The Legal News.

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GOOD WILL.

The cases which have come before our Courts upon the subject of good will are not numerous. That of *Findlay* v. *McWilliam*, 23 L. C. Jurist, p. 148, was one of the simplest character. The parties were engaged in business as wholesale confectioners, and were partners under the style of Findlay & McWilliam. McWilliam retired from the business, and sold to Findlay not only his interest in the assets, but also the "good will," and he received for his share of the good will $1,000. Nevertheless, immediately after the dissolution, he opened a confectioner's shop in the same street, only a few doors distant, sent circulars to the customers of the late firm, soliciting a continuance of their orders, and in various other ways sought to convey to the public that he was really the successor of the firm from which he had just retired. The Court of Appeal held these acts to be a violation of the obligations imposed on him by his sale of the good will, and he was condemned in damages.

The case of *Thompson* v. *Mackinnon*, 21 L. C. Jurist, p. 335, was of a different complexion, and presented some of the difficulties which have surrounded cases of this class. Mackinnon had carried on business as a biscuit maker, and the name had acquired celebrity in connection with his manufacture. In 1876, he sold to Thompson his entire stock in trade "with the good will and all advantages per-"taining to the name and business of the said "John Mackinnon." Now, Mackinnon had been using a label or trade-mark, not registered, consisting of the word "Mackinnon's," under which was engraved a boar's head grasping a bone in his jaws. This label Thompson caused to be registered, and continued to use. Subsequently, Mackinnon resumed business as a biscuit manufacturer, and having also commenced to use his old trade-mark, Thompson sought to restrain such use. The question was whether the exclusive right to use the trade mark passed to the purchaser, without express mention being made thereof in the contract of sale, and whether Thompson was entitled to the privilege of stamping the biscuit made by him with the name of Mackinnon. The Court of Review held that the right had so passed. Reference was made to a case in favor of the purchaser, decided by the Tribunal of Commerce, Paris, 1854. One Bajou sold his business as a glovemaker, including the good will and the use of the business mark, and he was subsequently restrained from using his old manufacturer's mark, which was the *fac simile* of his signature. The correctness of this decision has been doubted, and it is to some extent in conflict with the judgment of the Court of Appeal, Paris, 1857, in the case of Bautain. The plaintiffs in that case had bought the right to use the name of Bautain "comme ils le jugeraient convenable." But in appeal it was held "que les demandeurs "pouvaient se servir de ce nom seulement en "leur qualité de successeurs de Bautain, et en "le faisant accompagner de leur nom personel "de Merklein; que c'est donc abusivement que "sur leurs enseignes, cartes et factures, ils "portent le nom de Bautain seul, comme s'ils "étaient eux-mêmes la personne du dit Bautain." The Code de Commerce, it should be remarked, forbids the use by a trader of a name other than his own. Much might be said, indeed, of the immorality of allowing a name to be bought and used for the deception of the public. What would be thought of a painter of celebrity who, desiring to retire from the further exercise of his art, sold to another painter the right to affix his private mark to his works? And if a biscuit maker has succeeded in catering with great success for the public taste, why should his name be used to palm off the productions of another made from a different receipt?

We are governed here by the French law, but that of England differs little, and in the dearth of precedent on the subject, the English cases will be looked at with interest. We append, therefore, an article from the *Solicitor's Journal*, in which the latest English decisions are reviewed.

"Two recent decisions of the Appeal Court are of importance with relation to the subject of good will, which, though of narrow dimensions, is still somewhat perplexed.

"The first case is *Stewart* v. *Gladstone*, 27 W.

R. 512; L. R., 10 Ch. D. 626. It was a case of valuation of the property of a partnership on the withdrawal of one partner, for which purpose it was held upon the construction of the articles that the good-will was not to be valued. In the court below, Mr. Justice Fry expressed his disapproval of the doctrine of *Hall* v. *Hall*, 20 Beav. 139, that, *prima facie*, an outgoing partner is not entitled to separate compensation for good-will. We may observe that Vice-Chancellor Hall in *Reynolds* v. *Bullock*, 26 W. R. 678, also disapproved of *Hall* v. *Hall*. The principle of the decision of the Court of Appeal in *Steuart* v. *Gladstone* appears to be that in questions of this kind the intention of the parties will be collected from their deed of partnership, having regard in each case to what the particular interest or property is which would constitute the good-will. Some of the language of Lord Justice Bramwell, perhaps, goes a little further; but we do not apprehend that the case altogether is an authority adverse to Lord Westbury's decision in *Hall* v. *Barrows*, 12 W. R. 322; 4 DeG., J. & S. 150; and we do not suppose the doctrine to be impugned that, in the absence of a contrary agreement, good-will is for this particular purpose to be taken account of as an item in the property or effects of a partnership, where the character of the joint undertaking is such as to admit of a distinct thing of value coming under that head.

"The case, however, pointedly indicates the difficulty which affects any general rules upon this subject. That difficulty lies in the uncertainty of the thing 'good-will.' The word is generally considered to refer to two things, the advantage of continuing the established business in its old place, and of continuing it under the old style or name. In some cases the matter is simple enough. In selling a public house, which is the familiar instance, the fact that the house has already been used for the trade gives it a distinctly enhanced value for the purpose of custom; and so does the fact that it is known by a particular sign. In this case the name to which a good-will attaches is not the name of the previous dealer, but a mere fancy name or trade-mark. The whole good-will together is incident to the place, and in fact is commonly called the 'good-will of the premises.' This is never dealt with, and could not be dealt with, apart from the premises. But when a business enjoys custom independently, or in a great measure independently, of its local habitation, and when it is known by a personal designation and not a mere fancy name, the difficulties upon the law of good-will begin. The thing of value is the use of the name applied to the same business in the same district or circle of operations. It may be doubted whether the term covers anything more than this; whether, for instance, it could include any definite parts of the property or assets of a business—even trade-marks belonging to the business—other than the style or firm of the business itself.

"With respect to the right to the name, several points have been decided. It has been held to survive upon the death of a partner. This law was approved in a case where one partner's interest in good-will (apart from the stock and premises) was specially bequeathed to a legatee. *Robertson* v. *Quiddington*, 28 Beav. 529. Lord Romilly there said that the surviving partner was entitled to the name of the firm, so that it could not be sold. The decision, however, may rest on other grounds; and in a case of good-will consisting of a business name and of distinct value, we are compelled to suppose that this right of survivorship would not apply when the business and assets were sold; and the question follows (as in the case of a dissolution, to be presently adverted to) whether, where there is the right to compel a sale of the assets, this does not include the exclusive enjoyment of the business name.

"Upon the dissolution and division of assets it has been held that the right to the name belongs (in the absence of special agreement) to each partner separately. If the business and its property is sold, the partners, it would seem, lose their right, for the right to the name is part of the property of the business as an entirety. There may be some doubt, however, whether, wherever a partner is entitled to compel a sale of the assets and business, he can call for a sale of the exclusive right to use the firm name. It is difficult on principle to see why he should not. Independently of this point, the law on the question seems to stand exactly as it was stated by Lord Romilly in *Banks* v. *Gibson*, 34 Beav. 569: 'The name or style of the firm * * * was an asset of

the partnership, and if the whole concern and the good-will of a business had been sold, the name, as a trade-mark, would have been sold with it. If, by arrangement, one partner takes the whole concern, there must be a valuation of the whole, including the name or style of the firm. But if the partners merely divide the other partnership assets, then each is at liberty to use the name just as he did before.'

"*Levy* v. *Walker*, 27 W. R. 370; L. R., 10 Ch. D. 436, seems to us, in the first place, to confirm the doctrine that a sale of the business and assets upon a dissolution carries the right (to the exclusion of all the partners) to use the name. 'The trade-name,' says Lord Justice James, 'was the name of the business, and that business was sold.' But the case is of more striking importance in regard to the other ground of decision which was taken by all the judges. Mr. Justice Lindley, in his book, devotes some observations to the apparent reason to be found for a retiring partner objecting to his name remaining in the style of the business from the consideration that it may involve him in risk. *Levy* v. *Walker* shows that a party raising this objection will be required to make out that it has substantial validity. The Master of the Rolls discountenanced the *dictum* of Lord Cairns that a man may, by virtue of some right of property in his name, restrain another from using it. Lord Justice James pointed out that there is no such property, unless the name can be set up as a trade-mark, which is the footing upon which the style or firm of a business is protected. We collect from the view taken by the members of the Court of Appeal of this subject, which has extensive ramifications, that too much caution cannot be used in acting upon decisions of the class of which *Routh* v. *Webster*, 10 Beav. 561, is an example, where, upon a motion to restrain directors of a company from using plaintiff's name without authority in a prospectus, Lord Langdale is reported to have used warm language: 'What! are they (the directors) to be allowed to use the name of any person they please, representing him as responsible in their speculations, and to involve him in all sorts of liabilities, and are they then to be allowed to escape the consequences by saying they had done it by inadvertence? Certainly not.'"

NEW PUBLICATIONS.

THE CODE OF CIVIL PROCEDURE OF LOWER CANADA; together with the amendments thereto made since its promulgation; the authorities, as reported by the commissioners; all Statutes referring to Procedure; the Rules of Practice of the several Courts; a classified digest of all reported decisions, arranged under appropriate articles; tables of the tariff of fees payable to advocates; and an analytical Index. By THOMAS P. FORAN, M.A., B.C.L., of the Bar of Montreal. Toronto, Canada, Carswell & Co., 26 & 28 Adelaide Street East.

One of the consequences of the numerous amendments to the Codes enacted by the Legislature, is that the editions embodying the amendments and decisions quickly pass out of date. Hence the appearance of the present work by Mr. Foran, which has been brought out expeditiously, and embraces references to the decisions up to, and including those reported in 22 L. C. Jurist, 4 Quebec Law Reports, and 1 Legal News, of the year 1878. The expansive tendency of these annotated editions may be perceived from the fact that the present work embraces over eight hundred pages, whereas Mr. Justice Taschereau's in 1876 did not exceed 511 pages. It is to be remarked, however, that Judge Taschereau's book only included references to the decisions subsequent to 1872, whereas the present work aims to present a summary of all the reported decisions on the subject of Procedure, arranged under the appropriate articles of the Code.

Time and use are necessary to test the accuracy of a work of this character, but a first examination has left a favorable impression. Probably some of the references might have been omitted without detriment to the usefulness of the book. For instance, the case of *McLennan* v. *Hubert* (Superior Court decision) is cited under Art. 613, and the decision in appeal in the same case is referred to under Art. 834. But upon the whole Mr. Foran seems to have acquitted himself of his task with careful attention to the exigencies of such a work, —and that is not saying a little, as those who have been engaged in similar labors will readily admit.

The mechanical execution of the book will speak for itself. It is on good paper; the typography is excellent; and the publishers, Messrs. Carswell & Co., of Toronto, have added to its attractions by the superior style of binding.

NOTES OF CASES.

SUPERIOR COURT.

DISTRICT OF OTTAWA, Aug. 23, 1879.

HON. H. G. JOLY, Expropriating party, & MOREAU, Proprietor.

Q. M. O. & O. Railway—Consolidated Railway Act, 1879.

A petition was presented on the part of the Hon. H. G. Joly, Commissioner of Public Works, Quebec, to obtain immediate possession of certain land belonging to Moreau. This land was represented to be necessary to the petitioner, for the supply of materials for the construction of the Quebec, Montreal, Ottawa & Occidental Railway.

The petitioner had conformed to the requirements of the Consolidated Railway Act of 1879, 42 Vict. (Can.) chap. 9. Section 38 of this Act says that "whenever stone, gravel, earth, sand or water is required for the construction or maintenance of any railway, or any part thereof, the company may, in case they cannot agree with the owner of the lands on which the same are situate, for the purchase thereof," cause a Land Surveyor to make a map of the property, and then an arbitration may be had to ascertain the value.

BOURGEOIS, J., said the only question to be considered was whether the Consolidated Railway Act, 1879, applies to the Q. M. O. & O. Railway. After examination of what had been said by the Court of Appeal in the Bourgoin case, 23 L. C. J. 96, his Honor had no doubt that the Railway came under the Federal Act of last Session. The petition would, therefore, be granted, the petitioner to deposit in the Union Bank of Lower Canada the sum of $780, being double the amount offered to Moreau by the notice of expropriation (chap. 9, sec. 9, sub. sect. 28, *b*).

DeBellefeuille & Turgeon, for petitioner.

A. Rochon, for Moreau.

MONTREAL, May 31, 1879.

MONTREAL LOAN & MORTGAGE CO. v. BELLE.

Discussion of principal debtor by a creditor who was not bound to discuss—Responsibility of creditor.

RAINVILLE, J. The defendant, by a deed of transfer, 31 May, 1875, transferred to plaintiffs a *prix de vente*, with guarantee. The defendant now being sued, objected that the plaintiffs had not used due diligence in discussing the principal debtor Dansereau. The defendant complained specially that Dansereau's moveables had not been seized and sold, but a return of *nulla bona* had been made although he was known to possess considerable effects. The plaintiffs were not under the necessity of discussing the principal debtor, the deed of transfer specially exempting them from the necessity of previous discussion of the debtor. They had chosen to do so, however, without being obliged, and in such discussion could be held responsible only for gross negligence, and not for *faute légère*. The proof established that the plaintiffs had acted with reasonable skill, and with the care of a prudent administrator, thus complying with the terms of Art. 1710 C. C. The plea would therefore be dismissed, and the defendant condemned as prayed.

The judgment was in these terms:

"Considérant que la demanderesse a discuté le débiteur cédé sans y être obligée, et que dans cette discussion elle ne peut être tenue que de sa faute lourde et non de la faute légère;

"Considérant qu'il est prouvé qu'en faisant la dite discussion elle a agi avec l'habileté convenable et tous les soins d'un bon père de famille aux termes de l'article 1710 C. C." &c.

Lunn & Cramp, for plaintiff.

J. A. A. Belle, for defendant.

SHORT v. KELLY es qual.

Mortgage made by curatrix to interdict without authority—Judgment for amount of obligation.

MACKAY, J. The action of the plaintiff was on an obligation by Dame Mary Kelly, wife of W. T. Wilkins, who is interdicted for madness. The wife is curatrix, and she took a house in town, to occupy it till the following May. The plaintiff had her effects under seizure to secure the rent. Then it occurred to all parties that

it would be better to dissolve the seizure, and that plaintiff should take an obligation and mortgage for the rent. So the defendant went before a notary and declared herself *es qualité* to be well and truly indebted to plaintiff in the sum of $100, and she mortgaged in favor of plaintiff certain land in Farnham belonging to the interdict. Now, suit being brought on this mortgage, she pleaded that the obligation was null and void, because a curatrix could not mortgage without authorization of justice. His Honor was perfectly with the defendant in this, but, at the same time, she would be condemned to pay the capital, on this principle: She was presumed to be common as to property with her husband, and they must live somewhere. The wife had to be provided with a residence, and it was not in evidence that the residence in question was extravagant or unsuited to her. Although, therefore, the mortgage was null and void, yet as the indebtedness was established, judgment would be rendered for the same in favor of the plaintiff.

The judgment is as follows:—

"Considering that though the mortgage granted by defendant was and is null and void, she, defendant *es qualité*, might make a declaration of indebtedness *es qualité*, for a consideration such as had here from plaintiff by her, the defendant, and by her husband (the interdict) with whom she must be taken to be *commune en biens*, and which husband was and is bound to furnish a lodging for his wife;

"Considering that the interdict was indebted to plaintiff at date of the obligation of March, 1877, and that under all the circumstances plaintiff may have judgment against defendant *es qualité* for the debt demanded, interest and costs, doth adjudge and condemn the said defendant in her said quality to pay and satisfy to plaintiff the sum of $115.72," &c.

Trenholme & Maclaren for plaintiff.

Edson Kemp for defendant.

COURT OF REVIEW.

MONTREAL, May 31, 1879.

RAINVILLE, PAPINEAU, JETTÉ, JJ.

[From S. C. Bedford.

O'HALLORAN et al. v. BOUCHER.

Delegation of payment of Hypothec—Acceptance of delegation by Suit.

The action was brought by the plaintiffs as executors of the will of the late Maria Latley. They had loaned to one Archambault $450, and taken a mortgage for the amount on some property belonging to him. Archambault sold this property to defendant, who was charged with the payment of the hypothec to plaintiffs. The plaintiffs now sued defendant on the delegation in their favor by Archambault. The declaration did not allege that plaintiffs had accepted the delegation, or that the deed was registered.

The defendant demurred, on the ground that plaintiffs had not before the institution of the action, accepted the delegation of payment.

RAINVILLE, J. The Court had already decided in Gadoury and Archambault, an action under similar circumstances, that the action is a sufficient acceptance of the delegation. The law in Louisiana was the same, the principle being established that a third person accepts a stipulation in his favor by suing on it. Judgment reversed:

"Considérant que l'action instituée par les demandeurs est une acceptation suffisante et légale de l'indication de paiement ou délégation contenue en l'acte de vente consenti par Antoine Archambault, jr., au défendeur en cette cause, le 26 Août, 1876, cette cour casse," &c.

Judgment reversed, and demurrer dismissed.

J. O'Halloran, for plaintiffs.

W. W. Lynch and *Archibald & McCormick*, for defendant.

SUPERIOR COURT.

MONTREAL, May 31, 1879.

DRUMMOND et al. v. HOLLAND et al.

Delegation—Acceptance by Suit.

In this case, one McMann mortgaged his property to plaintiffs. Subsequently McMann sold the property to one Falardeau, who sold the same to defendants, who expressly assumed the payment of the hypothec to plaintiffs.

The defendants, being sued for the amount of the hypothec, pleaded, as in the above case, that there was no *lien de droit* between them and the plaintiffs, the indication of payment not having been accepted by the plaintiffs.

RAINVILLE, J., remarked that the same question was presented as had just been decided in Review in the case of *O'Halloran* v. *Boucher*

(see previous case). Following the rule there laid down, the action was an acceptance of the delegation, and the defendants' pretension could not be sustained. Judgment for plaintiffs.

Trenholme & Maclaren for plaintiffs.

Davidson, Monk & Cross for defendants.

COURT OF REVIEW.

MONTREAL, June 30, 1879.

RAINVILLE, PAPINEAU, JETTE, JJ.

[From S. C. Bedford.

RHICARD v. CHICOINE.

Title—Possession—Pleading.

RAINVILLE, J. This was a possessory action. The plaintiff alleged in his declaration that for more than twenty years he had possessed the land as proprietor, that the defendant had wrongfully taken possession, and the plaintiff claimed to be reinstated. The Court at Bedford had dismissed the action. This judgment was correct and would be confirmed, but one of the grounds would be struck out.

The judgment was as follows:—

" Considérant que le demandeur, après avoir allégué dans son action qu'il était en possession *animo domini* depuis plus de vingt ans avant le 1er de Mai 1876, a admis par ses réponses que sa possession depuis 1847 n'était qu'une possession précaire qu'il tenait de son fils Jacob Rhicard, et pour ce dernier alors propriétaire de l'immeuble en question;

" Considérant que le demandeur allègue de plus par sa réponse à l'exception et défense du défendeur, que depuis 1856 jusqu'au temps de son action, il a possédé à titre d'usufruitier qu'il tenait des nommés Monk et Jeremiah Rhicard, deux autres de ses fils, et qu'il n'a pas justifié cet allégué;

" Considérant que son allégation de possession *animo domini* et le droit d'action qu'il basait sur cette possession sont détruits par sa réponse à la défense, et que son allégation de possession à titre d'usufruitier n'est contenue que dans sa réponse, et non dans son action, et ne peut servir de base à celle-ci, et n'est pas prouvée;

" Considérant que le demandeur allègue avoir commencé à posséder à titre de précaire et avoir ensuite possédé depuis 1856 à titre d'usufruitier, mais qu'il n'a pas prouvé l'inversion du titre de sa possession;

" Considérant que l'action du demandeur, n'étant appuyée ni sur l'une ni sur l'autre possession, elle est sans fondement, et qu'elle a été justement déboutée;

" Cette Cour confirme," &c.

Buchanan & Co. and *Bethune & Co.* for plaintiff.

E. Racicot, for defendant.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, July 22, 1879.

DRUMMOND et al. es qual. v. HOLLAND et al.

Judicial Sequestration—Art. 1823 *C. C.*

The plaintiffs having obtained the judgment noted above, p. 285, the defendants inscribed in Review.

The plaintiffs thereupon applied to a Judge in Chambers for the appointment of a sequestrator to collect and receive the rents pending the litigation. This application was based upon the allegation, supported by affidavit, that the property was not worth the amount of the mortgage, and that the rents collected by defendants were so much placed beyond the reach of the plaintiffs.

JETTÉ, J., was of opinion that the petition for the appointment of a sequestrator must be granted:—" Considérant qu'en principe général le juge a le pouvoir d'ordonner toute mesure conservatoire lorsque l'intérêt des parties l'exige;

" Que ce pouvoir est indéfini et confié à la discrétion et à la sagesse de celui qui l'exerce;

" Que l'article 1823 du Code Civil n'est pas restrictif, mais simplement indicatif d'une espèce dans laquelle le séquestre peut être ordonné;

" Que l'immeuble désigné en la déclaration en cette cause et aux titres produits au soutien, acquis et possédé par les défendeurs est hypothéqué aux demandeurs ès qualités pour une somme excédant de beaucoup sa valeur, ce que les défendeurs eux-mêmes ont reconnu, et que dans de telles circonstances l'intérêt des demandeurs et des autres créanciers des défendeurs exige la séquestration du dit immeuble pour la conservation des droits de tous," &c.

Trenholme & Maclaren for plaintiffs.

Davidson, Monk & Cross for defendants.

MONTREAL, August 8, 1879.

[In Chambers.]

THE HERITABLE SECURITIES & MORTGAGE ASSOCIATION (Limited) v. RACINE.

Judicial Sequestration.

A similar application was made in this case to that made in *Drummond* v. *Holland*, noted above. The plaintiffs were suing the defendant hypothecarily, and the action being contested, they petitioned for the appointment of a sequestrator to receive the rents pending the litigation.

JOHNSON, J., (Aug. 8) granted the application, and ordered that the parties do appear on the 12th instant to name a sequestrator, and if they could not agree, the Judge would name one of his own accord (C. C. P. Art. 877).

On the 12th August,

JOHNSON, J., made the following order:—"The plaintiffs, represented by their attorney *ad litem*, being present, the defendant not appearing although notified so to do, I, the undersigned Judge, seeing the interlocutory order rendered in this matter on the 8th August instant, do, by these presents, name and appoint Thomas Gilmour, of Montreal, house agent, sequestrator in this cause, to administer the property and revenues of the real estate mentioned and described in the petition of plaintiffs," &c.

John L. Morris for plaintiffs; *W. B. Lambe*, counsel.

L. Forget for defendant; *E. U. Piché, Q. C.*, counsel.

N B. The same day the defendant inscribed in Review from the foregoing judgment of August 8.

MONTREAL, August 15, 1879.

[In Chambers.]

THE SAME PLAINTIFFS v. THE SAME DEFENDANT.

Opposition to Judgment—Suspension of Order of Judge in Chambers by another Judge in Chambers.

The defendant (Aug. 15) produced a *requête afin d'opposition*, supported by his affidavit, and asked for the suspension of the above judgments. One of the grounds of opposition was that defendant had not received notice of the judgment of Aug. 8, ordering the parties to appear to name a sequestrator. Another ground was that defendant had inscribed in Review from the judgment granting the petition for the appointment of a sequestrator.

TORRANCE, J., granted an order to the Prothonotary and others, to suspend all proceedings on the two judgments above mentioned, and to make a return thereof on the 1st September next, and ordering that the parties do then appear, that being the day of return of the *requête afin d'opposition*.

MONTREAL, August 20, 1879.

[In Chambers.]

THE SAME PLAINTIFFS v. THE SAME DEFENDANT.

Petition to Judge in Chambers to annul order of Judge in Chambers.

The plaintiffs in the above case presented a petition to Mr. Justice Mackay that the order made by Torrance, J., noted above, be cancelled and annulled, and that stay of proceedings be withdrawn and annulled, and that the sequestrator do enter on his duties according to law.

MACKAY, J., suspended judgment, and ordered reference of the matters in the petition against Mr. Justice Torrance's order, to the Practice Court, Third Division, on the 1st September next. In giving judgment his Honor remarked:

"Mr. Justice Johnson's order, which is opposed by the *requête à fin d'opposition*, I have not to pass upon. I will not say whether it is, or was, final, or merely interlocutory; revisible or not revisible. Mr. Justice Torrance's order upon the *requête* of defendant may have been *ultra vires*, he, a Judge in Chambers, acting in a manner to interfere with the judgment in Chambers of Mr. Justice Johnson, whose order and proceedings in the matter referred to some might hold not to be liable to be hindered or suspended by order of another Judge in Chambers, in vacation. I will not pass upon Mr. Justice Torrance's order upon the present petition. It seems to me that it would be unseemly, and bring the administration of justice into contempt. The term of September is close at hand, and under all the circumstances I think it best to suspend judgment, and to refer this matter (of the petition against Mr. Justice Torrance's order) to the Court, ordinary Superior Court, sitting in the Practice Division in September, say 1st of September, to which

Court Mr. Justice Torrance's order refers the parties."

Costs reserved.

John L. Morris for plaintiffs; *W. B. Lambe*, counsel.

L. Forget for defendant; *E. U. Piché, Q. C.*, counsel.

CURRENT EVENTS.

FRANCE.

AN AEROLITE CASE.—An entirely new question of property law, says the Paris correspondent of the London *Daily News*, is about to be tried at Issoudun. In one of the very rare fine nights of this very wet summer, a peasant crossing a field saw what is commonly called a falling star, but it was one of unusual magnitude, made a great noise and touched the earth within a few yards of his feet. Frightened as he was, he went to the spot and picked up a stone of considerable size, which in scientific language is called an aerolite. The rural mind is now relatively instructed, and it occurred to this countryman that what he had found, what, in fact, had dropped from heaven in his sight, must be a rarity and might have a money value. After consulting the school-master of his commune, he took the mysterious substance of no terrestrial creation to the Issoudun Museum, and there received in exchange for it the, to him, wonderful sum of 250 francs in hard money. Short lived was his joy. The proprietor of the field brought an action. He claims either the restitution of the aerolite which fell upon his land, or 10,000 francs damages, which he judges to be the value of it. M. Charbonnel, an eminent Paris advocate, is retained for the peasant who picked up the aerolite, and M. Bollé, an eminent *avoué* of Issoudun, for the proprietor of the land.

THE WILL OF THE PRINCE IMPERIAL.—It has often been said that the true character of a man is to be found in his will: and certainly thousands of persons will discern in the will of the lamented Prince Imperial the signs of a noble nature. It presents a striking contrast to the capricious, confused, and sometimes contemptible documents which are framed to vex expectant heirs, harass the courts of law, and enrich the lawyers. The dispositions of property are simple, no one seems to be forgotten, and the sentiments expressed in that part of the testament which does not relate to money, are conceived in a spirit of good will to all men, and of devoted affection to relatives and friends. The will is holographic; and therefore, according to the Code, it needed no attestation or publication; and, inasmuch as the Prince must of course be taken to have retained his French domicile and to have been a sojourner in our land, his will could only have been made in accordance with the law of his domicile. Our neighbors have put forth some strange ideas about the exigencies of English law in relation to wills. The *Gaulois* says that the Prince's will was opened in the presence of a solicitor and *thirty* witnesses, as required by the law of England. Wills, as we know, have often failed in this country from want of compliance with certain statutory formalities in the execution of them; but we never before heard that any particular ceremony was necessary at the reading of such a document.—*Law Journal* (London).

GENERAL NOTES.

A BIT OF PARCHMENT.—A fortune of $12,000,000 may turn upon a bit of yellow parchment found in a rubbish heap. A Nova Scotia journal says that the agent employed by the heirs of the Hyde estate to go to England has written encouraging reports. He has met the directors of the Bank of England, where the money is deposited. Hyde was formerly in Annapolis, having been sent out by the Imperial Government. He had one daughter born in Nova Scotia. The money in question was left to her after he died. An intimation was sent to this country many years ago asking for heirs. The family of the Hydes in the United States took the matter up and decided that the real heirs were in Nova Scotia. The missing link up to the recent period was proof that the original Hyde was the one who held the imperial commission and went to Annapolis. There was no commission of his to be found. A few years ago an old trunk was sold at auction and bought by a woman for 25 cents. She subsequently broke it up for kindling wood, and in the lining found a parchment document, which she deemed so pretty with the seals attached that she put it away as worthy of preservation. Subsequently she happened to mention the incident to a friend. It proved to be the missing document.—*N. Y. Tribune.*