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THE EARLY JURIDICAL HISTORY OF FRANCE.

A paper of great interest to lawyers is to be found in the Transactions of the Literary and Historical Society of Quebec. It was read by the late Hon. J. Sewell, Chief Justice of Lower Canada, at a meeting of the Quebec Literary and Historical Society, held at the Castle of St. Lewis, in the City of Quebec, on Monday, the 31st of May, 1824. This valuable essay, which is in the hands of very few of our readers, ought to be better known, and we think it well worthy of reproduction. The learned Chief Justice was also the author of the well known dissertation on law pleading, which has been several times reprinted, and has been generally appreciated by the profession. The Address is as follows :—

My Lord and Gentlemen,

Appointed to address a Society, distinguished, in its origin, by the rank and character of its noble Founder, and, in the first stage of its progress, by the respectability and talents of its numerous Members; whose high and meritorious purpose is, to extend more amply the advantages of Science and Literature to a remote, but rising portion of the Great Empire to which we belong, and the beneficial effects of its disinterested labours to future times, I am anxious to devote the period, in which I hope to be honored with your attention, to a subject which, corresponding with the views of your Institution, and involving matter interesting to Science, may, in some degree, be worthy of your notice.

Confining myself, therefore, to the more immediate object of the Society—Historical Research—I shall offer to your consideration an Essay upon the Juridical History of France, antecedent to the erection of the Sovereign Council of Quebec, in the year 1663; the Law, as it was then administered in France, in the Tribunals in the Vicomté of Paris, being, in fact, the Common Law of the division of Canada which we now inhabit.*

* Edits et Ordonnances, vol. 1, p. 21.

The study of the Municipal Law of every country requires some previous knowledge of its rise and progress. The obsolete principles of former ages are, most commonly, the foundations of what we possess; and, in many instances, the true object and intent of modern Institutions can only be known by reference to the history of their origin and gradual improvement. And as I feel assured, that, to persons of liberal education, knowledge of the Law which constitutes the rule of their civil conduct, must at all times be desirable, I cannot but hope that what I am about to offer upon the peculiar Municipal Law by which *we* are governed, (though I am conscious, it will be found imperfect,) will nevertheless be favorably received, as an attempt to elucidate a subject which, in Lower Canada, cannot be thought to be uninteresting.

The conquest of Gaul by the Roman power—the entire subversion of the Roman Government by the Franks—the nearly total annihilation of the power of the Crown at the close of the eleventh century, and the subsequent re-establishment of that power, are the events which more immediately affected the Laws of France, and occasioned their successive mutations. To these events, therefore, and to the greater effects which they have respectively produced in her legal polity, our inquiries will at present be confined.

Of the state of Gaul before the Roman conquest, (which was effected under the immediate command of Cæsar, about fifty years before the birth of our Saviour,) but little can be said with any degree of certainty. The inhabitants were then governed by a few unwritten customs and usages, peculiar to themselves, barbarous in the extreme and not meriting the appellation of Laws. Their manners were simple, and produced but few causes of contention, and such controversies as arose, were decided by their Druids, who, as among the ancient Britons, were both Priests and Judges.†

A consequence of the Roman conquest was, the introduction of the Roman Law, and for five entire centuries, during which Gaul remained a Province of the Empire, her people were wholly governed by that system.‡ The Roman Law,

† Cæsar de Bello Gal. Liber 5 and 6.

‡ Histoire du Droit François, by l'Abbé Fleury, pp. 9 et 10. Vide also, at the beginning of 1st vol. of Henry's, a learned dissertation, by Bretonnier, which establishes this fact.

however, of that day was not the Justinian Code, for that was compiled near a hundred years after the expulsion of the Romans.* It consisted of the several Constitutions of the preceding Emperors and of the writings of certain Civilians. The Constitutions had been collected in three Codes—the Gregorian, Hermogenian, and Theodosian, but the latter, published by the Emperor Theodosius, confirmed and adopted the two former, and as the writings of the Civilians consisted of such only as were sanctioned by the Code of Theodosius, there is reason to believe that it was the Theodosian Code only which was called the Roman Law.†

The power of the Roman Empire, in Gaul, was totally annihilated about the year 450 of the Christian era. Rome, weakened by the extent of her dominion, and yet more by the degeneracy of her citizens, debased in sentiments, depressed in talents and enervated in courage,‡ fell a sacrifice to the more hardy and enterprising Nations of the North, and the Government of all that extent of Territory, which has since been denominated France, was transferred to Barbarians—to the Franks and their associate Tribes—the Goths and Burgundians,§ and from the accession of the first Chieftain of the Franks (Merovée) France dates the origin of her Monarchy, divided into three Dynasties or races of Kings—the Merovingian—the Carlovingian—and the Capetian. The first comprehends Merovée and his descendants, who possessed the Throne from the year 450 to the year 770, when they were succeeded by Charles the son of Pepin, afterwards called Charlemagne, and his descendants, who constitute the Carlovingian race, in whose possession it remained until the year 987 when it passed to the Capetian race, who continued in possession, until the death of the late unfortunate Monarch, Louis the 16th, a descendant from Hugh Capet, the first of the Capetian dynasty.‖

There was not among the Barbarians, by whom the Romans were expelled, any general government, they were subject in their own District to the Chieftain who could do them the most good or the most injury,* and when they conquered Gaul, they took possession of the country as a band of independent clans.† Their first object was to secure their new acquisitions, and with this view, the leaders distributed among the soldiery, the lands which they had conquered, with a condition of continued military service annexed to the grant, an idea which appears to have been suggested by the peculiar situation in which they were placed, and to have been put in practice as the best means of furnishing that immediate mutual assistance, which was indispensably necessary for the defence and preservation of their conquest. Large districts or parcels of land were accordingly allotted to the chieftains and to the superior officers, who were called Leuds,‡ (Lords or Seigneurs), and their allotments, which were called feuda (fiefs or fees) were subdivided among the inferior officers and soldiers upon the general condition that the possessor should do service faithfully, both at home and abroad, to him by whom they were given.§ Every feudatory was, therefore, bound, when called upon, to defend his immediate superior, from whom he had received, and of whom he held, his estate: that superior to defend *his* superior, and so upwards to the Prince; while, on the other hand, the Prince and every seigneur was equally bound to defend his vassals or dependants who held their estates of him; so that the duty of the whole was severally and reciprocally to defend the conquest they had made together, and every part of it.‖ This singular institution, which is now called the feudal system, by degrees became general in France, and by the new division of property which it occasioned, with the peculiar maxims and manners to which it gave rise, gradually introduced a species of laws before unknown.

The whole of France, however, was not so distributed nor so holden—all was not seized by the conquerors. Such of the ancient inhabitants as were allowed to remain in the country kept their estates as they held them before; many, also, of the invaders who were not yet attached to any particular chieftain, took possession of vacant lands and enjoyed them in the same

* Fleury, p. 10.
† Fleury, p. 12.
‡ Gibbon's Decline and Fall, vol. 1, p. 94. 1 L. C. Dénizart's Discours Préliminaire, p. 59.
§ Esprit des Lois, Lib. 30, c. 6, vol. 2, p. 354.
‖ See the Histories of France by Duhaillan, Mezeray, &c.

* Dalrymple's Essay on the Feudal System, p. 5.
† Ibid. p. 6.
‡ Dalrymple, p. 11. Loyseau des Seigneuries, §§ 60 & 61, cap. 1.
§ Loyseau des Seigneuries, cap. 1, §§ 62 to 66.
‖ Wright on Tenures, p. 8.

manner,* and there were some even among the soldiery who, considering the portions which fell to their lot as recompences due to their valour, and as settlements acquired by their own swords, took and retained possession of them in full property as freemen.† From these causes, there were many estates which were allodial, which the possessors enjoyed in their own right and did not hold of any superior lord, to whom they were bound to do homage or perform service.‡ Every tenant of this description was called *liber homo*, in contradistinction to "*vassalus*," or one who held of a superior,§ yet they were not by any means exempt from the service of the state —they were subject to the command of the Dukes, or Governors of Provinces, and the Counts, or Governors of Towns, who were officers of the King's appointment; and the duty of personal service was considered so sacred, that they were prohibited from entering into holy orders unless they had obtained the consent of the Sovereign.‖

At their first incursions, the Barbarians, like the aborigines of Gaul, were governed by traditional customs. Their manners were uncivilized; war and hunting were the only subjects of pursuit in estimation, and, as they had no fixed habitations, no other property than cattle, their common disputes arose either from personal quarrels or acts of depredation. These were usually decided in public meetings of the people, held annually, at the close of winter, in general upon the information of witnesses, but in doubtful cases by the ordeal of fire or water, or by combat.¶

The polished minds of Romans, found nothing worthy of imitation in such conquerors, but the conquerors, savages as they were, perceived much in the Romans which they could not but admire. They particularly viewed a written Code of laws, as a novelty possessed of many advantages, and not only permitted the Roman jurisprudence to survive the destruction of the Roman Government, but, in imitation of what they approved, reduced their own usages to writing, particularly the Salique Law, which was the peculiar Law of the Franks.* The Theodosian Code, and the Laws, Customs and usages of the Barbarians, became therefore equally the Laws of France,† and as all Laws were held to be purely personal, and were not for this reason confined in their operation to any certain District, the Barbarian was tried by the law of his tribe, the Roman by the Roman Code, the children followed the Law of their Father, the wife that of her husband; the widow came back to that to which she was originally subject, and the freedman was governed by the law of his Patron.‡ Yet, notwithstanding these general provisions, every individual was permitted to make election of the law by which he chose to be governed, it was only required that he should make it publicly, and such elections were frequent.§ The clergy in particular, who were chiefly Romans, considered the privilege of being governed by the Roman Law to be so valuable, that when any person entered into holy orders it was usual for him to renounce the Law to which he had been formerly subject, and to declare that he would, from henceforth, be governed by the Roman Code.‖ Many customs, also, peculiar to the victors, were continued after the conquest of Gaul. It had particularly been their practice to meet in council, at the close of every winter, upon the state of their respective nations; and during the first and second Dynasties, several meetings of the Sovereign and of the Chiefs, in church and state, with the addition of the commons, (from the reign of Charlemagne) were held, in the open air, annually in the month of of March or May, and from thence denominated *champs de mars*, or *champs de mai*.¶

In these Assemblies, Laws were passed for the government of the Kingdom at large, and Canons established for the regulation of the church. Taxes were imposed, Regencies were appointed, and the Sovereign elected until the Crown became hereditary, and then the successor was proclaimed, if his right to the Throne was not controverted, and, if it was, it was

* Dalrymple p. 10 and 11.
† Robertson's Charles V. vol. I., p. 214. Lefevre de la Planche, Traité du Domaine, vol. 1., p. 117, et seq.
‡ Robertson's ibid, vol. I, p. 214.
§ Robertson's ib., p. 216. Dalrymple, pp. 10 and 11. Cust. of Paris, art. 182.
‖ Capitular's Liber 1st, sec. 114.
¶ Fleury, pp. 12, 13.

* Fleury, p. 21.
† Esprit des Lois, Liber 28, cap. 4, vol. 2, p. 240.
‡ Esprit des Lois, Liber 28, cap. 2.
§ Esprit des Lois, Liber 28, cap. 2. Fleury, p. 18.
‖ Robertson's Charles V. Vol. 1, p. 315.
¶ Fleury, p. 39.

solemnly determined.* The question on each subject of discussion was generally propounded by the King, who, when it had been fully debated, pronounced the definitive resolution. The result was then put into writing, the questions and resolutions which were passed upon them were reduced under distinct heads, called chapters, and to collections of several chapters was given the name of Capitulars.†

[To be continued.]

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, April 5, 1882.

Before MATHIEU, J.

ROSS et al. es qual. v. WORTHINGTON.

Company—Transfer of shares.

Held, that a transfer of shares by a stockholder in a Joint Stock Company, which is made with the object and has the effect of reducing the Capital Stock of the Company, is void; and all resolutions of the Company and of the Directors, authorising such transfer, are illegal and ultra vires.

The defendant was the holder of 70 shares in the Capital Stock of the Canada Agricultural Insurance Company, a body politic incorporated by chapter 104 of Canada, 35 Vict.; the Capital Stock of the Company was $1,000,000, of which at the time that defendant subscribed for his stock 10 per cent had been paid up.

In February, 1877, the Directors made a subsequent call of 10 p. c., but the Company being in difficulties, it was resolved to apply to Parliament for an Act to reduce their Capital Stock from $1,000,000 to $250,000. As this would take some time, a resolution was passed that any shareholder having already paid 10 p. c. upon his stock, should have the option of paying 15 p. c. more, and might then transfer the amount of the stock for which he had subscribed to E. H. Goff, at that time Managing Director, who would transfer to the stockholder one fourth of the amount of stock, the same being fully paid up. Money was raised sufficient to pay up a certain amount of stock which was placed in the hands of the Managing Director for this purpose, and nearly one half of the Capital Stock of the Company was reduced in consequence. The plaintiffs were appointed Assignees of the Company under chap. 38, 41 Vic., (Can.) and proceeded to notify the commuted stockholders that they would not recognise the transfers so made. The present action was brought as a test case, the defendant pleading,—

1st. That no regular calls were made or notices given.

2nd. That Goff who was the transferee of the shares formerly held by defendant, had not been made a party to the action, and that nothing appeared to relieve the plaintiffs from the necessity of so doing.

3rd. That he was the holder of only $1800 worth of stock fully paid up, for which he held the Company's certificate (which he produced and filed) as he had paid $1100 amounting to 15 p. c. at the time, he commuted his stock in addition to the 10 p. c. first paid.

The defendant's Counsel, at the *Enquête*, objected also to proof being made of the second and third calls, as the minute book of the Company was lost; the loss being proved parole evidence was admitted.

The following is the judgment of the Court:—

"La cour, après avoir entendu les parties par leurs procureurs et avocats respectifs sur le mérite de la présente cause, avoir examiné tout le dossier de la procédure et les pièces produites, dûment considéré la preuve; et sur le tout mûrement délibéré;

"Considérant que les demandeurs furent nommés syndics à la dite Compagnie d'Assurance Agricole du Canada, par acte spécial du Parlement du Canada; savoir, le chap. 38 des Actes 31 Vict.;

"Considérant qu'il est prouvé que le défendeur a souscrit soixante-dix actions dans le fonds capital de la dite Compagnie d'Assurance Agricole du Canada, du montant de cent piastres chacune, sur lesquelles il a payé un premier versement de dix pour cent, s'élevant à la somme de $700 courant;

"Considérant qu'il est établi que les Directeurs de la Compagnie d'Assurance Agricole du

*Enclyclopedia Method de Jurisp. verbo "Champ de Mars," Vol. 1, part 2, p. 443; Robertson's Charles V. Vol. 1, p. 167.

† Fleury, p. 40.

Canada, avaient décidé de permettre aux actionnaires de réduire le montant du capital par eux souscrit, de 75 pour cent, c'est-à-dire le réduire à 25 pour cent du montant originairement souscrit par chacun d'eux, que le défendeur dans le but de se prévaloir de la décision des Directeurs à cet effet, transporta le 23 mars 1877, le montant des actions par lui souscrites, à Edward H. Goff, alors gérant, et un des Directeurs de la dite Compagnie, et paya en même temps une somme de $1100, formant $1800 qu'il avait antérieurement payées, pour laquelle somme il reçût en retour, du dit Edward H. Goff, des actions payées au montant de $1800 ; savoir, 18 actions de la dite Compagnie ;

" Considérant que ce transport fait par le défendeur au dit Edward H. Goff, a été entré dans les livres de la Compagnie, et qu'il est prouvé que les $1100 que le défendeur a payées au dit Edward H. Goff ont bénéficié à la Compagnie, en autant qu'elles ont servi à éteindre une dette du dit Edward H. Goff, à la dite Compagnie par lui contractée, pour obtenir les actions dont il fit transport pour partie au défendeur en cette cause ;

" Considérant qu'il est prouvé que ce transport n'a pas été un transport sérieux, mais a été fait dans le but unique de réduire le capital originairement souscrit par le défendeur à 25 pour cent ;

" Considérant que les Directeurs de la dite Compagnie n'avaient pas le droit de réduire ainsi le capital des actions originairement souscrites par les dits actionnaires, et que le défendeur n'a pu par le dit transport se soustraire aux obligations par lui originairement contractées, de payer les versements demandés sur les dites actions ;

" Considérant qu'il est bien vrai qu'il appert que le consentement des Directeurs a été obtenu au transport des dites actions au dit Edward H. Goff, cependant la section 17 du chap. 104 des Statuts du Canada de 1872, 35 Vict., ne s'applique pas au cas actuel, vû que ce transport a été fait comme il est dit plus haut, dans le seul but de réduire le capital du défendeur par lui souscrit dans la dite Compagnie ;

" Considérant que les Directeurs d'une Compagnie à fonds social n'ont que des devoirs limités pour administrer les affaires de la Compagnie, et qu'ils n'ont pas le droit de décharger tous ou partie des actionnaires de la responsabilité qu'ont ces derniers vis-à-vis de la dite Compagnie ;

" Considérant que le dit défendeur a payé le premier installement sur les actions par lui souscrites dans la dite Compagnie ; savoir, la somme de $700 ;

" Considérant que le 22 février 1877, un deuxième versement de dix pour cent a été régulièrement demandé sur les actions souscrites dans la dite Compagnie, et que ce versement fut stipulé payable en deux installements de cinq pour cent chacun, le premier, le 25 mars 1877, et le second, le 24 avril 1877 ;

" Considérant que le huitième jour de novembre 1877, un troisième versement de dix pour cent sur le montant des actions souscrites fut régulièrement demandé et fut stipulé payable le 17 décembre 1877 ;

" Considérant que le défendeur est devenu endetté par les demandes de ces dits deuxième et troisième versements de dix pour cent chacun en la somme de $1400 sur le montant par lui souscrit dans le fonds capital de la dite Compagnie ;

" Considérant que le défendeur a le droit d'avoir crédit pour la somme de $1100 par lui payées au dit Edward H. Goff, et dont la dite Compagnie d'Assurance Agricole du Canada a bénéficié comme souscrit, et que d'ailleurs, il appert par la déposition de l'un des demandeurs en cette cause, Philip S. Ross, que les demandeurs sont disposés à donner crédit au défendeur de la dite somme de $1100, laissant en faveur des dits demandeurs *es qualité* une balance de $300, que le défendeur leur doit bien et légitimement comme balance des dits deuxième et troisième versements sur les dites actions par lui souscrites, comme souscrit dans le fonds capital de la dite Compagnie ;

" Considérant que le dit transport des actions du défendeur fait au dit Edward H. Goff, a été fait comme susdit, dans le seul but de réduire le capital du défendeur à vingt-cinq pour cent du montant originairement souscrit, il n'est pas nécessaire de mettre en cause le dit Edward H. Goff pour adjuger sur la réclamation des demandeurs en cette cause ;

" Considérant que les défenses du dit défendeur sont mal fondées, et que l'action des dits demandeurs *es qualité* est bien fondée pour partie ;

" A maintenu et maintient la dite action ;

"Et a condamné et condamne le dit défendeur à payer aux dits demandeurs *es qualité* la dite somme de $300 avec intérêt sur icelle, à compter du 17 décembre 1877, jusqu'au payement, déboutant les demandeurs du surplus de leur demande, et condamne le défendeur au dépens," etc.

Judgment for plaintiffs.

Church, Chapleau, Hall & Atwater, for plaintiffs.
Ritchie & Ritchie, for defendant.

COURT OF QUEEN'S BENCH.

QUEBEC, February, 1882.

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

GAUVIN v. ROCHETTE.

Service—Writ of Appeal.

Motion to reject appeal, the service being irregular. The service was made on Malouin & Malouin, attornies of Respondent in the Court below, by serving a copy personally on Philippe Malouin. The attorney in the Court below was Jacques Malouin, and not Malouin & Malouin, and a different person from Philippe Malouin, and not merely a misnomer. The time for appeal had elapsed.

In support of the motion the following cases were cited:—Dupuis & Dupuis, 6 L.C.R., p. 429; Leduc & Ouellett, 2 Rev. Leg. p. 626; Simard & Fraser, 1 Leg. News, 130; Johnston & Leaf, 2 Leg. News, 226; Peloquin & Lamothe, 3 Rev. Leg. p. 58.

The COURT thought the case of Dupuis & Dupuis in point, and the appeal was rejected.

COURT OF QUEEN'S BENCH.

QUEBEC, February, 1882.

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

MCCAMMON v. MCKINNON.

Appeal—Interlocutory judgment.

Motion for leave to appeal from an interlocutory judgment, discharging the *délibéré* until it be decided whether an insolvent who has obtained a settlement with his creditors be discharged.

The appellant sued the respondent for *bornage*. When the case was ready for hearing the respondent became insolvent, and proceedings were suspended. Subsequently the respondent obtained his discharge from his creditors which was not confirmed by the Court. The appellant then continued his proceedings *en bornage* and obtained judgment with costs. He tried to recover his costs, but was met with the objection that the respondent was not responsible for this debt, having been insolvent and discharged.

RAMSAY, J., dissenting. I would grant this motion without expressing any opinion as to the merits of the appeal. I don't think a judge has any discretion to refuse to give judgment till some future event, unless it be in the rare cases where some future fact can affect the issues. Whether respondent is discharged hereafter or not cannot properly affect the judgment to be given. At most it may aid the judge gropingly to arrive at a conclusion. It is a violation of Art. 11 C. C., and so we held in the case of Tracey et al. & Liggett et al., last term in Montreal. But it is said, the judgment in this case can do no great harm, for if the discharge is not speedily obtained the appellant can apply anew to the Court to be allowed to go on. This reason seems to me to be conclusive in favour of allowing the appeal. It amounts to this, that if the Court below persists in its present disposition, this Court will allow the appeal. Therefore the fact for which the Court below is now waiting is immaterial.

BABY, J., also dissented.

The majority of the Court rejected the motion.

Motion rejected.

MUNICIPAL ROAD.

In the case of *Price et al.* v. *The Corporation of Ste. Geneviève*—an appeal from Three Rivers—decided at Quebec in February last, a question of some interest to country readers was discussed. The following remarks were made by Mr. Justice Ramsay, who dissented in appeal, and concurred in the judgment of the Court below.

RAMSAY, J., (dissenting.) It appears that a passage or road existed for many years, called the *chemin du portage*. It was used by many people, but principally by appellants. There seems to have been no *procès-verbal* of the road,

or at least none known, the municipality repudiated all responsibility in the maintenance of it, and, though admitting that such a road was to some extent useful, they refused to verbalize it as a public road. They formally declared it to be a *chemin de tolérance*. Now this is an expression to which the municipal code has affixed a special meaning. It is a road, having the appearance of a public road, indicated by lateral fences or otherwise, and open at both ends. While so open it is ranked among Municipal roads—that is, the Municipality is liable for its condition as a public road, although the owners of the ground on which it passes are charged with its up-hold. The expression of the law is not very full, but its object or policy is clear and highly reasonable. To the private proprietor it says, you shall keep in repair any open place on your property to which you have given the general appearance of a public road, so that those who may be induced to make use of it by its appearance, may not be subjected to accident or inconvenience. It is ranked as a municipal road so that this obligation of the proprietor may be subject to the control of the municipal authorities. The municipal council can cause it to be closed at both ends, and so terminate its responsibility. This is in reality hardly, if at all, an extension of the liabilities of the common law. What is added is principally the power to the municipality to constrain the owner to desist from what is dangerous to the public. This seems to be admitted, but it is argued that by this they have no possessory right in the road, and that while leaving it open, it remains in some sense a municipal road, that the property remains vested in the owners who tolerate its use. This pretention is founded on the last part of Art. 749 M.C.: "But the property in the land and the obligation to maintain such roads continue in all cases vested in the owner or occupant."

I don't think the power to close the road, and so terminate the difficulty instantaneously, affects the question. It might be as well said that the municipality has another remedy, they might verbalize it as a public road. The fact is the law has declared that while things remain in a certain state the road shall be subject to municipal authority, and that the municipality shall be liable to the public as an owner. If this view be well founded, it does not seem to me to be of any moment whether you call this action possessory or not, within some very strict definition of a possessory action. It may be considered as a special action directing the appellants not to interfere with respondent's rights in the road, whether these rights be precarious or the reverse. Some of the conclusions are negatory, and it is on them respondent succeeded in the Court below. It is manifest that the appellants could have no greater right to destroy the road as a passage than the owners of the road, and it is perfectly clear that the owners could not tear up a municipal road of any sort while it was a municipal road. They might have closed it perhaps, and thus have destroyed its municipal character,—the appellants could not. It was manifestly a trespass on the rights of the corporation, if the road was municipal. The whole question then is as to the fact of whether it was a municipal road or not.

There is nothing in the resolutions of the council denying that it was. They called it a *chemin de tolérance*. It is not necessary that it should be fenced on both sides. Being *habitually* open at both ends, and being fenced in on both sides, determines that it is a municipal road; but this may be established by other signs if *habitually* open at *both* ends. Thus it might be indicated by ditches, by a finger-post, by *balises*, as is common in winter, or even, I fancy, by general appearance, and particularly by use. The presumptions arising from these indications gain consistency and become fortified by long existence. It is useless to go into minute criticism of the long *enquête* in this case.

The whole contestation leaves no room to doubt how the substantial facts stand. The land or passage, to use the terms of the code, was occupied as a road for nearly 80 years. So much was this the case that the appellants, without any reference to the proprietors, planked and themselves used it. It was not closed at either end. We have thus use by the appellants themselves on the assumption that they, as part of the public, had rights, and the most perfect indication by absence of gates at the end, and by the planked road-way, that it was a road for public use, and hence a municipal road.

I think therefore the appellants have no cause to complain of the judgment. It is

impossible to show more caution and reserve in according the conclusions of the plaintiff. In doing so, the Court has incurred his marked displeasure; but I do not think respondent's criticism is unanswerable. The Court below refused to give respondent the only damage he claimed, that is, the value of the plank. There were two good reasons for this. In the first place the corporation respondent was not liable to the charge of re-instating the road. The value then of these planks was not a measure of any damage to respondent. In the second place, it was admitted on all hands that the planks belonged to the Prices. The owners of the road, charged with the cost of maintaining this *chemin de tolérance*, could not have claimed to keep these planks without indemnity. In making the road passable for their own convenience, the appellants had a perfect right to lay down planks and, so far as the owners were concerned as such, to take them away again. It was the public right, invested in the municipality, appellants violated, not that of the owners of the road as such. A familiar illustration will make my meaning clear. My neighbour is obliged to bridge a ditch he has made for his convenience, while it remains open. I do it for him. He cannot keep the plank I have furnished, without indemnity, or make me pay its price if I remove it. On the other hand, I cannot remove it to the danger of the public without due precautions. It is on these principles the judgment is based.

There is some question of a *procès-verbal*. The Court below paid no attention to this tardily discovered *pièce de conviction*. It, evidently, could have no effect on the pretentions of the parties at the time of the acts complained of, even if it be applicable to the place in question—a fact about which I express no opinion. It is not in issue.

I would confirm.

RECENT DECISIONS AT QUEBEC.

Bornage.—Pour maintenir une action en bornage, il faut que le demandeur prouve son droit de propriété ou au moins sa possession civile.—*Mann* v. *Hogan*, 8 Q.L.R. 1.

Verdict.—A prisoner indicted for assault with intent to rob, may be convicted of simple assault.—*Reg.* v. *O'Neil*, 8 Q.L.R. 3.

Taxation, Exemption from.—Une maison sise et située sur le même lopin de terre que le collége Morrin auquel elle appartient, et occupée comme logement privé par deux des professeurs du dit collége, est exempte des taxes municipales, en vertu de la Section 25 du 29 Vic. ch. 57, comme étant employée pour les fins de d'éducation, bien qu'une partie du salaire des dits professeurs soit retenue par le dit collége, comme indemnité pour l'occupation de la dite maison.—*Le Trésorier de la cité de Québec* v. *The Morrin College*, (Cour du Recorder), 8 Q. L. R. 3.

Manslaughter on the high seas—Jurisdiction.—The prisoner was arrested, tried, and convicted at Quebec of manslaughter. The injuries of which deceased died were inflicted by the prisoner while they were both serving on board a British ship on the high seas, but the deceased died in the district of Kamouraska. *Held*, that the Court at Quebec had no jurisdiction to try the case; the prisoner should have been tried in the District of Kamouraska; and the conviction was wrong.—*Reg.* v. *Moore*, 8 Q.L.R. 9.

Evidence.—Parol evidence was sufficient to prove that the ship was a British ship.—*Ib.*

Privilege—Travelling agent.—The privilege granted by C. C. Art. 2006 does not apply to a travelling agent, *commis voyageur*, paid by salary and commission.—*Ross* v. *Fortin* (S.C.), 8 Q.L. R. 15.

THE REPRESENTATION BILL.

By the bill to readjust the Representation in the House of Commons, numerous changes are made in the boundaries of the electoral districts of Ontario. The following is the only change in the Province of Quebec:—

"3. All that part of the parish of Ste. Monique, now in the county of Terrebonne, is hereby detached from the said county, and annexed to the county of Two Mountains, for the purposes of representation in the House of Commons of Canada; and section one of chapter two of the Consolidated Statutes of the late Province of Canada, and sub-sections thirteen and fourteen of chapter seventy-five of the Consolidated Statutes for Lower Canada, shall be read and interpreted in so far as they apply to representation in the House of Commons of Canada, in conformity to the preceding section of this Act."