avec elle. A la mort du mari, la défenderesse renonça à la communauté de biens. Poursuivie, elle plaida que la dette en était une de la communauté, et qu'ayant renoncé elle n'était pas tenue de payer. Elle invoquait les articles 1382 et 2186 du code civil. Les demandeurs répondirent qu'elle était responsable comme marchande publique en vertu de l'article 179. Voir aussi Rogron sur art. 220; Toullier, vol. 12, Nos. 241, 244; Abbott, Acte de faillite de 1864, p. 6 et suiv.: c. 21, art. 220.

Jugement pour les demandeurs.

Edmond Lareau, avocat des demandeurs.

Judah, Branchaud & Beauset, pour la défenderesse.

(J. J. B.)

COURT OF APPEAL.

LONDON, Dec. 18, 1884.

BRETT, M.R.; COTTON, L.J.; LINDLEY, L.J.

WELDON v. DE BATHE.

(Law J. Notes of Cases.)

Married Women's Property Acts, 1870, 1882—*Trespass to Separate Property of Married Woman—Right to enter as Servant of Husband.*

Appeal by the plaintiff from the Queen's Bench Division.

The plaintiff, a married woman, living in a house without her husband, brought an action for trespass by entering the house which she alleged was bought with her own money, the produce of her own industry. The defendant alleged that he entered the house by the authority of her husband. The Queen's Bench Division, on the point of law being argued, gave judgment for the defendant, and ordered that part of the claim to be struck out.

The plaintiff appealed.

Their LORDSHIPS allowed the appeal, holding that the plaintiff was entitled to maintain the action, for that in the circumstances of the case the husband could not authorise the defendant to enter the house of the plaintiff against her will, as it was her separate property under the Married Women's Property Act, 1870.

HIGH COURT OF JUSTICE.

LONDON, Nov. 29, 1884.

Crown Case Reserved.

REGINA v. BUTT.

(Law J. Notes of Cases.)

Falsification of Accounts.

This was a case reserved by the deputy recorder of Poole for the consideration of the Court of Crown Cases Reserved, and raised the question whether the prisoner was guilty of an offence under the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24). The case was stated by the deputy recorder in the following terms:—

The prisoner was tried before me at the Midsummer Quarter Sessions for the borough of Poole, on July 5, 1884, on an indictment framed on section 1 of the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24) (A.) The evidence was that the prisoner, who was employed as a clerk and traveller by J. J. Norton, at Poole, collected on February 22 a sum of £8 14s 10d, which was due to his employer from W. Sheppard, of Bournemouth, for which he gave him a receipt, which was produced at the trial. On his return to Poole the same evening he went to his employer's office, and, according to custom, rendered an account of the money he had received during the day to Mr. Norton's cash clerk, a man named Elford. The prisoner wrote out on a slip of paper (which was produced) various sums he had received, but instead of putting down the £8 14s 10d which he had had from Sheppard, he wrote "Sheppard on account £5." Elford said that he then innocently either copied this sum from the prisoner's memorandum, or that the prisoner read it out to him from the memorandum, he could not remember which, into

Mr. Norton's cash-book, in which consequently there appeared the false entry, "W. Sheppard, £5," instead of, as it should have been, an entry of a payment by Sheppard of £8 14s 10d. The cash book, with this entry in it, was produced at the trial. At the time when he delivered the memorandum or read its contents out to Elford, the prisoner knew that in the ordinary course of business the items as communicated by him would be entered in his employer's books. At the close of the case for the prosecution the prisoner's counsel submitted that I ought not to leave the case to the jury, as no offence had been committed by the prisoner within the terms of the statute. I held that the case came within the statute, but agreed to reserve the point for the consideration of this Court. I accordingly left the case to the jury, directing them that the prisoner himself would be guilty of making a false entry in Mr. Norton's cash book if he, with intent to defraud, gave Elford, who was an innocent agent in the matter, the memorandum to copy into the cash book, or read its contents out to him for that purpose. The jury found the prisoner guilty. I respited judgment, and admitted him to bail, to come up for judgment at the next sessions. The question for the consideration of the Court is, whether the prisoner committed an offence within the above statute. If he did not, then the conviction to be quashed, otherwise the conviction to stand.

Charles Mathews, for the prisoner: These facts do not show that there was any false entry in the cash book. The book was not kept for the purpose of showing the transaction between the prisoner and Sheppard, but between the prisoner and Elford, for the purpose of showing the amount for which Elford was responsible to the prisoner, consequently it was a correct entry as between the prisoner and Elford. Further, the prisoner did not make a false entry within the meaning of the Falsification of Accounts Act (38 & 39 Vict. c. 24),* as the entry was not made by him, nor was it made in a book over which he had control. Neither did he "concur in making" a false entry, as the word "concurrence" implies agreement, and there was no concurrence on the part of Elford to make a false entry. The Act did not contemplate an entry on false information, otherwise a collector in Manchester telegraphing to his firm in London could be held guilty of making a false entry if he telegraphed false information which he knew would be entered in a book.

No counsel appeared in support of the conviction.

LORD COLERIDGE, C.J.: I am of opinion that the case is perfectly clear, and that, upon the facts, the prisoner made, or concurred in making, a false entry in a book of his employer within the terms of 38 & 39 Vict. c. 24. His duty was to render to the cash clerk an account of the sums he had received for his employer, and, having received a sum of £8, he, in sending his account to the cash clerk, wrote on a slip of paper £5. This piece of paper he either gave to the clerk or read out, and consequently the clerk entered the smaller sum in the cash book. That was a false entry in the ordinary sense of the word. The prisoner falsely read out the sum he had received from Sheppard, and with making that entry the prisoner had something to do —he either made it or concurred in making it. It has been contended that the statute was not broken, because the person making the entry did not know it to be false, and the person who knew it to be false did not make the entry, but, at all events, this entry was false so far as it purported to be an account of Sheppard's payment. It purported to represent a receipt from a person making a payment to the prisoner's employer, and the prisoner either made the false entry by the innocent hands of Elford or else he concurred

* If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully, and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document, or account, then in every such case the person so offending shall be guilty of a misdemeanour, &c.

in making it. The conviction, therefore, is right, and must be affirmed.

GROVE, J., HUDDLESTON, B., MANISTY, J., and MATHEW, J., concurred.

THE NEW DIVORCE LAW IN FRANCE.

During the dark and the middle ages, and until the great social and political cataclysm of 1789, France, like all other Catholic countries, had no laws bearing upon divorce. Marriage not being regarded as a civil contract, could not be dissolved by any temporal power. The Pope alone had the power, not to decree a divorce, but to declare a marriage null and void *ab initio*.

This, with other beliefs and convictions consecrated by religion and time, was swept away by the revolutionary torrent of 1789.

Marriage, instead of a religious sacrament, was declared to be a civil contract; and in 1792 the first divorce law was passed. As might be supposed, in that era of lax morality, every facility was offered by the law for severing the marriage tie. In addition to all the more or less grave causes recognized by modern jurisprudence in the United States, divorces were granted for incompatibility of character, and by mutual consent. As the formalities necessary to obtain a divorce by mutual consent were of the extremest simplicity, and as in the case of incompatibility of character, a mere allegation by one of the parties was sufficient proof upon which to base a decree, divorces became excessively numerous, and the law was the occasion of scandalous abuses, and a *quasi*-authorized immorality.

When Napoleon had succeeded in consolidating his power upon an apparently solid basis, and when the revolutionary elements had been again relegated to the Faubourgs, and society had become re-organized, the necessity for a new divorce law became universally felt.

On the 31st March, 1803, a law on divorce was promulgated, on the whole moderate and just, the determinating causes of which were maintained in the case of a limited divorce (*séparation de corps et de biens*), when in 1816 the divorce law itself was abrogated, and which, with some modifications, has been re-enacted by the law of the 19th of July, 1884.

By the law of 1803 divorce was granted for the following causes:

1st. Adultery of the wife.

2nd. Adultery of the husband, when he introduced a concubine in the conjugal domicil.

3rd. Condemnation of either party of an infamous crime.

4th. Excesses, violence and extreme cruelty and injury.

5th. Mutual consent.

The last ground for a divorce was a concession to the supporters of the law of 1792, and the more radical element of the populace, but it was so hampered and restricted by the procedure to be followed, that in practice it was very difficult to accomplish.

The re-establishment of the monarchy necessarily led to the abrogation of the law upon divorce, and for more than sixty years no serious or lasting effort was made to revive it. Six years ago, however, M. Naquet began his active and energetic propaganda, and in spite of rebuffs, ridicule and the most strenuous opposition, persistently carried out his purpose, and on the 19th of July, 1884, the new divorce law was voted.

It is little more than the re-enactment of the divorce law of 1803, but there are two salient features in the new law, one of which evinces the higher esteem and respect accorded to women in France in the present age, and the tendency to constrain men to the same marital obligations and duties as women. The second ground upon which divorce may be obtained is simply for the adultery of the husband, the restriction when he keeps a concubine in the conjugal domicil being abrogated.

The clause authorizing divorce by mutual consent is also abolished, and in its stead the following new clause is inserted:

"When the divorce *a mensa et a thoro* (*séparation de corps et de biens*) shall have existed for three years, the judgment decreeing such separation may be converted into a judgment for an absolute divorce."

These are the only changes made by the new law. It is open to objections in many respects, and it is questionable whether all of

its provisions will be sustained. It is not the law projected by Naquet or voted by the Chambre, but as modified, curtailed and restored by the Conservative Senate.

The clauses most condemned are the second, which may be re-established as in the law of 1803, and the facultative portion of the last clause, giving judges the option whether or not to convert the decree for a *séparation de corps et de biens* into one of absolute divorce. This will probably be made obligatory.

The re-establishment of clause 2 as in the text of the old law is not so absolutely prejudicial to the wife as would at first appear. For while under that law clause 2 gave her no right to demand a divorce for the simple infidelity of her husband, yet it could be obtained under clause 3 for "grievous injury." Although the granting this was left to the discretion of the judge, divorce was usually accorded on the ground that marital infidelity on the part of the husband was a "grievous injury" to the wife.

Indeed this 3rd clause had a general and saving effect, for it was applied in cases where clause 4 was not effectively, but morally true; as although a wife could not obtain a divorce for a mere misdemeanour, yet if the misdemeanour evinced moral degradation or turpitude, it would be considered a grievous injury, and a divorce granted on this ground.

The facility with which a *séparation de corps et de biens*, or a limited divorce, may be converted, under the new clause in the recent divorce law, into an absolute divorce on a mere *ex parte* motion, is not the radical change it would appear to Americans, for a limited divorce in France is not a palliative for an absolute divorce, as in New York and elsewhere, granted for causes insufficient to sustain an application for an absolute divorce, but is decreed for identically the same causes. In the law of 1803 it was made coexistent with an absolute divorce, as a concession to the conservative and religious element of the people who regarded marriage as an indissoluble sacrament.

The procedure under the new divorce law is purposely complicated and slow; the object being that parties to a divorce suit shall have sufficient leisure and opportunity to reflect upon the gravity of the steps they propose to take, and the serious nature of the bond they wish to dissolve. More than this, the judicial authority, which in France is much more extended than with us, and has a *quasi* paternal or patriarchal character, twice intervenes, and the judge *in camera*, having cited the parties to appear in person before him, admonishes and endeavours to reconcile them.

The libel or complaint of the plaintiff, which in France is a simple statement, devoid of the technicalities inherent to such papers with us, is presented by him in person to the judge, and explained and discussed. Should the statement appear sufficiently well founded to warrant a divorce suit, and should the plaintiff remain obdurate to the perfunctionary administration of the judge, the latter issues a citation to the defendant, as well as the plaintiff, to appear before him *in camera*. Here he uses his endeavours to reconcile the parties, going through the patriarchal comedy for a second time. Should it prove unsuccessful, and the plaintiff persist in his purpose, which he very naturally does (not having begun his suit for the mere pleasure of being lectured by the judge), his statement, and the papers in support thereof, are transmitted by the judge to the attorney-general (or district attorney [*procureur-général*]) (who is always a party to a divorce suit) and the court, the presiding judge of which, after hearing the attorney-general, either accords or refuses to plaintiff the permission to issue a summons. Here then commences the suit proper, the procedure of which may be divided into two phases, the private and the public.

The parties, as previously, appear before a judge *in camera*, but this time accompanied by their respective counsel, who state the grounds upon which their clients demand or oppose a divorce, mentioning the proofs they possess and the witnesses they intend to subpœna. Discussions between the parties naturally ensue, and objections are made to the proofs offered and the witnesses to be cited; all of which, with such further observations as the parties may choose to make,

are duly recorded by the clerk and signed by the parties.

This ends the proceedings *in camera*, which still partake of the patriarchal character, so inherent in French jurisprudence, which goes upon the assumption that the people at large are children, and ought to be treated as such.

The procès-verbal or statement thus signed is submitted to the court, which decides whether or not the petition for a divorce is admissible. Of course in the latter case the suit is dismissed, and the only remedy for the plaintiff is to appeal against the interlocutory judgment.

If, however, the libel or petition is admissible, the public and regular procedure commences.

Here the peculiar features incident to French divorce suits end, and the subsequent procedure is necessarily similar in its general characteristics to that of divorce suits in our own States.

The judgment, however, when rendered by the court does not *per se* dissolve the marriage. The law requires that the dissolution should be publicly pronounced by the civil officer (usually the mayor) of the domicil of the plaintiff.

The consequences resulting from a divorce are necessarily, on account of the subordinate position of the wife during marriage and the vested rights which children have in their parents' property, more serious and extensive than in the United States or England.

The marital power and authority accorded by the Code to the husband is destroyed, and the woman resumes her position and rights as a *feme sole*. Both parties have the privilege of re-marrying, with the exception that the party convicted of adultery cannot marry his or her accomplice, and the restriction that a woman cannot marry until ten months shall have elapsed since the judgment of divorce.

Should the children issue of the marriage be minors, they are entrusted to the care of the party in whose favor the divorce has been pronounced, unless a specific decree of the court order otherwise (C. C. 302.)

The right of the children to maintenance, education, and the share accorded them in the estate of their father and mother by the Code, subsist and are unchanged by a divorce pronounced between their parents. As to the parties themselves, the property relations existing between them may be modified. Articles 299 and 300, C.C., deprive the party against whom the divorce has been pronounced of all privileges and advantages (from a pecuniary point of view) which he or she had acquired by marriage settlements, or gifts made during the marriage, whereas the party in whose favor the divorce was pronounced is entitled to all the benefits and advantages acquired by marriage settlements or otherwise, even though the stipulation existed that such benefits and advantages should be reciprocal.—*N. M. Grinnell in Albany Law J.*

GENERAL NOTES.

The desks used by the Queen's Counsel in the Chancery Courts in the Royal Courts are being made level, instead of sloping, as hitherto.

Mr. Justice Rainville, who, as the bar are aware, has suffered from ill health since the Long Vacation and has been unable to perform any judicial duty, recently returned to the city with health much improved. His Honor is about to pay a visit to Europe before resuming his judicial functions.

Mr. Justice Fry relieves his mind very freely in the late case of *Lyell* v. *Kennedy*, Chancery Division. "I have rarely come across a case," he says, "in which greater folly has been shown than that which has been manifested in the way in which this case has been conducted. There has been a competition of demerits on both sides; each has striven to use the practice and forms of the Court to the utmost for the purpose of aggravating and annoying the other, and they have each been successful to a considerable extent, and the result has been a a most incredible waste of money, which will have ultimately to be borne by one or other or both of the parties."

Mr. Edmund Yates' appeal has been dismissed, and he has been consigned to Holloway prison, to undergo his sentence of four months' imprisonment for libel (7 L. N. 137.) A telegram, dated London, Jan. 19, says:—"Orders to the governor of Holloway prison took effect to-day in regard to Edmund Yates, the celebrated society editor. He is put on an allowance of half a pint of wine or one of malt liquor a day. Visits from friends must be arranged by the visiting magistrates, and he can receive only one newspaper daily. His letters will be regulated by the governor's orders. He is to take exercise by himself in the first-class misdemenants' ground, to rise at half-past six and retire at a quarter past nine. Rules may be relaxed by the medical authorities if his health suffers from the prison treatment."