The Legal News.

Vol. VII. MAY 10, 1884. No. 19.

REVOCATION OF PARDON.

Under this heading we noticed (Vol. VI., p. 49) a singular case which occurred in Ohio. A convict under sentence of imprisonment for life, obtained a pardon from Governor Foster on the faith of medical certificates declaring that he was in the last stages of a fatal disease. But by the time the man got home there was no trace of ailment left. The Governor, learning that he had been duped, revoked the pardon. The case was taken to the Supreme Court of Ohio, and the decision of that tribunal is now reported (*Knapp* v. *Thomas*). The Court holds "that a full, unconditional pardon, delivered, is irrevocable; and where a person imprisoned on a sentence for felony seeks a discharge by *habeas corpus*, based on such pardon, the pardon having been issued by the Governor pursuant to the constitution and statute, on the certificate of the physician to the penitentiary that the prisoner is in imminent danger of death, it is not competent in this State, under existing statutes, to impeach such pardon in such proceeding, by proof that the physician's certificate was obtained by false representations of the prisoner, and his fraudulent acts, with respect to his health, such representations having been made, and acts done, for the purpose of obtaining such certificate and such pardon."

EUSTON v. EUSTON.

The English papers contain a report of the trial in this case before the Probate, Divorce and Admiralty Division. It is described by the *Times* as "perhaps the most extraordinary case ever tried in the Divorce Court." The circumstances are certainly very peculiar, and if met with in a work of fiction would be pronounced very improbable. The petition was presented by the Earl of Euston, eldest son of the Duke of Grafton, for a declaration of nullity of marriage, on the ground that when he married the respondent she had a husband living. The respondent was a courtesan known as "Kate Cooke," with whom the petitioner became acquainted in 1871. He was induced to marry her, and settled upon her £10,000 to which he was entitled on his own account. The union, naturally, was an unhappy one, and the consorts, after a good deal of discomfort, separated finally in 1875. Suspicion being aroused that the woman had a husband living at the time the marriage ceremony was performed between her and the Earl, inquiries were pursued under great difficulties, and it was ascertained at last that "Kate Cooke" had been married to one George Manby Smith in 1863, and that Smith was still alive. It was supposed that he had gone down in a ship which sailed from London for Australia, but the person drowned, it was proved, was named George Maslin Smith.

At this stage the case for annulling the marriage seemed to be complete, and suit was commenced. But never were solicitors more disappointed. The respondent, it is true, was forced to admit the identity of Smith, but it appeared that Smith, on his part, had a wife living at the time the ceremony of marriage was performed between him and "Kate Cooke." Therefore that marriage was invalid, and "Kate Cooke" was lawfully married to the nobleman who is now in the direct line of succession to the dukedom of Grafton. The petition was therefore dismissed.

NEW PUBLICATIONS.

Parties to Actions: The Law respecting Parties to Actions, legal and equitable; by Horace Hawes, Counsellor at Law.—San Francisco; Messrs. Sumner Whitney & Co., Publishers.

This work, which is issued in the neat and convenient form of a pocket volume, purports to give the gist of the decisions of the courts upon the subject of Parties to Actions, as concisely as is consistent with a full presentation of the points decided, and by arrangement of the subject-matter and index, to place this information at the "finger-tips" of the lawyer. It is a work to be kept at the elbow of the busy practitioner, rather than

on the shelf of the scholar, as the author says in his preface. The division by chapters is as follows:—

I. Parties, their rights and remedies; II. Jurisdiction; III. Necessary and proper parties; IV. Aliens, non-residents, Indians, Trustees, Assignees, etc; V. States, counties, cities and towns; VI. Public officers; VII. Bankrupts and insolvents; VIII. Infants, Insane Persons, Idiots; IX. Husband and wife; X. Executors and administrators; XI. Landlord and tenant, Joint tenants, and tenants in common; XII. Master and servant, Principal and agent, Principal and surety, Bailor and bailee; XIII. Partnerships, Corporations, unincorporated associations, etc. XIV. Of the Joinder of Parties. XV. Of the misjoinder and non-joinder of parties, amendment and new parties. XVI. Abatement, revivor, etc.; XVII. Intervention; XVIII. Interpleader.

There is an excellent Index, covering 200 pages.

LYRICS OF THE LAW.—A recital of songs and verses pertinent to the law and the legal profession, selected from various sources, by J. Greenbag Croke. Publishers: Sumner Whitney & Co., San Francisco, 1884.

This collection of lyrics of the law embraces a great many scraps of interest. Some of them may seem without value to those actively engaged in the practice of the profession, but they would be useful and amusing in proper hands at a bar dinner. We have only room at present for the following:—

"A LAWYER'S WILL.

This is my last will and testament:
Read it according to my intent.
My gracious God to me hath given
Store of good things, that, under heaven,
Are given to those that love the Lord,
And hear and do His sacred word:
I therefore give to my dear wife
All my estates, to keep for life,
Real and personal, profits and rents,
Messuages, lands, and tenements;
After her death I give the whole
Unto my children, one and all,
To take as 'Tenants in Common' do
Not as 'Joint Tenants', *per mie, per tout.*
I give all my Trust Estates in fee
To Charlotte, my wife and devisee,
To hold to her, on trust, the same
As I now hold them in my name.
I give her power to convey the fee
As fully as though 'twere done by me,
And here declare that from all charges,
My wife's "receipts are good discharges."
May God Almighty bless his word
To all "my presents from the Lord,"
May he his blessings on them shed
When down in sleep they lay their head.
And now, my wife, my hopes I fix
On thee, my sole executrix—
My truest, best, and to the end,
My faithful partner, crown, and friend.

In witness thereof, I hereunto
My hand and seal have set,
In presence of those whose names below,
Subscribe and witness it.

26th January, 1835.

J. C. G. [L.S.]

This will was published, sealed and signed,
By the testator, in his right mind,
In presence of us, who, at his request,
Have written our names these facts to attest."

THE PROPOSED CODIFICATION OF OUR COMMON LAW: A paper prepared at the request of the Committee of the Bar Association of the city of New York, appointed to oppose the measure. By James C. Carter, a member of the Committee. New York, 1884.

This is a very learned and interesting essay on the subject of the proposed codification of the common law of the State of New York. Mr. Carter is an earnest opponent of the scheme, and the Bar Association apparently agree with him, as they have directed that three thousand copies of Mr. Carter's paper be printed and circulated among the members of the Legislature and the Bar of the city and State. We regret that we have not been able to give this pamphlet such a careful examination as it deserves. With us codification is an established fact, and although complaint may be made of obscurity in some parts and omissions in others, yet no one suggests that the Code should be swept away. As Sir James Stephen says, referring to the proposed Criminal Code in England:—"When a sufficient number of judicial decisions have clearly defined a principle, or laid down a rule, an authoritative statutory enactment of that principle or rule superseding the cases on which it depends is a great convenience on many well-known grounds, and especially because it

abbreviates the law and renders it distinct to an incredible extent." A carefully prepared code is a great boon, and we predict that the advocates of codification in the State of New York will sooner or later prevail.

A Short Response to a Long Discourse: An answer by Mr. David Dudley Field to Mr. James C. Carter's pamphlet on the proposed Codification of our Common Law. New York, 1884.

In this paper Mr. Field vindicates his draft Code from the charges of Mr. Carter. He rather sneers at the New York Bar Association as "a highly respectable association of 800 lawyers out of 7,000 in the city—one in nine," and declares that there is nothing new in Mr. Carter's pamphlet. "It is the same old committee, so far as appears, and it is the same old story, which the Legislature, the Bar, and others interested in the subject have heard time and time again, for the last nine-and-thirty years. The voice is a little disguised, it may be, when heard from behind the curtain, but as the actor advances to the foot-lights, we behold the same visage glaring at us that has glared so often before. To change the figure a little abruptly, 'The voice is Jacob's voice, but the hands are the hands of Esau.'" It may be judged from the foregoing that Mr. Field's style is animated, and his reply is interesting reading.

Letters upon the Interpretation of the Federal Constitution, known as the B. N. A. Act, 1867, by the Hon. T. J. J. Loranger. Quebec, 1884. First Letter.

This is a republication of letters which appeared in the daily newspapers, treating of federal and provincial relations. In the first Letter the *Mercer* case is discussed. Mr. Loranger, it is well known, holds extreme views on the subject of provincial rights, and in these Letters his pretensions are supported in a voluminous argument.

Catalogue by Subjects, of the Books Presented to McGill College by Mr. Justice Mackay.

Mr. Justice Mackay, on retiring from the Bench of the Superior Court, generously presented his very valuable law library to McGill University. We have now before us a catalogue by subjects of the works comprised in the gift, showing that for a private collection it is unusually complete, and forms an important adjunct to the University library.

Speech of Mr. Macmaster, M. P., on the Liquor License Act, 1883.

Mr. Macmaster, Q. C., delivered an able address in Parliament, in the course of the debate on the McCarthy Act, on the 18th of March last. We have received a pamphlet copy of the *Hansard* report, which makes a valuable addition to the literature of the Constitutional Act. Mr. Macmaster quotes a remark made to him by Mr. J. P. Benjamin in England, referring to the difficulties which occur in the interpretation of a written constitution: "You appear to have great difficulty in interpreting your Constitution, which has only been in existence for fifteen years; but I can tell you, after a practice of thirty odd years in the United States, and subsequently in England, where I often had to do with cases relating to the Constitution of the Colonies in the House of Commons and the House of Lords, that these cases are increasing year by year and day by day, and although we thought in the United States that the difficulties of our Constitution would be settled in the first fifteen or twenty years of its existence, the present day has developed difficulties that we never contemplated, and that are ten times as great as any that existed in the first half century of its existence."

NOTES OF CASES.

SUPERIOR COURT.

Montreal, Jan. 15, 1884.

Before Mathieu, J.

Hon. Sir A. Campbell, es qual. v. Judah.

Rights of the Crown—Compensation—C. C. 9, 1187, 1188.

Art. 9 *of the Civil Code refers only to such rights and prerogatives of the Crown as are attributions of the sovereignty, and not to such rights as may be possessed equally by subjects. Hence Articles* 1187 *and* 1188 *of the Code apply to ordinary claims of the Crown,*

and compensation may be pleaded between a claim of the Crown for the price of land sold and a debt due by the Crown for salary.

The judgment, which fully explains the point decided, is as follows :

" La cour, après avoir entendu les parties par leurs avocats sur la réponse en droit par le demandeur au second plaidoyer du défendeur en cette cause, examiné la procédure et délibéré :

" Attendu que le demandeur ès qualité de ministre de la justice et de procureur-général pour la Puissance du Canada, et comme tel agissant pour et au nom de Sa Majesté, réclame du dit défendeur comme légataire universel de feu Henry Judah, décédé le 10 février 1883, en vertu du testament de ce dernier en date du 1er mai 1876, qui fut prouvé dans la cour supérieure à Montréal le 14 février 1883, et enregistré au bureau de la division d'enregistrement de Montréal Ouest le 1er juillet 1883, la somme de $18,941.92, pour intérêt sur la balance du prix de la vente de l'ancien bureau de Poste à Montréal, No. 146 du Quartier Ouest de la cité de Montréal, consentie à Maurice Cuvillier par l'Honorable Sir Hector Langevin, K.C.M.G., ministre des Travaux Publics de la Puissance du Canada, au nom de Sa Majesté la Reine, le 4 novembre 1873, conformément à certaines conventions entre le dit Maurice Cuvillier et l'Hon. Alex. Campbell, maître-général des Postes de la dite Puissance, en date du 3 avril 1871, qui furent confirmées par un ordre du Gouverneur-Général en Conseil du 8 mai 1871, quel acte de vente sous seing privé du 4 novembre 1873 fut déposé dans les minutes de W. A. Phillips, notaire, le 25 octobre 1875, et enregistré le 7 décembre 1875, lequel terrain fut ensuite vendu par le dit Maurice Cuvillier à Henry Hogan, par acte devant le dit Mtre. Phillips, notaire, le 25 octobre 1875, puis vendu par le dit Henry Hogan au dit Henry Judah, par acte devant le même dit notaire, le 14 décembre 1876, enregistré le 21 décembre 1876 ;

" Attendu que le dit défendeur, dans son second plaidoyer, offre en compensation de la réclamation du demandeur ès qualité et pour autant la somme de $568.34 pour loyer et dépenses de bureau et la somme de $7,060, pour balance du salaire du dit Henry Judah comme commissaire sous le statut pour l'abolition des droits seigneuriaux dans le Bas Canada depuis le 31 mars 1879 jusqu'à la date de sa mort ;

" Attendu que le dit demandeur ès qualité demande le renvoi de cette partie du dit second plaidoyer du dit défendeur parceque le défendeur ne peut plaider compensation contre la couronne, et que la dette par lui réclamée et offerte en compensation n'est pas également claire et liquide ;

" Considérant que par les dispositions de l'article 1188 du code civil, la compensation s'opère de plein droit entre deux dettes également liquides et exigibles et ayant pour objet une somme de deniers ;

" Considérant que la créance offerte par le défendeur en compensation pour autant de la créance du demandeur ès qualité, est une créance liquide et qui parait exigible d'après les allégations du plaidoyer du défendeur ;

" Considérant qu'il est bien vrai que la couronne n'est pas mentionnée dans les articles 1187 et 1188 du code civil ; mais que les dispositions de l'article 9 du code civil, qui décrètent que nul acte de la législature n'affecte les droits ou prérogatives de la couronne, à moins qu'ils n'y soient compris par une disposition expresse, ne s'appliquent qu'au cas où ces droits ou prérogatives appartiennent à la couronne comme attribution de la souveraineté, et que ces dispositions ne s'appliquent pas au cas où les droits de la couronne sont des droits qui lui sont communs, et qui peuvent appartenir également aux sujets ;

" Considérant que dans l'espèce la réclamation du demandeur ès qualité est pour le prix d'une vente d'immeuble, et que la qualité de créancier du demandeur ès qualité est une créance ordinaire qui ne fait pas partie du domaine de la couronne et des droits de la souveraineté, et que les dispositions des articles 1187 et 1188 du code civil lui sont applicables ;

" Considérant que par le serment du couronnement tel que decrété par le statut impérial de 1688, chapître 6, de la première session du règne de Guillaume et Marie, le Roi ou la Reine jure de gouverner le peuple du royaume conformément aux statuts passés en parlement et aux lois et coutumes de ce royaume ;

"Considérant que ce ne serait pas conforme aux dispositions de ce serment si Sa Majesté pouvait acheter et vendre des propriétés et exercer les droits des sujets sans être soumise aux lois qui les concernent et qui ont été sanctionnés par Sa Majesté en parlement;

"Considérant que la dite réponse en droit est mal fondée : A renvoyé et renvoie la dite réponse en droit."

Answer-in-law dismissed.

Church, Chapleau, Hall & Atwater, for the plaintiff.

A. Branchaud, for the defendant.

SUPERIOR COURT.

MONTREAL, April 29, 1884.

Before JOHNSON, J.

DENAULT es qual. v. BANVILLE.

Action en déclaration de paternité—Evidence.

In an action en déclaration de paternité, where the defendant admitted the connection with the mother, but assigned a date which would disprove his paternity of the child, and there was no evidence of improper conduct of the mother otherwise: that the Court would give weight to her declaration on oath that the defendant was the father. Absolute certainty in such cases is not required: it is sufficient to establish a strong probability that the defendant is the father.

JOHNSON, J. This is an action *en déclaration de paternité* brought by the mother of a child to whom she has been appointed tutrix, and of which the defendant is alleged to be the father. The defence—a most cruel one if unfounded—is that the mother was a woman of loose habits, and that the child, which was of full term, could not be the defendant's, as he only had connection with her in December, 1882, and the child was born in July, 1883. The defendant therefore acknowledges his connection with this woman, but suggests, (and we have only his word for it) that it took place in December. As to alleged intimacy with other men, it is not proved. There were some technical objections made as to the registration of the *tutelle;* but they have no weight.

The woman swears the connection took place in October, 1882, and that the defendant is the father of the child.

Other evidence shows that it is probable, and there is nothing to suggest a loose life in this woman, nor that any one else might have been the father of her child.

We have nothing to do here now with any right that might be claimed by this woman for herself. She asks nothing for herself—it is not an action of damages:—there is nothing before the Court but the right of the child to have its paternity declared, and to be maintained, and the woman's evidence for the child is quite admissible. Fournel in his well known and well written treatise, says at page 118, speaking of the "*exception tirée de l'inconduite de la* "*fille enceinte:* Cette exception est devenue le "moyen banal employé par ceux qui sont "poursuivis en déclaration de paternité. Ils "ne manquent jamais d'opposer que la com- "plaisance qu'ils ont éprouvée n'était point "une faveur particulière, mais que plusieurs "autres ont participé au même destin; et par "cette imputation d'inconduite et de désordre, "ils cherchent à éluder les dommages et inté- "rêts, et la charge de l'enfant.

"Mais il s'en faut bien que cette exception "produise cet effet; elle ne peut (lorsqu'elle "est justifiée) s'appliquer qu'aux dommages et "intérêts, sans que l'accusé puisse s'en aider "pour la charge de l'enfant." In the present case, as I have said, nothing whatever is proved against this woman in the way of other misconduct; but if there was, what says Fournel? At the following page (119): "Mais, quand "l'inconduite de la fille est bien établie dans "la cause, ce n'est point une raison pour dis- "penser l'accusé de se charger de l'enfant, si "d'ailleurs il est suffisamment avéré qu'il y a "eu copulation entre les parties." Here the fact is admitted in the plea. Surely the defendant would not have admitted it if untrue, and as surely "he cannot by assigning a particular "date to it, negative the fact itself." The late Mr. Justice Rolland used to say in these cases: "The Court must find a father for this child." Fournel says the same thing. He says: "On "ne peut le chercher que parmi ceux qui ont "fréquenté la mère." Here we have no sug- "gestion of any one in particular who could have been the father, except the defendant. Fournel observes in another place (120) that the word of the mother is very weighty in such a case, and that "even supposing she might

" be wrong," " les magistrats ne craignent pas " de faire une injustice, en chargeant de l'édu- " cation de l'enfant celui qui peut au moins en " être le père, et qui n'offre aucun moyen plau- " sible pour la négative. De deux possibilités " il faut choisir celle qui étant plus vraisem- " blable, est aussi la plus utile à l'enfant : il " lui faut un père " (as Ch. J. Rolland used to say): " Le bon sens veut qu'on le choisisse " parmi ceux qui se sont exposés à le devenir. " Après tout, l'objet des magistrats n'est pas " de rencontrer nécessairement l'auteur de la " paternité naturelle. Il suffit qu'il y ait dans " les présomptions de quoi asseoir *une pater- " nité vraisemblable.* Celui sur qui elle tombe " ne doit imputer qu'à son imprudence et à " son inconduite de s'être exposé à ce soupçon." And then, Fournel gives some most extraordinary cases which I will forbear from referring to more particularly, but going on the main principles laid down by the recognized authority of Fournel, I say what else is *vraisemblable* in this case, except the paternity of the defendant? I say more: I say this infamous defence alleging the misconduct of the woman, failing as it does most miserably, what other defence has this man before the Court? None, absolutely none, but technicalities and sophistries which are too futile to be noticed. I have no doubt that upon the well understood principles governing such a case, the judgment must be for the plaintiff: and accordingly the defendant is held to be the father of the child; and to pay for its support.

Judgment for the plaintiff.

E. N. St. Jean for the plaintiff.

Mercier & Co. for the defendant.

CIRCUIT COURT.

MONTREAL, January 25, 1884.

Before DOHERTY, J.

CARMEL v. ASSELIN et al., and GIRARD, opposant.

Partnership—Dissolution.

1. *The members of a general partnership are jointly and severally liable for the obligations of the partnership, whether it be still existing or not.*
2. *The creditor of such partnership is not obliged to proceed against the property of the firm before seizing the effects owned by the partners individually.*

The defendants are hotel keepers at Montreal, carrying on business under the firm of " P. Asselin & Cie."

The plaintiff, a judgment creditor of the firm, caused the effects of Girard, one of the partners, to be seized at his domicile. Girard opposed the seizure on the ground that his individual property could not be seized under a judgment against the firm for a debt of the firm. It was also alleged that the notice of sale was irregular.

The plaintiff contested the opposition, alleging that the firm was dissolved, and had no known place of business nor assets, and that the defendants were jointly and severally liable.

The COURT dismissed the opposition.

Sarasin for opposant.

D'Amour for contestant.

CIRCUIT COURT, 1881.

SHERBROOKE, July 2, 1881.

Coram DOHERTY, J.

ANDERSON v. THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

The Railway Act—Actions for indemnity—Limitation of six months.

The six months' prescription under " The Railway Act" applies to actions for the value of horses or cattle killed on the railway track.

This was an action of damages, in which plaintiff claimed, from the defendants, the value of a horse killed on their track, near Richmond, P. Q., on the 17th September, 1880.

The writ was issued on the 22nd April, 1881, more than six months after the alleged occurrence.

The plaintiff's declaration alleged that the fences separating the railway from the plaintiff's pasture were insufficient; that the horse, owing to the bad state of the fences, got on the track, and was killed in consequence of defendants' neglect to maintain the fences in proper condition.

The defendants pleaded the prescription of six months established by *" The Railway Act."*

W. White for defendants:

The laches of which the plaintiff complains, is the failure of the defendants to fulfil an

obligation imposed by the Statute. The 42 Vict., Cap. 9, Sec. 27, enacts that "All suits "for indemnity for any damage or injury "sustained by reason of the railway, shall "be instituted *within six months*." This is precisely the same language as used in the original Act, 14 & 15 Vict., Cap. 51, Sec. 20. The meaning of the words "*by reason of the Railway*" is clearly set forth in the Act 8 Vict., Cap. 25, Sec. 49.

This prescription was maintained in 1857 in the case of *Boucherville* v. *Grand Trunk Railway Company*, reported in 1 Vol. L. C. J. p. 179, and the same jurisprudence obtained in the Province of Ontario:—See 20 Upper Canada Q. B. R., p. 202; 9 Upper Canada C. P. R., p. 164.

H. B. Brown, for the plaintiff, urged that the damages complained of did not arise "by reason of the Railway." That the language of a Statute establishing a prescription must be construed in a limited sense, and could not be enlarged by inference. He relied on two cases reported:—One in 1855, 1 L. C. J., p. 6; the other in 1856, 6 L. C. R., p. 172.

Per Curiam.—The prescription pleaded applies to the damages alleged. The action is dismissed with costs.

H. B. Brown, for plaintiff.
Hall, White & Panneton, for defendants.

THE SINS OF LEGISLATORS.

Herbert Spencer, in the *Popular Science Monthly* for May, has the following upon "the sins of legislators." It may be useful reading for some of our ambitious law-makers:

In a paper read to the Statistical Society in May, 1873, by Mr. Janson, Vice-President of the Law Society, it was stated that from the statute of Merton (20 Henry III.) to the end of 1872, there had been passed 18,110 public acts, of which he estimated that four-fifths had been wholly or partially repealed. He also stated that the number of public acts repealed wholly or partly, or amended, during the three years 1870-'72 had been 3,532, of which 2,759 had been totally repealed. To see whether this rate of repeal has continued, I have referred to the annually-issued volume of "The Public General Statutes" for the last three sessions. Leaving out amended acts and enumerating only acts entirely repealed, the result is that in the last three sessions there have been repealed separately, or in groups, 650 acts *belonging to the present reign.* This, of course, is greatly above the average rate; for there has of late been an active clearance of the statute-book going on. But, making every allowance, we must infer that within our own times repeals have mounted some distance into the thousands. Doubtless a number of them have been of laws that were obsolete; others have been demanded by changes of circumstances (though seeing how many of them are of quite recent acts this has not been a large cause); others simply because they were inoperative; and others have been consequent on the consolidations of numerous acts into single acts. But unquestionably, in multitudinous cases, repeals came because the acts had proved injurious. We talk glibly of such changes—we think of cancelled legislation with indifference. We forget that before laws are abolished they have generally been inflicting evils more or less serious, some for a few years, some for tens of years, some for centuries. Change your vague idea of a bad law into a definite idea of it as an agency operating on people's lives, and you see that it means so much of pain, so much of illness, so much of mortality. A vicious form of legal procedure, for example, either enacted or tolerated, entails on suitors costs, or delay, or defeat. What do these imply? Loss of money, often ill-spared; great and prolonged anxiety; frequently consequent illness; unhappiness of family and dependents; children stinted in food and clothing—all of them miseries which bring after them multitudinous remoter miseries. Added to which there are the far more numerous cases of those who, lacking the means or the courage to enter on lawsuits, and submitting to frauds, are impoverished, and have similarly to bear the pains of body and mind which ensue. Seeing, then, that bad legislation means injury to men's lives, judge what must be the total amount of mental distress, physical pain, and raised mortality which these thousands of repealed acts of Parliament represent!

RECENT SUPREME COURT DECISIONS.

Dominion Controverted Election—Railway Pass—37 *Vict., Cap.* 9, *Secs.* 92, 96, 98 *and* 100.—In appeal, four charges of bribery were relied upon, three of which were dismissed in the Court below, because there was not sufficient evidence that the electors had been bribed by an agent of the candidate. The fourth charge was known as the Lamarche case. The facts were as follows: One L., the agent of C., the respondent, gave to certain electors employed on certain steamboats, tickets over the North Shore Railroad, to enable them to go without paying any fare from Montreal to Berthier, to vote at the Berthier election, the voters having accepted the tickets without any promise being exacted from or given by them. The tickets or passes showed on their face that they had been paid for, but there was evidence that L. had received them gratuitously from one of the officers of the Company. The learned judge who tried the case found as a fact that the tickets had not been paid for, and were given unconditionally, and therefore held it was not a corrupt act.

Held (1) Fournier and Henry, JJ., dissenting, that the taking unconditionally and gratuitously of a voter to the poll by a railway company or an individual, whatever his occupation may be, or giving a voter a free pass over a railway, or by boat, or other conveyance, if unaccompanied by any conditions or stipulations that shall affect the voter's action in reference to the vote to be given, is not prohibited by 39 Vict., Cap. 9 (D). (2) That if a ticket, although given unconditionally to a voter by an agent of the candidate, has been paid for, then such a practice would be unlawful under section 96, and by virtue of section 98 a corrupt practice, and would avoid the election. (3) Fournier, J., dissenting, that an appellate court will not reverse the decision of the judge who tried the case on a question of fact, without its being made apparent that his decision was clearly wrong.—*Berthier Election Case, Genereux* v. *Cuthbert.*

GENERAL NOTES.

The Hon. George Irvine, Q.C., has been appointed by the Imperial Government, Judge of the Vice-Admiralty Court of Quebec, in the place of the late Mr. O'Kill Stuart.

In 1883 the total collections from law fees reached $86,609, of which Montreal paid $47,762, or more than one-half; and from licenses $272,423 was obtained, Montreal contributing $176,772 and all the rest of the province only $96,651.

The banquet offered by the bar and other friends to Mr. J. J. Maclaren on the 26th April, on the occasion of his departure for Toronto, was enthusiastic and most gratifying. We do not share the misgivings which were expressed by one or two (non-legal) speakers, and think it safe to predict that Mr. Maclaren will take an honorable position at the bar of the sister province.

Chief Justice Hagarty has been appointed Chief Justice of Ontario, in the place of the late Chief Justice Spragge, and it is understood that Chief Justice Wilson of the Common Pleas will take the place vacant by the acceptance of the post of president of the Court of Appeal by Judge Hagarty, and that Mr. Justice M. C. Cameron will take the place vacated by Judge Wilson.

Lord Coleridge is delighting his English friends with stories of his American visit, and among them was this:—He was at Mount Vernon with Mr. Evarts, and, talking about Washington, said: "I have heard that he was a very strong man physically, and that, standing on the lawn here, he could throw a dollar right across the river to the other bank." Mr. Evarts paused a moment to measure the breadth of the river with his eye. It seemed rather a "tall" story, but it was not for him to belittle the Father of the Country in the eyes of a foreigner. "Don't you believe it?" asked Lord Coleridge. "Yes," Mr. Evarts replied, "I think it's very likely to be true. You know a dollar would go farther in those days than it does now."—*Ex.*

In the March *Century* the author of the "Bread Winners," in answer to the accusation of his critics that "It is a base and craven thing to publish a book anonymously" says: "My motive in withholding my name is simple enough. I am engaged in business in which my standing would be seriously compromised if it were known that I had written a novel. I am sure that my practical efficacy is not lessened by this act; but I am equally sure that I could never recover from the injury it would occasion me if known among my own colleagues. For that positive reason, and for the negative one that I do not care for publicity, I resolved to keep the knowledge of my little venture in authorship restricted to as small a circle as possible. Only two persons besides myself know who wrote 'The Bread Winners.'" This seems to indicate an unfounded prejudice against writers of fiction. What would such people say to Disraeli, Lytton, Scott?