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A QUESTION OF PRACTICE.

The case of *Bowker Fertilizer Co. & Cameron*, noted in the present issue, settles a question that has frequently come up in the Superior Court, namely, where security for costs of suit is asked by motion, whether the motion must be made within four days after the return of the writ, or whether it suffices to give notice of the motion within four days. There has been some contrariety of opinion, but the majority of the judges have been disposed to make these formal proceedings expeditious in their nature, and have held that the motion must be presented within the four days, the same as if a dilatory exception were filed. If the defendant were behind time he simply lost a privilege which the law accords in a certain class of cases. The Court of Appeal, however, has ruled in favour of a more lax procedure. It is now held sufficient to give notice of motion within the four days following the return of the writ, and the motion may be presented subsequently.

JUDGES AND PASSES.

The *American Law Review* for May-June, recurring to the subject of judges and railway passes, and quoting our remarks *ante*, p. 89, facetiously makes an exception in favor of Circuit judges in Virginia, and thinks that these ill-paid officers, "living on $1,600 a "year, are entitled to all the railroad passes "they can get." It is poor economy to appoint ill-paid judges, especially where no absolute saving is effected, but, as sometimes occurs, an amount that would amply remunerate a sufficient number is distributed among an excessive supply of officials. Perhaps the Circuit Judges of Virginia may find a crumb of comfort in the fact that a great deal of the best intellectual work that has been done in the world—literary and scientific at least, if not judicial—has been poorly rewarded. Their brethren in Belgium, moreover, are existing on equally small salaries (*ante*, p. 161).

On the general question of judges accepting railway passes we find public opinion in the United States becoming more active. A recent issue of *Harper's Weekly* says:—"Great journals now pay their own way. They know that the only judgments worthy of attention are those of live-heads, not of dead-heads. And it is equally true of judgments from the bench as from the press, of the vote of the legislator as of the word of the critic. The contemptible bribery of 'dead-heads' by free passes of every kind ought to be suppressed by the voice of respectable opinion. But at a time when the sense of pecuniary morality is so relaxed a reasonable and stringent law upon the subject would be very efficacious."

FRENCH DIVORCE BILL.

Recent advices from France state that the Senate has adopted an amendment to the bill re-establishing divorce, permitting the wife to demand a divorce on the proof of adultery by the husband, even if the act is not committed under the conjugal roof. It rejected the amendment demanding that cruelty only shall constitute a case for separation, not for divorce.

A contemporary, referring to the proposed legislation, states that the provisions of the new French Divorce bill, if it passes the Senate as it left the Chamber, will constitute a great departure from the principle of indissolubility. To begin with, it sanctions divorce when either party to the marriage contract is guilty of infidelity. In the French Chamber the principle of treating sexes on a footing of equality in this matter was warmly defended by the majority, and carried on a division by a majority of 224 to 147. The bill allows either husband or wife to obtain a divorce for cause of (1) adultery, (2) cruelty, (3) serious insults, (4) a sentence of imprisonment for dishonesty or offences against public morals, (5) any ignominious punishment (*peine infamante*) other than banishment or degradation for political offences, (6) absence for a term of years. It also provided for divorces by mutual consent; but this provision was surrounded by many restrictions.

Any couple finding their married life insupportable, but not wishing to accuse each

other of any of the offences nullifying marriage, can make a declaration that they are no longer able to live together. This formal declaration must be supported by the acquiescence of three of the nearest relatives of both husband and wife, and repeated four times in the course of a year. The possessions of the household are valued, and one-half is settled upon the children of the marriage, to become theirs on attaining their majority. One of the parents must contract to undertake entire responsibility for bringing up the children. After all this is done the court will be empowered to pronounce a decree of divorce, but the divorced persons will not be allowed to marry again before the lapse of three years. In the case of divorce for adultery, cruelty, crime, or absence, no restriction is placed upon the remarriage of divorced persons, with the exception, that if a husband and wife after being divorced remarry each other, the State will not undo their contract a second time, unless one or other of this twice married couple is condemned to an infamous punishment. Three years after a judicial separation has been granted, either party can, on application, have it converted into a decree of divorce. It can also be so converted at the option of the court on the application of the injured party within a period of three months. Marriage with a co-respondent is permitted after divorce, it being naively observed by M. Naquet that such permission would inculcate the moral obligation of marriage and tend to limit adultery. The penalty affixed by the Civil Code to a wife's infidelity in case of judicial separation is abolished. A proposal that a settlement should be made in all cases upon the children of a marriage dissolved for specific cause was defeated.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, May 7, 1884.

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

CHINIC et al., (plffs. below), Appellants, and GARNEAU (deft. below), Respondent.

Agent—Trustees carrying on business of insolvents—Liability of creditors for losses incurred by trustees.

The plaintiffs were trustees under a deed of assignment from insolvents, with authority to carry on the business until it should be wound up, which was to be completed within two or three years. The business was not wound up in that time, but was carried on by the plaintiffs on an extensive scale with funds raised on their own credit, and large losses were incurred. Held, by the majority of the Court, in an action by the plaintiffs against creditors who had signed the trust deed, to oblige them to repay the amount of such losses, that the plaintiffs were not, under the circumstances, agents of the creditors, so as to make the latter liable for the result of their operations.

The judgment appealed from was rendered by the Superior Court (Meredith, C.J.), June 15, 1882. The following were the *considérants*:—

"The Court, etc.

"Seeing that the trust deed, bearing date the 16th of November, 1870, mentioned in the pleadings in this cause filed, was entered into by Nazaire Têtu & Co. (insolvent debtors) of the first part, by Cirice Têtu, (one of the members of the said firm), of the second part, and the plaintiffs, as trustees, of the third part, and that the creditors of the said Nazaire Têtu & Co., spoken of in the said deed, are not mentioned in the said deed as parties thereto;

"Seeing that by the said trust deed, it was agreed by the parties thereto, namely, by the assignees, Nazaire Têtu & Co. and Cirice Têtu, one of the members of the said firm, parties thereto of the first and second part, and the said assignees, namely, the present plaintiffs, parties thereto of the third part, that all the creditors of the said Nazaire Têtu & Co., named in a certain schedule mentioned in the said trust deed, 'do ratify 'and confirm this assignment, and do, in 'consideration of such assignment, remise, 'release, and forever quit claim unto the 'said firm of Nazaire Têtu & Co., and all the 'parties thereof, of all claims and demands';

"Seeing that in order to give effect to the said covenant, between the said insolvent debtors and the plaintiffs, the said creditors did afterwards put their signatures to the said trust deed, and by doing so they de-

prived themselves of the power of impugning the said deed of trust, and secured to the said insolvent debtors the discharge to which they were entitled under the said trust deed, but that the said creditors, by signing the said trust deed, cannot be regarded as parties creating the trusts established, or granting the powers given in and by the said trust deed; and that the said trustees, as regards the said creditors, were merely administrators of the insolvent estate, so assigned to them as trustees, and cannot be regarded as having been, as they the plaintiffs contend they were, the agents of the said creditors of whom the defendant was one, and that the said trustees had not any power as regards the said creditors or their property, beyond the interest of the said creditors, to the said insolvent estate so assigned to them as the said trustees;

"And seeing that, by the said trust deed so entered into between the said insolvent debtors and the said plaintiffs, it is amongst other things declared that the said trustees 'shall have full and ample power to pledge and hypothecate, if they think fit, all or any part of the said property, moveable or immoveable, hereby conveyed to them in trust, and with the money obtained by and through such pledging and hypothecating to carry on the said establishments at Escoumains and at Sault-au-Mouton, or either of them, to the same, or a greater or less extent than the same have been hitherto carried on by the parties of the first part, and it is hereby agreed that the said parties shall carry on the said establishments, and shall continue, there and elsewhere, as they may deem fit, the business of the said firm of Nazaire Têtu & Co., for the benefit of the creditors of the said firm and of the said parties of the first part as hereinafter mentioned';

"And that by the concluding clause of the said trust deed it was declared: 'It is well 'understood that the winding up of the said 'estate shall be made within two or three 'years from this date,' that is, within two or three years from the said 16th day of November, 1870;

"And seeing that the said estate was not wound up within the said period of two or three years, and that even after the lapse of the said delay the business of the said estate was carried on by the said plaintiffs upon a more extensive scale than it had been carried on before, and that the plaintiffs, in order to carry on the said business aforesaid, raised a large amount of capital on their own credit, with which they carried on the said business, without having obtained the consent or concurrence of the said creditors;

"Seeing that, in pursuance of a resolution of certain creditors of the said estate, it was wound up in the year 1877, and that the result of the said liquidation of the said estate was that there was nothing whatever for the creditors, who were called upon not only to lose claims amounting to $69,000, with seven years' interest, but also to pay the sum of $73,334 to meet losses sustained by the plaintiffs in so carrying on the said business;

"And considering that although the said plaintiffs, as trustees, were by the said trust deed authorized to raise the funds necessary to enable them to discharge their duties as trustees, yet that they ought to have raised the required funds in their capacity as trustees and upon the strength of the trust property, and that the said trustees in raising, as they did, capital on their own credit, and in carrying on, as they did, extensive lumbering operations, with the borrowed capital so raised, (although they doubtless acted in good faith,) exceeded their powers; and, moreover, that whatever rights (if any) the said trustees may have, as regards the said losses, against the parties by whom they, the said trustees, were so named, they, the said trustees, cannot have any such rights against the creditors by whom they *were not named*;

"It is in consequence considered and adjudged that the action and demand of the said plaintiffs be and the same is hereby dismissed with costs in favour of the defendant."

In appeal the judgment was confirmed, the learned judges, however, differing as to the reasons of confirmation. The Chief Justice was of opinion that the appellants were *mandataires* of the respondent, but that they had administered imprudently and exceeded the terms of their trust. Justices Ramsay and Baby were of opinion that the appellants

were not *mandataires* of the respondent. Mr Justice Monk thought that the appellants were not *mandataires* of the respondent, and, further, that there had been maladministration.

The following opinion was delivered by

RAMSAY, J. This is an action based on a trust deed, by which the appellants undertook to carry on the lumber business of the firm of Têtu & Co., then on the verge of insolvency, and to pay off the creditors so far as the estate assigned to them by the deed would suffice, and to give the balance if any to Têtu & Co. The result of the transactions of the appellants was not successful, and the object of the action was to compel respondent, who was one of the creditors of Têtu & Co., to pay back certain dividends he had received on his claim, and to indemnify the trustees for the advances they had made and the losses they had incurred in executing the trust.

This action was met by a *défense en fait*, and by a special plea by which respondent in effect set up, first, that by the payment of the second dividend respondent who was indebted to Cirice Têtu, one of the firm of Têtu & Co., was completely disinterested in the operations of the trustees. Secondly, that by this payment, and by two other payments out of the funds of the said Cirice Têtu, the liabilities of the firm of Têtu & Co. were reduced to $25,000, and that the estate was then able to pay off all its debts, if the appellants had sold off the property as they were authorized to do; but that instead of doing so the appellants carried on for their own profit the business of Têtu & Co. in violation of the powers conferred by the deed and at their own risk. Thirdly, that their administration was bad, vicious and grossly negligent, and that they had exceeded their powers.

The learned Chief Justice of the Court below dismissed the action, solely on the grounds that the appellants were not parties to the deed, and that although it was to some extent made in their interest, it was not generally a bargain with them but between Têtu & Co. and the appellants: the creditors are only parties ratifying the deed. Now what is the effect of such a ratification? Chief Justice Meredith has thus stated the question:—

"If I ratify a deed entered into by another as my agent I make the deed my own; but if I ratify a deed entered into by others in the exercise of their own rights, and for their own interests, I merely deprive myself of the power of objecting to such deed, and undertake to do whatever by the deed I am required to do, but nothing further."

And he concludes:—"Upon the whole, after giving to the trust deed the best consideration in my power, I can see nothing either in the letter or spirit of that deed, which would justify me in holding that under it, the trustees were the agents of the creditors. According to my view, the trustees did not represent the creditors in any way, or to any extent, except as regards their interest in the estate assigned. And yet, according to the contention of the plaintiffs, they had power not only to render valueless the claims of the creditors against N. Têtu & Co., but also to subject the creditors personally and jointly and severally to debts to an unlimited extent. For if, as the plaintiffs contend, they had power to make the creditors liable for the $73,000, now alleged to be due to the plaintiffs, then the discretion of the trustees was the only limit to their power over the estates of the creditors.

"The capital obtained from La Banque Nationale from 1871 to 1876 was, as already mentioned, $850,000, and, according to the contention of the plaintiffs, each of the creditors was personally, jointly and severally liable for the whole amount so borrowed."

It appears to me that this is unanswerable as a general statement of the law; but has it no exceptions? Or rather, is this only a ratification of a deed entered into by others? I am inclined to think that this deed contains something more than a ratification of the acts of others, for there is at all events one clause which states that the consideration of the *transport* to appellants is the discharge of the Têtus. But this does not alter the question before us, for it is only an abandonment to the Têtus of all recourse against them in consideration of the cession they were about to make. From this I do not

think it can be assumed that the deed creates a mandate by the creditors to the appellants. The whole form of the deed is a mandate by the Têtus to appellants, and I cannot find any instance of a deed in this form being held to bind parties, however strongly interested they might be in the transaction, to obligations that are not clearly expressed. Their ratifying the deed is fully explained by the fact that without such ratification the deed might have been annulled for fraud. I attach no weight to the argument as to what probably or possibly the creditors might have intended to do. They were certainly interested in seeing an effort made to redeem the estate; but, on the other hand, it seems in the last degree improbable that they bound themselves jointly and severally to this terrible responsibility for such a chance.

I am to confirm.

Judgment confirmed.

Bossé & Languedoc for the appellants.

Hamel & Tessier for the respondent.

COUR DU BANC DE LA REINE.

Montréal, 21 mai, 1884.

Présents: Sir A. A. DORION, C.J., Hons. Juges MONK, RAMSAY, CROSS, BABY.

DIXON et al., Appelants, & ETU, Intimé.

Facteur—Mandat.

JUGÉ: 1. *Que le facteur ou agent d'un principal résidant en pays étranger est seul responsable, personnellement, envers les tiers.*

2. *Que les personnes employées par ce facteur ou agent, qui est leur mandant, ne sont pas responsables, personnellement, des transactions faites au nom de leur mandant.*

Voici les faits de la cause:

En 1880 les appelants Thomas Dixon, fils de James, et Thomas Dixon, fils de Thomas, tous deux de Joliette, furent chargés par un certain James S. Dixon, de Berthier, d'acheter, en son nom, en par lui payant, et d'expédier tout le foin qu'ils pourraient trouver dans Joliette, à Peckham, Ralph & Co., résidant aux Etats-Unis. Les appelants, comme employés de James S. Dixon, achetèrent une certaine quantité de foin de l'intimé, sur laquelle il resta due une balance de $148.32, pour laquelle ils furent poursuivis et condamnés à payer par le jugement de la Cour Inférieure, qui se lit comme suit:

"La cour, etc., considérant que les dits défendeurs, en achetant le dit foin pour Peckham, Ralph & Co., comme sous-agents des dits Peckham, Ralph & Co., spécialement chargés de faire le dit achat par le dit James S. Dixon, de Berthier, agents des dits Peckham—sont responsables, vis-à-vis du dit demandeur, pour le prix du dit foin, comme agents représentant un principal étranger, en vertu de l'art. 1738, C. C.; et qu'il n'est pas prouvé que le dit demandeur ait renoncé en aucune manière, à exercer le recours qu'il a contre les dits défendeurs, pour le prix du dit foin;

"Considérant que les dits défendeurs ont eu la possession du dit foin, qu'ils l'expédiaient eux-mêmes directement, aux dits Peckham, Ralph & Co., et qu'ils pouvaient facilement se protéger et protéger le dit demandeur, dont ils avaient acheté le foin, et qu'ils ne l'ont pas fait;

"Considérant que le sous-agent d'un principal étranger est responsable de la même manière que l'agent principal;

"A renvoyé et renvoie les défenses des dits défendeurs," etc.

La Cour d'Appel a renversé ce jugement comme suit:

"La cour, etc.

"Considérant qu'il appert, par la preuve, que, dans les transactions qui font l'objet de la demande, les appelants n'ont agi que comme les agents et les employés de James S. Dixon, leur mandant, résidant à Berthier, dans le district de Richelieu, et que l'intimé a transigé avec les appelants en cette qualité;

"Considérant que les appelants n'ont encouru aucune responsabilité personnelle, envers l'intimé, pour les causes mentionnées en la déclaration en cette cause, et qu'il y a erreur dans le jugement rendu par la C. C. du district de Joliette, le 10 février 1883;

"Cette cour casse et annule le dit jugement et renvoie l'action de l'intimé, avec les dépens des deux cours."

Jugement renversé avec dépens.

J. N. A. McConville, pour les appelants.

Adolphe Germain, C. R., conseil.

C. P. Charland, pour l'intimé.

(A. G.)

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1884.

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

THE BOWKER FERTILIZER CO. v. CAMERON.

Procedure—Motion for security for costs.

A motion for security of costs may be presented after the expiration of four days from the return of the writ of summons, if notice thereof has been given within four days.

The plaintiffs moved for leave to appeal from an interlocutory judgment. The facts were as follows:—The writ was returned 12th April, 1884. T. P. Foran appeared for the defendant, and on the 15th April, notice of motion for security for costs was served upon the plaintiffs, the motion being presentable on the 29th April. The motion was presented on that day, and was opposed by the plaintiffs on the ground that it came too late; that the motion was in the nature of a dilatory exception and should have been of record before the court within four days from the return day, viz., on the 16th April, 1884. Judgment was, however, rendered, (Macdongall, J.,) granting the motion, and ordering that security for costs should be given.

Hall, for plaintiffs, moved for leave to appeal from this judgment, submitting that the practice had long been settled, requiring the motion to be made within four days from the return day. Counsel cited *Melles et al.* v. *Swales*, 1 L.N. 566; *Cruickshank* v. *Lavoie*, 3 L.N. 37; *Adams* v. *McIntyre*, 3 L.N. 143; *Oliver* v. *Darling*, 3 L.N. 303.

DORION, C.J. This is a motion for leave to appeal from an interlocutory judgment granting a motion for security for costs. Notice of motion was given within four days of the return of the writ of summons, but the motion was not presented until several days after the return. The pretension of the plaintiffs is that the motion itself should have been made within the four days, *i.e.*, that it is not sufficient that notice should be given, but that the motion should be presented within the four days. The reason urged is that the motion is in the nature of an *exception dilatoire*, and as the exception must be filed within four days, you are bound to file the motion within the same delay. A number of decisions of the Superior Court have been referred to, showing that the point has come up frequently, and the majority of the cases appear to sustain the plaintiff's pretension. The question, however, has never been decided by the Court of Appeal, and, as far as I am concerned, I must say that it does not appear to me to be a proper interpretation of the Code. The effect of the *exception dilatoire* is only that as soon as the party can be heard he will ask for security. The notice of motion is the same. The notice is, that as soon as the defendant can be heard he will ask for security. If the plaintiff does not contest, security can be given at once. If the defendant does not give notice that he will move for security he waives his right. But a notice is sufficient to show that he does not waive his right. We are all agreed that the Court below exercised a right discretion in allowing the motion for security for costs, and the petition for leave to appeal is, therefore, refused.

Motion for leave to appeal rejected.

Church, Chapleau, Hall & Atwater for the plaintiffs.

T. P. Foran for the defendant.

Barnard, Q.C., counsel.

SUPERIOR COURT.

MONTREAL, June 30, 1884.

Before JOHNSON, J.

LA BANQUE NATIONALE v. JOLY, and LANGLOIS, opposant.

Procedure—Execution—Title of opposant.

Where an opposition is made to the sale of real estate under execution, founded on title registered before the date of the seizure, the plaintiff may attack the opposant's deed as simulated without concluding for its rescision.

PER CURIAM. In this case, the plaintiffs have taken in execution of their judgment against their debtor Joly, the property which he is in the actual occupation of. The opposant comes forward with his title and claims the property seized as owner, and says not only that he was the sole and registered proprietor of it, at and before the time of the seizure; but the fact was well known to the plaintiffs when they caused the seizure to be made *super non domino et non possidente*.

The plaintiffs contest this, and say the op-

posant has no right of property in the house and land seized; that he never had possession, and that the deed by which he pretends to have acquired from Lafond is simulated, the opposant being merely the *prête-nom* of the defendant for whose interest the opposition is made.

This contestation was met by a demurrer, which was dismissed, but it has been brought up again at the merits, and is, therefore, still before the court *au fond*. It gives two grounds: 1st, that the contestants do not ask to annul and set aside the deed; 2nd, that the conclusions merely asking the dismissal of the opposition, are insufficient. Both these reasons mean the same thing, viz.: that the contestant could not ask for the dismissal of an opposition founded on an apparent title, without at the same time asking that the title should be set aside.

There is nothing, I think, in either or both of these objections. The contestants do not recognize any existing title at all in the opposant. They say he has no title, that it is a sham and has no existence, and they do not, of course, ask to set aside what they say does not exist. Therefore the demurrer was properly dismissed.

The substantial question, however, a question of fact, is whether this title of the opposant is a reality or a pretence to protect Joly. The other point, whether it can be raised under a contestation to an opposition, or requires a direct action against the ostensible registered owner, is not in my opinion of so much consequence as it seemed at the hearing. For whether the title of the opposant be good or bad is the sole question, and if he comes forward with a deed as evidence of his title, he must submit to hear it said by his opponent that his deed is no deed at all. It was argued that this man who lives in another district, where this property is situated, was entitled to be sued in his own jurisdiction, and I see that in the cases of *Tempest & Baby* something of that kind was alluded to by the learned Chief Justice; but I do not think it is a very important consideration, for after all, as far as that consideration goes, it would be merely a question of costs. The title invoked by the opposant is either real or fictitious. The opposant chooses his own mode of asserting his title. I do not discuss at length the law as affecting this particular question. I merely say that as between these parties the question is properly raised. I have had before me, I believe, all the authorities and cases on this point. It is hardly fair to put it in the form of saying you can't question a man's title by seizing his property in the hands of your debtor. *You do not question his property* by seizing the apparent property of your debtor. You only say to your debtor: "That appears "to be your property; I find you in the occu- "pation of it, and I seize it." You do not attack the real owner at all. You only act within the limits of the art. 632, C.P.C., if your debtor is reputed to be in possession of the property seized *animo domini*. Having done that; having acted within the law as far as the fact of his possession can be ascertained, the real owner appears with his opposition. He surely cannot contend that what he alleges is *incontestable*. If he has no real title, but merely a fictitious one, the creditor must be allowed to tell him so, and to show it if he can. I will merely cite one authority: Pothier, Ed. Bugnet, p. 242, No. 526. After stating the general principle contained in our article 632, the author says: "Observez néanmoins, que l'on entend par propriétaire non pas seulement celui qui l'est en réalité, mais encore, celui qui possède l'héritage *animo domini*, soit qu'il en soit véritablement le propriétaire, soit qu'il ne le soit pas." The note at the foot of page 243 adds: "Sur le propriétaire apparent." Vide passim Marcadé, Vol. 10, p. 58, last edition; 24, 31, 32 and 33, A. L. R.; 19 Laurent, No. 603; Dalloz, Rep. Verb. Obligation, No. 3,114; 6 L. C. Rep. 489; 4 Rév. Leg. 461; 3 L. N. 66; Queb. L. R. 301; 2 L. C. Law Journal, p. 37, *Masson* v. *McGoun*.

In *McCorkill* v. *Knight*, the Court of Appeals, and subsequently the Supreme Court, adopted the principle which runs through all our cases on this subject, that the party invoking the nullity of such a seizure must show that his possession and title are founded not on deeds that are false and simulated, and having no real existence: the points being not merely the validity, but the existence of the ownership, and the possession *animo domini*.

The real question in the case, however, is the question of fact I have already alluded to. Do all the transactions between Joly and his friend Langlois show sufficiently and clearly that Joly is the real owner, and Langlois is only the pretended owner? It is very difficult to give a confident and decisive opinion on this question. It is a question of appreciation of evidence, and of inference from facts. I have weighed it all as carefully as I can, and I have come to the conclusion that although the circumstances may show clearly, that in all Langlois did he was desirous of protecting his friend Joly from the hostile action of his creditors, there is nothing to show that he (Langlois) is not the real owner. Creditors are suspicious naturally enough under such circumstances, but that is a very different thing from saying that Langlois is to lose his property, or that any hope or design the parties may have had that Joly might some day become the owner, is to expose Langlois to lose his present rights.

Opposition maintained.

C. L. Champagne, for opposant.

Geoffrion & Co., for plaintiff contesting.

GENERAL NOTES.

An esteemed correspondent at Quebec, with the tone of whose communication we certainly have no reason to be dissatisfied, thinks a recent reference to our "modern legislators" to be somewhat *déplacé*, in the columns of the *Legal News*. Our correspondent is perfectly right in assuming that we do not propose to allow politics to intrude upon our space. At the same time it may be remarked that the *Legal News* is not exclusively (as our correspondent implies) a mere report of judicial proceedings. It is an independent journal devoted to legal topics, and, as such, it follows the course adopted by the leading journals of the law in England and the United States, in offering a free and unbiassed criticism of such matters pertaining to the law, and to law-makers and administrators, as may seem to merit attention.

The manner in which certain lady taxpayers propose to demonstrate their fitness to take part in the government of the country—namely, by lawlessly declining to pay the Queen's taxes—will be found attended with some difficulty. The maxim of law that an Englishman's house is his castle may be admitted to extend to an Englishwoman, so that if she keep her door shut against the sheriff's officer, armed with the ordinary writ of *fi. fa.*, the blockade cannot be raised by breaking the door open. Crown debts are, however, not recovered by a *fi. fa.*, but by the more effective weapon of a 'writ of extent,' under which the 'body, land, and goods' of the fair recalcitrants would be seized. The seizure of their bodies would delight these candidates for martyrdom, but the necessities of the revenue would be fully answered by taking their property. If they shut their doors against the sheriff, he will be bound, after politely asking them to surrender, to break the doors open by force. This law is at least as old as the reign of James I. It is reported by Lord Coke in *Semayne's Case*; and, although Lord Coke did not get on well with the ladies of his family, he was a very accurate reporter.—*Law Journal* (London).

In commenting upon Eno's case, the *Evening Post* points out that an offence, in order to be extraditable, must be the offence understood by the name given to it in the treaty in both of the countries which are parties to the treaty and not in one only. There is no doubt that the offence charged against Eno is not forgery in England, and that an indictment against him for forgery would not lie in England. The *Post*, however, seems to assume that Eno has committed what may be described as "American forgery," and that is not the case either. He has only committed New York forgery. Many American decisions go the length of the English doctrine, quoted by the *Post*, that "telling a lie does not become a forgery because it is reduced to writing." In Massachusetts it has been held "that the mere false statement or implication of a fact, not having reference to the person by whom the instrument is executed, will not constitute the crime." The cookery of accounts to cover an embezzlement is forgery by the statute of New York only, and, of course, it is even more preposterous to maintain that the extradition treaty must be construed by the statutes of one State than if such a construction were general in this country.—*N. Y. Times*.

The Washington *Law Reporter* gives the following statement of three months' work of the United States Supreme Court:—"The last volume, 109, of the United States Supreme Court Reports, covers a period of three months, October 15, 1883, to January 7, 1884, and in that time shows 90 cases decided by the court. Of these the chief justice delivered the opinions in 20, Judge Blatchford in 13, Matthews in 13, Woods in 12, Gray in 9, Bradley in 6, Harlan in 6, Miller in 6, and Field in 5. There were 12 dissenting opinions, of which no less than 5 were by Judge Harlan, 3 by Field, 2 by Gray, and 1 each by Miller and the Chief Justice. The longest opinion in the volume is that in the Civil Rights Cases, *U. S.* v. *Stanley*, which covers 59 pages, of which 36 are devoted to Judge Harlan's dissent."

W. D. Thompson, in the *American Law Review*, says of the late Charles O'Conor:—"He was a model to the bar and an honor to his country. He used no dishonorable means to win the favor of a jury. He was no orator; but by plain statements of facts well marshaled he rarely ever lost a doubtful case. As a man, his character was unimpeachable. He was honest, stern, upright, and noble. He was seldom known to smile. He was like the younger Pitt: 'Modern degeneracy had not reached him.' No political corruption, state chicanery, or bribes could induce him to swerve from the path of duty. All his sayings and actions bespoke of energy and a powerful intellect."