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The *Law Journal* (London) refers as follows to the Crown Case Reserved, a report of which appears in the present issue:—"In *Regina* v. *Latimer*, the Crown Court decide that if a man strike at another and wound a woman he is guilty of unlawful and malicious wounding within the statute 24 & 25 Vict. c. 100, s. 20. The Lord Chief Justice was of opinion that *Rex* v. *Hunt*, 1 M. C. C. 93, a decision of all the judges briefly reported, virtually decided the question, but a close examination of that case shows that it was little in point. The indictment was not for maliciously wounding, but for feloniously cutting. No one doubts that if a man meaning murder kills the wrong man he is guilty of murder, and so of a felonious assault, but the law of murder depends on the common law. The question was whether the word 'maliciously' in a statute is satisfied by a malice which had a different object for the blow. In *Regina* v. *Pembliton*, 43 Law J. Rep. M. C. 91, it was held that to aim at a man and to smash a window is not malicious; now it is held that to aim at a man and wound a woman is malicious. The distinction is fine, but it is probably sound, and ingenuity might suggest many similar complications of motive and act which chance-medley might bring about. For example, is it malicious to aim at a horse and wound the rider? We suppose it is, on the authority of the present decision, although the poor horse, hit in mistake for the rider, would probably be no better off than the plate-glass. The distinction is perhaps unsound in strict logic, but the fact is that the law very properly takes care of human life and limb, and when they are in danger ignores metaphysics. In the reign of William Rufus, we believe, the doctrine was carried further, and it was contended that when the man was a king it was treason to kill him in shooting at a stag, but, as Coke gravely points out, Tyrrell was no poacher, but shot at a stag in the royal forest at the king's command, and the king's death was legally an accident. Personally Tyrrell was not, we believe, confident of the soundness of his legal position, and was called away to the Crusades."

One George Hill was prosecuted for manslaughter on the 3rd inst. under unusual circumstances. It appears that last month he was in charge at night of a fire escape in Soho. A fire broke out in a house off Regent street, and in a short time a man appeared at the upper windows shrieking for help. The fire escape was telegraphed for and the firemen started to hasten it, but no telegraphic response came, and when they arrived at the Soho station the trained custodian of the fire escape was found to be absent. The firemen, not knowing how to manage it, so misplaced it that the man in leaping was killed. Hill was tried for manslaughter. Mr. Poland, for the Crown, contended vigorously that the culprit's negligent absence contributed to the result and he was therefore guilty; but Mr. Justice Hawkins ruled that all such contribution to culpably negligent manslaughter must be direct, and that if Hill had been at his post and attended to his duty the result of death might have been the same. During the argument Mr. Justice Hawkins said:—"The deceased jumped from a window in danger of being burned, and not because of any wrongful act on the part of the defendant." Mr. Poland answered:—"Yes, the man jumped to escape burning, and it was the duty of the defendant to be there to save his life."

The *N. Y. Herald* collates some facts to illustrate the celerity of criminal administration in Belgium, France and England. Leon Vandersmissen killed his wife April 7. He was tried at Brussels for murder, and on June 2, the third day of his trial, he was convicted and sentenced to fifteen years' imprisonment. In less than two months after its commission he was paying the penalty of his crime. Mme. Clovis-Hugues shot and killed M. Morin at the Palais de Justice, in Paris, November 27, 1884. She was brought to trial

January 8, 1885, and acquitted the same day. Six weeks after the tragedy a verdict of justifiable homicide was rendered by the jury in the Court of Assizes. The two men charged with cannibalism in the famous Mignonette case were indicted November 3, 1884, soon after they landed in England. Three days later they were tried. The question whether their offence was murder went to the Court of Appeal. That tribunal gave its decision December 4, and the prisoners were sentenced to death on the 9th. This sentence was commuted to one of imprisonment a few days afterward. In less than six weeks after their indictment they were paying the penalty of the law. In contrast with these cases several United States cases are mentioned in which the delay is usually from one to two years, confirming the observation of Gov. Hill in a recent message to the legislature:—"The long delay which in almost every instance elapses between the original sentence of death and the execution of the criminal has for many years been a scandal upon our system of criminal law."

SUPERIOR COURT.

SWEETSBURG (D. Bedford), Nov. 5, 1885.

Before BUCHANAN, J.

NICK v. ARPIN.

Act inflicting Penalty—48 *Vic.* (*Q.*) *ch.* 22, *s.* 9 —*Matter of Procedure.*

HELD:—*That the Act* 48 *Vic.* (*Q.*) *ch.* 22, *s.* 9, *inflicting a penalty for not producing statement, &c., is not mere matter of procedure, and has not a retroactive effect. Hence it does not apply to a debtor whose bail bond and the judgment declaring the capias valid were in force previous to the passing of the Act in question.*

BUCHANAN, J.:—

The defendant was arrested under *capias* and gave bail, and by the final judgment rendered on 2nd May 1885, such arrest was declared valid.

The plaintiff now petitions that inasmuch as the defendant has not filed a statement of his property within 30 days from the date of the judgment as required by art. 766 of the C. C. P., that he be imprisoned in the Common Gaol of this District for a period not exceeding one year.

Under the articles of that Code two forms of Bail Bond were allowed—the condition of that under Art. 824 being that the Bond should be exigible in case the defendant left the Province without paying the judgment. This is what was generally known as special bail, and was made under the provisions of 25 Geo. III and to be found on page 135 of the Revised Statutes.

Under Art. 825 the condition of the Bond was that he should surrender himself to the sheriff when required by an order of the Court or judge within one month from the service of such order, and that is the form of so called special Bail adopted here and given by the defendant.

This question as to the nature of Bail has been discussed in two cases which I have found reported in connexion with applications of the nature of the present one.

The case of *Poulet* v. *Launière*, 6 Q. L. R., p. 314, decided by Ch. J. Meredith, was one where the Bail was given under Art. 824, and in that case he says: "But if the sections of 12 and 18 of ch. 87 of the C. S. L. C., which our Art. 766 purports to reproduce, be looked at, it will be found that they refer to the case of a debtor who has *given security to surrender* in default of an abandonment of his property, and not to the case of a defendant who has given special Bail."

In the case of *Cossit et al. & Lemieux*, 2 Q.B. R. 19, C. J. Dorion says: "S'il donnait le cautionnement de se remettre entre les mains du shérif lorsque requis, il pouvait être emprisonné si dans les trente jours après signification de l'ordre de la Cour ou d'un juge, à cet effet, il ne fournissait pas un état sous serment de ses biens. Mais s'il fournissait, dans les huit jours après le retour du bref de capias, le cautionnement qu'il ne laisserait pas la Province, dans ce cas, ni lui, ni ses cautions ne pouvaient être inquiétés à moins qu'il ne laissât la Province. Il est certain que la première partie de l'art. 766 ne s'applique qu'au défendeur qui a fourni des cautions qu'il se rendrait au shérif sur l'ordre de la Cour, et non à celui qui a fourni un cautionnement spécial qu'il ne laisserait la Province."

It would then appear settled from these

decisions, the last being rendered by the Queen's Bench in November 1881, that as regards defendants putting in Bail under Art. 825, such as the present case, that they came under the effect of Art. 766, that is that they would be bound to file the statement, and that those putting in Bail under Art. 824, not to leave the Province, did not come under its effect in that respect and were not in default by not making such statement.

By the judgment in the case of *Carter* v. *Molson*, 27 L. C. J. 157, the majority of the Queen's Bench decided that a defendant bailed under Art. 825, although bound by Art. 766 to file the statement, was not liable to imprisonment for failure to do so. The Privy Council with some hesitation (6 Leg. News, 189) adopted that view upon the principle that the penalty of imprisonment was not imposed by the Code of C. P., and consequently could not be prescribed. I have very carefully examined the grounds on which this judgment appears to be based and they do not appear to be quite satisfactory, but the law being pronounced to be such by the highest Court in the Empire, I must accept it. Besides the Legislature in making the enactment hereafter alluded to adopted the view taken by the Courts. I notice that in the case of *Cossit & Lemieux* to which I have referred, the Chief Justice, when speaking of the case as if it had been one, which it was not, in which the defendant was bound to furnish a statement, and that no penalty was provided for not so doing, says: "C'est là une lacune causée sans doute par inadvertence, mais comme les dispositions relatives à la *contrainte par corps ne s'étendent pas d'un cas à un autre*, il est pour le moins *douteux*, que, lors même que le défendeur aurait été tenu de fournir un bilan, il aurait pu être condamné à un emprisonnement pour ne pas l'avoir fait."

This judgment was previous to that of *Carter & Molson*, and by that time the doubtful element appears to have disappeared.

The jurisprudence so far appeared settled in favor up to a certain point of the fraudulent debtor until the enactment of the 48 Vic. ch. 22, s. 9, which came into force sixty days after the 9th May 1885, subsequent to the rendering of the final judgment in this cause, but previous to plaintiff's petition which was filed on 2nd September last. By Art. 776 it is enacted: "If the contesting party establishes any one of the offences mentioned in Art. 773, or if the defendant refuses to attend or to answer as required under the preceding article, the Court or judge may condemn him to be imprisoned for a term not exceeding one year, &c." Then comes in the amendment. If the debtor discharged upon bail does not produce his statement and declaration within the 30 days mentioned in Art. 766, such debtor and *his sureties* are subject to the same penalties and recourse, &c."

Here, then, the *lacuna* alluded to by the Chief Justice is supplied, but as the defendant very pertinently suggests, can it apply to him whose Bail bond and the judgment declaring the *capias* valid were in effect and force before the passing of this amendment?

There is no question but that the defendant was at all times bound to furnish this statement—that was a liability incurred under the bond—but not having done so, can he be brought under the effect of an *ex post facto* law? The terms of the clause are in the present tense—if he does not do so and so. How could he be in default to do it when during these thirty days or one month there was no text of law requiring it to be done? If the Legislature had not entertained the opinion that the judgment of the Privy Council was correct, it might have made the correction in the form of one to remove doubts, or as remedial, but it is nothing but a bald declaration of a penalty to be incurred by the person who does not file the statement.

But in order to bring him under its operation, the plaintiff contends that this is matter of procedure, and that being such, the law will have retroactive effect. But is it matter of procedure? The judgment in *Carter & Molson* does not as distinctly hold as it held that Carter had not the remedy sought for, that this was matter of procedure. It does not say that the imposition of a penalty for not doing a thing ordered by the law is matter of procedure. That may be inferred, but I cannot be governed in matters not supported by common sense by what may be inferred from the judgment of a superior tribunal. The affixing a penalty is not procedure in

any sense; the manner in which it should be enforced is procedure, but the thing itself is not. Various illustrations of this rule will suggest themselves at once and need not be dwelt upon.

If the enactment in question had contained merely matter of procedure, it would, under the authorities, have had the effect contended for—the authorities are all clear upon that point; but this clause is penal and punitive in its terms. Maxwell, Interpretation of Statutes, at page 199:—"Although to make a law for punishing that which at the time when it was done was not punishable *is contrary to sound principles*, a law which merely alters the procedure may with perfect propriety be made applicable to past as well as future transactions."

Nowhere it is sought to punish a man for omitting to do something for which he was not liable to this specific punishment, and this being contrary to sound principles, and not merely matter of procedure, I cannot do.

Demolombe at great length lays down the principles by which Courts are to be governed in the construction of laws sought to be made retroactive, but this case does not come within any of those rules.

At par. 59, Vol. I, he says: "Mais il est essentiel de ne pas confondre le fond (that being the punishment here) avec la forme, le droit lui-même avec l'exercice du droit, ce qui est enfin *decisorium* avec ce qui n'est qu'*ordinatorium*."

It is said in some of the authorities cited by plaintiff's counsel, that where, by a subsequent law, process of *contrainte par corps* is granted, it would apply to a matter or claim incurred before that law was passed. But is a *contrainte par corps* identical with a penalty? for it is a penalty here, the amendment saying so. A *contrainte par corps* as being a process to enforce payment of a debt, may be considered matter of procedure, but a *contrainte par corps* in the sense treated of by these writers (Laurent and Aubry & Rau) is not a penalty. In that case it cannot be purged by payment of the debt. In a *contrainte par corps* by a *capias* it could—it is in the power of the debtor to obtain his liberation by doing or paying some thing. But here, any thing the defendant might do would not liberate him; this is a punishment which he must undergo. It is penal and nothing else, and to say that this must be governed by the laws relating to *contrainte par corps* would make these writers contradict themselves, for at page 61, Vol. I, Aubry & Rau say: "En vertu du principe fondamental de droit pénal, *nulla pœna sine lege*, les lois qui prononcent des peines pour des faits jusqu'alors non incriminés ou qui aggravent les peines précédemment établies, ne peuvent recevoir aucune application à des faits *antérieurs* à leur promulgation."

There is the *contrainte par corps* for personal damages; that is a mode of enforcing payment which the debtor can free himself from, and may be called a species of procedure. Here it is not a procedure to enforce any payment or to compel the execution of an obligation, but a punishment for something in the nature of a misdemeanour, and this process of *contrainte par corps* is specially treated of in the *Civil* Code (Art. 2271) a title being devoted to it, showing that the Codifiers did not consider it mere matter of procedure.

Under the circumstances I am compelled to dismiss this petition. Could I, on sound principles, have done otherwise, I should most willingly have done so, but to me the law is clear, and the man who has broken the law must, under the *present proceeding*, be allowed to escape punishment.

E. Racicot, Q.C., for plaintiff.

G. B. Baker, Q.C., for defendant.

SUPERIOR COURT.

QUEBEC, April 21, 1885.

Before CASAULT, J.

THURBER et vir v. LEMAY.

Illegal agreement.

HELD,—*On demurrer, by the defendant, that an* agreement, *between a registrar and another person, to the effect, that, on the registrar resigning his office, so as to allow that other person to be appointed registrar in his place, the new registrar should pay, to his predecessor, one half yearly of the new registrar's fees of office, is* null and void; *and an action, based on such an agreement must be dismissed.*

In this case, the hearing on the demurrer had been postponed until the final hearing of the case on its merits.

The following is the text of the judgment:—

" La Cour ayant examiné la procédure et la preuve de record et entendu les parties par leurs avocats sur le mérite de la *défense en droit* filée en cette cause par le défendeur;

" Considérant que la *promesse* alléguée dans l'action, et par laquelle le défendeur, en considération de la démission en sa faveur par Joseph Filteau de la charge de régistrateur pour le comté de Lotbinière, que le dit Joseph Filteau occupait alors, s'est obligé de payer au dit Joseph Filteau moitié des revenus du bureau d'enregistrement du dit comté, *était illégale et nulle;*

" Considérant que la dite promesse, n'étant pas revêtue des formalités requises, ne peut pas non plus valoir *comme donation;*

" Maintient la dite défense en droit et renvoie l'action de la demanderesse avec dépens."

Demurrer maintained, and action dismissed.

R. P. Vallée, for plaintiff.

F. X. Lemieux, for defendant.

(J. O'F.)

COURT OF REVIEW.

QUEBEC, March 31, 1884.

Coram MEREDITH, CH. J., STUART, CASAULT, JJ.

NADEAU v. THE CORPORATION OF ST. SÉVÉRIN.

Judgment—Correction of Clerical Error.

In this case, the Court below dismissed, without costs, *the plaintiff's action. In Review, on the 31st December, 1883, that judgment was purely and simply confirmed, with the* costs *of the Court of Review against the plaintiff. Through some sort of error, the judgment in Review was entered in the register, as having dismissed the action* with costs.

HELD:—*That such an error was a merely clerical one, and that the judgment could be corrected, by the substitution of the word "without" for the word "with."*

The following is the judgment of the Court:—

" La Cour, siégeant en Révision, vu la requête de la part du demandeur en la présente cause, aux fins de faire *corriger une erreur clérical* commise en la rédaction du jugement rendu par cette Cour, le trente-unième jour de décembre dernier dans la dite cause;

" Considérant que, dans l'énonciation du jugement qu'elle confirmait, cette Cour, siégeant en Révision, a fait une erreur, en mentionnant le dit jugement comme renvoyant l'action du demandeur *avec dépens*, tandis qu'il la renvoyait *sans dépens*, le jugement prononcé en cette Cour, le trente-unième jour de décembre dernier, *est corrigé*, en substituant le mot "*sans*" au mot "*avec*" dans le dispositif du dit jugement, qui se lira comme suit: "Le jugement en première instance, " savoir, celui prononcé le quinzième jour de " juin 1883, par la Cour Supérieure, siégeant " dans et pour le district de Beauce, est, en " autant qu'il renvoie l'action du dit demandeur *sans dépens*, confirmé avec dépens de " révision contre le demandeur." "

L. Taschereau, for the plaintiff.

E. Vézina, for the defendant.

(J. O'F.)

[CROWN CASE RESERVED.]

HIGH COURT OF JUSTICE.

LONDON, May 15, 1886.

REGINA v. LATIMER.

Unlawful Wounding—Malicious Intent—24 & 25 Vict. c. 100, s. 20.

This was a case reserved by the learned Recorder of Devonport.

The prisoner was indicted for unlawfully and maliciously wounding Ellen Rolston. The evidence showed that, in the course of a quarrel in a public-house, the prisoner aimed a blow with his belt at a man named Chapple. The belt, however, struck Chapple but slightly, and, bounding off, inflicted a serious wound on the face of the prosecutrix, who was standing near.

Three questions were left to the jury: (1) Was the blow struck at Chapple in self-defence to get through the room, or unlawfully and maliciously? (2) Did the blow so struck in fact wound Ellen Rolston? (3) Was the striking of Ellen purely accidental, or was

it such a consequence as the prisoner should have expected to follow from the blow aimed at Chapple?

The jury found: (1) That the blow was unlawful and malicious. (2) That the blow did, in fact, wound Ellen Rolston. (3) That the striking Ellen Rolston was purely accidental, and not such a consequence of the blow as the prisoner ought to have expected.

Upon these findings a verdict of guilty was directed.

The question for the Court was whether, upon the facts and findings of the jury, the prisoner was rightly convicted.

Croft, for the prisoner, cited *Regina* v. *Pembliton*, 43 Law J. Rep. M. C. 91; L. R. 2 C. C. 119.

Helpman, for the prosecution, was not called upon.

The COURT (LORD COLERIDGE, C.J., LORD ESHER, M.R., BOWEN, L. J., FIELD, J., and MANISTY, J.) held that the conviction must be sustained. The case of *Regina* v. *Pembliton* was distinguishable, having been decided upon an Act which was directed against certain special injuries to property, and not against the person.

COUR DE CASSATION (CH. DES REQUÊTES).

PARIS, 16 mars 1886.

Présidence de M. BÉDARRIDES.

MOREAU ET CIE. v. FLEURY.

Vente sur échantillon—Qualité loyale et marchande—Non conformité avec l'échantillon—Résiliation—Expertise—Rapport—Avis des experts—Pouvoir des juges d'appel.

1o. *Dans une vente sur échantillon, le refus de l'acheteur de prendre livraison des marchandises, expédiées par le vendeur, est suffisamment justifié, lorsqu'il est constant que les dites marchandises, tout en étant d'une qualité loyale et marchande en rapport avec le prix convenu, sont néanmoins, dans une mesure appréciable, d'une qualité inférieure à celle de l'échantillon. La résiliation, si elle est demandée, est donc, à bon droit, en ce cas, prononcée aux torts du vendeur.*

2o. *Les juges, statuant au vu d'un rapport d'arbitre, peuvent, en se fondant sur les constatations de faits consignées au dit rapport, en tirer cependant d'autres conséquences que l'arbitre, et adopter, sans violer aucune loi, une solution différente de celle qu'il proposait.*

" La Cour,

" Sur le premier moyen (sans intérêt);

" Sur le deuxième moyen, pris de la violation des art. 1134, 1135, 1582 et suiv. C. Civ. et de la fausse application des art. 1184, 1610, 1611 même Code;

" Attendu qu'il appartenait aux juges du fond de reconnaître si le vin expédié à l'acheteur était ou non conforme à l'échantillon remis par les vendeurs et formant la base du marché, et si, par suite, il y avait lieu de prononcer, aux torts des vendeurs, la résiliation du contrat demandée par les deux parties;

" Attendu que si l'arrêt attaqué déclare que le vin livré était d'une qualité loyale et marchande, en rapport avec le prix convenu, il constate en même temps que sa qualité était néanmoins inférieure à celle de l'échantillon dans une mesure qui justifiait suffisamment le refus de l'acheteur;

" Attendu qu'en décidant, en conséquence, que c'était par le fait des vendeurs que le contrat n'avait pu recevoir son exécution et qu'en en prononçant la résiliation à leur charge, l'arrêt a apprécié souverainement les faits de la cause et n'a violé aucune loi;

" Sur le moyen additionnel tiré d'un excès de pouvoir et de la violation de l'art. 1316 C. Civ. et des principes généraux en matière de preuve et des droits de la défense:

" Attendu que le demandeur n'établit pas que les juges aient procédé personnellement, en dehors de l'audience et en l'absence des parties, à l'examen des marchandises litigieuses, et qu'ils aient ainsi fondé leur décision sur un mode d'instruction irrégulier; qu'ils se sont appuyés au contraire sur le rapport de l'arbitre qu'ils ont expressément visé;

" Attendu, d'autre part, qu'aux termes de l'art. 323 C. Pr. Civ., les juges ne sont pas astreints à suivre l'avis des experts, si leur conscience s'y oppose; qu'ils ont donc pu, dans l'espèce, en se fondant sur les conclusions de l'arbitre rapporteur, en tirer cependant d'autres conséquences que l'arbitre et adopter une solution différente de celle qu'il

proposait; qu'ainsi l'arrêt attaqué n'a pas commis d'excès de pouvoir et n'a violé ni l'article de loi, ni les principes invoqués par le pourvoi;

" Rejette."

[NOTE.—Sur le premier point: Lorsqu'une contestation s'élève sur l'exécution d'un marché conclu sur échantillon, pour défaut prétendu de qualité de la marchandise livrée, le juge saisi du litige ne peut, pour le trancher, s'écarter de la solution de cette question: "*La marchandise est-elle conforme à l'échantillon?*" Cette conformité pourra, d'ailleurs, il est vrai, être appréciée d'une façon plus ou moins rigoureuse, suivant que les parties auront entendu se lier, en contractant, plus ou moins strictement. Si elles n'ont entendu se lier que sous la condition expresse d'une conformité *absolue* de la marchandise à livrer avec l'échantillon adopté, une différence même très légère devra être considérée comme une cause de résiliation: Rouen 14 mars 1884 (Gaz. Pal. 84, 2, supp. 207) et la note. Si, au contraire, elles n'ont entendu stipuler qu'une conformité *approximative*, une conformité *morale*, le juge aura plus de latitude dans son appréciation, et pourra, malgré certaines différences entre la marchandise livrée et l'échantillon, décider que le marché a reçu valable exécution. Il y aura là d'ailleurs pure question de fait, dont la Cour de cassation ne saurait avoir à connaître: Cass. 9 février 1885 (Gaz. Pal. 85, 1, 422). Mais il n'est pas permis au juge de perdre de vue, dans sa décision, que c'est simplement d'après la conformité ou non de la marchandise livrée avec l'échantillon, qu'il doit prononcer. La simple déclaration que la marchandise livrée était *loyale* et *marchande* ne saurait pas plus justifier une décision favorable au maintien du marché, que la simple constatation de *vices cachés* ne justifierait une décision en prononçant la résiliation. V. Paris 3 janvier 1885 (Gaz. Pal. 85, 1, 675) et la note.

Sur le deuxième point: V. Cass. 28 décembre 1885 (Gaz. Pal. 86, 1, 470.)]

JURISPRUDENCE FRANÇAISE.

Patron— Ouvrier— Accident —Assurance —Cumul d'indemnités—Ordre public.

1o. La clause d'une police d'assurance contre les accidents qui frappe de déchéance l'ouvrier qui aurait préalablement intenté contre son patron une action en responsabilité, ou qui ne lui accorde d'indemnité qu'à la condition de ne pas actionner son patron, est nulle d'ordre public.

2o. Lorsqu'un patron assure ses ouvriers et retient sur leurs salaires le montant de la prime, il se substitue vis-à-vis d'eux à la compagnie d'assurances, et il peut être, en cas d'accident, actionné par eux en paiement de l'indemnité stipulée par la police, sauf le recours du patron contre la compagnie.

3o. Toutefois, le patron pouvant être considéré en ce cas comme le *negotiorum gestor* de ses ouvriers, ceux-ci ont, en cas d'accident une action directe contre la compagnie: ils peuvent, à leur choix, actionner directement soit la compagnie, soit leur patron.

4o. Dans ces conditions, l'allocation de l'indemnité à l'ouvrier ne le prive pas du droit de réclamer, en outre, des dommages-intérêts au patron, si celui-ci a commis une faute engageant sa responsabilité personnelle, et si l'indemnité d'assurance ne suffit pas pour couvrir intégralement l'ouvrier du préjudice qui lui a été causé.

(*Toulouse, Trib. Civ. 1er juil.* 1885—*Gaz. Pal.* 18-19 *oct.* 1885).

TRADE MARK—NAME OF FORMER EMPLOYER.

In *Van Wyck* v. *Horowitz*, 39 Hun, 237, the defendant, who had been hired as a watchmaker and clerk by the plaintiff, a jeweler, having left his employment opened a store a few doors from that of the plaintiff, and put up a sign "A. Horowitz, late with J. P. Van Wyck" (the plaintiff). *Held*, that the plaintiff could not restrain him from using his name on the sign. Reversing the decision of Westbrook, J., 16 Abb. N. C. 121, the Court said: "The defendant in no way uses the name of the plaintiff. He simply states what is true, that he was once with the plaintiff. He does not state or pretend that he was a partner, and there is nothing to justify the inference that he intended to give the public such an idea. It is not pretended (as has sometimes been done in such cases) that he

conceals the words 'late with,' so as to make it appear that the store which he conducts is that of the plaintiff. It is not necessary in this case to consider how far, and in what cases a family name may be practically a trade-mark. For the difficulty with the plaintiff's case is that the defendant is not assuming any name of the plaintiff. To state that he was 'late with J. P. Van Wyck' is, on the contrary, to publish to the world that he is not now with Van Wyck, and that his store is not at Van Wyck's store. Thus there is not the least fraud on the public, and not the least injury to the plaintiff, and no one would be justified in inferring that the defendant was representing himself to have formerly been a partner of the plaintiff. In fact the language used is generally understood to mean that the person is not a partner, but is in the employ of the person '*with*' whom he is said to have been. The commercial agent commonly describes himself as 'with' his employer."

THE PROPOSED CHANGES IN THE CONSTITUTION OF THE COURTS AND CODE OF PROCEDURE.

The bill now before the Quebec Legislature proposes to make the following among other changes:—

COUR SUPÉRIEURE.

Pour les fins de l'administration de la justice dans la cour supérieure, le lieutenant gouverneur pourra, par proclamation à cet effet, constituer la province en deux divisions judiciaires.

Sur les 27 juges dont la cour supérieure de cette province est aujourd'hui composée, il y aura, à dater de cette proclamation, deux juges en chef et 25 juges puisnés.

Le juge en chef qui sera nominé pour la division judiciaire de Montréal, possèdera les mêmes pouvoirs, et remplira les mêmes devoirs, dans sa propre division, que ceux accordés par le présent acte, au juge en chef de la division de Québec.

COUR D'APPEL.

La section première de l'acte 33 Vict., ch. 9, est remplacée par ce qui suit:—

"Dans la cité de Montréal, la cour siége comme cour d'appel et d'erreur au moins trois fois par semaine jusqu'à ce que le rôle des causes soit epuisé, excepté cependant entre le 30 de juin et le premier de septembre, entre Noël et le dix de janvier, et pendant le temps qu'elle siége dans la cité de Québec," &c.

COUR DE CIRCUIT.

Dans la cité de Montréal, la cour doit siéger chaque jour juridique.

CODE DE PROCÉDURE CIVILE.

L'article 1121 du dit code est remplacé par le suivant:—

"1121. Le pourvoi pour erreur et l'appel sont institués au moyen d'une inscription, et le contre appel par un simple avis à la partie adverse. Sur l'inscription il est payé un honoraire de $4 pour la préparation et la transmission du dossier."

Dans les quinze jours qui suivent le délai pour comparaître, chacune des parties doit produire au greffe un mémoire ou *factum* imprimé au soutien de sa cause.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, June 5.

Curators Appointed.

Re Joseph A. Giroux.—Henri Boivin, Granby, district of Bedford, curator, April 27.

Re Goldberg & Levitt.—W. A. Caldwell, Montreal, curator, June 1.

Re Hyacinthe Guillette, Bedford.—F. W. Radford, Montreal, curator, May 28.

Dividends.

Re Amable Godin.—First and final div. payable June 22. L. Morasse, Sorel, curator.

Re Lucien Godin.—First and final div. payable June 22. L. Morasse, Sorel, curator.

Re D. H. Rochon, Bedford.—Final div. payable June 25. Kent & Turcotte, Montreal, curator.

Re Sénécal & Scott.—Final div. payable June 26. Kent & Turcotte, Montreal, curator.

Creditors' Meeting.

Re Amable Jodoin, Jr.—At office of C. Beausoleil, trustee, Montreal, 4 p. m. June 21.

Cadastre Deposited.

Parish of St. Modeste, part of registration division of Témiscouata. June 25.

GENERAL NOTES.

Mr. Joseph Doust, law and commercial stationer, Toronto, has issued a legal chart for this Province, compiled by H. R. Hardy, barrister at-law. The chart contains a large amount of useful information.