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THE SUICIDAL IMPULSE.

The lamentable death of Mr. Justice Colt, of the Supreme Judicial Court of Massachusetts, by his own hand, in a fit of melancholy, has already been noticed. Concerning this gentleman the bar of Massachusetts have adopted the following kindly resolution:—

"*Resolved*, that in his death the Commonwealth has suffered a severe public loss. His ample learning; his conscientious application of his best powers to the execution of the duties of his high office; his broad, sagacious, and practical apprehension and understanding of affairs; his patience in investigation; his fraternal courtesy and spirit of professional fellowship; his kindly and sympathetic interest in the rights of suitors, and his unsullied integrity of personal character, combined to make him worthy of our utmost confidence and our highest respect and esteem." Judge Hoar once said of him, that "he had that quality of respecting everything that is respectable, which is one of the best traits of the best men of this Commonwealth." It is much to be lamented that the career of such a man should have so melancholy a termination. The parallel cases of Sir Samuel Romilly and Mr. Justice Willes in England, at once suggest themselves, (not to mention that of Hugh Miller in a different calling.) The *American Law Review*, for October, mentions that Abraham Lincoln, according to his biographer Lamon, had to struggle against the same suicidal impulse, which occasionally exercises so powerful a sway over highly gifted and cultivated minds.

FRAUDULENT PREFERENCE A "SECRETING."

A case which has long stood in the reports received an emphatic overturning during the last term of the Court of Queen's Bench. In *Gault* v. *Donnelly*, 1 Lower Canada Law Journal, p. 119, (A.D. 1866) it was held that a fraudulent preference is not a secreting. Mr. Justice Badgley, who rendered the decision in the Superior Court, remarked: "This sale bears all the appearance of a fraudulent preference, but it has been already decided that a fraudulent preference is not a secreting. The word secreting conveys the meaning of concealing, hiding, putting aside in unfrequented places. Fraudulent preference, therefore, does not in any way come within the meaning of the legal term secreting. The act of secreting his effects would be a selfish act for his own advantage; whilst a preference given to a particular creditor is not for the debtor's own advantage but for that of the creditor."

The case was taken to appeal, and was there affirmed by Justices Drummond, Mondelet and Johnson, but the then Chief Justice (Duval) strongly dissented. "The whole case" his honor remarked, (3 L.C. Law Journal, p. 57) "turns upon the interpretation to be put upon the word 'secreting.' The facts of the case are that the defendant, being the plaintiffs' debtor and being insolvent, made over a portion of his property to Mr. Walsh, another of his creditors. It is contended that this was only an undue preference, and does not amount to a fraudulent secretion. But what meaning can be given to the term 'secreting,' if it be not a secreting to put property beyond the reach of the creditors, as was done in this case?" The view of the late Chief Justice has been adopted by the majority of the same Court in the case of *Gault & Dussault*, reported in our present issue. The same principle is to be found in *Molson & Carter*, 3 L.N. 258.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1881.

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

GAULT et al. (plffs. below), Appellants, and DUSSAULT (deft. below), Respondent.

Capias—Secreting—C.C.P. 798.

Fraudulent preference, by which assets which should be available to the creditors generally, are given to one or more, is equivalent to secreting.

The appeal was from a judgment of the Superior Court, Montreal, Rainville, J., granting the petition of respondent, a trader in Sherbrooke, for liberation from arrest under writ of

capias. The writ of *capias* was issued upon affidavit alleging that a writ of attachment under the provisions of the Insolvent Act of 1875 had been issued against defendant's estate; that he had been guilty of fraud within the meaning of the Act; that prior to the attachment, and within the three months preceding it, defendant had disposed of a portion of his stock-in-trade to one Deseve, the purchase price of which stock remained unpaid. The Judge in the Court below considered that the facts did not amount to secreting, and granted the defendant's petition for liberation.

DORION, C. J., said, it had been decided over and over again by the Court as now constituted, that the remedy by *capias* subsisted concurrently with the Insolvent Act. He was not, therefore, prepared to hear the question raised in this case. The Chief Justice commented on the facts as established by the evidence, (which appear in the judgment below) and held that it was a clear case of fraudulent preference, amounting to secreting. His Honor could not understand the attempt to make a distinction between secreting and fraudulent preference. The French version used the words *cacher ou soustraire*. This was the same as *recéler*, which was *détourner, distraire, divertir*, the effects which should be available to the creditors generally, and there could be no doubt that the acts of the respondent were equivalent to a *recel*.

RAMSAY, J. I concur so fully in what has fallen from the learned Chief Justice, in delivering the judgment of the Court, that I should have thought it unnecessary to add any remark of my own were it not that I consider it important that there should be no doubt as to the individual opinions of the Judges in this important matter. The question is simply as to the meaning of article 798 of the Code of Procedure. No question was raised at the Bar as to any conflict between the Insolvent Act and the article, and if it had been, the decision could not have given rise to any difficulty. As the Chief Justice has said, over and over again we have decided that proceedings in insolvency did not deprive the creditor of the right to take out a *capias*. Again, there is no question as to the proceedings being fraudulent. We are all agreed there was fraud. The effect of the transactions complained of appears to have been to reduce the available assets of the estate from 75 cents in the dollar to about 12 cents. The argument, which has been pointedly stated by one of the learned Judges who dissents, is that there may be a fraudulent disposal, which does not amount to secreting, and that an instance of this is a fraudulent preference. I believe there is some authority for this view, but I confess I am unable to understand it. I can conceive a payment being so trifling that it could not be considered fraudulent, but if a preference or any other disposal amounts to a fraud, it appears to me to be secreting within the meaning of the Act. Secreting does not mean hiding alone, but, as the article says, any "making away" with property which shall put it unlawfully out of the creditor's reach. Thus one may secrete or make away with property by putting legal impediments in the way of the creditor, by which he is prevented from getting possession of it in order to be paid. I expressed this opinion in the case of *Molson & Carter*, and I understand the Privy Council concurred in it. Indeed, it is difficult to understand that the legislature could have intended it should be otherwise. I am at a loss to conceive why courts should use so much ingenuity to put a strained interpretation on the law to defeat its manifest object. If it be said that it is figurative to call it *secreting*, to pass a fraudulent deed to shield property from seizure, I admit it, but I am not aware that in the interpretation of statutes it is necessary always to adopt the first meaning of the term used.

The judgment is as follows:

"La Cour, etc....

"Considérant que le premier mai, 1877, l'intimé, qui était alors insolvable, et incapable de payer ses dettes, a vendu à A. L. Desève, son confrère et son commis, le fonds de commerce qu'il avait dans un magasin que le dit Desève tenait pour lui à Sherbrooke;

"Et considérant que cette vente, qui comprenait toutes les créances dues à ce magasin, a été faite d'un seul lot, hors du cours ordinaire des affaires de l'intimé, à l'insu de ses créanciers à raison de vingt pour cent de déduction sur l'estimation des dites marchandises et créances évaluées à $1,560;

"Et considérant que l'intimé a reconnu par sa déposition que le dit A. L. Desève ne possé-

dait rien, et qu'il lui avait payé le prix de vente des dites marchandises par des billets payables à trois, quatre et six mois de leur date ;

" Et considérant que peu de temps après cette vente, savoir, le ou vers le 11 juin 1877, l'intimé, se déclarant incapable de payer ses créanciers, leur a demandé une réduction de 25 pour cent. sur le montant de leurs créances, sans les informer de la vente qu'il avait faite à Desève de l'un de ses magasins, ni qu'il en avait reçu le prix au moyen de billets promissoires ;

" Et considérant que de l'aveu de l'intimé, immédiatement après le refus de ses créanciers d'accepter ses offres, il aurait transporté les billets qu'il avait reçus du dit Desève à ses parents et amis, comme suit, savoir un billet de $750 à Millier & Cormier, Cormier, l'un d'eux, étant son beau frère ; un autre billet de $150 à Dupuis & Dupuis, Louis Dupuis, l'un d'eux, étant aussi son beau frère ; un autre billet de $200 à John Harkness, et un quatrième à Auguste Noël ;

" Et considérant que les dits Millier & Cormier, Dupuis & Dupuis, Harkness et Noël n'étaient pas les créanciers de l'intimé lorsque ces billets ont été transportés, et que ces transports leur ont été faits pour les garantir de la responsabilité qu'ils avaient encourus en endossant pour l'intimé des billets qui n'étaient pas encore échus ;

" Et considérant qu'il appert par la preuve et les circonstances sous lesquels l'intimé a vendu son fonds de commerce, et transporté les billets qu'il avait reçus du dit A. L. Desève lorsqu'il était complètement insolvable, qu'il a fait ces transactions pour cacher et soustraire ses biens et effets dans l'intention de frauder ses créanciers et les appelants en particulier, et que la vente qu'il a ainsi faite, ainsi que le transport des dits billets sont des actes de recel et de soustraction d'une partie de ses biens en fraude de ses créanciers, qui autorisaient les appelants à prendre contre l'intimé les procédés sanctionnés par l'article 798 du Code de Procédure Civile ;

" Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure siégeant à Montréal le 19eme jour de janvier, 1880, qui a déclaré que les paiements faits par l'intimé en fraude de ses créanciers, n'autorisaient pas l'émanation d'un *capias ad respondendum* en cette cause ;

" Cette Cour casse et annule le dit jugement du 19 janvier, 1880, et procédant à rendre le jugement que la dite Cour Supérieure aurait dû rendre, renvoie la requête de l'intimé, et le condamne à payer aux appelants les frais encourus tant en Cour Supérieure que sur le présent appel.

(Dissentientibus les Hon. Juges Monk et Cross.)"

Judgment reversed.

Davidson & Cushing, for Appellants.
Archambault & David, for Respondent.

SUPERIOR COURT.

MONTREAL, Oct. 1, 1881.

Before TORRANCE, J.

MCDOUGALL v. SCOTT.

Séparation de corps et de biens—Costs of action.

The wife suing for separation from bed and board, is not entitled to ask that the defendant be foreclosed from making proof unless he pay the fees due to her attorney.

This was a demand by a wife suing her husband for a separation from bed and board. She made a motion that he be foreclosed from making any proof in this cause unless he paid to plaintiff's attorney the amount due for his services.

PER CURIAM. The demand as it is made is irregular. It is true that the form given by Pigeau, Tom. 2 : 216, contains an allowance to the wife as well for aliment and maintenance as for the costs of the action. In the present case, the plaintiff is allowed to sue *in forma pauperis*, and the order has already been given this day for $20 per month for aliment.

The demand now made, that defendant be foreclosed from making proof unless he pays a sum for costs of plaintiff, should not be granted. Defendant has rights as well as plaintiff, and one is to disprove the plaintiff's case if he can, and prove his own case.

Motion rejected.

B. C. Maclean for plaintiff.
W. Scallon for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 1, 1881.

Before TORRANCE, J.

DUROCHER v. JODOIN.

Exception à la forme—Costs.

This case came up on the merits of two exceptions *à la forme*, filed by two defendants. The return of the bailiff mentioned the service of the writ of summons without the declaration, and said that service was made by leaving a copy of the declaration upon the defendants. The omission was attacked by an exception by each defendant. At the hearing on the merits of the exceptions, the Court was against plaintiff, but gave him leave to amend on payment of costs. These costs were taxed at $16 for each defendant, and the plaintiff failed to pay them. The case was again heard in its original state, and the exceptions were maintained with costs, which the Court, in its discretion, taxed at $1 to each defendant, in addition to his necessary disbursements.

A. B. Longpré for plaintiff.

R. Prefontaine for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 1, 1881.

Before TORRANCE, J.

CONTENT v. POIRIER.

Pleading—Demurrer should precede défense en fait.

This case was before the Court on a demurrer to the declaration. The demurrer was preceded by a *défense en fait* or general issue. The Court discharged the *délibéré* on the ground that the demurrer should have been placed first in the order of pleading before the general issue. Vide Wotherspoon's Manual, pp. xxi, xxii. Stephens on Pleading, p. 50.

Bourgouin for plaintiff.

R. Prefontaine for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 1, 1881.

Before TORRANCE, J.

LA BANQUE D'HOCHELAGA v. GOLDRING.

Bail under C. C. P. 825—Statement.

A defendant who has given bail under C.C.P. 825, is bound to file a statement within thirty days after judgment maintaining the capias, or, in default, to be imprisoned.

This case came up on a demand by the plaintiff for the imprisonment of defendant, under C. S. L. C., cap. 87, s. 12. The defendant had been arrested for civil debt, and had given bail under C. C. P. 825. The *capias* had been maintained by the final judgment for $36,800, rendered on the 31st January, 1881. The defendant was absent from the Dominion, and had neglected to renew one of his securities to the amount of $10,000 in obedience to the order of the Court. He had not been served personally to answer the present petition, being without the jurisdiction of this Court, and the Court under the circumstances could not require personal service, C. C. P. 781; but the defendant had appeared by counsel who had been served, and he had also been served at the Prothonotary's office, under C. C. P. 84.

S. Cross, for defendant, cited *Poulet* v. *Launière*, 6 Q. L. R. 314, likening the case to one of special bail.

Béique, for plaintiff, said the bail had been given under C. C. P. 825.

PER CURIAM. This is not the case decided in *Poulet* v. *Launière*. The bail was given under C. C. P. 825, and it was the duty of the defendant to file a statement under C. S. L. C. cap. 87, s. 12, within thirty days after judgment, or submit to the consequences mentioned in s. 12, s. s. 2. The defendant here is in default, and the imprisonment for a year is ordered.

Petition granted.

Beique & Co. for plaintiff.

Davidson & Cross for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 1, 1881.

Before TORRANCE, J.

MCCRAE v. MILLER.

Capias—Departure with intent to defraud.

A tenant had fraudulently removed his furniture from Montreal, without settling for his rent, and had intimated an intention of going to the United States. Held, that the capias was well founded.

PER CURIAM. This was a petition for the liberation of a debtor arrested under a *capias* for non-payment of his landlord, on the ground that plaintiff believed that he was immediately about to leave the Province of Quebec and Dominion of Canada with intent to defraud, &c. The evidence showed that the defendant, a sewing machine agent, took a lease from McCrae, jointly with one Egger, of a house in Montreal, at a rental of $240 per annum, and secretly removed the furniture in May to Brockville, where his employer

required him to locate himself for a time as a local agent, at a weekly salary of $10. He had resided in New York, whence he had removed to Montreal. And it appeared that he had said that if he did not succeed in Brockville, he would move back to the States. His wife had been in the States, in order to get security there for him on behalf of his employer, but had been unsuccessful. He had bought the furniture in Montreal with money advanced by Egger, some $500. At the time he left in May, he said to Egger that he would try to get bonds for the Brockville office, and if he could not get them, he would try to remain there without bonds, and if he couid not remain without bonds, he would go to the States. These facts are proved,and there was no doubt but that McCrae had been unfairly dealt with. These facts prove that McCrae had grounds for believing that Miller might at any time remove into the States, as he had, so far as he was concerned, fraudulently removed from Montreal, without settling with him—secretly taking away his furniture. Is the Court justified in saying that the defendant Miller has not disproved the allegations of the affidavit? The Court holds that the affidavit has not been disproved, and dismisses the petition.

Archibald & McCormick for plaintiff.

Church, Chapleau, Hall & Atwater for defendant.

SUPERIOR COURT.

MONTREAL, October 1, 1881.

Before TORRANCE, J.

CAMPBELL v. MCGRAIL et al., and MCGRAIL, petitioner for revocation of judgment.

Requête civile—Grounds for revocation of judgment.

This case was before the Court on the motion of plaintiff to reject from the record a *requête civile*.

The action was to recover from defendants as co-partners a sum of $308. It was begun in December, 1880. The defendants appeared by attorney but did not plead, and were foreclosed from pleading in February, after which plaintiff inscribed the case for evidence *ex parte* on the first March. The defendants were summoned to answer interrogatories on the 7th March, and a default was entered against them for not appearing to answer. The case was inscribed for hearing on the merits on the 8th March for the 14th March. Plaintiff obtained judgment for $308 on the 16th March. The petition now in question was filed on the 12th July, and though the judge in Chambers ordered service of petition to be made upon plaintiff or his attorney, the service was only made at the Prothonotary's office. Thereupon the judge ordered a stay of execution. The service and notice was not regular, and the suspension order was in fact made without notice. The chief grievance of defendants by the petition was that they were not allowed to answer interrogatories though they alleged that they offered to do so, and charged artifice against plaintiff and his attorney.

PER CURIAM. The chief grievance of defendant is that he was not allowed to answer the interrogatories on the 7th March. Assuming that the default against him was irregularly entered on that day, of which, we have only his affidavit, he was represented in the case by attorney, and his attorney was duly notified of the hearing on the 14th March, a week after the default complained of, and no step was taken during this week to take off the default. I do not think the case is one in which the judgment should be interfered with. The judgment could not be set aside on such evidence as defendant offers. The plaintiff's motion for the last reason is granted.

J. L. Morris, for plaintiff.

F. Quinn, for defendant.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

HALL v. HARRISON, and STUART, T.S., and HARRISON, opposant and petitioner by *requête civile*.

Opposition—C. C. P. 510.

A person whose interests are affected by a judgment in a cause, to which such person was not made legally a party, may come in by tierce opposition with a view to be maintained in his rights.

JOHNSON, J. There is a good deal of confusion in this record; but I must get at the true state of it, and do substantial justice if I can, without violating any of the laws of procedure in the Circuit Court. There was first an opposition, and afterwards a *Requête civile*, the judgment having been given by default; and it was contended under the opposition, first, that there had been no 'assignation.' The return of the bailiff shows

this. He says she has no domicile here; and there is nothing in the record disclosing compliance with the provisions for calling in absent debtors.

This, then, is the case of an opposition by a third person not a party to the cause: that is to say, the defendant was only nominally a party in the case. (See case *Kellond* v. *Reed*, 18 Jurist, 311; Taschereau, J.'s remarks). There it was held that the opposition would have been the right course. The learned judge observed: "En effet, *il n'y a de parties au procès* que celles qui ont été sommées d'y répondre, et même le demandeur peut n'y être pas partie, quoique son nom y apparaisse comme demandeur. Or le code, en disant que celui *qui a été partie à un* procès peut faire révoquer le jugement pour certaines raisons, au moyen de la Requête civile, n'a pas pu vouloir dire qu'il suffisait pour qu'une personne dût être considérée comme partie à un procès que son nom y fût, soit comme demandeur ou défendeur. Ce serait admettre un principe bien dangéreux en pratique. Je considère l'appelant comme tierce personne dont les droits sont sérieusement compromis par un jugement rendu dans une cause où elle n'etait pas partie, et à laquelle elle n'avait pas été appelée, et comme telle elle tomberait sous l'empire de l'art. 510, C. P. C., qui dit que 'Toute personne dont les intérêts sont affectés par un jugement rendu dans une cause où ni elle, ni ceux qui la représentaient n'ont été appelés, peut y former opposition,' et l'article 512 déclare qu'il est procédé sur la tierce opposition produite comme dans une instance ordinaire." It was objected by plaintiff that the affidavit was insufficient, and that there was no deposit as required by art. 486, C. P.; but it is not the case contemplated by that article, but a very different case, viz., that of a person who is called a defendant, but who has not been made a defendant by legal summons. The affidavit appears quite sufficient; and it is to be observed that after joining issue upon this opposition, and going to proof, and in the absence of a motion to reject on either of these grounds, it would seem to be very late to raise the objections.

The *Requête civile* remains, and both these proceedings are before the Court under the inscriptions on the merits both of the opposition and of the *Requête civile*. That is a remedy open to those who are properly parties to the case, and not as here to third parties. The case of *Thouin* v. *Leblanc*, 10 L. C. Rep. p. 372, decides the present one in the most direct manner.

Requête civile dismissed with costs.

Opposition maintained with costs.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

PIGEON v. ROUSSIN.—ROUSSIN v. PIGEON.

Lessor and Lessee—Damages.

The lessee has no right of action against the lessor for damages caused by the act or negligence of another tenant in the same building, e.g., damages resulting from a leaking water-pipe in a story overhead, which had been let to another tenant who had abandoned the premises.

JOHNSON, J. In one of these cases the plaintiff asks for a term of rent of a lodging leased to the defendant, and taken by itself there should be judgment in that case for the plaintiff. In the other case the debtor of the rent sues the landlord for damages caused by a flow or leak of water from the pipe in the third story of the building, which had been let to another tenant who had abandoned the place.

The Court has to apply the principles of Articles 1616 and 1617 C. C. to the circumstances of the present case. The language of article 1616 is:—"The lessor is not obliged to warrant the lessee against disturbance by the mere trespass of a third party not pretending to have any right upon the thing leased; saving to the lessee his right of damages against the trespasser, and subject to the exceptions declared in the following article." The following article is: "1617. If the lessee's right of action for damages against the trespasser be ineffectual, by reason of the insolvency of the latter, or of his being unknown, his rights against the lessor are regulated according to article 1660;" and this last article (1660) provides for the cases where there may be either a reduction of the rent, or a dissolution of the lease; and then the article concludes with these words: "but in *either case he has no claim for damages against the lessor.*"

The present case does not present itself in the form of a defence to the action for rent, nor does it ask in any form for a reduction of the rent or a dissolution of the lease. It is brought independently to obtain damages; and

the law says there is no action of damages against the lessor. There are decided cases to which I will presently refer; but it certainly struck me at the hearing, and on that account I reserved judgment, that the words in Article 1616, "the trespasser not pretending to have any right upon the thing leased," meant to restrict the action of the lessee against the trespasser to outside trespassers not having any relation with the landlord, nor in any way under his control, for of course it is plain enough that if a stranger comes and breaks your windows, you should have no right to sue your landlord on that account. But here the plaintiff had the ground floor, another had the floor above him, and still another had the third floor, where the pipe burst; and it is said truly enough that there was a kind of control exerciseable by the landlord over his tenants, including this lofty delinquent himself. This argument, however, cannot effect a change in the legal relation and responsibility of the landlord, for on principles well known and treated of in all the books, the landlord is not responsible for *troubles de fait;* though he is responsible for *troubles de droit.* The present case, however, suffers no difficulty. The landlord cannot be answerable in damages at any rate. His relation to his tenant did not make him *garant* for the latter's negligence; and even in the cases where he is answerable, as it was said he was here, for his own act and not the act of his tenant, who, in fact, had left the premises, it can only be in the way of diminution of rent, or dissolution of the lease. Therefore the action of the tenant for damages is dismissed; and there is judgment for the rent due. I have mentioned that there were cases, and they will be found cited under the Article 1616 in the *code annoté* of M. DeBellefeuille. In one of them—the case of *Gallagher* v. *Alsopp* (8 L. C. R., p. 156), it is held that the landlord is not answerable in damages for the act of one of his tenants done to another of them.

The other cases are those of *Hamilton* v. *Wilson* (2 Rev. de Leg. p. 441), and *Boily* v. *Vezina* (14 L.C.R. 325), and they related to the acts of third parties not tenants. The whole subject, however, is treated in Mourlon, Tom. 3, No. 747.

CIRCUIT COURT.

MONTREAL, Sept. 30, 1881.

Before JOHNSON, J.

THOMPSON et al. v. CITY OF MONTREAL: SHAW v. CITY OF MONTREAL: SIDEY v. CITY OF MONTREAL.

Tax on brokers and commission merchants—Ship Agents.

A ship agent is not subject to a tax imposed on brokers and commission merchants.

JOHNSON, J. The plaintiffs in these three cases have paid under protest a sum of $50 each, which the Corporation assumed to levy from them under the authority of a by-law. This by-law is No. 94, sec. 12, and in terms prohibits the exercise of either of the following callings, that is to say, those of broker, money lender, or commission merchant, in this city, without a license for which fifty dollars has to be paid.

The parties who sue here all submit their cases upon one and the same statement of facts, and these are, that with the sole exception of Mr. Sidey they are part owners of the ships of which they act as agents here. Mr. Sidey, however, is not an owner, but only the agent of the owners. In other words, the Messrs. Thompson, Murray & Co. and Mr. Shaw are shipowners, and superintend their own business in this city, and Mr. Sidey superintends the business of other shipowners. The first two are, so to speak, their own agents, and Mr. Sidey is agent for other and distinct persons. As regards the first two, therefore, they are only agents in the same way that every active partner in a firm is an agent for the purposes of the partnership (and that, of course, is the law governing the individual members of every firm), and Mr. Sidey is the agent or attorney *ad negotia* of his principals who are not his partners.

The question is whether these facts make either of the plaintiffs liable for the tax; *i.e.*, whether they or any of them are brokers or commission merchants. There are three classes mentioned in the by-law — money lenders, brokers, and commission merchants. The first, of course, is out of the question. Then do these facts, that these parties are ship agents, two of them for themselves, and one for other parties, constitute them brokers or commission merchants? In this country there can be no diffi-

culty in defining who is a broker and who is a commission merchant. We have express law on the subject. Art. 1735 says "a broker is one who exercises the trade and calling of negotiating between parties the business of buying and selling or any other lawful transactions. He may be the mandatary of both parties, and bind both by his acts." Art. 1736 :—"A factor or commission merchant is an agent who is employed to buy or sell goods for another, either in his own name or in the name of his principal, for which he receives a compensation commonly called a commission." It is obvious that the business of these parties is not described in either of the articles of the Code, and I do not think I should make the case any clearer by discussing principles or analogies which the express terms of the law render unnecessary.

I am of opinion, therefore, that the plaintiffs in all these cases are ship agents, and nothing more, for their being owners or not has nothing to do with the question whether they are brokers or commission merchants. The tax is not put on mere agents such as these, but on brokers, a perfectly distinct calling, intermediaries and agents of both parties to a bargain, and upon commission merchants, who by law are those who buy and sell for others; and it cannot be extended beyond those terms to include mere ship agents. Therefore I decline to go beyond the express law; and I neither refer to the case cited from 4 Bingham, nor to the fact which was mentioned, and indeed proved in these cases, that the tax in question has not been levied from agents of the same class in another ward of the city. There is therefore judgment for plaintiffs in the three cases, with costs.

Dunlop & Lyman for plaintiffs.

RECENT DECISIONS AT QUEBEC.

Nuisance—Indictment—B. N. A. Act.—The defendant, agent of the Bell Telephone Co. of Canada, was indicted for illegally erecting three telegraph poles, in Buade street, a leading thoroughfare in the city of Quebec, thereby obstructing the Queen's highway, to the common nuisance of the public.

The Company is incorporated by Act of the Parliament of Canada, 43 Vict. ch. 67, with power to establish telephone lines in the several provinces of the Dominion, and to construct, erect and maintain lines along any public highway, street, bridge, water-course or other such place, or across or under any navigable waters, either wholly in Canada, or dividing Canada from any other country, "provided that in cities, towns and incorporated villages, the opening up of the street for the erection of poles or for carrying the wires underground, shall be done under the direction and supervision of the engineer or such other officer as the Council may appoint, and in such manner as the Council may direct, and that the surface of the street shall, in all cases, be restored to its former condition by and at the expense of the Company." This charter, and the consent of the city Council, duly obtained, were relied on by the defendant as a plea to the indictment; in the absence of these conditions the poles in question would undoubtedly constitute an obstruction and a nuisance.

It appeared that the business of the Company, in connection with the objectionable poles, was of a purely local character, and confined to the district of Quebec, and it was not declared by the charter to be an undertaking incorporated for the general advantage of Canada.

The jury, under direction of the Court, found a verdict of *guilty*, subject to the question reserved for the determination of the Court *in banco*, whether the said Company had authority under their statute, or were otherwise authorized by law, to place the poles in the said street; and if so, whether the Dominion Legislature had a legal right to grant such authority.

Held, sustaining the verdict, that the establishment of the Company in Quebec, was one purely of a local character and intended to serve local purposes, having no pretension to connect provinces, or even to cross navigable rivers, and of such a nature as to be *ultra vires* of the Dominion Parliament, and falling exclusively within the jurisdiction of the local legislature.

To give the Dominion Parliament the power to authorize the Bell Telephone Company to impede circulation and traffic in the streets of Quebec, one of two conditions would have been required; either the Company should have been incorporated for the purpose of connecting by telephone lines this province with any other or others of the provinces of the Dominion, or of extending its lines beyond the limits of this province; or it should have been declared by parliament to be for the general advantage of Canada or of two or more of the provinces.—*Regina* v. *Mohr*, Reserved Case, decided by Court of Queen's Bench, 8th June, 1881. 7 Q.L.R. 183.