The Legal News.

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JUDICIAL SALARIES.

The Judges of Canada are as ill-paid a class of officials as it is possible to find anywhere, when the nature of the duties imposed upon them is taken into consideration. In the Province of Quebec it would be a great boon to the community if we could readjust the judicial machinery so as to dispense with some of the Judges, and give those actually required a better remuneration. It is not uncommon to hear a lament over the lack of great men on the bench, but it may fairly be asked whether one of the first preliminaries to securing talent—an adequate remuneration—has been attended to. Thus far, with the exception of the newly constituted Supreme Court, the salaries paid to the Judges of the superior tribunals are no larger than pertain to many simply clerical positions in England. The list of officers quoted below shows that in England not only are subordinate officials enjoying ample salaries, but the Judges are not unmindful of the welfare of their relatives. The list is as follows, the amounts being in pounds sterling: Secretary of Presentations, the Hon. E. P. Thesiger, £400; Secretary of Commissions, Mr. W. M. Cairns, £300; Secretary of Causes, Mr. J. Romilly, £1,000; Clerk of Records and Writs, the Hon. E. Romilly, £1,200; Registrar in Lunacy, Mr. C. N. Wilde, £1,000; Queen's Coroner and Attorney, Mr. Fred. Cockburn, £1,200; Master at the Crown Office, Mr. J. R. Mellor, £1,200; Associate, Mr. T. W. Erle, £1,000; Associate Exchequer Division, Mr. H. Pollock, £1,000; Master, Sir F. Pollock, £1,500; ditto, Mr. G. F. Pollock, £1,500; Queen's Remembrancer, Sir F. Pollock, £2,000; Secretary to Sir J. Hannen, Mr. J. C. Hannen, £300; Secretary to Sir R. Phillimore, Mr. Walter Phillimore, £300; Registrar in Bankruptcy, Mr. J. R. Brougham, £1,300; Clerk of Assize for Home Circuit, the Hon. R. Denman, £953; Associate, Mr. R. Denman, Jr.; Clerk of Assize, Midland Circuit, Mr. Arthur Drake Coleridge (salary not mentioned); Clerk of Assize, Oxford Circuit, Mr. E. Archer Wilde, £1,000; and Clerk of Assize, Western Circuit, Mr. W. C. Bovill, £1,000.

DISPOSAL OF ARREARS.

In a communication to the *Times*, "A Solicitor" gives some information respecting the efforts which have been made at various times in England, in recent years, to clear off judicial arrears by the appointment of additional Judges. The writer takes occasion, from the facts stated, to deprecate additional judicial appointments without serious consideration. In the case of the Judicial Committee, however, there can be little doubt that the salaried appointments were urgently demanded by the exigencies of the case. In the year 1871, he says, a considerable number of cases were waiting for hearing before the Judicial Committee of the Privy Council. To remedy this an Act of Parliament was passed, under the provisions of which four permanent Judges were appointed, with salaries of £5,000 each. These Judges, without any extraordinary exertions (for they only sat five days a week for about five hours each day), cleared off all arrears, and, after an adjournment of upwards of three months, the Court recommenced its sittings in the autumn with a list of seven cases—viz., four Colonial Appeals, two Indian appeals, and an application for the prolongation of two patents. The writer estimated that this business would occupy about seven days, and thought it more than probable that at the expiration of about that time the learned Judges would have nothing to do.

In the year 1876, in consequence of complaints as to an arrear of appeals in the House of Lords, two Law Lords were appointed, each with a salary of £5,000 per annum, and the House was empowered to sit for the purpose of hearing appeals at any period of the year. The House sat for a few days in November, 1876, and then adjourned until the Session of Parliament in February, 1877, when its ordinary sittings were resumed. The arrears were thus, without difficulty, disposed of, and the House resumed its sittings in the fall with a list of 14 cases. Although this list would doubtless be added to before August next, the writer considered it certain that a great part of the time of the recently appointed Judges would be unoccupied.

"A Solicitor" believes that the services of Judges of the ultimate Courts of Appeal might have been made available for assistance in the intermediate Court of Appeal, in like manner as those of the Lord Chancellor are, and thus some of the Judges who are now required in that Court would have been free to act as Judges of First Instance. This would be somewhat like taking the Judges of the Supreme Court of Canada to sit in the Ontario Court of Appeal, a scheme which would be open to question. While it is certainly desirable that judicial functionaries should not be allowed to grow rusty, it is hardly expedient to shift them about from Court to Court in the endeavour to fill up every moment of leisure time.

THE TOOLS OF THE LEGAL TRADE, AND HOW TO CHOOSE THEM.

[Continued from p. 192.]

But, as the *law* that bodies on and above the earth tend toward its centre may be remembered, while all the numberless instances in which they have actually done so cannot be; so, in like manner, a man may learn and remember most of the *laws* which govern the overwhelming masses of decisions collected in our books of reports, provided they are duly and accurately pointed out to him. No man, with the reports alone, can collect all himself; because this would require, not only the reading of the reports, but the continual and extensive collating of case with case. For one to attempt this would be to consume a lifetime in the most laborious work before he was half ready to "put up his shingle" for practice.

The foregoing views, in which the thing to be done appears, disclose to us in some measure the sorts of tools needed. Of course, we need the reports; and, as helps to find the cases in the reports, the digests. Beyond that, we need to have the principles of the law in general, and those which govern each particular subject, collected for us.

Not to pause, therefore, on the obvious necessity of reports and digests, let us proceed to the more important matter. Under the names of treatises and commentaries on the law, we have great numbers of different sorts of books. The majority of them are, in fact, digests, and no more; and many of them are poor, at that. But there are among them works which are truly what they profess to be—varying, however, greatly in merit. A treatise or commentary, which is truly such, may be the most worthless book in a lawyer's library, or it may be the most valuable. It is absolutely essential, both to the study and the practice of the law, that there should be some good books of this sort, and very desirable that they should be multiplied to include all departments of legal knowledge. Their function is to *collect the doctrines;* in other words, to state—what the decided cases are mere evidences of—*the law.* They reduce the evidences to their results.

Let us see how this is. The law is the legal rule. The facts of cases are ever varying, but the rule remains the same. The author compares case with case, and, from a multitude of cases, derives a rule. Perhaps he is aided in this by some judge in some case having before him derived the rule, or perhaps he is not. If he is thus helped, he still has to see whether the judge was correct. If he is not thus helped, his labor is still greater. In either alternative the deduction which he sets down must be correct, or his book is no suitable tool for the practitioner to work with. Assuming the book to be thus correct, the practitioner, desiring to know what the result would be on a given state of facts, takes it in his hand, and finds in it the rule which covers the facts. These facts may never have transpired before; but he has become just as certain how this "new case" should be decided as how an old one was, if decided correctly. And in the same way he ascertains whether the adjudication in an old case was right or wrong. If, on the other hand, the book states the rule erroneously, it is a false guide; and the mariner might as well sail by a chronometer out of time as for him to employ the book in his practice.

It becomes, therefore, in every case in which a treatise or commentary is relied upon, a proper subject of enquiry whether the rule stated by the author is correct. The name of the author, however eminent, is not conclusive, nor is the fact that the ablest judge who ever adorned a bench has given voice to the same rule. Either circumstance, and especially the two combined, may furnish strong *prima-facie* evidence; but neither, nor both, can be accept-

ed as conclusive. A practitioner, therefore, who uses a tool of this sort should be in a position to withstand a challenge of it by his adversary.

This is one point of view, out of several, from which we may approach the disputed question as to how fully the cases should be cited in such a book. There is a difference in the scope and aim of books of this general sort. If the design is merely to present leading doctrines for the instruction of students and the occasional reading of practitioners, and the book is not meant to be used as a working tool in the legal trade, and if its doctrines are merely the familiar and admitted ones—that is a case which I shall not pause to discuss, for I am considering the tools. Where the book is a tool, and its temper is to be tried in hard conflicts in court, plainly it would be defective should it cite only a single case out of a hundred on a disputed question. And, I submit, it would be dishonest if it cited the cases on one side of such a question and made no allusion to the other, or even to the fact that the question is disputed; though, I acknowledge, there are good books by excellent authors, who are personally honest, written on exactly this principle. I distinguish the author from the man; the one is honest, the other is not.

Again, the great number of states in our Union, and the fact that under the United States government questions may be decided in differing Circuit and District Courts with no appeal to the Supreme Court, create a want in our text-books such as could not be known or appreciated in England. Every practitioner desires to see, first of all, the authoritative decision of his own court on the question in hand. To enable him to do this—that is, to present to each reader the one case which he specially craves, and no more—may require the citation of nearly half a hundred in all to the one proposition. An excellent lawyer, practising in a large eastern city, said to the writer a few days ago: "Do you not think it a great mistake in authors of legal treatises to make in them any citations from the southern and western reports? They are of no authority." Now, this suggestion, hard as by implication it might seem on the court in which this lawyer practises, reveals the common truth. The practitioner wants, first of all, the cases which will most influence the decision of his own tribunal. He will never thank the author of the book which he uses as a tool for leaving *them* out, however he may grumble about the rest.

And why should not the author of a book, which is to be used as a tool, having looked, as he ought, into all the cases for his own guidance, refer his readers to such as they also may have occasion to consult? It is said, by some, that the referring to many cases is a thing very easily done. But suppose it is easy; so is the copying of words from a judicial opinion, or from another text-book — except that, with some authors, it is impossible to make the marks of quotation. Yet this does not prove that words should not be copied. It is also said that the reader can find for himself the cases in the digests. That is not true, as to all of them, if the text-writer has done his duty. But, if it were, still a tool is, in part, for labor saving. Why should not the treatise serve for the finding of the cases, like a digest, when it can be made to so easily? Moreover, this fulness of citation protects the lawyer who uses the book from the opposite party, who else might produce to the court a case apparently adverse to the doctrine, with the exclamation, "There is something which it should open the understanding of your careless author to read!"

Such appears to be the true method, expressed in general terms. With a judicious author it will have many exceptions. Thus, some branches of the law are so heavy with cases, and already so well settled in their leading principles, that this could not be done without making his book unprofitably large. Suppose, for example, this plan was adopted and strictly adhered to by the writer of a treatise on evidence! His book, unless greatly larger than heretofore deemed necessary for this subject, could contain little or nothing besides cases. And there are so many other exceptions as considerably to qualify the rule.

Again, there are lawyers who, seeing the citations of cases to be very numerous, draw the inference that, therefore, the author is a slave to them, and his book is a mere digest. The truth is that the number of cases has nothing to do with the character of a book in this respect. One who can truly master a hundred can master equally a hundred thousand. An

incompetent writer may conceal his weakness with the hundred better than with the hundred thousand. There is no other difference.

I am now to give some practical hints as to the methods of testing a book which it is proposed to use as a tool.

There are few exceptions to the rule that a digest should contain all the cases. And a treatise should have all it professes to. We take into our hands the book, whether treatise or digest, and see what are its scope and claim. If these require all the cases, they also, by implication, require that each case be cited to every important point within the subject of the book. For example, should a work on dower pretend to have every case, and should Doe v. Roe be on the question of the marriage which will give dower, and likewise on the question of the effect of an ante-nuptial contract with a third person to sell the land to him, the holding-out of the author would not be fulfilled by his referring to Doe v. Roe only under the former head. We open the book to its Table of Cited Cases. Then we look through any volume of reports wherein we anticipate that there are cases which ought to be found within the book, turning the leaves carefully over, one by one. Coming to a case, we see whether it is in the Table of Cases. If it is not there, we note the fact and proceed. If it is there, we turn to the case at the place, or several places, to which we are referred, and observe what the author has done with it. If he has cited it at every important point, then, so far, his profession is realized; otherwise, it is not. To save time, we here anticipate a further enquiry by noting the manner of his use of the case. Do the text and it correspond? If he has undertaken to state its effect, is it correctly done? In this way we go on, comparing volume after volume of the reports with the book, until we become satisfied how far promise and fulfilment, as to the cases cited, correspond.

This method is easy and conclusive; but, in a given instance, we may be already in possession of knowledge which will enable us to shorten the process. Thus, I now take into my hands a digest on a special subject. The author, in his preface, says it incorporates all the American cases of any importance on the subject, omitting such as are obsolete or of merely local or temporary interest. I happen to know that not long since, a lawyer made a collection, not of all the cases, but of the cases which he deemed to be of this class, for a single year, and counted them. And I know that the cases on a given subject will average about the same in successive years, except that the number gradually increases with the growth of the country. So, I count the author's cases in his Table of Cases; and the result is that they number considerably more than a six years' supply, but less than a seven years'! This is discouraging. Still, let us not do him injustice, but look further. Perhaps he deems that the larger part of what are commonly termed states are not such in law, their admission to the Union being illegal; for which reason he ignores them. But, no; an examination readily shows that he has referred to cases in all, or nearly all, the states. And among them are cases from the inferior courts, as well as from the superior. Yet we discover that with him, contrary to Campbell, "distance" does not "lend enchantment to the view." We count the cases from one of the states remote from his home, and find that they number less than one year's supply. Next, is not his *selection very select*—only the very most important cases being included, and an enormous amount of chaff winnowed away? To answer this we open the book to the first title which happens to occur to us, upon which we know something of the cases, and, according to our ideas, the more important are not there, while a part of the less important are. But, stay; this may be deemed by him a minor title; let us turn to one which all will agree to be leading. Under this title, according to what we know to be common opinion, the most important cases consist of a considerable line decided by the Supreme Court of the United States. We look carefully through this title; well, we do find in it a paragraph on a single point, among several, decided in one case by this court. So, the Supreme Court of the United States is not beneath the author's notice. The point does not seem to us to be the most important one in the case, but perhaps it is. We remember that there is lying by us a carefully-written argument by counsel in a cause involving a question within this title. In it the case in the digest is referred to, but to a point other than the one digested; and, besides, there are seven other

cases from the Supreme Court here cited and commented on. The book, therefore, is not what it professes to be.

When examining a book, there is no more perplexing discovery than the not unfrequent one that there is no connection between the preface and the book itself. It is natural to apply the maxim *Falsus in uno, falsus in omnibus*, and condemn it at a breath. If a writer does not know better than really to suppose he has all the cases, or all the important ones, when perhaps he has not a quarter of them, evidently not much to edification can come from him. If he does know better, then we have forced upon us a topic not pleasant to discuss. But it is never possible to discover whether or not an author is, to the fullest extent, responsible for his preface or title-page. These are the parts into which, more than into any other, publishers in general deem themselves entitled to thrust their improving or deforming fingers; and, though an author may not concede their right, he may be so cornered by them that, practically, he has no alternative but to yield. The sale of a single volume, it may be readily anticipated, will be greater if the purchasing lawyers can be made to believe it has all the cases on its topic, than if the topic were swelled to four volumes, containing truly all of them. So, of the volume just mentioned, the advertisements by the publishers, as far as I have noticed, open by declaring it to contain all the American decisions upon its topic, from the earliest period to the time of publication; though they have an ending in the terms of the preface. Here is a conflict. Did the pressure proceed from them to the author, or from the author to them?

Moreover, a style of preface is sometimes adopted leaving it not quite clear to every reader what is meant. An author, for example, uses, in the main, the English text-books, instead of the reports, in making so much of his book as does not depend on the American decisions; and copies the citations from those books into his notes. Then, in his preface, he tenders a sort of acknowledgement of indebtedness to English authors for help in general and particular. There happens to be an English book which, I will suppose, is named *The Chum Cud;* it is in several volumes; and, among its subjects, is that of our American author. Other subjects in *The Chum Cud* have no relation to this one. It appropriates a separate volume to one such subject, and in some new editions of the work this volume is enriched by various cases not in the regular reports, or reported in them less perfectly. So, our American author makes a special bow to *The Chum Cud*, from which, he says, he has repeatedly drawn cases not in the reports, or given in them but imperfectly. Now, does he mean that he has mingled the topic of this special volume of *The Chum Cud* with his own? A slight examination will show that, most judiciously, he has not. Has he, in fact, drawn any cases, as he seems to say he has, from *The Chum Cud?* No, not from this special volume nor particularly from any volume of the edition mentioned. In one of the English text-books from which he compiled the English part of his own there is a reference to *The Chum Cud* for a single sentence in one case, which, however, is given at great length in the reports. So, our author has this reference for this one case; but for no other case does he cite *The Chum Cud.* And that is right; because it contains no cases of the sort under consideration, relating to his subject. What, then, is meant? Is the statement in the preface false? Of course it is not. Should your friend tell you that he had just been strengthened by eating an ice-cream out of the new moon, you would not understand him as literally affirming that the new moon is a dish, that ice-creams are in it, and that he had just been there and eaten one. Why? Because the thing is palpably impossible. You would rather understand him as indulging in some pleasant figure of speech In the instance before us it is not important to inquire what is the rhetorical name of the figure of speech in which the author of the preface indulged, or what is the literal meaning intended to be conveyed. But a practical difficulty distinguishes a case like this from the supposed one of the moon. Everybody sees the moon, and knows all about it. Few could be made to believe, even on the authority of an astronomer, that the new moon is a dish, filled with a ball of ice-cream. But *The Chum Cud* is not, in this country, a familiar object, like the moon; it is a book seen, with us, only in large libraries, and rarely or never used; and few American lawyers know what particular

editing has been done to its several volumes in each successive edition. Hence, profitless time has been spent in searching in the *Cud* for the supposed cases which it reports perfectly, but which are given imperfectly, or not at all, in the reports, upon the subject of the American book. So that, in an hour of disappointment, the ungracious thought has even arisen that an American author, who merely sought to please his readers, by an unique figure of speech in his preface, conveying really, it may be, the idea that the supposition of his having looked beyond the English text-books for the English law would be as mistaken as to suppose he had gone to *The Chum Cud* for cases not elsewhere to be found, had, instead thereof, attempted to mislead his readers by pretending to a wider research than truly he had made.

That such a mistake is not unnatural will appear from a further illustration. There is an excellent English book, familiarly known to the American profession, especially through successive American reprints. After a certain edition of it in England had been before the profession twelve years, a new and revised edition there appeared. And, when this new English edition had become well known both there and here, a fresh American edition was issued, "Reprinted," said the American editor, "from the last London edition." In fact, the reprint was from the twelve-year-old edition, and not from the one which was the last at the time when it was published and the title-page took its date. But, on a careful inspection, one could see that the date of the American editor's announcement was long before the day of publication, in the year preceding the one standing on the title-page, and a fair space of time anterior to the English issue. Moreover, plain on the title-page stood the English numbering of the edition, and the name of its English editor. The English date was nowhere given. Everything, therefore, was really all right, the same as in the case of the book which referred to *The Chum Cud.* But I have before me a magazine notice of this reprint, written by one of the most careful, honored, and able legal persons in the country, wherein he has observations, arising from an inspection of the reprint, upon legislative changes of the law in England "within the past quarter of a century!" Nor will any one blame him for the blunder. Few American lawyers can carry in their memories the numbers and dates of English editions, and the names of the respective editors, with such accuracy as to say that an American reprint, just issued, and professing to be from the "last London edition," is really from an earlier one.

Some will chide me for saying so much of the preface, which, they will affirm, is not, like the rest of the book, used as a tool of the legal trade. But a tool without an owner is of no use in anything; and a book, to be serviceable, must find purchasers. The preface is not sold separate from the rest, and, as Sir Knight Hudibras wisely reasoned of his horse and single spur, if the preface side of a book is stimulated to an "active trot," the tool side will go with it.

In truth, however, the preface is a tool, and often a very important one. If Mr. A has in court a cause involving large interests, and Mr. B is the lawyer opposed to him, then, if A can prevent B from laying before the tribunal a series of unanswerable adjudications on B's side, Mr. A may so manage as to obtain a victory to which he is not justly entitled. If Mr. B has already in possession a book which, according to the preface as he reads it, contains all the cases on the subject, so as to render any further looking unnecessary, yet it has not in fact all of them, or especially those on which B's success depends, here is "luck" for A. The preface has performed its mission as a tool, without A's putting it in motion. But A is on excellent social terms with B, open-hearted and generous, and perhaps B does not own the book; so A kindly loans it to him. Here the the preface, as a tool, dexterously handled by A, is lodged in the soft part of B's brain, and the cause is won.

We see, therefore, why a preface, when it is to do this sort of work, should be so framed as to admit of being read two ways. The sharp lawyers, looking into it, will comprehend the situation and purchase the book, not so much for personal use as to lend to their less sagacious brethren; and, of course, they will always have for it a good word. The other class, when able, will buy it to use themselves, because of what they believe it to be. If, for example, they understand it as professing to have all the cases, no doubt that it has them will cross their minds; and they will be happy in the reflection

that the labor of searching through many books is at an end, and that now they will be even with the other fellow who has beaten them so many times. In such happiness, though unfounded, we see a beautiful compensation which nature makes for the want of original bake in the understanding. And, assuming that such a lawyer belongs to the class who will learn only in the school of experience, he acquires, on being unexpectedly overcome through something which his book does not contain, a valuable lesson, lasting him through life.

[To be continued.]

CURRENT EVENTS.

ENGLAND.

Illicit Fees. — A Manchester Solicitor named Bent has been sentenced to five years' penal servitude for receiving property knowing it to have been stolen. It appeared that the prisoner defended a man charged with robberies at railway stations, and took part of the proceeds for his fees. Mr. Justice Brett, in passing sentence, said the prisoner was a grasping, rapacious man, who had betrayed his trust, and assisted the bad to plunder, and then stripped them of all they had.

A Vegetarian in Trouble.—An inquest was held in Oldham recently on a woman alleged to have been starved. Her husband was a strict vegetarian. She had been recently confined, and he refused to call in medical attendance or give her anything but food composed of wheat or rice. The jury censured the husband.

UNITED STATES.

Prisoner and Counsel. — A rather unusual scene took place in a Philadelphia Criminal Court on the 6th inst. An individual who bears the astonishing name, Blasius Pistorius, has been twice tried and convicted of murder in the first degree. The first conviction his counsel were able to set aside, but as the facts were such that there was no hope of a verdict of acquittal, they advised him to plead guilty of manslaughter, it being understood that this plea would be accepted. He refused to do this, and was convicted. A motion was thereafter made by his counsel for a new trial, at the argument of which he was present. After one of the counsel had spoken in favor of the motion, the petitioner arose and delivered a long speech, in which he reviewed the evidence, and made severe charges against the members of the legal profession who had had anything to do with the case, charging his own counsel with having been in collusion with the district attorney, and stating that he had been convicted in order to please Prince Bismark. The speech of the prisoner was read from a manuscript, and although quite lengthy, was listened to to the end by the court.

CANADA.

Treasure Seeking. — Apropos of the discussion respecting the perils to which Judges are exposed, an amusing incident is chronicled by the daily press. The gardener of Judge Coursol had been for several nights much alarmed by the appearance in the Judge's garden, at Montreal, night after night, of two men who conducted themselves in an extraordinary manner. He mentioned the matter to the Judge, who asked Detective Lafon to take the case in hand. Lafon accordingly, with a *posse* of police, concealed himself in the garden, and after patiently waiting some time, at the accustomed hour, eleven o'clock, the two mysterious men made their appearance. One was attired in priestly robes, which were covered with pictures of the saints, &c. Around his neck he wore a long string of beads, to the end of which a cross was attached; a watch hung from a chain down his back; a sword hung from his side in close companionship with a flask of holy water, and in his left hand he held a sponge attached by a wire, which he squeezed, occasionally squirting the water around him. Behind him came his confederate, holding up the robe of his principal from contact with the ground, and watching the passage of time as indicated by the watch upon his back. The two made their approach towards a certain apple tree in a most methodical manner, under which, when they arrived, they commenced their incantations, walking around it, the leader invoking the aid of heaven to bring up the treasure. They were arrested and brought to the Canning Street Station, where the principal gave his name as J. Sudan, a Swiss, and his confederate as Leopold Boone, a Belgian. Sudan said he had been told by one Racine that a great many noblemen had

hidden treasure in strong boxes and buried them in the ground, and his calculations showed him that one of them was buried in the Judge's garden, just under the apple tree they had visited. The Judge laughed heartily and ordered the prisoners' discharge.

THE INSOLVENT ACT.—The *Monetary Times* takes the following view of the failure to carry the repeal of the Insolvent Act: "The Dominion Board of Trade, at its last meeting, opposed the repeal of the bankrupt law by a vote of twenty-five against seven. And now the House of Commons has followed suit by a vote of ninety-nine against fifty-five. The question was brought up, on a motion for the second reading of a bill, introduced by Mr. Barthe, for the repeal of the Act. All question of the repeal of the law will probably be set at rest for the present. There are two ways of looking at the bankrupt law; one is, to regard it as a means of winding up, as it was intended to be, insolvent estates in an equitable manner, and giving the debtor a free discharge, if he were deserving of it; another is, to regard it as a means of increasing the number of insolvencies. There is some truth in both these views. The chief cause of insolvency is a glut in the market; and the bankrupt law may be perverted so as to make traders less careful of entering into transactions which lead to insolvency. Mr. Barthe saw in the number of failures a reason for the repeal of the law; a number which he stated at 7,554 since 1873, with aggregate liabilities to the amount of $100,000,000. In other words, every third trader had failed. But in the absence of a bankrupt law, there would certainly have been less than it has been. But there would have been great difficulty in winding up the insolvent estates, and it would have been done in a far less equitable manner. A permanent repeal of the bankrupt law is out of the question, though we are not certain that it might not occasionally be suspended, for a time, with advantage."

DIGEST OF QUEBEC DECISIONS.

The following is a digest of the decisions reported in Volume 21 of the Lower Canada Jurist, (1877) which have not been noted already in the LEGAL NEWS.

Abduction.—On an indictment for abducting a girl under the age of 16, where it appeared the girl had left her guardian's house for a particular purpose with his sanction, *held*, that the girl did not cease to be in possession of her guardian within the meaning of the statute 32 & 33 Vic., c. 20, s. 56.—*Regina* v. *Mondelet*, Q. B., p. 154.

Absentee.—An absentee cannot be legally summoned by advertisement on the ground that he has property in the district of Montreal, when the evidence shows that such property consists merely of a *bon*, not produced nor proved to be in the possession of the defendant.—*Poirier & Lareau*, Q. B., p. 48.

Account.—1. An account rendered and filed under a judgment of the court, will be rejected as irregular, if it does not exhibit the three heads of receipts, disbursements, and what remains to be recovered.—*Les Curé, &c., de Beauharnois* v. *Robillard*, S. C., p. 122.

2. An account unsustained by vouchers will not be rejected on motion, when it is established by affidavit that the vouchers are in the possession of third parties.—*Chevalier* v. *Cuvillier et al.*, S. C., p. 308.

Adjudicataire.—An obligation by an *adjudicataire* in favor of the Sheriff, by which the *adjudicataire* promises to pay the Sheriff the amount of his purchase money, with interest, is against public order and the laws regulating the office of Sheriff, and is, therefore, null.—*Berard & Mathieu*, Q. B., p. 234.

Affidavit.—See *Practice*.

Agent.—1. A notarial power of attorney to manage and administer the affairs of the constituent generally, and in so doing to hypothecate the constituent's property, is not an authority to sign promissory notes in the name of the constituent.—*Serre* dit *St. Jean et vir, & The Metropolitan Bank*, Q. B., p. 207.

2. The statements made by the agent, to the effect that he had authority to sign notes for his principal, cannot make evidence against the principal, the power being governed by the terms of the written power of attorney.—*Ib.*

See *Bank Account*.

Appeal.—1. The Court of Queen's Bench has discretionary power to allow an appeal to the Supreme Court, after the delay mentioned in the statute.—*Caverhill & Robillard*, Q. B., p. 74.

2. A security bond, duly signed by the Prothonotary, and stamped, cannot be set aside by

the Court of Queen's Bench on the ground that the security was executed by error and surprise.—*Mallette & Lenoir*, Q. B., p. 84.

3. A judge of the Court of Queen's Bench has power in Chambers to extend the delay for giving security on an appeal to the Privy Council beyond the delay ordered by the Court as that within which security must be given, whenever he is seized of the matter prior to the expiration of such delay; and, on security being put in within such extended delay, the respondents are estopped from executing the judgment appealed from.—*The Mayor &c. of Montreal & Hubert et al.*, Q. B., p. 85.

4. An appeal lies directly to the Supreme Court from the judgment of the Superior Court sitting in Review, in cases not under $2,000, where the judgment having been confirmed in Review against the party inscribing, no appeal lies to the Court of Queen's Bench.—*Abbott* v. *Macdonald*, C. R., p. 311.

See *Privy Council; Insolvent Act; Practice; Security for Costs.*

Arbitration.—The Courts have a right to refer to arbitration disputes between relations, where the facts are difficult of appreciation, without its being necessary that the contestation should be the result of relationship.—*Robert & Robert*, Q. B., p. 18.

Attorneys.—See *Practice.*

Auctioneer.—An auctioneer is not liable personally, on a sale made by him for a disclosed principal.—*Larue* v. *Fraser*, S. C., p. 309.

Aveu Judiciaire.—The *aveu judiciaire* cannot be divided, and, therefore, an admission that the price of sale was not really paid, as stated in deed, coupled with the statement that the deed was really a donation, and not a sale, cannot be divided.—*O'Brien* v. *Molson, & O'Brien* v. *Thomas*, S. C., p. 287.

Baggage.—See *Carrier.*

Bailiff.—See *Practice.*

Bill of Exchange.—See *Prescription.*

Bank Account.—Where a bank account has been kept, in the name of M. C., as the agent expressly of C. S., and that account has been closed, and a new account opened in the name simply of "M. C., agent," and it is proved that M. C. was in reality (although unknown to the bank), the agent not only of C. S. but of various other parties, all of whose funds were indiscriminately deposited and withdrawn in the name of "M. C., agent," C. S. cannot be held for an overdrawn balance due by "M. C., agent," in the absence of any special evidence to establish indebtedness to the bank by C. S. personally.—*The Metropolitan Bank* v. *Symes et vir*, S. C., p. 201.

Bon.—An unstamped *bon* is null, and an action founded thereon will be dismissed with costs, even though the defendant has not pleaded the non-stamping of the *bon.*—*Hudon & Girouard*, Q. B., p. 15.

Bornage.—1. Where an action *en bornage* is brought without previous demand, with a claim for damages joined thereto, of which no proof is made, the plaintiff will be condemned to pay the costs of the suit.—*Rochon* v. *Côté*, S. C. p 273.

2. See *Encroachment.*

Builder.—A builder cannot claim to prove, either by parole testimony or the oath of the opposite party, his claim to extra work, in the absence of the order in writing therefor required by art. 1690 C. C.—*Beckham* v. *Farmer*, S. C., p. 164.

Building Society.—See *Tirage au Sort.*

Calls.—A subscriber to a Company to be incorporated under Letters Patent, but who never subscribed after the incorporation, nor paid calls after such incorporation, is not liable to be sued on the stock thus subscribed for.—*The Union Navigation Company & Couillard*, Q. B., p. 71.

Capias ad Respondendum.—1. The mere filing of the statement in conformity with art. 764 C. P. does not entitle the party arrested to be released from custody, such statement being subject to attack by any creditor within the delays mentioned in art. 773.—*Bruckert* v. *Moher*, S. C. p. 26.

2. A writ of *capias* issued on the ground of fraudulent departure from the Province, will not lie, when the defendant is domiciled in the U. S., and is merely returning home after a temporary sojourn here, and there is no allegation of any special circumstances of fraud.—*Renaud & Vandusen*, Q. B., p. 44.

3. Where a *capias* has been declared good and valid, and the defendant, in appealing from the judgment, gives security for costs only, and files a declaration that he does not object to the execution of the judgment, the appeal does not suspend proceedings against the bail on

their bond to the Sheriff.—*Lajoie & Mullin et al.*, Q. B., p. 59.

4. An affidavit for *capias* is defective which deposes that the departure of the defendant "may" deprive the plaintiff of his recourse, in place of using the words of the Code of C. P. "will deprive."—*Stevenson* v. *Robertson*, S. C., p. 102.

5. An affidavit for *capias* which deposes in the alternative, that "the defendant has secreted or made away with or is about immediately to secrete or make away with his property, &c." is defective.—*McMaster* v. *Robertson*, S.C., p. 161.

6. An affidavit for *capias* is defective, which used the words, "peut être privé de son recours," in place of the words "privera, &c," and which omitted to depose as to the intent to defraud.—*Ford* v. *Léger*, S. C., p. 191.

7. The allegation in an affidavit for *capias* that deponent believes and is informed that the defendant is about to secrete "*ses biens meubles et effets mobiliers*," is defective, and the affidavit is also bad on account of the failure to state therein the special grounds and reasons of such belief.—*Augé* v. *Mayrand*, C. R., p. 216.

8. The pretensions of a defendant, who, after being arrested under a writ of *capias*, leaves the country and refuses to appear for examination, will not be favourably regarded by the Court.—*The Molsons Bank* v. *Campbell*, S. C. p. 280.

9. A writ of *capias* on the ground of secretion of property, may issue against a debtor resident in Ontario, for secreting property in Ontario, if the debtor be found in this Province.—*Gault et al.* v. *Robertson, & Robertson*, petr., C. R., p. 281.

10. A defendant arrested under a writ of *capias* must raise all his objections, *in limine litis*, against the sufficiency of the affidavit, and not merely in appeal.—*Heyneman & Smith*, Q. B., p. 298.

Carrier.—The notice on a passenger's ticket, that the carrier will not be responsible for the the safe-keeping of the passenger's baggage, is not binding on the passenger, without proof of notice to him of this limitation of liability.—*Woodward* v. *Allan et al.*, S. C., p. 17.

Cause of Action.—1. In an action by a creditor of a Railway Company against a shareholder in such Company, to recover the amount unpaid on his shares, the cause of action arose at Montreal, where the Company had its principal office, and where judgment was rendered for the debt due by the Company and execution was also issued, and not at Bedford, where the shareholder subscribed for his shares.—*Welch* v. *Baker*, S. C., p. 97.

2. The cause of action is determined by the place where the note sued on is made, and not by the place where it is made payable.—*Mulholland et al.*, v. *The Company, &c., of A. Chagnon et al.*, S. C. p. 114.

Certiorari.—See *Licence Act; Jurisdiction.*

Circuit Court.—See *Jurisdiction.*

Collocation, Report of.—See *Practice.*

Commercial Debt.—See *Prescription.*

Contrainte par Corps.—Where a rule for *contrainte par corps* has been made absolute, it is not competent to the party condemned, by a subsequent petition, to allege payment and non-indebtedness previous to the judgment on the rule.—*Genereux* v. *Howley et al.*, & *Jones*, petr., S. C. p. 162.

Composition.—See *Promissory Note.*

Congé Défaut.—1. The *congé défaut*, on a rule, will be granted without costs.—*Larin* v. *Desorges, & Séré, mis en cause*, S. C. p. 206.

2. When *congé défaut* is asked by a defendant, under art. 82 C. C. P., notice of the application to plaintiff is unnecessary.—*Chalut* v. *Valade et al.*, S. C. p. 218.

Costs.—See *Congé Défaut; Practice.*

Costs, Security for.—1. When claimed by dilatory exception and security given, the costs on the exception will be reserved to abide the issue of the suit.—*Akin* v. *Hood*, S. C. p. 47.

2. Where an opposant is a non-resident, though his domicile has been in this Province, he will be required to give security for costs.—*Gravel* v. *Mallette, & Mallette*, opposant, S. C. p. 162.

3. The Court in Montreal has no jurisdiction to order that the security for costs offered by the plaintiff, who appealed from a judgment of the Court for the district of Montreal, should be taken before the Prothonotary or a Judge in the district of Rimouski.—*Fournier* v. *Delisle*, S. C. p. 163.

4. A demand for security for costs from an insolvent will not be granted unless the insolvent is such under the Insolvent Act.—*The Niagara District Mutual Fire Insurance Company* v. *Mullin*, S. C. p. 221.

5. An Ontario Insurance Company, though doing business in Montreal, is bound to give security for costs.—*The Niagara District Mutual Fire Insurance Company* v. *Macfarlane et al.*, S. C. p. 224.

See *Insolvent Act.*

Damages.—The Corporation of Montreal is liable for damages caused by the bad state of one of the public footpaths in the city.—*Grenier* v. *The Mayor et al. of Montreal*, Q. B., p. 296.

See *Priest.*

Delegation.—1. The one in whose favour a delegation is made in a deed of sale may sue for the money thus delegated to be paid to him, without alleging any acceptance of such delegation.—*Brisbois* v. *Campeau*, S. C. p. 16.

2. The registration of a deed containing a delegation of payment does not operate an acceptance of such delegation.—*Mallette et al.* v. *Hudon*, S. C. p. 199.

See *Unpaid Vendor.*

Demand of Payment.—The want of demand of payment cannot be urged successfully, in the absence of a deposit in Court of the debt due.—*Smallwood* v. *Allaire*, C. R. p. 106.

Donation.—An unenregistered deed of donation of moveables cannot avail as a title to such moveables against creditors of the donor.—*Crossen* v. *O'Hara, & McGee*, opposant, S. C. p. 103.

See *Married Woman; Marriage Contract.*

Draft.—Where a Bank discounts the unaccepted draft of A on B, for the purpose of retiring B's acceptance on a former draft, on the faith of a telegram from B to A to draw on B for the purpose aforesaid, the Bank may recover the amount of such draft on B, although he subsequently refuse to accept the same.—*The Molsons Bank* v. *Seymour et al.*, S. C. p. 82.

Election.—1. Where the respondent, in answer to a petition contesting his election as member of the House of Commons, makes counter charges against the unsuccessful candidate, who is not a party to the cause, and in whose behalf the seat is not claimed, and prays that he be disqualified, such petition is an election petition, and must be accompanied by security and all other formalities prescribed by the Dominion Controverted Elections Act, 1874.—*Somerville et al. & Laflamme*, S. C. p. 240.

2. The section 100 of the Dominion Controverted Elections Act of 1874 does not preclude the recovery of accounts for lawful expenses connected with an election, unless the expenses were incurred with a corrupt or illegal motive.—*Workman & The Montreal Herald Printing and Publishing Company*, Q. B. p. 268.

3. The costs of an election feast, after an election (in 1867) had been closed, are not recoverable.—*Guevremont & Tunstall et al.*, Q. B. p. 293.

Encroachment.—In an action for encroachment on a lot of land by building beyond the line of division between it and the adjoining lot, where the encroachment is clearly proved, judgment may be rendered accordingly without the necessity of a legal *bornage.*—*Levesque & McCready*, Q. B. p. 70.

Enquête.—An inscription for *enquête* must be filed at least eight days before the day fixed for the trial.—*Latour* v. *Gauthier*, S. C. p. 39.

Evidence.—The entries in a merchant's book make complete proof against him.—*Darling & Brown et al.*, S. C. p. 169.

See *Agent; Builder; Interest; Trouble.*

Exception à la forme.—1. The description of a plaintiff in a writ of summons, as carrying on the "trade and business of banking in the City of Montreal, in the district of Montreal and elsewhere," is a sufficient compliance with the requirements of Art. 49 C. P.—*Bureau & The Bank of British North America*, Q. B. p. 261.

2. An appearance and plea by a person who was not served in the cause, though the writ purported to be addressed to him, will be rejected with costs where the evidence showed that he was aware of the error in the writ. In such a case if the party fears that judgment may be erroneously rendered against him, his proper course is to come in by intervention.—*The Exchange Bank of Canada* v. *Napper et al.*, S. C. p. 278.

Exception Déclinatoire.—See *Cause of Action; Jurisdiction.*

Executive Council.—The members of the Executive Council who concur in an order of Council sanctioning the sale by the Crown of certain real property, and the execution of a deed of sale in accordance with such order, cannot be sued *en garantie* by the purchaser, to guarantee and indemnify him against an action brought by the Attorney-General for

and on behalf of Her Majesty, to set aside the deed of sale, on the ground (*inter alia*) that the sale itself was *ultra vires*, and that the deed was executed without lawful authority.—*Church*, Atty. Gen., *pro Regina*, v. *Middlemiss & Middlemiss*, plff., *en gar.* v. *Archambault et al.*, defts., *en gar.*, S. C. p. 319.

Executors.—1. Executors are not liable, jointly and severally, for the payment of the balance of moneys collected by them, but are only liable each for the share of which he had possession.—*Darling et al. & Brown et al.*, S. C. p. 125.

2. Executors are not liable to pay more than 6 per cent. interest on the moneys collected by them after their account has been demanded, in the absence of proof that they realised a greater rate of interest by the use of the money. —*Ib.*

Exchange.—In the case of an exchange of horses, it is not competent for a party, sued on a note given as boot on such exchange, to plead non-liability, on the ground of a redhibitory vice in the horse received by him, and without bringing any action to set aside the exchange; especially where such plea is filed several months after the defendant knew of the vice and had tendered back the animal.—*Veroneau* v. *Poupart*, S. C. p. 326.

Experts.—When the report of experts has once been made, they are *functi officio*, and cannot of their own motion make a new report on the ground that the first is imperfect or defective.—*Beckham* v. *Farmer*, S. C. p. 38.

Extra Work.—See *Builder.*

Foreign Judgment.—In an action on a foreign judgment and the usual *assumpsit* counts, where the plaintiff only files a copy of the judgment which does not reveal the cause of indebtedness, he will be ordered to file an account.—*Holme* v. *Cassils et al.*, S. C. p. 28.

Guarantee.—An order to "give bearer what he wants" does not contain a continuing guarantee.—*Lacroix & Bulmer*, Q. B. p. 327.

Habeas Corpus.—After a prisoner is committed for trial for arson, if the depositions on which the commitment is based do not establish his guilt, he will be admitted to bail.—*Exparte Onasakeurat*, petr., S. C. p. 219.

Hypothecary Action.—A hypothecary action may be instituted against the direct debtor, as well as against a *tiers détenteur*, when such direct debtor is still in possession of the property hypothecated by him.—*Lebrun* v. *Bédard*, S. C., p. 157.

Imperial Statute, 22 *and* 23 *Vic. ch.* 63.—Under this Statute in any case depending in any court, in any other portion of Her Majesty's Dominions, if the law applicable to the facts of the case is the law administered in any other part of Her Majesty's Dominions, and is different from the law in which the court is situate, it is competent to the court in which such action may depend to direct a case to be prepared, setting forth the facts, and to pronounce an order remitting the same for reference to the Superior Court, administering the law applicable to the facts of the case, and desiring said Court to pronounce its opinion upon the questions submitted to it. And such case is brought before the said Superior Court by petition of any of the parties to the action, praying the Court to hear the parties or their counsel, and to pronounce its opinion on the questions submitted.—*Noad* v. *Noad*, S. C., p. 312.

Innkeeper.—An innkeeper is responsible for the effects stolen from a traveller while lodging in his house, where it is not proved that the theft was committed by a stranger and was due to the negligence of the traveller; and the oath of the traveller is sufficient to prove the loss, as well as the value of the things stolen.—*Gerikin & Grannis*, Q. B., p. 265.

Insolvent Act.—1. A party who has for six months acquiesced in the proceedings taken against him under the Act cannot afterwards question the jurisdiction of the Court.—*Fulton* v. *Lefebvre, & Lefebvre*, ptr., S. C., p. 23.

2. A *capias* may lie against a defendant who has assigned under the Act.—*Robertson et al. v. Hale, & Hale*, ptr., S. C., p. 38.

3. An appeal to the Court of Queen's Bench does not lie from any judgment of the Superior Court under the Insolvent Act, which is not a final judgment.—*Mackay* v. *The St. Lawrence Salmon Fishing Company*, Q. B., p. 76.

4. Notwithstanding an assignment under the Act by a defendant in a suit, he may still continue to act in the suit in his own name.—*Morin* v. *Henderson*, S. C., p. 83.

[To be concluded in next issue.]