The Legal News.

VOL. I. MARCH 23, 1878. No. 12.

SEIZURE OF A RAILWAY.

We noticed in a recent issue the case of *Wyatt* v. *Senecal*, in which the rights of railway bondholders, with respect to the removal of rolling stock from the road, were in question. In the case of *The County of Drummond* v. *The South Eastern Railway Company*, decided recently by Judge Dunkin, another point of railway law of considerable importance was discussed. Part of the South Eastern Railway having been seized under execution of a judgment in the ordinary course, the question came up, whether a railway, or part of a railway, held by an incorporated company could be seized, and sold at Sheriff's sale, like an ordinary property. The Court, in an elaborate judgment, a short report of which appears in the present issue, decided that such seizure was not permitted by the law, and that it was not in the interest of creditors themselves to possess the right sought to be exercised. The Legislature might do something to amend the existing law, but his Honor intimated that caution was necessary. We quote in this connection the concluding remarks of the learned Judge :—"It may be objected—in effect it was so at the argument—that under the view here taken the active means of recourse of mortgage bondholders are less than they may probably have been led to fancy them, perhaps than they had some ground for thinking them, perhaps even than they ought to be. But with this a Court of law has no concern. Possibly enough, the law might have been put into better form, or yet may be. A Court can deal with it only as it is. At present anything in the nature of what was done in the Carillon and Grenville Railway matter can be done here (even though by consent of parties) only subject to revision, as each case presents itself, by the legislative power. It may well be a far less evil to leave things even in that state than to subject railways, to such end, to any judicial process not thoroughly hedged round with all needed safeguards, and this not merely with a view to protection of the various overt interests more immediately involved, but also to the requisite continuance (after sale, as before) of a corporate body duly organized to hold, and bound to work, each as a public institution. And whenever attempt so to legislate shall here be made, it is obvious to remark, that the fact of our railway system falling partly under Dominion and partly under Provincial control, is one suggestive of only so much the more of caution in this behalf."

INDICTMENTS FOR LIBEL.

The prosecution in the Bradlaugh-Besant case in England, for publishing an obscene book, has failed before the Court of Appeal on a technical difficulty. The defendants were tried before the Court of Queen's Bench on indictment for unlawfully publishing an obscene book called "Fruits of Philosophy." Among the objections taken by the defendants at the trial was one that the indictment was defective, because it did not set forth the book or any passage thereof. The motion to quash the indictment on this ground was, however, overruled by the Court, reference being made to a case decided in the United States, *Commonwealth* v. *Holmes*, 17 Mass. 336, in which Parker, C. J., said :—"It can never be required that an obscene book should be displayed upon the records of a Court, for this would be to require that the public itself should give permanency to indecency." The reasons given by the Court of Queen's Bench for overruling the motion to quash were that setting out the whole book would be inconvenient, that it would be more reasonable that the objection should be taken by demurrer before the trial, and that the publication was a public nuisance. The Court of Appeal considered, however, that it would hardly ever be necessary to set forth a whole book in the indictment, and as to the objection against putting obscenity on the record, the Court very properly pointed out that the same reasoning would apply to other cases. It seems perfectly clear that indictments must be framed with sufficient precision to enable the accused to see what is charged against him, even though in so doing it may be necessary to employ language which offends the ear.

PUBLICATION OF LIBEL.

Mr. Justice McCord has given a decision at Quebec in the case of *Irvine* v. *Duvernay et al.*,

reported on another page, which threatens to augment the difficulties, already somewhat formidable, that surround newspaper publishers. The Judge holds in effect that the publisher of a newspaper may, in an action for libel, be summoned in any district where a copy of the paper containing the alleged libel circulates. Thus, publishers in Montreal may be called to defend themselves in Gaspe, provided a copy is proved to have been sold in that district, or to have been received by a subscriber therein. So, we presume, the publisher of a journal, the office of publication of which is in Ontario, Manitoba or British Columbia, may be sued in any district of the Province of Quebec to which a copy of the journal may happen to find its way.

THE PARLIAMENTS OF FRANCE.

(Concluded from page 126.)

The number of judges necessary to pronounce a sentence varied in the different courts. In criminal cases, a majority of two was required to convict; in civil suits, a majority of one or two was required. The vote of every member of Parliament was of equal weight. The counsellors, as their name implies, had been originally advisers of the court, when it was composed of barons or officers of State not versed in legal lore. By the gradual process often seen, the adviser had acquired the nominal as well as the actual authority. The Parliament of Saint Louis seems to have consisted of twenty-four members,—three great barons, three bishops, and eighteen knights,—with whom were associated thirty-seven clerks, lay or religious, to draw up their decrees. The peers of France preferred fighting for the Holy Land to hearing long speaking claimants and hair-splitting advocates. It was not pleasant for a great baron, longing for a deer-hunt or an opportunity to break spears in a tournament, to listen to some wearisome trial, only finally to make himself the bewildered mouthpiece of some black-gowned student of Bologna, who did not know the first rules of the noble science of venery, who was ignorant alike of the joyous art of the troubadour and of the weight of a coat of mail. The baron went slaying the Saracen, and the clerks became actual members of the great court of Parliament. The office of president was superior to that of counsellor in dignity and emolument, but was of no greater weight in the decisions of the court.

Early regulations ordinarily present many of the features of paternal government. The faults and duties of judges were sharply looked to in the earlier days of Parliament. The ordinance of 1318 forbids the members of Parliament eating or drinking with parties who had suits before them. They were furthermore enjoined to attend the sessions, and not to leave their seats more than once in the morning. "It is a great disgrace," says the ordinance, "that while the court is in session, its members should be walking and frolicking about the halls of the palace." Age, weight, and gout, in our days, probably exert a more efficacious restraint in this respect than the admonitions of kings on beardless judges.

Despite strict instructions, perfect attention was not obtained. President de Harley remarked once, that, if the gentlemen of the court who talked would make no more noise than those who slept, it would be a great favor to those who listened. In 1681, the Chancellor Letellier informs some of the judges that the king has observed that they go to the palace with cravats, grey clothes, and with canes in their hands; and he directs them to assume a more dignified toilet. The *procureur général* of the Parliament of Rouen—an officer of enormous authority, and having a certain advisory power with the court—informs the judges that, although the gown does not make the monk, still judges ought not to clip their hair and wear beards. In 1347, the dauphin Charles forbid all magistrates having anything to do with commerce; and he also rates them for their idleness, and for the amount of time that they waste at their dinners. The judges of the present day may dine unreproved; but, if the statement be correct that advocates in France have been forbidden to plead with mustaches, the tendencies of the French mind seem unchanged.

The sessions of the court were held at early hours The great chamber met on Mondays, Thursdays, and Fridays, at six in the morning, and continued until ten. During Lent, they sat an hour longer, for convenience of attending the sermon. From six to seven reports were made. The argument of cases began at seven, and continued until the judges adjourned for refreshments. At half-past eight, they met again

and sat until ten. After ten, the chamber met as might be required, to hear reports, for consultation, and for other purposes. On Wednesdays and Saturdays the great chamber sat with closed doors, to consider matters of state, the enregistering of decrees, and to hear parties opposing marriages. There were afternoon sessions Tuesdays and Saturdays. At the morning sessions, the presidents, from All Saints' Day to the Annunciation of the Virgin, sat in an ermine robe and a cap. The rest of the year they were arrayed in a scarlet robe. In the afternoon meetings, all were arrayed in black gowns.

One would have supposed that the early hours, which must have made miserable the lives of our ancestors, would have been changed by the eighteenth century. Still, in the great case of the diamond necklace, in 1786, the court met at a quarter past six. One hundred and eighty-seven members of Parliament, for nine months, listened to that famous trial, which excited an interest unequalled by any case not political in its nature which Europe has seen.

The fate of that glittering ornament, valued at half a million, which was made for a king's mistress, distracted all Europe, helped the downfall of the ill-fated Marie Antoinette, and furnished the last important subject for the investigation of the great court, which for five hundred years had administered the laws and influenced the destinies of France.

We have yet to sketch the political *rôle* of the French courts. It was one which might well have given the Parliament of Paris a power equal to that of its great namesake of England. No other body in France had any control upon the monarchy. The States-General failed, for reasons which cannot be traced here, to become operative in the national history. The French monarchy tended to become absolute. A custom which originally was merely a form, by one of those changes which often occur in political history, seemed destined to exercise a powerful control upon the unlimited authority of the king. As far back as 803, under Karl, we find the *capitularies* read and published in a public *plaid* in Paris before the *échevins*. Obedience to them was promised, and they were signed by the *échevins*, bishops, abbés, and counts, with their own hands. The reading and adoption of these royal edicts seem to have been regarded as necessary to make them effective. The enregistering of ordinances with the Parliament was the continuance of this ancient practice. The custom had a natural origin. There was no other means of publishing the royal will to the community. The fittest way to inform all of the contents of the king's edicts was to have them solemnly enrolled in the records of the court for the district. It seems to have been conceded, when the uncertain forms of government had become fixed, that a royal edict or ordinance had no force or validity until it had been registered by the local court or Parliament. Registry was required, therefore, from each of the Parliaments of France. But here, as so often in French history, the Revolutions and changes of Paris were those of the entire kingdom.

The local courts rarely did aught but follow in the footsteps of the Parliament of Paris; and the history of the struggles of the judiciary for power are to be found almost exclusively in the annals of that body.

It was an easy and a natural step from the necessity of registration, for Parliament to claim the power of deciding whether that registration should be allowed. The popes, who had the right of crowning the emperor of the holy Roman empire, soon insisted that, as the coronation was necessary before the title could be assumed, such a right involved the power of deciding whether that great dignity would be worthily bestowed. The possessor of power that must be invoked soon claims a discretion in its exercise.

There can be no doubt that the power of registration in Parliament was originally only clerical. The king made the decree; the court published it to the world, and enrolled it on its registers as a part of the law it was to administer. The enlargement of this authority was, however, a healthful change. Many an institution most valuable to freedom has sprung from the dead husk of some worthless form.

The power of registration or rejection of royal decrees possessed by a body better fitted for the office might have made France a constitutional monarchy. But the long struggles of the French judiciary with the king did not bring forth the fruits that might have been hoped for. The power of the Parliament to refuse registration of edicts, unless supported by sufficient moral and popular pressure to compel acquiescence, was strangely restricted. If the Parliament refused to register an edict,

the king could hold a *lit de justice*, so called, as some one complained, because there the law was put to sleep. The Parliament was summoned to attend the king, or more frequently he himself went to the great chamber. In the presence of the entire body, the registration of the edict was ordered. No one could oppose the royal will in the royal presence, and the edict was thereupon duly enrolled.

Parliament constantly endeavoured to free itself from the exercise of this authority, and to annul the assent compelled by the presence of the sovereign. As early as the fourteenth century, under the pretext that error or inadvertence was found in some ordinance sent from the king, the registration was delayed that it might be reconsidered; and, even beyond that, it was attempted to refuse registration entirely. This endeavour was promptly checked at first; but a permanent political body, tenacious of its power, rarely fails in extending its authority. The nature of the Parliament was the fundamental reason that finally prevented its attaining a controlling influence in the government. It was not only not a representative body in form, but it was not so in feeling. The members of the judiciary in England, and much more of the Parliament, came from the people and belonged to the people. Somers on the bench was still the man who had pleaded for the seven bishops, and sat in the convention which had declared the throne vacant. But the members of the French Parliament belonged to a caste, and were fully infused with the narrow spirit of caste. An encroachment on their rights, the creation of new members of the court who might diminish the profits or dignity of those already in office, attempts to increase the tax on their salaries, or to restrict their jurisdiction —such were the edicts that met with the most vigorous opposition from these aristocratic and hereditary jurists.

Many other ordinances of the government also incurred their opposition. But it is doubtful if a legislative body, solely composed of jurists, will ever prove satisfactory in its workings. The conservatism which renders lawyers a valuable portion of the community, does not fit them to constitute the governing class. However adapted to guard the heritage of the past, they have shown little tendency to develop the promise of the future. Neither does their intellectual training prepare them for legislative work. All these qualities were intensified in a close corporation like the French Parliament, composed of a hereditary legal aristocracy. Whenever it sought to assert its independence, it would refuse to register any edict for the levying of new taxes. The power of regulating taxation is undoubtedly the basis of all popular liberty; but taxation is to be regulated, not prohibited.

When additional means were needed for the frequent wars of France and the increased national expenses, the obstinate refusal of the Parliament to register any new tax rendered it necessary for the government to exercise its authority or to cease to have any authority to exercise. Kings, as well as common men, become desperate when their financial straits are extreme. A uniform and a humiliating ceremony was gone through with at such times. First, came fierce opposition to the registration of the tax, copious Parliamentary eloquence, abundant frothy denunciation of tyranny, and proclamation of the just powers of the court. Then came a *lit de justice*, and eloquent presidents *à mortier* and vituperative counsellors registered the royal will in sullen silence. Then, when the king had departed, more eloquence, and resolves not to be coerced, followed by a resolute enforcement of the ordinance by the government.

Under Richelieu, the Parliament met with its master, and the royal authority found little opposition. But the reaction which followed his despotic rule, together with the jealousy felt of Mazarin, made this body the leader of a revolutionary, though far from a liberal, party.

The remonstrances of the court against royal edicts and its demand for Mazarin's dismissal led to open hostilities. During the continuance of the first war of the Fronde, the Parliament of Paris was a legislative body. The great nobles, who had a right to a seat in it, exercised their prerogative, and took part in its deliberations. De Retz became a member, and largely influenced its action by his wily declamation and subtle policy. The famous wits and beauties who figured in that struggle, centered their attention upon its deliberations. Mme. de Longueville, the most fascinating of French

women, used upon its members her smiles and the indescribable charm of her manner. Rochefoucauld there observed many of the phases of character which are immortalized in his maxims. De Retz, Molé, Condé, and Mme. de Longueville furnished the observer of human nature with the foundation for the apothegms which have become a part of the common wisdom of the civilized world.

The Fronde was not a war having for its end any revolution in French government which should create effective checks on the royal authority. It was fanned by a host of aristocratic seekers after place and plunder, who had anticipated a rich enjoyment of the spoil after Richelieu's death. The Parliament seized the opportunity to exercise again its long-restrained prerogatives, and fostered the popular prejudice against Mazarin. The wars of the Fronde were begun from uncertain causes, prosecuted with varying purposes, and terminated with no apparent result.

Louis XIV. treated the Parliaments in much the same manner that he did his lackeys; and the conduct of the members seemed to make the treatment appropriate. In the eighteenth century, they again came into transitory political importance. The Parliament of Paris annulled the will of Louis XIV., which needed its registration to become operative. It was in this, however, but the instrument of the Duke of Orleans,—the most profligate, though not the worst, ruler of modern times.

Under Louis XV. and XVI., the Parliament was in almost constant conflict with the government. Wearied with such controversy, in 1771 Louis XV. abolished the Parliament of Paris, and soon after the provincial courts, and sent their members to reioin their enemies of the order of Jesus in political nothingness. But Louis XVI., among his numerous well-meant, ill-received, ill-fated endeavors to satisfy the requirements of the French people for an improved administration, breathed life again into the suspended Parliaments, and restored the former judges to office. A body such as this, firmly holding to its sanctified abuses and ancient prejudices, was little fitted to lead in such a revolution as was forming. Mirabeau and Sieyès and Robespierre and Danton did not require the assistance of presidents *à mortier*, who would sit on their gorgeous seats, and learnedly and tediously discuss the rights of registration and the prerogatives of their order. The National Assembly soon swept them away. The abolition of the Parliaments was moved. Some one objected that they were then in vacation. "So much the better," said Mirabeau: "let them remain there for ever. They will pass unperceived from sleep to death." Accordingly, on November 3, 1789, the Parliaments were directed to remain in vacation, and temporary courts were organized. "Nous avons enterré les Parlements tout vivants," said Alexander Lameth. In September, 1790, they were finally abolished, and passed out of history. In all the subsequent changes of French government, the judges have possessed solely judicial power; and no court has had more than a very small proportion of the extended jurisdiction, the pomp and the pride of the Parliament of Paris. The old Parliamentary families have almost all passed away. The most powerful court of history has left neither political nor lineal descendants. It has left a history curious and important. The judge who does not expect to pass upon measures of government in his judicial capacity, the lawyer who does not anticipate taking part in a controversy like that of the diamond necklace before a court organized like the Parliament of Paris, may still find interest and profit in the record of its customs, its work, and its fate.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, Feb. 21, 1878.

DUNKIN, J.

THE COUNTY OF DRUMMOND v. THE SOUTH EASTERN RAILWAY COMPANY; and THE S. E. R. Co., Opposants.

Seizure of Railway held by an Incorporated Company.

The County of Drummond, holding fifty $1000 mortgage bonds of the Richelieu, Drummond & Arthabaska Counties Railway Co., since merged (under Quebec Act 36 Vict., c. 51), in the South Eastern Railway Company, had recovered judgment against the latter company for $14,490, and under a writ *de terris* had taken in execution part of the railway.

The defendant met the seizure by an oppo-

sition *à fin d'annuller*, resting chiefly on the objections: 1. That the railway of an incorporated railway company is in the nature of a public trust inseparable from its corporate franchise, incapable of becoming an ordinary private property, and not seizable under legal process. 2. That, even if seizable at all, it must at any rate be dealt with in its entirety; whereas here, the seizure was of a part of the company's railway, and left unseized a large remainder in the districts of St. Hyacinthe and Bedford.

The plaintiff answered "that the debt, for to satisfy which the property taken in execution was seized, was a debt for which said property was specifically by law and statute of the Province made liable by first hypothec, and so declared by the judgment in this cause; and that by virtue of the premises, and of the facts of this case, and by law, plaintiffs had a right to seize and take in execution the said property as they have done."

DUNKIN, J., referred to the case of *Abbott* v. *The Montreal and Bytown Railway Company*, (1 L. C. Jurist, p. 1) as not establishing the validity of a seizure and sale by Sheriff of a railway. His Honor cited 1 Redfield 250, and held that, however acquired, the railway is a statutory whole, held for ends and under servitudes constitutive of an imperative public trust,—of a trust from which nothing short of authority by or under statute can free it, or any really material part of it. The franchise of the Company—using that term as covering the whole of that trust, the entire of what are sometimes called the various franchises of the Company—subsists in order to the railway, the railway by virtue of the franchise. The right contended for by the plaintiff was one which, if granted, would do infinitely more harm than good to railway mortgage bondholders. Imagine such goods held under peril of procedure at any moment, on default of prompt payment of all coupons, for an enforced sale, at suit of any bondholder,—not of franchise and road together, to the best possible advantage, and with all possible precaution in behalf of all interests —but of the road alone, as an immoveable that any Sheriff can sell and deed over as a thing of course, irrespectively of the franchise. Bonds, so held, of any railway ever so little liable to get into financial trouble could not, for any legitimate purpose of investment, be worth the holding.

Opposition maintained.

E. Carter, Q. C., for opposants.

N. W. Trenholme for plaintiffs contesting.

Quebec, March 11, 1878.

McCORD, J.

IRVINE v. DUVERNAY et al.

Cause of Action—Libel—Newspaper—Publication.

McCORD, J. This is an action of damages for libel, brought against the proprietor of the *Minerve* newspaper.

It is met by a declinatory exception, founded on the grounds: 1st. That the defendants are not domiciled within the jurisdiction of the Court; 2nd. That they have not been personally served within that jurisdiction; and 3rd. That the cause of action did not originate in this district, but in that of the domicile of the defendants; and the publication of the libel, if any, took place at Montreal.

The first two of these grounds suffer no contestation, and the only question arises upon the third.

The facts which give rise to this question are notorious, and are admitted in the record.

The defendants mail their paper at Montreal, addressed to a great number of subscribers and to public reading rooms in Quebec.

That they published their newspaper in Montreal is certainly true; but this is no ground of declinatory exception, because it is equally true that they also published it in the city of Quebec.

They are charged with having published a libel in Quebec. This is the real cause of action. The fact of their having caused the libel to be inserted in the newspaper at Montreal, as the plaintiff himself alleges, is an additional fact, which in no manner diminishes his right of action; for that right is complete without it—the mere publication of a libel being a sufficient cause of action.

The simple question comes to this: Does a person who mails in Montreal libellous matter to a number of individuals and to public reading rooms in Quebec, who receive and read the same, publish that matter in Quebec?

I am of opinion that he does, and am borne out by decisions in England which would seem to have been adopted in the United States.

Greenleaf, on Evidence, vol. 3, No. 173, p. 148, says: "The *publication* must be proved to "have been made *within the county* where the "trial is had. If it was contained in a newspaper "printed in another State, yet it will be sufficient to prove that it was circulated and read "within the county. If it was written in one "county and sent by post to a person in another, "or its publication in another county be otherwise "consented to, this is evidence of a publication "in the latter county."

This opinion is principally founded on the English case of *Rex.* v. *Watson*, and is given in Greenleaf's 3rd vol., which treats specially of evidence in criminal prosecutions. But the place where a crime is committed in so far as regards the jurisdiction of the Court, and the place where the right of action arose in a civil case, are analogous matters. And Greenleaf is evidently of that opinion, for in his 2nd vol., which treats of evidence in civil matters, he also says, No. 416, p. 368: "The sending of a letter by the post is a publication in the place to which the letter is sent."

And by the foot note it will be seen that he bases himself upon the English case of *R.* v. *Watson*. The case of *R.* v. *Girdwood* is also in point.

I am aware that the decision in the case of *Tremblay* v. *White & al.*, rendered not long ago, in this district, is against me, but I am sorry that I have not been able to bring my own opinion to coincide with it.

The learned counsel for the defendants stated at the argument, that it was the postal authorities who published the paper in Quebec, but these postal authorities are merely part of a machinery which the defendants knowingly made use of; they were not ordinary agents who would have had an option to act or not to act, and even if they had been such agents, the defendants would still be responsible for what they themselves had done *per alium* and therefore *per se*.

Exception dismissed with costs.

R. B. St. Young for plaintiff.

Mackay & Turcotte for defendants.

Montreal, March 19, 1878.

PAPINEAU, J.

JAEGER v. SAUVÉ.

Lessor and Lessee—Ejectment, action of, may be brought by Lessee.

The defendant leased a store from one Dubord, and some time after, she sublet the same store to the plaintiff, with the consent of the landlord, who intervened in the lease. Subsequently, the defendant having refused to give possession to the sub-tenant, the latter took an action of ejectment in his own name.

F. X. Archambault, for defendant, contended that the action in ejectment pertained to the lessor only.

The Court maintained the action.

J. Doutre, Q.C., for plaintiff.

F. X. Archambault for defendant.

Montreal, March 15, 1878.

TORRANCE, J.

THE GLOBE MUTUAL LIFE INSURANCE CO. v. THE SUN MUTUAL LIFE INSURANCE CO.

Non-resident—Power of Attorney.

The plaintiffs described themselves as "The Globe Mutual Life Assurance Company, a body corporate and politic, duly incorporated according to law, and having its head office and principal place of business in New York, in the State of New York, one of the United States of America, and having an office and doing business in the City and District of Montreal."

The defendants moved that plaintiffs, as non residents, be ordered to give security for costs; but the motion was rejected by Dorion, J. (1 Legal News, p. 53) "considering that plaintiffs have alleged in their writ and declaration that they have an office and place of business in the City and District of Montreal, in this Province, where they carry on business, and that they cannot be considered as absentees for the purposes of the said motion."

The defendants then filed a dilatory exception, praying for a stay of the proceedings until the plaintiffs should have produced a power of attorney, under C.C.P. 120, as non-residents.

TORRANCE, J., in giving judgment maintaining the exception, referred to the decision by Mr. Justice Dorion, that the plaintiffs, doing business in Montreal, and having made a deposit of $100,000 with the Minister of Finance at Ottawa, under 31 Vict. c. 48, did not come under the rule of C.C. 29. That decision being contrary to the one rendered in *The Niagara District Mutual* v. *Macfarlane*, 21 L. C. Jurist 224, his Honor considered it proper to look to the reason of the rule and the exceptions to it. The rule had always existed, and among the

majority of nations. By the French law foreigners were obliged to give security for costs when they instituted an action. L'Ancien Denizart, Vo. Cautio judicatum solvi. The chief exception was where the foreigner had immoveable property in France. Pothier, Personnes, Tit. II, p. 577. The rule of the C. C. 29 (Quebec) required security from non-residents in Lower Canada, and that rule was taken from the Provincial Statute, 41 Geo. III, c. 7, s. 2. The reason of the rule was the same in the modern French law. 2 Carré & Chauveau, p. 155-172; C. C. Nap. 16; C. C. P. Nap. 166, 167; 1 Demolombe p. 308, n. 253; Fisher's Digest, Vo. Costs, pp. 2028-2030; *Kilkenny and Great Southern & Western Railway Co.* v. *Fielden*, 6 Exchequer Cases, 81. The foreign plaintiffs here argued that having a business agency in Montreal, and having made the usual deposit of money with the Government at Ottawa, they were not bound to give security for costs. His Honor remarked on this that the plaintiffs were non resident notwithstanding that they have an agency in Montreal, and they had nothing but personal property, if any, in Montreal. Further, as to the deposit at Ottawa, it was a security for the policy holders, and this was not an action by a policy holder, or against one, but an action for libel. And even if the deposit were a security available to all, it was not a security in the Province of Quebec. The plaintiffs were non-resident in the terms of C.C. 29, and it was therefore the duty of the Court to maintain the dilatory exception.

Exception maintained.

Greenshields for plaintiffs.

S. Bethune, Q. C., for defendants.

COURT OF REVIEW.

Montreal, Feb. 28, 1878.

TORRANCE, J., DUNKIN, J., RAINVILLE, J.

[From S. C., St. Francis.

In re DUSSAULT et al., insolvents, and DESEVE, claimant, and PREVOST et al., contestants.

Trader—Marriage Contract—Registration.

The claimant, who was the wife of one of the insolvents, claimed from the estate of her husband, $1120 under their marriage contract, dated 15th February, 1868, and registered 23rd June, 1868. The claim was contested on the ground that the husband was a trader, and that the marriage contract was not registered until long after the day fixed by law. The Court at Sherbrooke maintained the contestation, under the Insolvent Act of 1864, sec. 12, par. 2, which requires the marriage contract of every trader to be registered, in the registration division in which he has his place of business, within thirty days from the execution thereof. The claimant's husband was styled a trader in the contract.

In review the judgment was confirmed, the Court holding that the non-registration of the marriage contract of the trader within thirty days from the execution thereof, was a bar to the wife's claim against his estate.

Judgment confirmed.

Hall, White, & Panneton for claimant.

Davidson & Cushing for contestants.

COMMUNICATIONS.

THE SUPREME COURT.

To the Editor of THE LEGAL NEWS:

SIR,—May I ask the reason why the Supreme Court is so excessively slow in rendering judgments? It cannot be pretended that the judges are overwhelmed with work—they have comparatively very little to do. What then can be the reason for their being so excessively deliberate? Surely they do not need six months to make up their minds as to the merits of the cases argued before them. They have every facility the Privy Council possesses, yet what a vast difference in the dispatch of business before the two Courts. In the one, judgment almost invariably immediately after the arguments—in the other, six months' incubation on the record. The injustice worked to the parties by such delay is very great, and is without excuse.

If this state of things is allowed to continue, farewell to the idea of diverting appeals from the Privy Council. Despite of the heavy expense, all, or very nearly all, the important cases in the Province of Quebec are taken to England. The members of the profession distrust the ability of judges who, as a rule, keep cases six months under advisement.

The Supreme Court at present is looked upon with great distrust; if the miserable system of

delay now in vogue is persisted in, a year hence it will be regarded as a total failure.

Faithfully yours,

W. H. KERR.

Montreal, March 13.

ASH-WEDNESDAY.

To the Editor of THE LEGAL NEWS:

SIR,—In the Civil Code Ash Wednesday does not appear among the definitions of "Holidays," while in the Code of Civil Procedure it is quoted as a non-juridical day.

I am aware that it is not a legal holiday, so far as Promissory Notes and Bills of Exchange are concerned,—but is it a legal holiday in the Courts of this Province?

Yours, &c.

ENQUIRER.

Montreal, March 6th, 1878.

["Enquirer" will find an answer to his question in the Quebec Statute, 31 Victoria, Chap. 7, sec. 2, 25thly, which includes Easter Monday and Ash Wednesday among the "holidays" of the Province of Quebec. ED.]

NEW PUBLICATIONS.

CLARKE'S MAGISTRATE'S MANUAL, being annotations of the various Acts relating to the rights, powers and duties of Justices of the Peace, with a summary of the Criminal Law of Canada; by Mr. S. R. Clarke, of Osgoode Hall, Barrister-at-law; Author of The Criminal Law of Canada; The Insolvent Act of 1875 and Amending Acts, &c.: Toronto; Hart & Rawlinson. Montreal; Dawson Bros.

The author of a well-known commentary on the Insolvent Act has, in the present work, presented the magistracy of the Dominion with a manual which cannot fail to be of much service to them. Books on magisterial law pass rapidly out of date, and a fresh compilation like Mr. Clarke's must supersede at once those which have appeared in former years. A special feature of Mr. Clarke's book is the citation of all the cases decided in Canada which relate in any way to the rights, powers and duties of Justices of the Peace. The English cases in point are also given. A summary of the Criminal law of Canada, alphabetically arranged, which occupies 120 pages, is lucidly written, and will be found interesting. Mr. Clarke is a painstaking writer, and his reputation is deservedly high. We do not think that it will suffer in any respect by the publication of this valuable manual.

CODE OF CIVIL PROCEDURE.—We understand that Mr. I. Wotherspoon, of Montreal, has in press a second edition of his valuable Commentary on the Code of Civil Procedure. The publishers are Messrs. Dawson, of Montreal.

CURRENT EVENTS.

CANADA.

THE LAW OF EVIDENCE.—A bill introduced by Mr. Kirkpatrick proposes to amend the law of evidence in certain cases of misdemeanor, by the enactment of the following clause:

"On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, or of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses, and compellable to give evidence.'

ENGLAND.

THE LATE THOMAS CHITTY.—The death is announced in England of Mr. Thomas Chitty, the well-known Special Pleader, at the ripe age of 76. He was the author of several well-known works, Chitty's Practice and a collection of statutes being the best known. He was the father of Mr. J. W. Chitty, Q. C., one of the leaders in the Rolls Court. Mr. Thomas Chitty had the following well-known lords and gentlemen as pupils in by-gone days: Chancellor Cairns, Lord O'Hagan, Chief Justice Whiteside, Mr. Justice Willes, Mr. Justice Quain, and Sir James Hannen.

RIGHT TO LATERAL SUPPORT.—"NEIGHBOURING LAND."—*Mayor of Birmingham* v. *Allen*, 37 L. T. Rep. N. S. 207.—Plaintiff and defendant were the owners of parcels of land, which were separated from each other by a narrow strip of land belonging to a third person. The owner of the intervening strip had, many years ago, worked out the coal beneath it. The working the coal under his own land by the defendant caused, or

threatened to cause, a subsidence of the plaintiff's land; and this action was brought to restrain him from such working. In considering the law applicable to the case, the Master of the Rolls, starting with the proposition that a landowner is entitled to have his land, in its natural state, supported by the land of his neighbour, said:—

"Who is his neighbour? The neighbouring owner for this purpose must be the owner of that portion of land—it may be a wider or a narrower strip of land—the existence of which in its natural state is necessary for the support of my land. That is my neighbour for that purpose; as long as that land remains in its natural state, and it supports my land, I have no right beyond it, and therefore it seems to me that that is my neighbour for this purpose. There might be land of so solid a character, consisting of solid stone, that a foot of it would be enough to support the land. There might be other land so friable, and of such an unsolid character, that you would want a quarter of a mile of it; but whatever it is, as long as you have got enough land on your boundary which, left untouched, will support your land, you have got your neighbour, and you have got your neighbour's land to whose support you are entitled. Beyond that, it would appear to me that you have no rights."

It appearing, however, that the intervening strip would have afforded, if left in its natural state, a sufficient support to the plaintiff's land, the court said:—

"The plaintiffs have no right as against the landowners on the other side of that intervening space, and they acquire no right, whatever the owner of the intervening land may have done. If the act of the intervening owner has been such as to take away the support to which the first landowner who complains is entitled, then, for whatever damage occurs from the act which he has done, the first owner may have an action; but an action against the intervening owner, not an action against the owner on the other side; and it appears to me that it would be really a most extraordinary result that the man upon whom no responsibility whatever originally rested, who was under no liability whatever to support the plaintiff's land, should have that liability thrown upon him without any default of his own, without any misconduct or any misfeasance on his part. I cannot believe that any such law exists, or ever will exist."

The Court of Appeals sustained the decision of the Master of the Rolls, BRETT, L. J., saying:—

"Although, therefore, this is a case of first impression,—that is to say, a case in which we have, after the Master of the Rolls, for the first time, to decide what is the proper definition of 'adjacent lands,'—I think the Master of the Rolls has given a very happy definition of them, and one which we ought to accept."

UNITED STATES.

MRS. LOCKWOOD'S VICTORY.—The bill which passed the House yesterday, by a vote of 169 yeas to 87 nays, entitled "A bill to relieve certain legal disabilities of women," was the bill recently introduced by Mr. Glover for Mrs. B. A. Lockwood, and argued by her before the House Judiciary in the early part of the session. It is a modification of the same bill which has been introduced each session for the last four years, or ever since Mrs. Lockwood was refused admission to the Court of Claims on the ground that she was a married woman. The highest vote ever reached before in the House on this question was on Butler's bill, in 1874, when the yeas stood 91.

The bill was unanimously recommended by the committee for its passage at the last Congress, and committed to Mr. Hoar, who was soon after made one of that august tribunal who settled the Presidency, and no time or opportunity was afterward found to take it up.

Mrs. Lockwood was refused admission to the United States Supreme Court last year, although she was entitled under the rule, on the ground that there was no English precedent, and was told that she must wait for a more extended public opinion or for the enactment of a special law to admit her. That lady is able to cite several notable instances of women jurists in England, duly appointed, and will do so in her forthcoming brief before the Senate Judiciary, where the bill is now pending, as introduced by Senator Sargent.

This bill does away with the disability of sex, and opens the door for any other woman who is willing to qualify herself for admission.

It would seem to the casual observer as though the ordeal were hard enough without having any more obstacles thrown in the way. —*Washington Union, Feb.* 22.

A JUDGE IN TROUBLE.—The House of Representatives of the State of Minnesota on Wednesday, by a vote of 71 to 30, decided to prefer articles of impeachment against Judge Sherman Page, one of the Circuit Judges of that State. The charges are upon his alleged misconduct in office, involving "tyrannical conduct towards citizens, litigants and others, and interfering in the administration of justice to gratify personal

malice." It is really strange, considering the great number of Judges in this country, that there are so few cases of impeachment. America, taken all in all, may well be proud of the honesty and ability of her judiciary. When a judge does administer the affairs of his office for personal ends, he should receive no mercy at the hands of the law makers. We hope, if Judge Page is guilty of the charges alleged against him, that he may receive just punishment at the hands of the General Assembly of Minnesota; but if he is innocent, that he may be vindicated by the members, without fear or favor. There is no place in America where a man can act the tyrant more than on the Judge's bench, if he is so disposed. He may abuse a lawyer, witness, or client, and if the party abused and injured even undertakes to say a word in his own behalf, he can commit him to jail for contempt of court, beyond the reach of a *habeas corpus*, and that, too, without a jury trial.—*Chicago Legal News.*

WOMEN AS LAWYERS.—The House of Representatives, on the 21st ult., passed, by the decisive majority of 169 to 87, a bill providing that when a woman shall have been a member of the bar in the highest court of any State or Territory she shall, on application, be admitted to practice before the United States Supreme Court. The Senate will probably indorse the bill, and we may expect in the course of the coming year, to hear female counsel arguing causes before the highest tribunal in our land. The bill is, however, a partial one, in that it opens the Supreme Court to the women of those States and Territories only where no distinction is made on account of sex in admissions to the bar. The great body of female aspirants for forensic honors will be still excluded from an opportunity to place their names upon the roll of the Supreme Court. We trust this circumstance will be considered when the bill comes before the Senate. But why not leave the whole matter where it belongs—with the courts? When any considerable number of the States permit women to practice at the bar, the Federal courts will give them the same opportunity, and no objection will be raised. Because two or three States and Territories and the District of Columbia have made the experiment of admitting women to the bar is no reason why the dozen or so female lawyers who have taken advantage of the privilege shall be given a favor which is denied to their sisters residing in other parts of the country.—*Albany Law Journal.*

THE FISHERIES AWARD.—The *American Law Review*, in concluding a notice of the Fisheries Arbitration, says: "It is no secret that the opinion of each of the counsel for the United States is, that there is more money-value in the guaranty the British receive against all duties on fish, than in all that the Americans receive from the extension of rights to fish inshore; and that the amount awarded, nearly four hundred and sixty thousand dollars a year, is nearly equal to the average annual market value of all the mackerel caught by Americans in British waters, inside and outside together, and taken at their value in barrels, cured and pickled, on the wharf in Boston or Gloucester, ready for sale."

BENJAMIN F. WADE.—Benjamin Franklin Wade died on the 2nd inst. at his residence at Jefferson, Ohio. He was born near Springfield, Mass., October 27, 1800. He received a common school education. He came to Ohio in 1826, and in 1828 was admitted to the bar of that State. In 1835 he was chosen prosecuting attorney of Ashtabula county. In 1837 he was elected to the State Senate, and was twice re-elected. In 1847 he was elected presiding judge of the third judicial district of Ohio, which office he held until chosen to the United States Senate in 1851, which place he held for several terms. His last official position was that of commissioner to investigate affairs in St. Domingo, which he held in 1871. His reputation as a lawyer was very high, but it was overshadowed by the eminent place in political life occupied by him.—*Albany Law Journal.*

SUPREME COURT OF WISCONSIN.—By a recent amendment of the Constitution of Wisconsin the number of judges of the Supreme Court of that State is to be increased from three to five. The two new judges will be elected by the popular vote in April next.

ITALY.

DEATH OF AN EMINENT ITALIAN JURIST.—Paolo Frederigo Sclopis di Solerano, an eminent Italian jurist, died on the 8th inst. at Turin. He was born in 1798, and received his diploma as doctor at law when twenty years of age. He

presided at the Geneva Court of Arbitration, and achieved great credit for his conduct on that occasion. He was considered as one of the foremost international lawyers of the age.

GENERAL NOTES.

TESTATE AND INTESTATE.—In the year 1876-77 "Probate or Inventory Duty" was paid on property left by will, estimated at £120,628,580 and on £11,118,800 on persons dying intestate In the former the cases numbered 30,498 and in the latter 10,408. Last year in England 8,664 persons died intestate leaving property worth £9,208,175; in Scotland, 629, worth £768,730; and in Ireland, 1,115, worth £1,141,895.—*London Times.*

THE LAW'S DELAYS.—The London papers are greatly concerned over the law's delay, and are asking, is there no cure? It is claimed that the knowledge of a disease is half its cure; that more than one-half the law's delays are caused by the judges wasting their time, and their want of dispatch in disposing of business. Comparisons are being made between the judges and the time it takes them to dispose of cases. It is claimed that in one court, the judge will be engaged a whole day in hearing a motion, talking and joking with the counsel, and that if a case goes over the motion day, it is equivalent to a continuance for three months, and that when a case is heard, he often takes it under advisement for months, which sometimes operates as a perpetual injunction. It is said of another judge, that he never takes any case under advisement, but decides all cases that come before him as soon as the evidence is heard; and that on motion day he will dispose of twenty or thirty motions in an hour; that he will not listen to the discussions of counsel which do not relate to the questions in issue; that he says but very little himself, and that little to the point; and that as a consequence his docket is kept up, and what is known as the law's delay is not allowed to obstruct the course of justice in his court. The London *Courier* devotes three columns to describing these judges, and the way they dispose of their business. The first it calls Judge Slow, the last Judge Quick. Much that it says applies as well to the way justice is administered in America as in England. We have no doubt much more judicial labor could be performed by the courts of America if our judges would more fully realize the importance and cost of their time to the people. Our courts are not the places to discuss politics or war news, but to try cases in the least possible time consistent with justice. A judge can accomplish a great deal in the course of a year, if he will do no unnecessary talking himself, and allow the bar to do none. Talking judges are always unpopular with the bar. There are no class of men that like to see despatch in business more than lawyers. If any judge who is considered slow by the lawyers, will follow the above suggestions for a month, he will be astonished at the amount of judicial labour performed within the month. Few of us realize how much time we waste. This is especially so with judges.—*Chicago Legal News.*

SERVING THE DEAD.—Some Wisconsin sheriffs seem to have but faint notions of decency and propriety. The following is a *verbatim* copy of a summons and return of the sheriff thereon in a justice's court in a suit in Sparta, Wis.:

MONROE COUNTY, } ss.
Town of Sparta. }

The State of Wisconsin to the Sheriff or any Constable of said County:

You are hereby commanded to summon A. Weigand, if he shall be found within your county, to appear before the undersigned, one of the Justices of the Peace in and for said county, at my office in said town, on the 10th day of September, A.D. 1875, at 9 o'clock in the forenoon, to answer to Isaac Tuteur, plaintiff, to his damage two hundred dollars or under. Hereof fail not at your peril.

Given under my hand, this 3rd day of September, 1875.

SAMUEL HOYT,
Justice of the Peace.

MONROE COUNTY, ss.

I, Geo. B. Robinson, Deputy Sheriff of said county, do certify that I have been to the defendant's usual place of abode, and find he is dead, and so I left a copy at his last and final abode in my county, to wit: *on his grave* in the town of Ridgeville, he not leaving any family or funds behind. He leaves this world without a cent, and has gone where the plaintiff can't sell him whisky. Alas! Tuteur is out, and Weigand is dead!

C. W. MCMILLAN, Sheriff.
By GEO. B. ROBINSON, Deputy.

Service and copy	$ 25
Travel, forty miles	4 00
	$4 25