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*Editor.*—JAMES KIRBY, D.C.L., LL.D., Advocate.
1709 Notre Dame Street, (Royal Insurance Chambers, opposite the Seminary.)

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Vol. IX. DECEMBER 25, 1886. No. 52.

The decision of the Queen's Bench, Montreal, in *Grégoire & Grégoire*, M. L. R., 2 Q. B. 228, has been affirmed by the Supreme Court of Canada. The appeal in the case of *McMillan & Hedge*, M. L. R., 1 Q. B. 376, has also been dismissed by the same Court. The Judicial Committee, on the 9th instant, dismissed the appeal in *Senécal & Hatton*, M. L. R., 1 Q. B. 112.

The bulk of litigation in the highest Court in England is small compared with the United States and Canada, the enormous costs across the water doubtless tending to discourage appeals. Thus in 1885 there were only 57 appeals entered in the House of Lords from the Court of Appeal. In 1884 there were 55. In the former year there were 16 appeals in regard to real property, 38 in regard to personalty, and 32 miscellaneous. In the Supreme Court of the United States there are about 400 appeals entered annually.

Coming down to the Court of Appeal, in 1885 there were in all 1438 appeals entered, including interlocutory appeals, as against 1428 in 1884. The two divisions of the Court of Appeal sat 414 days in 1885.

The Judicial Committee sat 76 days, during which time they disposed of 40 cases out of 82 entered. They also disposed of 45 motions and petitions.

In the High Court of Justice there were 4,255 causes tried in 1885,—a large falling off from the previous year, when there were 5,405 tried. Of the 4,255, 1,680 were Chancery causes. The total amount of costs taxed in the Chancery Division, in 1885,was £1,286,242, showing an increase of £39,000 on the preceding year.

In the County Courts there were 961,413 cases entered in 1885. In 1883 they exceeded a million. The number of cases tried in 1885 was 586,716.

The law concerning dogs and dog bites, in England, has given rise to numerous complaints, and these appear to be not without foundation. At the hearing of a case in the Bolton County Court recently, damages were claimed from a defendant on account of his dog having bitten the plaintiff. The evidence proved that the dog, a huge St. Bernard, rushed at the plaintiff, a little boy, knocked him down, "tore a large piece out of his right cheek, disfiguring him for life, and shook him as a terrier would a rat." The judge, however, found himself unable to award damages to the plaintiff, because the law requires that the dog must be proved not only to have previously shown vicious propensities, but to have, to the knowledge of its master, been accustomed to bite mankind. The judge declared that "he wished it to go forth to the world that the law relating to dog-bites as it stands is barbarous."

The Court of Appeal in England, in *Lucas* v. *Harris*, has given an important decision with reference to pensions. *The Law Journal* says:—"The decision of the Divisional Court in *Lucas* v. *Harris* has been overruled by the Court of Appeal. The Divisional Court were of opinion that the test whether a pension could be attached was whether it was granted for future or past services. The Court of Appeal do not affirm or deny the propriety of this test; but they hold that it is not exhaustive. In *Lucas* v. *Harris* the pension was solely for past services; but it was granted under the Army Act, 1881, section 141 of which provides that every assignment of and every charge on and every agreement to assign or charge any deferred pay or military reward payable to any officer or soldier of any of Her Majesty's forces, or any pension, allowance, or relief payable to such officer or soldier, shall be void. The decision of the Court of Appeal is to the effect that money made by statute inalienable does not lose its character after judgment, and cannot be at-

tached. The decision is of very great importance to the service and to those who have dealings with its retired members."

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## SUPREME COURT OF CANADA.

QUEBEC.]

GRÉGOIRE v. GRÉGOIRE.

*Tutor and minor—Sale prior to 1st Aug. 1866. —Action to annul — Prescription — Arts. 2243, 2258, C.C.*

HELD, affirming the judgment of the Court below, M. L. R., 2 Q. B. 228, (Fournier and Henry, JJ., dissenting,) that the action to annul a sale made in 1855 by a minor emancipated by marriage, to her father and ex-tutor (without any account being rendered, but after the making of an inventory of the community existing between her father and mother) of her share in her mother's succession, was prescribed by ten years from the date when the minor became of age. Arts. 2243, 2258, C.C. *Motz* v. *Moreau*, (7 L.C.R. 147) followed.

Appeal dismissed with costs.

*Geoffrion*, Q.C., for appellant.

*Paradis* for respondent.

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McMILLAN v. HEDGE.

*Servitude—Aggravation of—Art. 558, C.C.*

On the 26th March, 1853, one G.L., by deed of sale, granted to P.C. 'a right of passage through the lot of land of the said vendor fronting the public road as well on foot as with carriage, and to the charge to the said purchaser 'of keeping the gates of the said passage shut.'

In 1882, McM, having acquired the dominant land, built a coal oil refinery and warehouses thereon. In the course of his trade he had several heavy carts making three or four trips a day through this passage leaving the gate open, and in addition to his own carts, most of the coal oil dealers of the city of Montreal, wholesale and retail, were supplied there with their own carts.—At the time of the grant the land was used as agricultural land; the passage was ten feet in width.

HELD, affirming the judgment of the Court below, M. L. R., 1 Q.B. 376, (Henry, J. dissenting), that the passage could not be used for the purposes of a coal oil refinery and trade, as McM. thereby aggravated the servitude and rendered it more onerous to the servient land than it was when the servitude was established. Art. 558 C. C.

Appeal dismissed with costs.

*Davidson, Q. C.*, for appellant.

*Pagnuelo, Q. C.*, for respondent.

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BRITISH COLUMBIA.]

THE CANADIAN PACIFIC RAILWAY CO. v. MAJOR.

*Canadian Pacific Railway Act, 44 Vic. ch. 1.— Cons. Ry. Act, 1879, s. 19.*

By the Act incorporating the Canadian Pacific Railway Co., 44 Vic. ch. 1, the provisions of the Cons. Ry. Act, 1879, are made applicable to the building of the Canadian Pacific Railway in so far as they are not inconsistent with or contrary to the said act of incorporation.

HELD, (Henry, J. dissenting), that the provision contained in section 19 of the Cons. Ry. Act, 1879, that no railway company shall have any right to extend its line of railway beyond the termini mentioned in the special act, is inconsistent with the power given to the Company under sec. 14 of said contract to build branch lines from any point within the Dominion, and with the declaration in section 15 of the charter, that the main line, branch lines, and any extension of the main line thereafter constructed or acquired shall constitute the Canadian Pacific Railway.

The Canadian Pacific Railway has, therefore, a right to build their road beyond Port Moody in British Columbia, the terminus mentioned in said act of incorporation.

Appeal allowed with costs.

*Robinson, Q. C.*, and *Tait, Q. C.*, for appellants.

*Eberts* and *Richards, Q. C.*, for respondent.

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## *COURT OF QUEEN'S BENCH— MONTREAL.**

*Partnership—Responsibility for acts of person managing business carried on by appellants under a different name.*

The appellants set up a firm of "J. H. Wilkins & Co.," which by private agreement

* To appear in Montreal Law Reports, 2 Q.B.

was their own business, with J. H. Wilkins as manager, but to the public, the business was that of J. H. Wilkins & Co. This firm bought goods from respondent, the price of which was claimed by the present action.

HELD:—That the appellants were liable for the obligations of the firm of J. H. Wilkins & Co., and for the acts of J. H. Wilkins who was entrusted with the management.—*Lewis et al.*, appellants, & *Osborn*, respondent, June 30, 1886.

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*Will—Codicils— Construction of — Revocation of Legacy.*

*H.*, who had $5,000 of stock in La Banque du Peuple, made a will by which he bequeathed $1,000 of this stock to his granddaughter. Subsequently, he made three separate codicils, all bearing the same date, by one of which he bequeathed $3,000 of the said stock to the same granddaughter, and by the other two codicils he made specific bequests of $1,000 each of said stock for other objects,—thus disposing by the codicils of the entire sum of $5,000. The question was whether the bequest by the first codicil of $3,000 to the granddaughter, under the circumstances stated, revoked the previous bequest in her favor, of $1,000, contained in the will.

HELD:—That the legacies contained in the codicils, disposing as they did, specifically, of all the stock which the testator had in La Banque du Peuple, operated a revocation of the first bequest of $1,000 to the granddaughter, contained in the will.—*Pattison*, appellant, & *Fuller*, respondent, June 30, 1886.

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## *SUPERIOR COURT—MONTREAL.**

*Municipal Code—Arts.* 939, 941, 951 — *Action by county Council—Cost of Bridge.*

HELD:—1. The mode of recovery under Art. 941, Municipal Code, for the collection of taxes imposed for county purposes under a *procès-verbal* is not exclusive, and an action by the county corporation lies against a local corporation for the recovery of taxes imposed by such *procès-verbal.*

2. The apportionment under Art. 814, M. C., is an apportionment of *work*, and may be dispensed with by a *procès-verbal;* and where a *procès-verbal* made by a county council for the cost of a bridge declared that no apportionment should be required, and fixed the portion payable by the local corporations, and the homologation of the *procès-verbal* was never opposed nor appealed from, the effect was to make the local corporation debtor to the county council for the amount.—*Corporation of County of Missisquoi* v. *Corporation of Parish of St. George de Clarenceville*, In Review, June 30, 1886.

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*Claim against insolvent estate—Collateral security—Notes—Goods pledged.*

Held:—1. That a creditor, who holds notes as collateral security, is entitled, until fully paid, to be collocated upon the estate of his debtor in liquidation for the full amount of his claim, without deduction of any sums he may have received or collected from other parties liable upon such notes previous to the declaration and payment of dividend.

2. But as to goods held as collateral security, the law of pledge applies, and, whatever sums the creditor may have realized upon such goods previous to the payment of dividend, extinguish his claim *pro tanto*, and must be deducted from the total amount of the claim upon which he is collocated.—*Benning* v. *Thibaudeau*, In Review, Sept. 28, 1886.

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*Patent—Action for Infringement—Right to obtain interim injunction—Security.*

HELD:—1. That a patentee, during the pendency of an action instituted by him to restrain the infringement of his patent, is entitled to an *interim* injunction under 35 Vict. (D.) ch. 26, s. 24, on the production of affidavits that his patent is being infringed by the defendant, and further of a judgment in another case, establishing that he (the plaintiff) had successfully maintained an action complaining of a similar infringement.

2. That the Provincial Injunction Act of 1878, requiring security to be given before an injunction is granted, does not apply to

* To appear in Montreal Law Reports, 2 S. C.

an injunction under the Dominion Patent law.—*Baril* v. *Pariseau*, Jetté, J., Sept. 6, 1879.

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*Maitre et serviteur—Salaire—Pertes du patron—Faute de l'employé.*

JUGÉ:—Que même en loi et en l'absence de toute convention spéciale, un patron a droit de retenir sur le salaire de son employé le montant des pertes que ce dernier lui a fait subir par sa faute.—*Levêque* v. *Benoit*, Taschereau, J., 19 novembre, 1886.

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*Nouvelle action—Frais—Suspension d'action—Motion.*

JUGÉ:—Que lorsqu'une action a éte déboutée, sur des moyens de forme et qu'une nouvelle action est intentée, le défendeur ne peut par motion demander à ce que l'action soit suspendue jusqu' à ce que les frais de la première action soient payés.—*Vallée* v. *Leroux*, Mathieu, J., 23 octobre 1886.

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## CIRCUIT COURT.

QUEBEC, Nov. 22, 1886.

*Before* CARON, J.

THE CORPORATION OF THE COUNTY OF PORTNEUF v. LARUE.

*Municipal Code, Arts.* 932, 16—*County Council—Appeal—Costs.*

HELD:—1. A county council, which shall have dismissed an appeal from the decision of a local council, is not obliged, by art. 932 of the Municipal Code, then and at the same meeting, to exercise the two powers, conferred upon it by that article, that is to say, of condemning the appellant to pay the costs of such appeal and to tax such costs; it may then only adjudge the payment of such costs; and it may, at a subsequent meeting, tax such costs.

2. The order, made by the county council to the effect, that costs shall be paid to "*A. B., secretary-treasurer of the county corporation,*" is a valid direction of payment; all such costs, paid into his hands, are a payment to the county corporation, he being its treasurer; the objection to such an order is made invalid by art. 16 of the Municipal Code, which declares that no objection to any municipal proceeding, *not* entailing real injustice, shall be valid.

3. An appellant, so condemned to pay the costs of the appeal, is not entitled to any notice of the time, at which such costs shall be taxed.

4. The corporation of a county, whose council shall have so rejected an appeal with costs, has a right to recover, from the appellant, the amount of such costs, by a suit, in the same manner (Art. 932) as fines may be recovered under art. 1042 of the Municipal Code.

5. When several appellants shall have been so condemned in costs, the county corporation has a right to determine, by a repartition based on the local valuation-roll, the amount of such costs payable by each appellant.

*Morrisset & de St. George*, for plaintiff.

*Belleau, Stafford & Belleau*, for defendant.

(J. O' F.)

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## CIRCUIT COURT.

QUEBEC, Dec. 6, 1886.

*Before* ANDREWS, J.

DE LA CHEVROTIÈRE v. GUILMET.

*Promissory note—Demand of payment.*

HELD:—1. The demand of payment of a promissory note must be accompanied by a tender of that promissory note to the debtor.

2. Such demand of payment cannot be made publicly at the church door, immediately after Divine service, either on a Sunday or a feast of obligation.

*Tessier & Pouliot*, for plaintiff.

*Montambault, Langelier, Langelier & Taschereau*, for defendant.

(J. O' F.)

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## CIRCUIT COURT.

QUEBEC, Dec. 6, 1886.

*Before* ANDREWS, J.

LAGACÉ v. GRENIER, & MARSH et al., T.S.

*Saisie-arrêt—Declaration of garnishee.*

HELD:—Although, from the general tenor of the declaration of a garnishee, that, at the time of the service upon him of the writ of garnishment, it may be reasonably inferred that he was indebted to the defendant, yet, if the garnishee shall have expressly de-

clared that he was not so indebted, the garnishee cannot be condemned on a motion for judgment against him; the plaintiff must adopt the proceeding of a contestation of the garnishee's declaration. (1)

*J. E. Bédard*, for plaintiff.

(J. O' F.)

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CHANCERY DIVISION, (England).

Nov. 8.

*Before* KAY, J.

*In re* THE OXFORD BUILDING SOCIETY.

*Company—Director — Liability — Payment of Dividend out of Capital—'Realised profits.'*

One of the articles of association of a company was as follows: 'No dividends shall be payable, except out of the realised profits arising from the business of the company.' The business of the company consisted in lending money to builders on mortgage, generally at 8½ per cent., repayable by instalments of principal and interest in fourteen years. In their balance-sheets, the company took credit 'for the present value of the repayments on mortgages held by the company,' which amount was treated as profits immediately available for payment of dividend. The basis of the estimate by which the amount of the present value was arrived at was an assumption that every one of the securities on which the company were advancing money was ample to provide for principal, interest, and costs. For this the directors had nothing but the assurance of their surveyor, who was also secretary. In the winding-up of the company, a summons was taken out by a creditor to obtain repayment from the directors of the sums paid by them from the commencement of the company by way of dividend in excess of the realised profits arising from the company's business.

*Sir H. Davey, Q. C., Maclean, Q. C.*, and *Buckley*, for the directors, contended that, even if it were the fact that from the commencement of the company the directors had continually paid dividends out of capital, yet they could not be made liable unless their conduct amounted to fraud. They further contended that the word 'realised' meant no more than 'real profits honestly earned,' and that the use of that word did not impose on the directors any further liability than that which was imposed upon them by the general law.

KAY, J., held that the directors were liable. It was not necessary to prove fraud. It was settled by authority (1) that directors were *quasi*-trustees of the company; (2) that directors who improperly paid dividends out of capital were liable to repay such dividends personally upon the company being wound up; (3) that this liability might be enforced by a creditor, or by the liquidator under section 165 of the Companies Act, 1862, or by the incorporated company before a winding up; (4) that the acquiescence of shareholders did not affect the creditors in such a case; and (5) that such an act was a breach of trust, and the remedy was not barred by the Statutes of Limitation. The word 'realised' must have its ordinary commercial meaning, which, if not equivalent to 'reduced to actual cash in hand,' must at least be 'rendered tangible for the purpose of division.' The meaning of the word was the direct converse of the word 'estimated.' The directors had paid dividends out of capital on the chance that profits might be realised sufficient to justify such payments, which was precisely what the articles expressly forbade. It was improper to pay any dividend in respect of an instalment not actually paid, because until payment no part of that instalment could be treated as a realised profit. It would be the duty of the directors, if each instalment were punctually paid, to treat a sufficient part of each instalment as the interest on the advance, or the unpaid portion of the advance, to that time. This amount, after providing for all current expenses and outgoings, and setting apart a sufficient sum to meet contingencies, would be properly applicable to pay a dividend. Upon this footing his lordship declared that the directors were jointly and severally liable for the amounts improperly paid away in each year of their directorship, amounting in the aggregate to 44,433*l.* 4*s.* 6*d.*, and, as the liability was founded upon a breach of trust, they must also pay interest at 4 per cent.—*Law Journal*, (London).

(1) See also *Grant & Federal Bank of Canada*, M. L. R., 2 Q. B. 4.

COUR D'APPEL D'AGEN (2e Ch.)

14 mai 1886.

Présidence de M. DESPEYROUX.

MARQUET *v.* EPOUX FORT.

*Femme mariée—Commerçant—Fonds de Commerce—Exploitation en commun—Patente—Cautionnement—Nature—Preuve.*

*La femme mariée, qui s'occupe particulièrement du commerce de son mari et lui prête un concours actif, dans l'exercice de ce commerce, ne saurait pour cela être réputée marchande publique, lorsque le mari est toujours resté à la tête de son commerce qu'il gérait lui-même, lorsque la patente relative à l'exploitation du fonds était en son nom et que la femme n'a jamais fait un commerce distinct et séparé de celui de son mari.*

*L'engagement qu'aurait pris la femme, dans ces conditions, de payer le prix de fournitures faites au commerce de son mari, n'est qu'un cautionnement civil dont la preuve ne peut être faite que suivant les règles prescrites aux art.* 1341 *et suiv. C. civ.*

" LA COUR,

"Attendu que l'action de l'appelant contre les mariés Fort tend à les faire condamner solidairement au paiement de la somme de 995 fr. 95, pour solde de fournitures de farine; que Fort reconnaît quant à lui la légitimité et le montant de son compte; que Marquet, en ce qui concerne la femme Fort, fonde sa demande sur ce que, depuis sa séparation de biens, celle-ci s'occupait particulièrement du commerce de la boulangerie de son mari, et qu'en outre elle a pris personnellement envers lui l'engagement de lui payer les marchandises qu'il livrait;

"Attendu qu'il résulte des justifications produites par les intimés que Fort était le propriétaire de la boulangerie qu'il tenait au Passage-d'Agen; qu'il est toujours resté à sa tête, et qu'il a été inscrit, jusqu'en 1885, au rôle des contributions mobilières et des patentes; que lorsque, dans le courant de l'année 1884, sa faillite fut déclarée et la séparation de biens prononcée entre sa femme et lui, Fort continua de faire fonctionner sa boulangerie, la gérant alors d'une manière provisoire dans l'intérêt de ses créanciers, jusqu'à la vente de son fonds; qu'il est établi aussi qu'à cette époque, Mathilde Gay a prêté à son mari, dans le dit commerce, un concours actif, mais sans jamais avoir fait un commerce distinct et séparé de celui de son mari; que l'action de Marquet, telle qu'elle est intentée, vient d'ailleurs imprimer à ces faits une effective confirmation; que dans ces conditions et conformément aux dispositions des art. 4 et 5 du Code de commerce, l'épouse Fort ne saurait être réputée marchande publique et ayant pu valablement s'obliger pour ce qui concerne le négoce; que sa situation demeure régie par la présomption légale en vertu de laquelle elle ne doit être réputée que la préposée de son mari, quelque importante que soit la part qu'elle a pu prendre au commerce de ce dernier;

"Attendu, il est vrai, que l'appelant prétend que la dame Fort se serait engagée, depuis sa séparation de biens, à lui payer le prix des farines par lui fournies; qu'il excipe ainsi d'un cautionnement souscrit par elle, pour l'acquit d'une dette de son mari; mais qu'un tel cautionnement ne se présume pas; qu'il doit être exprès, et ne saurait être prouvé que suivant les règles prescrites aux articles 1341 et suivants C. civ.; que Marquet n'apporte, pour justifier ce cautionnement de Mathilde Gay, ni preuve écrite, ni commencement de preuve par écrit;

" Par ces motifs,

" Démet l'appelant de son appel, etc., etc."

NOTE.—Par arrêt du 11 août 1884, la Cour de cassation a jugé que la femme mariée, exploitant un fonds de commerce en commun avec son mari, ne peut être, à raison de ce fait, réputé marchande publique, alors même qu'elle serait séparée de biens et que la patente relative à l'exploitation du fonds serait en son nom (Gaz. Pal. 84. 2. 301 et la note.) Auxautorités citées, *adde* conf. Trib. com. Nantes 28 mai 1870 (Rec. de Nantes 70. 1. 164; Rennes 2 mars 1881 (*ibid.* 82. 1. 19). V. aussi conf. Trib. com. Nantes 9 mai 1885 (Gaz. Pal. 86. 1, Rép., v° Commerçant, n° 1).

Quant à la nature de l'engagement souscrit par une femme non commerçante pour l'acquit d'une dette contractée par son mari commerçant dans l'intérêt de son commerce,

V. Lyon 18 février 1886 (Gaz. Pal. 86. 1. 712) et la note sur les deuxième et troisième points.—*Gaz. du Palais.*

## *RECENT UNITED STATES DECISIONS.*

*Executor and Administrator—Liability for Acts of Co-Executor.*

Where the funds of an estate were originally in the hands of one of the executors, or paid to him in the due course of administration, and there is nothing to excite suspicion as to the integrity or responsibility of such trustee, or to create a belief that the funds have been improperly used or invested, his co-executor or co-trustee is not chargeable with his wrongful use of the fund. Where however an executor knowingly assents to the misapplication of the trust funds by his co-executor, or negligently suffers him to receive and waste the estate when he has the means of preventing it by proper care, he becomes liable for a resulting loss. Croft v. Williams, 88 N. Y. 384; McCabe v. Fowler, 84 id. 314. The general rule as to the liability of one executor or trustee for the acts of his co-executor or trustee is laid down in Williams Executors (6th Am. ed. 1820), 9, as follows: "A *devastavit* by one of two executors shall not charge his companion, provided he has not intentionally or otherwise contributed to it, for the testator, having misplaced his confidence in one, shall not operate to the prejudice of the other." For the *devastavit* of an executor or trustee, his co-executor or co-trustee is not liable unless it appears that he had knowledge of or assented to the acts done, or had notice which should have excited his suspicion and put him on inquiry. This rule is fully sustained by the authorities. Sutherland v. Brush, 7 Johns. Ch. 17: Sherman v. Parish, 53 N. Y. 483; Adair v. Brimmer, 74 id. 539; Peter v. Beverly, 10 Pet. 532; Ormiston v. Olcott, 84 N. Y. 339; McCabe v. Fowler, 13 id. 314; McKim v. Aulback, 130 Mass. 481; Croft v. Williams, 88 N. Y. 384. —N. Y. Court of Appeals, Oct. 12, 1886. *Wilmerding* v. *McKesson.*

*Ex Post Facto Laws—Change of Procedure.*

Where the law in force at the time of the commission of the alleged offence provided that juries should be the judges of the law, but which law was repealed before the trial, *held*, that it was competent for the Legislature to make such change, and no error for the trial court to refuse to instruct the jury in the language of the prior law. The procedure only has been changed. The degree of punishment, the character of the offence, and the rules of evidence, remain as under the former law. It may be observed that the only change in the law is to provide another tribunal to pass upon the law of the case. Prior to the change, if the words in the former Code are to be taken at their full meaning and import, the jury were the judges as to the law of the case on trial. After the change, the court sits in that capacity, and is the judge of the law. No vested right of plaintiff in error is affected. A new tribunal may be erected, or a new jurisdiction given to try him, and no right is abridged. Com. v. Phillips, 11 Pick. 28. In People v. Mortimer, 46 Cal. 114, it is said: "It is clear therefore that no constitutional difficulty would be encountered in requiring past offenses to be tried under new forms of procedure: and it is equally clear that if such offenses are to be tried only under the old forms, and later offenses under the new, it would or might 'create endless confusion in legal proceedings.'" Cooley, in Constitutional Limitations (4th ed.), at page 331, says: "But so far as mere modes of procedure are concerned, a party has no more right in a criminal than in a civil action, to insist that his case shall be disposed of under the law in force when the act to be investigated is charged to have taken place. Remedies must always be under the control of the Legislature, and it would create endless confusion in legal proceedings if every case was to be conducted only in accordance with the rules of practice, and heard only by the courts in existence when its facts arose. The Legislature may abolish courts and create new ones, and it may prescribe altogether different modes of procedure in its discretion, though it cannot lawfully, we think, in so doing, dispense with any of those substantial protections with which the existing law surrounds the person accused

of crime." In 1 Bish. Crim. Proc., §115, it is said: "It is a doctrine, extending through every department of the law, that rights, when vested in individuals, are unchangeable, while the remedies by which those rights are enforced may be varied from time to time at the pleasure of the Legislature. Now within this principle, the absolute rights of prisoners, especially the constitutional ones, in respect to their defense, cannot be taken away. But they can be modified as to time, place and manner of their enforcement. Only the substance of them must be preserved. We therefore conclude that the law is not *ex post facto* and within the inhibition of the Constitution of the United States, or of this State, and that plaintiff in error has been deprived of no substantial right by the refusal of the trial court to instruct as requested.—Neb. Supreme Ct., Oct. 27, 1886. *Marion* v. *State*.

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## *CHAMPERTOUS AGREEMENTS.*

In the Mayor's Court of London, on November 15, before the Recorder (Sir T. Chambers, Q.C.) and a jury, the case of *Baker* v. *Ward* was tried. It was an action brought to recover 50*l*., as money had and received by the defendant to the plaintiff's use. The defendant pleaded payment, and also never indebted. Mr. Lewis Glyn and Mr. Harper were for the plaintiff; Mr. Candy for the defendant. It appeared that Mr. Henry Baker, the plaintiff, had formerly been a labourer, and he had met with an accident by which both his legs were broken, and in order to recover compensation, he put the matter in the hands of the defendant, Mr. R. H. Ward, a solicitor, of Wallbrook, and an action, *Baker* v. *Fearn*, was entered in the High Court of Justice, the present plaintiff being the plaintiff in that action, to recover damages for the injuries he had received It was out of that case that the present action arose. The defendant had made an arrangement with the plaintiff that he would take up his case as a speculation, and that if he did not recover damages, then the defendant would not ask for any costs; but in the event of damages being recovered then the defendant was to keep 50*l*. beyond the amount which he would be entitled to as costs. The action was set down for trial at the Chelmsford Assizes, but just on the eve of the trial the defendant settled the case by accepting 150*l*. as damages on behalf of the plaintiff. Of that sum 100*l*. had been paid to the plaintiff and 50*l*. retained by the defendant, in addition to 46*l*. taxed costs received by the defendant from the defendant in the former action. The case of *Earle* v. *Hopwood*, 30 Law J. Rep. C. P. 217, was relied on.—On behalf of the defendant it was said that the agreement which the plaintiff made was that he would pay the defendant one-third of his verdict, and it so happened that that was 50*l*. That was an advantage to the plaintiff, who was in a hopelessly impecunious position, and would never have been able to bring an action at all without some such assistance.—The plaintiff was then called, and said that he had been perfectly satisfied with what Mr. Ward, the defendant, had done for him, and had no intention of suing him for the 50*l*. He did not want to bring an action against Mr. Ward, but of course 50*l*. would be very acceptable to him. About a month ago a Mr. Harrison came to him and asked him to sign a piece of paper, which he did. That paper was a retainer to commence this action, although he did not desire it to be brought. Mr. Harrison was the son of Mr. Nathaniel White, who was the plaintiff's present solicitor.—On that evidence the counsel said that he would ask the jury to say that this was not the plaintiff's action, but one brought without his authority.—The learned Judge said that that would be contradicting the record. He could not see that the defendant had any answer to the case. He had not acted in any way immorally, but only unprofessionally, and certainly against the law which had been established for the protection of the public from lawyers.—A verdict was then entered for the plaintiff, but leave was given to move the High Court.—*Law Journal* (London).

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## *INSOLVENT NOTICES, ETC.*

*Quebec Official Gazette, Dec. 11.*

*Judicial Abandonments.*

Victor Louis Côté, manufacturer, St. John's, Dec. 3.
Joseph Jacques, shoemaker, Quebec, Dec. 4.

*Curators appointed.*

*Re* Chs. Chapdeleine, district of Richelieu, Kent & Turcotte, curator, Montreal, Dec. 7.

*Re* Frs. X. Larin, Montreal —Chs. Desmarteau and E. G. Phaneuf, Montreal, curators, Dec. 9.

*Re* N. O. Lefebvre, Sorel.—Kent & Turcotte, Montreal, curator, Dec. 3.

*Re* Cyrille Mongeon, Sorel.—Kent & Turcotte, Montreal, curator, Dec. 3.

*Re* Sharpe & MacKinnon, Montreal.—D. L. McDougall and David Seath, Montreal, curators, Nov. 29.

*Re* Richard Smardon, manufacturer, Montreal.—C. R. Black and D. L. McDougall, Montreal, curators, Dec. 2.

*Dividends.*

*Re* Charles D. Edwards, Montreal.—First and final dividend, Hy. Ward and Chs. Baillie, Montreal, curators.

*Re* James Sangster, Huntingdon.—First and final dividend, payable Dec. 28, W. S. Maclaren, Huntingdon, curator.

*Separation as to property.*

Emilie Dupuis vs, Louis N. Fortier, Gatineau Point, June 17.

# GENERAL INDEX TO SUBJECTS.

## VOL. IX.