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THE COURT OF QUEEN'S BENCH AND ITS SITTINGS.—SENTIMENTAL AND OTHER VIEWS.

In the issue of 1st December an endeavour was made to show practically the working of the four days' rule—the word system is purposely avoided, as it seems to wound certain susceptibilities, and its use might afford excuse for digression. It was also sought to establish the recondite truth that the greater the fraction the less the quantity, or that a third is less than a half.

The *Gazette* interviews have been useful in letting us know who are in favour of the four days' rule, whence the objections come, the nature of these objections, and, to some extent, the motives which prompt them. The six very eminent members of the bar, interviewed by the *Gazette* reporter, have given in their adherence to the proposition to abolish terms and substitute sittings in the most unqualified terms. This is more important as it is the affirmation of a recommendation of the Bar, in November, 1876, Wotherspoon's Manual, 2nd Ed. pp. VIII, IX. It may be said that since that time the bar has asked for monthly terms; but this was only subsequent to, and in consequence of, the destruction of Mr. Mousseau's bill in the Legislative Council last session. Their demand amounts to this, give us the means to be heard, we have been persistently refused the remedy we asked—there are degrees of badness, although the Code tries to say there are none of *fault*.

The "open secret" of the *Gazette* retains something of its original mystery. It is, however, no secret at all, that three Judges have avowed their approval of the four days' rule, and the Chief Justice has expressed no hostility to it publicly, so that the Justices Tessier and Cross alone oppose it avowedly.

It is, therefore, important to examine their reasons.

Mr. Justice Tessier's apparently amount to this—he doesn't like to leave his home, for the relative discomforts of an hotel, and he doesn't like to have the Court sitting at Montreal for lengthened periods of time in his absence. Both these feelings are perfectly natural, but they are *personal*, and therefore, they can only be regarded as minor considerations. The learned Judge is, however, reported to have made two statements which require comment. He says: "The great difficulty has been in getting the cases heard. There has been no complaint about any delay in deciding them." With all due deference to the learned Judge, this is argumentative "padding." It is obvious that the fewer the cases heard, the less likelihood will there be for any ground of "complaint about any delay in deciding them." It is equally obvious that if the number of cases heard is considerably augmented and if the opportunity to decide them is almost totally taken away, the delay in giving judgments must necessarily become the part of the system in which the defect is apparent. The expedient attributed to the Irishman whose blanket was too short is not alone an outburst of Milesian genius. There is, however, another mode of concealing the precise spot where the arrangement breaks down—that is, by giving hasty and half-considered judgments; or, as Judge Baby happily put it, although unreported, "si l'on nous impose une *besogne* trop forte les jugements s'en resentiront." One word more on Judge Tessier's communication to the interviewer. The rendering judgments have considerably narrowed the days of term for hearing cases, and the attempts to have *délibérés* and to deliver judgments on days fixed for that purpose out of term, have signally failed.

It is almost touching to find that Mr. Justice Cross is embarrassed by a hankering after the old system (he calls it a system) which obtains in England and elsewhere; and he is not appeased by the belief that the Privy Council sits almost continuously until the work is exhausted. As a matter of history Mr. Justice Cross was not always so conservatively minded. In the last year of his practice (Nov., 1876), he attended a meeting of the Bar which voted the annihilation of the term system in the Court of Appeals *nem. con.*, and he took by no means a passive part in that meeting. Such change of view is perhaps not singular. Proverbially, circumstances alter cases, and men's

appreciation of them. Then he was a Montreal attorney clamouring that his client should be heard, now he is a Judge having to count, to some extent, with a Quebec prejudice. At all events, then he did not express the opinion that "the times of sitting had not much to do with the progress of business; it was merely shifting the days of work."

R.

THE ADVOCATE'S PRIVILEGE – WORDS SPOKEN ON TRIAL.

The English Court of Appeal in a recent case (*Munster* v. *Lamb*, 49 L.T. Rep. [N.S.] 253) had occasion to review the decisions touching counsel's privilege in the defence of a client. The defendant Lamb, a solicitor, was engaged to defend one Ellen Hill at the Brighton Petty Sessions. The prisoner Hill, a servant employed in the house, was charged with having administered soporific drugs to Munster's other servants, with the object of facilitating the commission of a burglary in his premises. It was proved that narcotics were found in the house, but the prisoner's counsel attempted to account for their presence by suggesting that Munster himself was using the drugs for improper purposes. "I have my own opinion," said Lamb, "for what purpose all these young women are resident in the house of Mr. Munster. I can believe that there may have been drugs in Mr. Munster's house, and I have my opinion for what purposes they were there, and for what they may have been used."

This was an insinuation of a very atrocious character, and without the slightest justification. Mr. Munster accordingly brought action for slander. Lamb pleaded that he was a solicitor, and that the words complained of were spoken while he was engaged as an advocate in the defence of Ellen Hill. The plaintiff was non-suited, and a rule *nisi* having been obtained calling upon the defendant to show cause why the non-suit should not be set aside, the rule was discharged by Justices Mathew and Smith. The plaintiff appealed, and Brett, M.R., and Fry, L.J., have affirmed the decision. It was admitted by the plaintiff's counsel that for some purposes advocates are privileged, but it was contended that the privilege exists only aslong as the counsel is acting *bona fide*, and is saying what is relevant to the proceedings in which he is engaged. The Lords Justices of Appeal, however, overruled this pretention, and laid down the wide rule that no action lies against counsel for words spoken with reference to and in the course of a judicial inquiry in which he is engaged as counsel or advocate, even if such words are spoken maliciously and without reasonable and probable cause, and are irrelevant to any issue or question forming the subject of inquiry. Brett, M.R., said: "A counsel is in a position of extreme difficulty, for he has not to speak of the things which he knows; he does not know whether the facts which he is instructed to bring forward are true or false, but he has to argue in favor of the proposition which will best advance the case of his client. He wants protection more than the judge or the witness, and he wants it more for the public benefit. In my opinion the reason of the rule covers him, not merely as much as the other classes of persons, but more, in order that he may be able to keep his mind free for the performance of his duty. The protection is given not for the benefit of a man who may wish to act with malice; but the reason is that if the rule were otherwise, an innocent counsel would be in danger, and would be put to trouble. It is better that the rule should be made large, *even though it may be large enough to cover the case of a man who acts with malice and is guilty of misconduct.*"

LAST WORDS.

The case of *Brousseau* v. *Seybold*, which appeared in our last issue (p. 389), may be regarded as an appropriate sequel to the discussion which occurred some time ago with reference to the decision of the Supreme Court in the case of *Shaw & Mackenzie*. That was a judgment which took a great many persons by surprise, and which certainly effected a serious revolution in practice. It became at once a very delicate and a very responsible duty to advise the issue of a capias in any case of meditated flight from the jurisdiction, however aggravated might have been the conduct of the debtor and however hopeless the creditor's prospect of ever receiving one farthing of his just claim if he suffered the fugitive to escape. It naturally followed, therefore, that

the remedy by capias gradually passed into disuse; that class of persons who think that the world owes them a living without any work on their part snapped their fingers at those who had been foolish enough to trust them, and went to and fro as they pleased, and where a creditor was audacious enough to venture upon the perilous remedy of capias, he almost invariably found himself brought up short by the quashing of his proceedings, which, in turn, was followed by an action of damages.

A case of this kind was *Brousseau* v. *Seybold*, which came before Mr. Justice Johnson, who also pronounced the original decision in *Shaw & Mackenzie*. The learned Judge reviews the latter decision and naturally is tempted into some criticism which the bar will doubtless appreciate. The shaft of sarcasm is delicately tipped but the point is keen, and the effect is enhanced by the fact that the learned judge is almost without a rival in the appreciation of testimony—a task in which he has had more than ordinary experience.

Something may undoubtedly be said in behalf of the policy of the new departure. Those who have not paid their debts in the past are not likely to pay them in the future. If they stay here they will continue to prey upon their friends and the community at large. Perhaps it is not wise to oppose any obstacle to their flight to pastures new, in the glorious company of "migratory Arctic birds," as our respected *confrère* of the *American Law Review* calls them.

NOTES OF CASES.

COUR SUPÉRIEURE.

MONTRÉAL, 12 novembre 1883.

Coram LORANGER, J.

FÉLIX MOLINARI, requérant *certiorari*, v. M. C. DESNOYERS, intimé, & W. B. LAMBE, poursuivant.

L'Acte des Licences—Magistrat de Police—Juridiction.

1o. *Le magistrat de police a juridiction pour révoquer le certificat d'un licencié qui souffre une condamnation pour contravention à l'acte des licences de* 1878.

2o. *Le magistrat peut prononcer sur l'accusation sans distinguer entre les différentes, offenses indiquées dans la plainte quand elles sont toutes de même nature.*

3o. *L'acte des licences est dans les attributions conférées aux provinces par la section* 92 *de l'acte de l'Amérique Britannique du Nord.*

PER CURIAM. On demande par le présent *certiorari* la cassation d'une conviction prononcée contre le requérant par le magistrat de police, le 28 juin 1883, sous l'acte des licences de 1878. Le requérant était accusé *d'avoir souffert que de la liqueur enivrante, vendue dans son magasin où il a sa licence, fusse bue dans son magasin, le neuvième et le seizième jour de juin* 1883, *par une personne ne résidant pas avec lui et n'étant pas à son emploi.* Le magistrat a maintenu la plainte et a condamné le requérant à payer l'amende imposée par la section 74 du dit acte qui s'applique au cas; il a en outre révoqué le certificat en vertu duquel le requérant avait obtenu sa licence pour vendre des liqueurs enivrantes dans son magasin. Cette révocation est permise par la section 102 du même acte.

Le requérant se plaint de cette conviction et demande qu'elle soit infirmée pour entr'autres raisons les suivantes: 1o. parceque le magistrat de police n'avait pas juridiction pour révoquer le certificat de licence; 2o. parceque, par la conviction, il appert que le requérant a été poursuivi pour deux offenses, l'une commise le neuf et l'autre le seize juin, et que la conviction ne fait pas voir pour laquelle des deux offenses la condamnation a été imposée; 3o. parcequ'e le poursuivant n'avait pas demandé par sa plainte la révocation de la licence et conséquemment que le magistrat aurait jugé au-delà des conclusions de la demande.

En dernier lieu, le requérant s'attaque à l'acte des licences lui-même, qu'il dit être inconstitutionnel.

Sur le premier point, savoir: que le magistrat était sans juridiction à révoquer le certificat de licence, il n'y a qu'à consulter le Statut, pour voir que cette prétention n'est pas fondée.

Les termes de la section 102 sont clairs et précis et ne sauraient donner lieu au doute; voici comment ils se lisent: "Si un licencié "pour la vente des liqueurs enivrantes, ou pour "tenir un hôtel de tempérance, souffre une con- "damnation pour contravention à la présente

" loi, ou est convaincu de félonie, le *tribunal* " *prononçant la sentence* ou *les commissaires des* " *licences dans la cité de Montréal* peuvent révo- " quer le certificat en vertu duquel il a obtenu " sa licence."

Le Bureau des Commissaires a été aboli par le chap. 3 de l'Acte 42–43 Vict., et le magistrat saisi des plaintes portées sous l'Acte des licences est revêtu des pouvoirs et attributions que possédaient ces commissaires.

Le requérant prétend que le magistrat n'a pas compétence pour révoquer ce certificat qui, suivant lui, doit être révoqué par un tribunal supérieur. Il m'est difficile, malgré l'ingéniosité que l'on a déployée à l'argument, de saisir la raison et la convenance de cette procédure. La loi déclare positivement que *le tribunal saisi de la plainte pourra révoquer la licence.* Or, quel est ce tribunal? Si on réfère aux sections 194 et suivantes de l'Acte de 1878, on trouvera que les plaintes et poursuites de cette nature se portent soit devant la Cour Supérieure ou de Circuit, soit devant deux juges de paix, ou devant le juge des sessions de la paix, ou devant la Cour du Recorder, ou le magistrat de police, ou le magistrat de district. Or, dans l'espèce, elle a été portée devant le magistrat de police, qui avait juridiction à recevoir et juger la plainte. Le rouage imaginé par le requérant ne pourrait avoir d'autre effet que d'embarrasser la procédure et de rendre tout à fait illusoire la disposition si sage de la loi, qui punit les infractions aux règles de discipline qu'elle a établies, par la perte du privilège qu'elle a accordé au porteur de la licence.

On se plaint, en deuxième lieu, qu'il y aurait eu cumul d'offense dans l'accusation, et que le magistrat n'a point indiqué celle qu'il entendait punir. Ce sont les sections 205, 206 et 261 de l'acte de 1878, tel qu'amendé par la 42–43 Victoria, qu'il faut consulter sur ce point.

" On peut, dit la section 205, cumuler dans " une déclaration, information, plainte ou som- " mation, plusieurs contraventions commises " par la même personne pourvu que cette décla- " ration, plainte, information ou sommation " contienne une énonciation spécifique du temps " et du lieu de chaque contravention, et, en ce " cas, les formules indiquées par cette loi seront " modifiées *mutatis mutandis*." La section 206 ajoute: "Mais si la poursuite est portée de- " vant un autre tribunal que la Cour de Circuit " ou la Cour Supérieure, le montant de l'amende " sur une seule et même plainte ne doit jamais " excéder $100, quelque soit le nombre des con- " traventions."

La section 205 est amendée par la 42–43 Vict., chap. 29, de la manière suivante : " Mais il ne sera pas donné plus d'honoraires au procureur que s'il n'y avait qu'une seule contravention."

Il me parait clair, d'après les termes de ces trois sections interprétées ensemble, que le magistrat peut prononcer sur l'accusation sans distinguer entre les différentes offenses indiquées dans la plainte, quand elles sont toutes de même nature. La formule 1 qui, aux termes de la section 261, forme partie de la loi, démontre que la mention d'une date précise n'est pas absolument requise.

Vient maintenant la question de constitutionalité de la loi. Le requérant a prétendu que l'acte des licences était inconstitutionnel et avait été jugé tel par le Conseil Privé dans la cause de la *Reine* v. *Russell.* Le requérant fait erreur; tel n'a pas été le jugement dans la cause *Russell*, et le Conseil Privé a particulièrement évité le point, sur lequel du reste il n'était pas appeler à se prononcer. Tout ce qui a été jugé dans cette cause, c'est que l'acte de tempérance du Canada de 1878 n'intervenait pas avec les sous-sections 9, 13 et 16 de la section 92 de l'acte de l'Amérique Britannique du Nord; que cet acte s'appliquant plutôt aux offenses publiques qu'aux droits civils, était d'un intérêt général pour la Puissance; que s'il affectait les revenus provinciaux, ce ne pouvait être que d'une manière incidente.

L'acte des licences est dans les attributions conférées aux provinces par la section 92 ci-dessus citée de l'acte de 1867. Il serait oiseux de faire une longue discussion d'une question déjà traitée par les cours de différentes juridictions dans cette province et définitivement jugée en appel. Je me contenterai de référer les parties à la cause même de *Russell* v. *The Queen*, 5 Legal News, p. 234; à la cause *Sulte & La Corporation des Trois-Rivières*, p. 332 du même volume, et aux nombreuses citations que l'on trouvera dans ce dernier rapport.

Au reste, y eût-il doute sur le point, que ce doute se trouve levé par la section 30 de la 46e Victoria, qui déclare que jusqu'au mois de mai 1884, toutes les lois de licences passées par les

législatures provinciales du Canada seront et sont déclarées valides et effectives à toutes fins que de droit, tout comme si elles eussent été décrétées par le parlement du Canada.

Sur le tout, je suis d'opinion qu'il n'y a pas erreur dans la conviction dont est appel, et je déboute le certiorari avec dépens.

Augé & Cie. pour le requérant.

N. H. Bourgoin pour le poursuivant.

SUPERIOR COURT.

MONTREAL, November 30, 1883.

Before JOHNSON, J.

SCOTT v. TURNBULL.

Promissory Note—Evidence.

Parol evidence is admissible to establish the actual order of endorsements of a note or bill, the instrument being only prima facie evidence.

JOHNSON, J. This is an action by the indorsee and holder of a promissory note against the defendant as having endorsed it as a guarantor (*pour aval*), and the facts alleged in the declaration are, that the Standard Drain Pipe Company being indebted to one Mitchell, promised to settle with him by giving an approved endorsed note, and gave him their note in consequence, (the one now sued upon) payable to his order, and further procured the name of the defendant to be put upon it as guarantor; that the note so endorsed by Turnbull was delivered by the Company to Mitchell who endorsed it for value to the plaintiff. The defendant met the action by two pleas: 1st, alleging that the plaintiff had merely lent his name to Mitchell the true holder, and had no right of action; 2nd, that the plaintiff got the note after maturity: that the defendant knows nothing of any agreement between Mitchell and the Company, and that he endorsed the note for Mitchell's accommodation, and never signed as guarantor. That Mitchell is a prior endorser to the defendant, and is therefore liable to him, and the note is subject to all the equities between Mitchell and him. The answers are general. When the case came on for trial, Mitchell was called by the plaintiff, and proved every word of the declaration,—and also that the note had been endorsed by him before maturity; but delivered to Scott in payment of an old debt after maturity. Mitchell's evidence was objected to on the ground that it was parole evidence to vary the contents of a written instrument; and I might have had difficulty in saying that the plaintiff ought to get judgment on Mitchell's evidence alone; but it is sworn by another witness (Mr. McCall) that the note was brought to him on the day of its maturity, *or the day before;* and that the only name on the back of it at that time was Turnbull's, and that the only reason Mitchell wrote his name on it even then, was because the witness asked him to do so, as it was payable to his (Mitchell's) order. So that it is quite clear Mitchell is not a prior endorser to Turnbull; but the latter must have signed as security. Therefore there are no equities as between Mitchell and Turnbull which Turnbull can oppose to Scott. If Mitchell had brought suit in his own name both against the makers and Turnbull, what could Turnbull have had to say to him? Evidently nothing; and he can't have anything more now to say to Scott who got the note subject to the defences existing against it. As to the objection to parole evidence to vary the *apparent* contents of the note, I would refer the parties to 1st Daniel on negotiable instruments, p. 520–21, No. 704: "Where a note is endorsed by the "payee and by a third party, the legal inference "is that the payee is prior indorser; *but it may "be proved otherwise by parole evidence."* That was the opinion I expressed at the hearing, and nothing has been said or cited to alter it since. I have not, of course, had time to examine the question very attentively; but I see in Bigelow's law of bills and notes, 2nd Ed., p. 174, a number of cases cited in support of this view, and the commentator uses almost the same words that I did. He says: "The actual order of indorsement, where there are several indorsements, is open to parol proof; the note or bill being but *prima facie* evidence; and he cites *Coolidge* v. *Wiggin*, 62 Maine, 568; *Sturtevant* v. *Randall*, 53 Maine, 149; *Smith* v. *Morrill*, 54 Maine, 48; *Clapp* v. *Rice*, 13 Gray, 403; and goes on to say, in this manner, one who appears to be an indorser, and in law is such *prima facie*, may be shown to be a joint promisor or guarantor, and in support of that he cites *Browning* v. *Merritt*, 61 Indiana, 425; and *Way* v. *Butterworth*, 108 Mass. 509.

The judgment therefore is for the plaintiff.

Robertson, Ritchie & Fleet for the plaintiff.

Kerr & Carter for the defendant.

SUPERIOR COURT.

Before JOHNSON, J.

THE ONTARIO BANK v. FOSTER.

Insolvency — Benefit of Term — When action on note may be instituted.

1. *A firm which has ceased to meet its ordinary payments as they become due, will be deemed insolvent within the meaning of* 1092 *C.C., and the insolvency of the firm entails that of the partners individually.*
2. *An action on a promissory note against the maker, instituted on the afternoon of the third day of grace, is not premature.*

PER CURIAM. The action is to recover the amount of a promissory note, signed by the defendant and endorsed by his firm, A. M. Foster & Co., for $15,000, dated 21st day of November, 1882, and payable three months after date at the Ontario Bank in Montreal. The suit was accompanied by an attachment before judgment which has been dismissed upon the ground that fraudulent secretion was not established. A consent has been filed in the record, that the evidence and exhibits which were filed upon the issues raised upon the petition to quash the attachment shall avail upon the present issue.

There are really only two points for consideration:—

1st. Whether the action was prematurely brought.

2nd. The amount (if any) for which judgment is to be rendered.

The last day of grace expired on the 24th of February last, and the action was instituted on the afternoon of that day, after banking hours. The declaration alleged that at the date of the action, and for some time past, the defendant had been insolvent, *en état de déconfiture*.

The right of action therefore depended on two points:—1st, the insolvency as depriving the debtor of the term; 2nd, the existence *de plano* of the right to sue on the afternoon of the third day of grace.

The plaintiffs contend that the defendant had become bankrupt before the 24th February, and that the amount of the note was exigible before and on that date. They also contend that, under the circumstances proved in the case, even if the defendant had not been bankrupt, the action was not prematurely instituted.

On the question of bankruptcy the plaintiffs cite 1092 C. C. The English version reads as follows:—

"The debtor cannot claim the benefit of "the term when he has become *bankrupt* or *in-*"*solvent*, or has by his own act diminished the "security given to the creditor by the contract."

The French version reads as follows:—

"Le débiteur ne peut plus réclamer le bénéfice "du terme, lorsqu'il est devenu *insolvable* ou "*en faillite*, ou lorsque par son fait il a diminué "les sûretés qu'il avait données par le contrat "à son créancier."

Article 17 C. C., sub-section 23, reads as follows:—

"By 'bankruptcy' is meant the condition of "a trader who has discontinued his payments."

The French version is as follows:—

"La faillite est l'état d'un commerçant qui "a cessé ses paiments."

It cannot be disputed that the defendant, before and on the 24th February last, was a bankrupt, "*insolvable*," within the meaning of these articles.

It is proved by the evidence of Mr. Taylor, partner in the firm of A. M. Foster & Co., the endorsers of the note, and of which firm defendant was a member, that on the 18th of January, 1883, a letter was written at Mr. Foster's dictation, to all the English creditors of the firm, notifying them that they would not be able to meet the drafts falling due on the 4th of March following. This letter was to all intents and purposes a suspension of the firm of A. M. Foster & Co., and it did not after the said date meet any of its engagements as they became due. It is indeed admitted on all hands that the firm then suspended payment.

Mr. Stephenson proves that on the 24th February last there were 32 notes lying at the Ontario Bank overdue bearing the firm's name; in addition to this there was about $20,000 overdue to English creditors, and $2,000 to Canadian creditors.

The learned Judge who rendered judgment dismissing the attachment before judgment, by one of the *considérants* of his judgment, held as follows:—

"Considérant qu'il n'est pas prouvé que le "défendeur, *quoiqu'insolvable* au commencement "des procédures adoptées par la dite deman-"deresse, soit en état de déconfiture."

The learned Judge makes a distinction between being "insolvable" and being "*en état de déconfiture.*"

Under the articles of the code above cited it is not necessary that defendant should have been "*en état de déconfiture,*" to render the note exigible; it was sufficient that he was "*insolvable.*" The very word used by the learned judge, is the word used in article 1092, "*insolvable,*" and so it has been held in the case of *Corcoran* v. *The Montreal Abattoir Co.*, reported in the 6th vol. of the Legal News, p. 135. The holding in that case was that a company *ceasing to meet its ordinary payments* when they became due, though its nominal assets may be equal to its liabilities, will be deemed *insolvent*, and cannot claim the benefit of the term upon a note not yet due.

It has always been held that the bankruptcy of the firm entailed that of the individual partners. The partners of A. M. Foster & Co. were jointly and severally liable for the negotiable paper bearing the firm's name, which matured from the date of the suspension (18th January, 1883,) to the 24th February, when suit was instituted (Art. 1854, C.C.). Stephenson (one of the trustees) proves that there was about $30,000 of negotiable paper, upon which the firm was liable, overdue and unpaid on that date. In fact, the firm became dissolved by the suspension (bankruptcy) (Art. 1092, C.C.), and defendant was bound to have paid the maturing paper, as if he alone had signed it. The Court, therefore, is with the plaintiff on the first point, and adopting the view of the learned judge who dissolved the attachment, holds that the defendant was insolvent; and under Art. 1092 C.C. the note had become exigible. As to the second point—the right of action on the third day of grace after banking hours—I am with the plaintiff also. The general rule, no doubt, is that the law does not recognize fractions of days; and upon that principle, in a case of *Ste. Marie & Stone** the Court of Appeals held that prescription of a note only commenced after the third day of grace. But here we have to see what effect the law gives to a term of indulgence such as 'grace,' or the days of grace. Prescription certainly runs by entire days; but does that principle of positive law quite satisfactorily dispose of the question as to the point of time when a right of action arises in such a case as this. I think not. Daniel in his work on Negotiable Instruments, vol. 2, p. 214, secs. 1207, 1208 and 1209, discusses the question and winds up by saying: "But there "is still stronger reason to hold that the action "may be commenced after demand and refusal "on the last day of grace, for grace was origi- "nally a matter of indulgence and courtesy, and "not of contract, and it would seem unreason- "able to extend indulgence after the maker has "expressly refused to make the payment on the "last day allowed him. The weight of author- "ity supports the view that suit may be com- "menced on the last day of grace against the "maker." There are, he says, contrary authorities.

When we come to look at our own code, and the statute law which it reproduces, the point seems still more clear. Art. 2319 of our Civil Code says: "Bills of exchange after pre- "sentment for payment, as provided in the 5th "section of this chapter, if *not then paid*, are "protested for non-payment *in the afternoon of* "*the last day of grace.* The protest is held to "have been made in the afternoon of the day "on which it bears date, unless the contrary "appears on the face of it." Turning to the 5th section, we find the same provision as to the *afternoon* of the third day of grace, a particular provision of law applicable to bills and notes, and giving rise to rights, not only on particular days, but *in the afternoon* of a certain day. Then, looking at our consolidated statutes, c. 64, sec. 16, from which Art. 2319 is taken, we find the same thing; but, as I venture to think, more plainly expressed than in the Code. We find the words of the 16th section to be: "If any bill or note is unpaid *at the expiration of* "*the forenoon* of the last day of grace, the "holder thereof may cause the same to be duly "presented for payment, and in default thereof "to be protested for non-payment, and if such "bill or note is payable at a bank (which was "the case here) it may be presented at such "bank, and the demand of payment preliminary "to the protest thereof may be made either "within or after the usual banking hours of "such bank." I confess I am at a loss to see what more can be wanted than a presentment for payment at the time allowed by law, and

* 5 Legal News, 322.

the refusal to pay. If the right of action does not arise from that moment, when does it arise? I must confess that if there is no such right of action I cannot see either the use of a demand or the meaning of a refusal. If a man, at a lawful time, when his debt is due (and there can be no doubt as to the time it was due, under the words of the articles and the statute cited) is asked to pay, and he says no, what possible use can there be in waiting another day or another hour before taking steps to make him pay? Besides, in the present case there are other circumstances showing not only that the defendant had not the funds ready at the place of payment, but that he had made up his mind not to pay this note (see the evidence of Mr. Taylor and Mr. Chipman). Of course I am not bound to go into this part of the case at all, holding, as I have done, that the insolvency made the debt due. If I had any doubt of the right of action existing after the protest, and in the absence of funds at the place of payment, I should still hold that the defendant's known and proved intention not to pay the note was a very strong circumstance to give a right of action after the expiration of banking hours. However, I have given my views more from courtesy than necessity, as the first ground of the judgment is sufficient.

As to the precise amount due, I have examined the statements and pretensions of both parties, and I adopt the statement of the plaintiff which, after deduction of sums to be credited, would leave the exact amount due to the plaintiffs $8,040.83, with interest on the total amount of the note up to the time of paying the 50 cents on the dollar, which are credited, and after that, on the balance, with costs.

Abbott, Tait & Abbotts for the plaintiff.

Geoffrion, Rinfret & Dorion for the defendant.

RECENT ENGLISH DECISIONS.

Larceny—Of Water in Pipes.—Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of a larceny at common law. Q. B. D. April 24, 1883, *Firms* v. *O'Brien*, L. R., 11 Q. B. D. 21.

Bigamy—What constitutes.—The prisoner was convicted of bigamy. It was proved that he had married W. in 1865, and had lived with her after the marriage, but for how long was not known; that in 1882, W. being still alive, he had gone through the form of marriage with another woman, but there was no evidence as to the prisoner and W. having ever separated, or as to when, if separated, they last saw each other. *Held* by the court (Lord Coleridge, C.J., Pollock, B., Manisty, Lopes, and Stephen, JJ.), that the prisoner was rightly convicted. C. C. R., June 2, 1883. *Queen* v. *Jones.* (Opinion by Lord Coleridge, C.J.) L. R., 11 Q. B. D. 118.

THE ADMINISTRATION OF JUSTICE.

The following letter, which appeared in the Montreal *Gazette*, deals with a kind of misrepresentation of judicial proceedings which abounds in the daily press:—

SIR,—The *Daily Witness* about three days ago contained an article resembling others that have appeared in it, in which it abuses the Administration of Justice in Quebec Province, and complains of the slowness of the Judges, the intricacies of the practice, &c. I can speak from experience, and I say that in no country is justice in the Civil Courts administered with greater celerity than in Quebec Province. In no country is there a Court of Appeal that can equal our Court of Review for simplicity of procedure, small costs and speediness of judgments after arguments. As a general rule the appeals heard in the last week of one month are disposed of at the end of the next. In Ontario an appeal, say from a Vice-Chancellor, heard before three judges in January, may remain undecided until the middle of November or December, and this in a case not embarrassed by parol evidence whatever. I am one victim of this administration so applauded by the *Witness*. I may add that the cost of procuring the judgment of the Vice-Chancellor in that case amounted to eight hundred dollars in all; though no witnesses were examined, adding to the costs. There were one plaintiff, represented by his lawyer, and several defendants, represented by two lawyers. Such a case as that would have been as fully debated and as solemnly judged, in our Superior Court, for less than three hundred dollars *in toto;* and the judgment in appeal would have been rendered in February; whereas in the case I speak of, argued in January last, no judgment has yet been rendered. Yours, M.

17 November, 1883.