The Legal News.

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THE NEW CHIEF JUSTICESHIP.

We are glad to notice, from a bill introduced by the Attorney General, that the suggestion made by Mr. Justice Torrance in a recent letter (p. 58 of this volume) is about to be carried out. The suggestion was that there should be a Chief Justice of the Superior Court for the Montreal division. It is stated that Chief Justice Meredith approves of the proposition, and that the bill has his concurrence. The first Chief Justice, it is understood, will be Mr. Justice Johnson, the senior Judge of the district.

THE LAW OF LIBEL.

Mr. Irvine is doing a good work in amending and clearing up the obscurities in the law of libel. As the law is now interpreted, the press is placed under restrictions in this Province, which do not exist elsewhere. We have not yet seen the bill introduced by Mr. Irvine, but we understand that a prominent feature of it is to permit the defendant in a libel suit to plead the truth of the charges, and that the publication was made in the interest of the public.

LEGAL STUDY.

The *American Law Review*, for May, has an instructive article by Mr. Wellman, on admission to the bar. Law students will find it profitable reading. In a further notice of the subject in the same issue, the writer says:—"Many students, even some who have to make their living, are pressed by a great temptation to shirk thorough work, and shrewdly to pick out of the books the things which go a great way both in and out of school, notwithstanding the warning of their teachers that such a method, like a donkey engine, only works where it is carried. Of such students, the rich ones want speedy admission to the bar; the poor ones want business of some sort, and they need to get it soon. Consequently they often yield to the pressure of what they believe to be a necessity, and some of the ablest of them become intellectual vagrants, who give occasion to the saying, that lawyers can half learn a thing better than anybody else. This fatal facility is rapidly developed in the green wood, and becomes monstrous in the dry. A lawyer of great experience once said, in a conversation about the study of law, 'There is but one chance for a man to get his law, and that is at the beginning.' This is to be taken, of course, with the modifications understood in reasonable conversation. It indicates, however, a fact with which old practitioners have become too familiar, and which, year after year, surprises the aspiring beginners who have trained themselves to study their cases with a certain effort at perfection. It is that the men who, from necessity or choice, began the practice of the law without forcing themselves to take the time and the pains to control their circumstances, whether in riches or poverty, and to undergo long and well-directed labor in examining the authorities, and in considering the established or growing principles which make the life and health of the law as a great factor of civilization, rarely have the requisite pluck afterwards, or having it, rarely find the time to educate themselves over again. It takes intellectual enthusiasm to follow in any profession the example, for instance, of Descartes in philosophy, by surrendering acquired habits of thought, and even well-considered opinions, and beginning at the bottom to learn the rudiments of what, at heart, one knows that he is ignorant. Many fear that it is not worth while to begin again. They surrender. It may not be their fault. Nature may have taken them by surprise and exhausted their youth before they find out that they have a choice in the matter. Nor do we wish even to seem to disparage such men, by suggesting that it is their misfortune. That might be as absurd or as inconsiderate as to take pains to cry out against a poet that he is no mathematician, or against a merchant that he is no scholar. It is simply a fact. It is a fact that many well-known, able and useful practitioners and judges are not, and have never tried to be, thorough lawyers. The fact that they have never tried to be thorough lawyers, is the point which we now urge as the reason why they are not. It is a very simple thing to say; but it is wholesome for candidates for admission to the bar to verify it by examining the briefs and decisions which prove it. They

are easily found, and are an edifying illustration of the principle, that although it be ignored, the law of cause and effect does not cease to play. In the long run, the bench and the bar become what the candidates for admission to the bar please. Yet, since it is a part of a lawyer's business to have the end in view from the beginning, it is well to try to pass the critical incident of entering the bar upon a plan that is worth working upon to the end."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, April 8, 1881.

Before RAINVILLE, J.

EX parte ROSE DELIMA PAGÉ, Petitioner for *certiorari*.

Quebec License Act—Amendment of 1879 *is applicable to restaurants.*

PER CURIAM. The petitioner was convicted of having, from eleven of the clock in the evening of Saturday, the 13th November, 1880, until Monday following at five in the morning, neglected to keep shut the bar of a certain restaurant, then kept by her, on St. Catherine street, in the City of Montreal, contrary to the License Act, 1878.

She complains of this conviction on the ground that the Act in question had been repealed, so far as concerned the offence in question, by the Quebec Act of 1879, 42 & 43 Vict. cap. 4, s. 1.

We are informed that the conviction was based upon the Act of 1878, on the ground that so far as the petitioner was concerned, the law had not been changed. The Statute of 1879, in its preamble, refers only to taverns, but the enacting clause is in these words:

"Every person licensed or not licensed to sell by retail, in quantities less than three half-pints, in any city, town or village whatsoever, spirituous liquors, wine, beer, or temperance liquors, shall close the house or building in which such person sells or causes to be sold, or allows such liquors to be sold, on any and every day of the week, from midnight until five o'clock in the morning, and during the whole of each and every Sunday in the year, &c."

It is evident that the preamble of this Act does not refer to restaurants, but to taverns; but the enacting clause has no such limitation, but refers to houses or buildings generally, in which liquor is sold. Is the enacting clause to be limited by the preamble? Dwarris on Statutes, says, p. 655: "The preamble to a statute usually contains the motives and inducements to the making of it; but it also has been held to be no part of the statute." So also pp. 656, 657, 658.

The conclusion, therefore, is that the enacting clause should prevail, and this being the case, no offence was committed between 11 and 12 on Saturday night as charged, and the conviction should therefore be quashed.

Conviction quashed.

Augé for petitioner.

Et.lier for the City.

SUPERIOR COURT.

MONTREAL, April 28, 1881.

Before TORRANCE, J.

MONTPETIT v. PELADEAU.

Deposit—Proof—Interrogatories on faits et articles—Division of answer.

The aveu of the party may be divided when part of the answer is improbable, or invalidated by indications of bad faith.

This was an action to recover from the defendant $100 alleged to have been confided by plaintiff, through Mlle. Sophie Jobin, to defendant, to be deposited in the Savings Bank in the name of plaintiff. The complaint was that defendant had converted this sum to his own use, paid interest on it for two years, and no more. There was a second count setting up a loan to defendant. The plea was the general issue.

PER CURIAM. The first witness examined was Peladeau himself. He says that on the 26th February, 1875, he received from Mlle. Jobin the sum of $100 to deposit in her name in the Savings Bank, and he had returned it to her, save $2 and a few cents. The entry was made in the Bank book, produced as plaintiff's exhibit number one. He further on explains that the deposit was made in his own name, as he had deposited before. He drew it out the following day at the request of Mlle. Jobin, who wanted it. Further on he is asked if a short time before the death of Mlle. Jobin, she had not asked him, in presence of Mlle. Denault, if the money was still in the bank in the name of plaintiff.

He denied this. He said he had seen the book in the hands of M. Turcotte, who went to the Bank to draw the money. He is asked if he had not given the deposit book to Mlle. Leonard, and denies it He also denies having given the book and $6 for interest to Mlle. Leonard. He said Mlle. Jobin gave him $6 to pay Mlle. Montpetit for wages. He said Mlle. Jobin gave him $6 to give Mlle. Montpetit, and he had kept it, because he had an account of his own against her nephew, M. Montpetit. He says he did not speak of wages before Mlle. Leonard. The next witness examined was Mlle. Leonard, who says that Mlle. Jobin did not pay wages to Mlle. Montpetit. The book was given her by Peladeau, and $6 in 1877 for interest. He told her that Mlle. Jobin sent her the book to keep it safe. In 1878, he gave her the book, with the remark that he did not give the $6, because Michel Montpetit owed him. Mlle. Denault is next examined. She denies that Mlle. Jobin paid Mlle. Montpetit any wages. She was present at a conversation between Mlle. Jobin and Peladeau, and Peladeau then said he knew the money did not belong to Mlle. Jobin, but to M. Montpetit, and that it was correct in the Bank. Michel Montpetit was the last witness examined. He denied that he owed $6 to Peladeau, and speaking to Peladeau about it, the latter said it was not true he had said so. Montpetit told him that Mlle. Montpetit was going to sue him, and he said, let her not put costs upon me and I shall get money from Mlle. Masson. Peladeau had also admitted to Montpetit the letter produced as coming from him. Peladeau in his examination had denied any knowledge of the letter. The establishment of the charge against Peladeau depends largely upon the admissibility of parol testimony against him—taken in connection with his admissions under examination in the witness box. We have first to notice his plea, which is the general issue simply. In the witness box, he admits receiving the money from Mlle. Jobin, and at first says he deposited it in her name in the Bank. But later on he corrects himself, and says that the deposit was in his own name in his own account. This is a variance which may have some significance. Then we have the curious fact of the withdrawal of the money the day after the deposit. The excuse was that Mlle. Jobin wanted it again. Is it likely that Mlle. Jobin, living at Isle Perrot, 20 miles from town, after giving Peladeau the money to be deposited in her name in the Bank, would ask for it immediately? Next, there is the surrender by Peladeau of his own deposit book to Mlle. Jobin, as representing the deposit, and as if he had nothing to do with it. Why should he give her the book if he had already returned the money? Further, there is the payment of interest proved by Mlle. Leonard, and the entries in his deposit book showing the payments. There are lastly the contradictions between his statements and those of Mlle. Denault, Mlle. Leonard and Michel Montpetit, who were without interest in the suit. The Court was witness of the manner and expressions of Peladeau under examination, and draws its own conclusions as to his veracity and truthfulness. It has no hesitation in saying that no reliance is to be placed upon the statements of Peladeau. Further, that he has committed wilful and corrupt perjury in the case. The rules which apply to a case like the present are simple. C. C. P. 231 says: "The answer of any party to a question put to him may be divided in the following cases, according to circumstances, and in the discretion of the Court: 1o * * * 2o When the part of the answer objected to is improbable or invalidated by indications of fraud or of bad faith, or by contrary evidence. Further, I would refer to the case of *Goudreault* vs. *Poisson et al.*, 13 L. C. J. 235, where the Court of Appeals held that in such cases the admission could be divided, and also where the statement under oath did not agree with the pleading. Looking at all the circumstances of the case, and endeavouring to use a careful discretion, the conclusion of the Court is to condemn the defendant as a *dépositaire infidèle* and as the holder of the plaintiff's money.

S. Pagnuelo, Q. C., for the plaintiff.

H. St. Pierre for defendant.

SUPERIOR COURT.

MONTREAL, March 17, 1881.

Before JOHNSON, J.

LA BANQUE NATIONALE v. LESPERANCE et al.

Guarantee Insurance—Deficiency in Accounts of Bank Teller.

The Teller of a Bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was $6,300 *short, and it was ascertained that a deficiency of the same amount existed in the Teller's accounts, and had been during several years skilfully covered up and concealed from the knowledge of the authorities of the bank, who had made the usual inspections.*

Held, that a Guarantee Insurance Company which had guaranteed the fidelity of the Teller was liable for the deficiency, but only to the extent which occurred after the contract was made.

PER CURIAM. The defendant, Lesperance, was a teller in the Banque Nationale, and the other defendant (the Canada Guarantee Company), guaranteed his fidelity. The first policy was granted on the 1st of May, 1878, for a year; and when that expired, it was renewed for another year. In December, 1879, the Bank took the present action against both of the defendants, alleging a defalcation of $6,300 by Lesperance, and the joint and several liability of both of them under the bond.

The declaration specially avers that on the 23rd May, 1879, while the policy subsisted, Lesperance, at the close of his day's work, locked up the cash and securities under his control in the usual manner, and went to his home, which appears to have been at Longueuil. That the 24th and 25th of May were both of them holidays, one being the Queen's Birthday and the other a Sunday; and the Bank only opened its doors again on the Monday morning, and Lesperance being unable to come, sent his keys to the Manager. That amongst the values in his cash box, the defendant had tied up a parcel of bank notes to be sent to the principal office at Quebec, and had endorsed on it what were supposed to be its contents, viz., $10,363; that this parcel was sent off by the express to Quebec on that same afternoon, and it was there discovered that instead of containing $10,363, as shown by the writing on the back of it, the parcel only contained $4,063, making a deficiency of $6,300. That after referring to the Express Company and making a minute inspection, the Bank came to the conclusion that he was a defaulter to that amount, and had been so for some time previous to this discovery. That the Bank forthwith gave notice to the Insurance Company, offering to give them communication of the books and accounts, and to do everything that might be desired of them in order to ascertain the facts; and they, the Insurance Company, actually made a minute examination of the thing for themselves, and convinced themselves that the defalcation really existed. That the Bank further, in pursuance of a stipulation in the policy to that effect, caused Lesperance to be arrested on a criminal charge at their request, and alleging that they have done everything they were bound to do, they conclude for a joint and several condemnation of the defendants for the missing sum.

The defendant, Lesperance, pleading for himself, answers in effect by telling the plaintiffs to prove their case. He says there is no deficit; that when he left the Bank on the 23rd of May his cash and securities were all right, the $6,300 included, and if the money has disappeared, it must be by the fault of the Express Company, the Quebec branch or the Manager here. The Guarantee Company pleads, firstly and secondly, certain conditions of the bond requiring preliminary proof before action brought, and that the plaintiffs should prosecute criminally. The third plea denies the guilt of Lesperance, and alleges that when he left the Bank on the 23rd, he left the money and securities under his control in the coffers of the Bank intact; and that, meeting with an accident on the 24th, and not returning to the Bank on the 26th, he sent his keys to the Manager, who received them, counted the cash and securities, and certified them as correct in the Bank's books, which was true, and he (Lesperance) is thereby relieved from all further responsibility.

The Guarantee Company's fourth plea is, that if any loss has been sustained by reason of Lesperance's acts, it was sustained previous to the execution of the bond. That the Bank's claim is based on error in ascertaining the result of entries in the Bank's books, which have been irregularly kept for years prior to the bond. There was a motion made at the hearing to add to the other averments, to the effect that any such deficiency could only have occurred by the gross negligence and carelessness of the Bank, and was concealed from the assurers at the time the risk was first taken. I think this addition may be made without injustice or inconvenience, and will be sufficiently met by the general answer.

The case must be looked at first of all with respect to Lesperance. If he is a defaulter, there is an end of the matter as far as he is concerned; but the case of his surety must be looked at on its own merits, and raises different questions. The evidence is very bulky and hard to master. It is all taken under the old system of the *Enquête au long*, so long used, or rather abused, in this Province, and fitter at all times to baffle than to assist justice. It will suffice for me to state the conclusions which I draw from it, and which enable me to base my judgment in the case, both as to the liability of the officer of the Bank, and as to that of his surety. First then, as to Lesperance himself. The whole thing is a question of evidence, and all the facts and circumstances must be considered. His own evidence, whatever may be its effect for or against the other defendant, can, of course, have no effect at all to exonerate him from direct liability to his employer.

The facts are correctly stated in the declaration as to the time of Lesperance's leaving the bank on the afternoon of the 23rd, his absence the next day, which was the Queen's birth-day, and also the next day, of course, which was a Sunday. On the Monday morning he sent his keys, by his brother, to the manager, who found himself somewhat embarrassed, as there was another clerk absent on leave at the time, and who usually took Lesperance's place when the latter did not come to the office. But he did the best he could. He found Lesperance had left separate parcels tied up with string, and having slips of paper on them mentioning, in Lesperance's hand-writing, the amount in each parcel, one being endorsed $10,363, B. N., Quebec; and there were also loose bills. As the Manager had to go behind the counter himself, and do the work of the day, he had not time to undo the parcels and count the contents; so he trusted to what was written on the slips. As to the loose bills and checks, however, he counted them. Later in the day, the Manager, having to send a round sum to Quebec, took $4,637, tied them up and added them to the parcel left by Lesperance containing apparently $10,363, intending to send off $15,000; and the the messenger enclosed the whole in a paper cover, sealed it up, and delivered it to the Express; and in that state the parcel and contents were, the next day, delivered at the office of the bank in Quebec, where the teller (Boucher) received it, opened it and saw the contents, but did not immediately count the money, and put the whole into his safe until the next day, when he untied the parcels or bunches of bills; found the $4,637 (which had been put in by Sancer) all right, but the one which had been done up by Lesperance lacked $6,300. This is the first appearance, or first discovery, of any deficit at all. The next thing that happened was that this was notified to the office at Montreal, and the Inspector, Mr. Matte, was sent up to make enquiry and examination. There can be no doubt whatever of the result of Mr. Matte's investigation, which was, according to his sworn evidence, to establish Lesperance's defalcation precisely to this amount, viz., $6,300, and extending over a considerable time back. This is the result to which the evidence has conducted my mind. There is much in it which it was difficult to apprehend clearly at first; but I have referred to it over and over again, and I cannot say there is any cause for reasonable doubt. There were witnesses examined on Lesperance's behalf—witnesses of great respectability no doubt—residents of Longueuil, who testified to his general good character and habits, and to their own disbelief (whatever that may be worth), of his having used the money. These gentlemen spoke of the bringing of the criminal charge, and of its having been abandoned. Whether it has been abandoned or not, does not clearly appear; nor, indeed, is it at all important to know whether a criminal charge for having stolen the money is maintainable against him or not. If this money, which had been in his custody, is missing after a careful inspection, he ought to give some account of it. It is impossible to shut one's eyes to the reasonable and proper effect of the inspector's evidence, or to the circumstances attending it. I forbear from emphasising every point; but it must be remembered that he had the defendant, Lesperance, with him in the vault, as a *légitime contradicteur* as it were, and he was constantly referred to for explanations, which were not forthcoming. It is broadly contended that Mr. Sancer himself may have taken the money from the parcel left by Lesperance; but where is the evidence that the $6,300 were ever in that parcel? There is positively none whatever. Then, there is the

circumstance of the slip, without the money, being in the middle of the parcel; and those who are used to these things, and know all about them, say such a thing as that is very unusual and suspicious. But the theory of Sancer's responsibility might be admitted up to a certain point of time with plausibility perhaps; that is to say, as long as it is a question of veracity between him and Lesperance; but when the thing is pursued further, and it is found that this very amount was missing from Lesperance's cash, their relative positions are very much changed. The inspection showed that Lesperance, not Sancer, was the defaulter. What interest had Sancer therefore in putting a false slip into the parcel? Then it was said that Sancer, in answer to one of the telegrams from Quebec, had said that he felt sure the whole of the money had been sent, and this was argued upon as an admission on his part of the fact. Of course, when it is fairly looked at, it is only an admission of Mr. Sancer's confidence up to that time—before the inspection had taken place—nothing more.

This proceeding is not an inquisition to discover who took the money, but an action based on the distinct allegation that Lesperance took it, or, at all events, is responsible for it; and that, of course, must be proved by evidence inconsistent with any other reasonable hypothesis. Can it be pretended reasonably that Sancer, who had no deficiency, no motive, is to be put in the place of him who had both? It cannot escape observation, that what came to light previous to the inspection, that is to say, what took place at the end of May, was not the deficiency itself, if I may so speak, it was only the evidence of the deficiency. It was not then that the money was appropriated or lost, though it was only then that it was discovered. The person who left the slip with $10,000 odd written on it, when there lacked $6,300 of the amount, was a person who had an interest in hiding an already existing deficiency. It could not have been Sancer, therefore. It would be cruel and monstrous to entertain such a proposition. Mr. Sancer is not being tried here. If he is a defaulter let him be accused, and let him defend himself. The only question now is whether the evidence shows Lesperance to be liable, and I have come to the conclusion on this evidence that it does.

The defence of the sureties is, as I have said, different. Their three first pleas have received a sufficient answer by what has been already said on the issue with Lesperance. The deficiency is there, and the notices to the Company were given. Their fourth plea, however, regards the time at which this deficiency occurred, and the amendment is in effect that the Bank was guilty of gross negligence, and ought to have been aware of it, and have informed the Guarantee Company before contracting with them. The general answer puts all this in issue, and it does not appear that the Bank knew, nor, therefore, that it could inform the Company, of any deficiency previous to the bond. If they had voluntarily suppressed anything they knew, or were bound to know, it might vitiate their contract with the Company, no doubt; but if they were only cleverly defrauded, without the ordinary inspections and precautions usual in business disclosing the fact, they are not to be reproached on that score. They could not give notice of what they did not know themselves. Therefore this contract is not to be avoided on account of their not informing the company of things that were not within their knowledge in the ordinary course of a prudently conducted business. But admitting that the contract exists would not make the Company liable for deficiencies that occurred before the execution of the bond, whether the Bank knew of such deficiencies or not. The Company makes a much stronger case for Lesperance than he has made for himself. They produce evidence of the cuttle-fish kind. They obscure the evidence of Matte. They produce a Mr. McDonald, an accountant, against whom I have not a word to say; but in dealing with his evidence I must say what I think of it. Mr. McDonald was employed by the Company as a professional man to investigate and report upon the case for their satisfaction. I have no doubt he has done so very ably and very honestly; but the amount of it is that he reports to them that they should resist the plaintiff's claim upon the ground that all the allegations contained in Mr. Matte's deposition are susceptible of refutation; but it is evident he has misunderstood Mr. Matte's evidence, which was given in French, and a translation of it handed to the witness. He says he made his report, and that

it is true. The report is that, upon a certain theory which he propounds, Mr. Matte's conclusions may be susceptible of refutation, and that possibly no deficiency may have occurred at all. Mr. McDonald cannot be admitted, however, to judge of the effect of Mr. Matte's evidence, except as to its effect on himself as an expert. He says that upon his theory it is susceptible of refutation. Then by all means let it be refuted,—but refuted by facts and proof, not by hypothesis and opinion There is the deficiency clearly shown, as far as Lesperance is concerned; but when, and to what extent with reference to the time of the contract? In my judgment, after devoting much time to this case, I think that the Company's guarantee can only apply to the deficiency of $1,400 clearly shown to have occurred after the contract. It was a contract to make good the consequences of any misconduct that might occur after it was made. By no rule can it be made to apply to deficiencies occurring previously. Those were purely at the risk of the Bank, whether known to it or not, and whether its officer covered up and concealed them or not. The judgment, therefore, is for the whole amount against Lesperance, and for $1,400 only against the Company, jointly and severally with him, and with costs.

Geoffrion & Co. for plaintiff.

Mousseau & Co. for Lesperance.

J. C. Hatton for Canada Guarantee Co.

SUPERIOR COURT.

MONTREAL, April 29, 1881.

Before JOHNSON, J.

MORRISON es qual. v. MCCUAIG.

Trustees—Right of Survivor.

Certain property was acquired by a number of trustees for the congregation of a church. No right of survivorship was referred to in the deed of conveyance.

Held, that a person claiming to be sole surviving and remaining trustee had no right of action to get back the property from alleged unlawful holders.

PER CURIAM. The plaintiff and defendant were, both of them, co-trustees along with others of a Presbyterian Church, and in that capacity, and before the passing of the statute of 1875, they, all of them, acquired some land for the congregation and built a church. Soon afterwards proceedings took place in consequence of the provisions of the statute, and one party contends that there has been a lawful accession, and the other that there has not. The plaintiff belongs to the Union party, and the defendant to the Anti-Union; and the plaintiff brings the action to get back the church and land, alleging the defendant's individual and unlawful possession of them.

The plaintiff styles himself "John Morrison, "of Cote des Anges, in the County of Soulanges, "District of Montreal, farmer, in his quality of "sole surviving and remaining trustee legally "appointed and authorized to hold the real "estate, and representing the civil rights of the "religious congregation of Cote St. George, in "the said county, in connection or communion "with, and forming part of *the Presbyterian "Church in Canada, suing in his said quality*, and "on behalf of all the other members of the said "congregation." These are the important capacities assumed by the plaintiff, and he brings his action against the defendant personally, describing him merely as, "Donald McCuaig, of "Cote St. Patrick, in the County of Soulanges, "in the District of Montreal, farmer."

Of course, the real object of the action is to have it decided to which party the church rightfully belongs, but the defendant by his first plea contends that the plaintiff has no quality to bring the action at all; and that he, the defendant, has no quality to defend it. With respect to the plaintiff's right, it is questioned on two grounds: one of law and the other of fact; first, it is said he would not by law represent the civil rights of the congregation as the surviving trustee; and secondly, as matter of fact, that there was another body of trustees elected, and who would have had the right of action if any existed. Now, without going into the question of fact at all, even with regard to this preliminary question of procedure, and still less on the merits, it seems that the right of property in this building and in the land, was conveyed by the deed of the 23rd November, 1871. It was there conveyed to William McNaughton, John Morrison (the present plaintiff), Duncan McClellan and Donald McCuaig (the defendant), "en leurs qualités de "Syndics de la congregation Presbytérienne en "connection avec l'église d'Ecosse des dites "Cotes St. Georges, St. Patrice, partie du Town-"ship de Newton attachés, et qui font et feront "profession à l'avenir de la dite religion Pres-"bytérienne." Then follows the description of the land conveyed. There is no right of survivorship here mentioned at all. The conveyance seems to be to these gentlemen as trustees, and the right of action would seem, so far, to be vested in them and their successors in office.

The deed further goes on to say: "Pour le "dit terrain et dépendances jouir, user, faire et "disposer en toute propriété par la susdite con-"gregation Presbytérienne, &c." Whether the right of action therefore would be in the congregation, or in the trustees, is another question altogether, and it was to that point merely that I understood the argument of the learned counsel for the defendant to be directed; and there certainly was much force in his argument that, if the property was vested in them as a corporation, there was no right of action through another or others, under Art. 19 of the Code of Procedure. But the point now is different from that: It is, whether the deed, not having provided for the succession of the trust, and the

constitution of the church not being shown to have provided for it, a single survivor can, by mere right of survivorship and without any successors having been chosen, exercise the right in his own name. This is the plaintiff's own statement of his case, quite irrespective of the defendant's pretension, which he contests, that other trustees were actually appointed and are *de facto* in office: so that this naked point is at once presented, and must be decided; can one of a number of trustees acquiring property for a congregation, by mere right of survivorship, and without any due succession to those who have died or ceased to hold office, exercise the rights of the whole body of trustees in his own person and name? Nay, more, perhaps: can the plaintiff call himself survivor at all, for he is naturally so only as regards the two of the trustees who have died; the other one has gone over to the other camp, and is still in the land of the living. Now this point was not argued at all, and I must decide it for myself. Either this congregation was a corporation or it was not. If it was a corporation, it must sue in its own name. If not being a corporation, the congregation has civil rights exercisable by trustees, those trustees and their duly appointed successors must sue. The old Statutes, long before the Act of 1875, regulate this. They are the 2nd Vic., c. 26, and the 19th and 20th Vic.. c. 103, and they are reproduced in the Consolidated Statutes of Lower Canada, cap. 19. The first of these Acts, sec. 3, said that congregations, when they wished to acquire lands for churches, might "*appoint one or more trustees, "to whom and to whose successors (to be appointed "in the manner set forth in the deed of conveyance) "the lands necessary for each of the purposes afore- "said may be conveyed; and such trustees and "their successors for ever, by the name by which "they and the congregation for which they act are "designated in such deed, may acquire, &c., and "may institute and defend all actions at law, "&c., &c.*" By the second of these Statutes, sections 1 and 3, "*the successors of the trustees "appointed in the manner provided by the deed, "or in the manner provided by a meeting of the "congregation held as provided by that Act, have "the same powers.*" This deed, as we have seen, makes no provision on this subject. If the plaintiff's position is to prevail, the mere fact of his own decease, or of his going over to the other party, would have extinguished the action forever. Therefore, I need not go farther; and without discussing the facts alleged, either as regards other *de facto* trustees, and without getting to the point of the defendant being improperly sued in his individual capacity, and still less to the merits of the case, I hold that I cannot proceed further with it, and it is dismissed with costs.

A case of *McRae* v. *McLeod*, very like this one, was cited by the plaintiff. That case was decided in Ontario, and was very like the present one, three surviving trustees having brought the action, and no point of this sort seems to have been raised. I am not informed what the law of Ontario may be respecting the acquisition of lands by religious congregations; but our Statutes which I have quoted, are, I think, clear.

J. L. Morris for plaintiff.

Doutre & Co. for defendant.

NOTE.—In *Tavernier* v. *Robert et al.* (p. 131), Prefontaine & Major were also for defendants, by substitution of attorney.

THE BAR SECRETARYSHIP.

To the Editor of the Legal News:

DEAR SIR,—Since you were good enough to publish my declaration of battle a few days ago, hear, I pray thee, my *post litem* wail. Put not your trust in promises. Two years ago my claim, or at least the claim of some English speaking candidate to the Secretaryship, was admitted on all sides. No such phenomenon as an English speaking secretary had been heard of for many years. Almost all the leading French barristers (I might mention names, but *cui bono?*) pledged themselves that as soon as Mr. Pelletier (who had then been a candidate for two or three years) should have had his turn, they would consider me next entitled to the position. On this ground, and on this alone, I was tempted to come forward this year. But in the meantime, other competitors had entered the field. They did so, if I am rightly informed, *in forma pauperis*. Their appeal was *ad misericordiam*, and was characteristically importunate. One was a poor man with a large family, or a large man with a poor family (I forget which). He gained the coveted prize, and is (presumably) happy. *Gaudeamus igitur*. I who was deluded into the belief that I was the only one who had any claim got *five* votes. In justice to my friends, however, I must state that business engagements prevented me from being present at the fray, and they were therefore quite justified in thinking that I had retired from the lists. I arrived just in time to hear the "demnition total," as Mr. Mantalini puts it. Therefore I complain not. But there seems to me to exist a moral in all this. If the rich pecuniary reward attached to the office of secretary is to prove only a golden apple of discord among the younger members, why not abolish it altogether? It is evident that the choice will be restricted so long as that remains. If the office should go begging under these conditions, as well hap it may, I will pledge myself (if I may be permitted to pledge myself to anything so far in the future) to perform the duties of the office until another can be found to do so on the same terms. By this means $200 can be added annually to the library fund, and much contention avoided.

I remain again,
Truly yours,
C. H. STEPHENS.

Montreal, May 3, 1881.