The Legal News.

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FIRE INSURANCE — LOSS, IF ANY, PAYABLE TO THIRD PARTY.

In vol. 3, p. 25, of this work, reference was made to the decision of the Court of Appeal in *Black & National Insurance Co.*, 3 Leg. News, 29; 24 L. C. J. 65. In that case it was held, by a majority of the Court, that where a policy, taken out by the owner of real property, declares that the loss, if any, is payable to certain persons named as mortgagees to the extent of their claim, such persons become thereby the parties assured to the extent of their interest as mortgagees, and their rights and interests cannot be destroyed or impaired by any act of the owner of the property. Mr. Justice Ramsay, who was one of the dissentient judges, described this decision as not compatible with any sound principle. "It alters the obligation of the insurer, and exposes him to perils which the contract he has entered into, on its face, does not contemplate."

As the decision above referred to was a reversal, and there were two dissentients, authority on the point was pretty evenly divided, Justices Mackay, Monk and Ramsay being in favor of the insurer, and Chief Justice Dorion and Justices Tessier and Sicotte being in favor of the mortgagee.

Nearly ten years later the question has again presented itself in *National Assurance Co. of Ireland & Harris*, M. L. R., 5 Q. B. 345. Here the loss, if any, was made payable to a person named in the policy, and it was held that the rights of this person were not affected by acts of the insured which would have the effect of voiding the contract as regards the insured, such as an assignment of the property without the permission of the insurer. It was also held that the creditor to whom the loss was payable might make the preliminary proof of loss in his own behalf, notwithstanding a stipulation in the contract that the proof of loss should be made by the insured although the loss should be made payable to a third party.

This judgment, which was made to rest upon *Black & National Ins. Co.*, extends and broadens the scope of the earlier decision. It would appear that the fact of a company consenting to an assignment of the loss, is equivalent to a renunciation on its part of all the conditions of the policy. For example, the property insured may be assigned to some one whom the company would have utterly refused to insure, but the company has no redress during the remainder of the period for which the premium has been received. The property may be converted from a dwelling into a saloon, but the contract holds good. To use Mr. Justice Ramsay's words, the obligation of the insurer is altered, and he is exposed to perils which the contract he has entered into, on its face, does not contemplate.

The equal division of opinion on the former case was pointed out. This equality is still more marked when the two cases are taken together. The vote stands thus: For the insurer:—Justices Mackay, Monk, Ramsay, Cross, Doherty, 5. Against the insurer:—Chief Justice Dorion, and Justices Tessier, Bossé, Papineau and Sicotte, 5. It happens that the French-speaking judges have all gone the one way and the English-speaking the other. The amount involved in *National Assurance Co. & Harris* was too small to give a right of appeal either to the Supreme Court or to the Judicial Committee of the Privy Council. It seems very strange, however, seeing the importance of the question, and the remarkable division of opinion above noted, that an effort has not been made to bring the case before the Judicial Committee of the Privy Council. There is every reason to suppose that on a presentation of the facts here stated, special leave to appeal would readily have been granted by the Judicial Committee. As the matter now rests, a very important question is governed only by the accidental decision of an intermediate tribunal, the ten judges who have pronounced upon it standing precisely five to five.

COUR SUPÉRIEURE.

SAGUÉNAY, sept. 1888.

Coram ROUTHIER, J.

REGINA v. DENNISTOUN et al. (15 Q. L. R. 353.)

Concession de Fief—Titre originaire détruit—Preuve secondaire—Promesse de concession suivie de possession—Acte de foi et hommage—Cadastres des seigneuries—Etendue et limites.

Jugé:—1o. La concession d'un fief par la couronne de France, au Canada, en 1661, est un fait dont la preuve est soumise aux règles ordinaires, et la preuve secondaire en est admise lorsqu'il est constaté que le titre originaire de concession, et les registres où il était consigné, ont été détruits par des incendies;

2. Sous l'ancien droit, la promesse par l'autorité compétente d'une concession de seigneurie, suivie de possession par celui à qui elle était faite du territoire auquel elle se rapportait, équivalait à une concession régulière;

3o. Avant l'abolition de la tenure seigneuriale, l'acte de foi et hommage reçu et signé par le Gouverneur de la Province, était une preuve *primâ facie* que le territoire auquel il se rapportait avait été antérieurement concédé à titre de seigneurie;

4o. Les cadastres des seigneuries faits en vertu de la section 16 de l'acte seigneurial de 1854, constatent aussi bien les droits de la couronne que ceux des seigneurs et des censitaires, et peuvent être invoqués contre elle aussi bien que contre ces derniers;

5o. En déterminant l'étendue ou les limites d'une concession dont l'existence est établie par une preuve secondaire, il faut rechercher les divers sens dont les noms de lieux mentionnés dans les documents produits sont susceptibles, et tenir compte des circonstances telles que les connaissances topographiques que possédaient les parties contractantes, les endroits où les concessionnaires ont fait des établissements, etc.

COUR DE MAGISTRAT.

MONTRÉAL, 21 juin 1889.

Coram CHAMPAGNE, J. C. M.

Dlle CHEVALIER v. BEAUSOLEIL.

Dépôt volontaire—Responsabilité.

JUGÉ:—1o. *Qu'une servante qui quitte le service de son maître et laisse en partant sa valise à la maison de ce dernier, fait un dépôt volontaire, et dans ce cas, le dépositaire n'est responsable de la perte de la valise que si elle a lieu par sa faute et sa négligence.*

2o. *Que la preuve de faute et négligence incombe au demandeur.*

PER CURIAM:—La demanderesse qui était au service du défendeur lui demande en partant la permission de laisser sa valise chez lui pour quelque temps; le défendeur après lui avoir dit d'enlever sa valise et ses effets, a consenti néanmoins à ce que la valise reste chez lui. Quelques semaines après, la demanderesse a retrouvé sa valise à St-Henri, mais il manquait une grande partie de son contenu dont elle réclame maintenant la valeur.

La preuve ne fait pas voir comment la valise est partie de chez le défendeur.

Ce dépôt était volontaire, le défendeur ne peut, en conséquence, être tenu responsable de la perte des effets qu'en autant qu'elle aurait été occasionnée par sa faute et négligence. La preuve ne montrant nullement à qui la faute, le défendeur n'est pas responsable.

Autorités; C. C. 1804; *Pothier*, Dépôt, Nos. 43, 44; 14 *de Lorimier* sur l'article 1804.

Action déboutée.

J. M. Mireault, avocat de la demanderesse.

Mercier, Beausoleil, Choquette & Martineau avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 21 juin 1889.

Coram CHAMPAGNE, J. C. M.

RACETTE et al. v. DESMARTEAU.

Clause pénale—Preuve.

JUGÉ:—*Que lorsqu'il s'agit de donner effet à une clause pénale, la preuve de la violation de cette clause est rigoureuse et ne doit laisser aucun doute.*

PER CURIAM:—Les demandeurs par contrat écrit se sont engagés à faire pour le défendeur une certaine quantité de briques, à tant par mille briques, avec condition expresse que les demandeurs paieront au défendeur

une pénalité de $5.00 par jour, pour chaque jour qu'ils négligeront de faire de la brique.

Les demandeurs auxquels il est dû au delà de $40.00 prennent une saisie-arrêt avant jugement.

Le défendeur nie qu'il y ait eu lieu à prendre contre lui une saisie-arrêt avant jugement, et ajoute, en outre, que le montant réclamé par l'action est compensé par les amendes que les demandeurs doivent lui payer pour les jours qu'ils ont négligé de faire de la brique.

La preuve ne justifie pas la saisie-arrêt avant jugement, et plusieurs témoins déclarent que les demandeurs ont perdu du temps par la faute du défendeur; sur ce point la preuve est contradictoire. Lorsque la preuve est contradictoire, au sujet d'une clause pénale, il faut donner le bénéfice du doute à la partie qui s'est obligée. Les demandeurs ne pourraient être condamnés à payer cette pénalité que dans le cas où il serait établi hors de doute qu'ils ont forfait à leur contrat par leur faute.

Saisie-arrêt avant jugement cassée.

Jugement pour les demandeurs sur l'action.

Ethier & Pelletier, avocats des demandeurs.

Lavallée & Lavallée, avocats du défendeur.

(J. J. B.)

APPOINTMENT OF QUEEN'S COUNSEL.

In the House of Commons, March 18, Mr. Amyot said:—A question of importance now agitates the public, especially the legal portion of it, and is of a nature to cause trouble. There seems to be a conflict of jurisdiction in regard to the appointment of Queen's Counsel, between the Federal and Local Governments. The object of my motion is to elucidate that prerogative, which also includes other questions vital to the Confederation at large. It is an important one, not only as far as the etiquette in the courts is concerned, but it may involve serious consequences. The criminal law provides that the Crown Prosecutor shall have the right to reply, in addressing the jury, when he is a Crown Counsel. The wrong application of this rule may occasion new trials, writs of error, cause heavy expenses, undue delays in the administration of justice. We all know what were the Queen's Counsel in England. "A custom, says Blackstone, (Vol. III, page 354) has, of late years, prevailed of granting letters patent of precedence to such barristers as the Crown thinks proper to honor with that mark of distinction; whereby they are entitled to such rank and pre-audience as are assigned in their respective patents." These counsel, in England, are appointed by the executive power. It is one of the prerogatives of the Crown. The same practice obtained here, and, up to Confederation, those appointments could not give rise to any difficulty. Even after the Confederation, no difficulty arose until the Supreme Court delivered its judgment, in 1874, in the case of *Lenoir* v. *Ritchie*. Up to that time, nobody denied the right of the Local Legislatures to appoint Queen's Counsel for their courts. The Supreme Court of Canada, in the case cited, decided that the Local Legislatures had no such power. Their judgment rests on the following syllogism: (1) The appointment of a Queen's Counsel is a royal prerogative, and can only be made in the Queen's name; (2) The Queen does not form part of the Local Legislatures, but only of the Federal Parliament; (3) Hence, to the Ottawa Government alone belongs the appointment of the Queen's Counsel. No appeal to Her Majesty's Privy Counsel was taken from that decision; which has perplexed the mind of the legal community ever since, and embarrassed the divers Governments of the Dominion. That judgment was concurred in by only three of the honorable judges of the Supreme Court; the Chief Justice was not present; one of the sitting judges pronounced that the Provinces had the right to appoint Queen's Counsel, and another would not give any opinion, because the question did not arise. The only question in dispute was whether an appointment of Queen's Counsel made by a statute of Nova Scotia in 1876, had a retroactive effect, and gave to the new title-holders precedence over the counsels appointed by the Ottawa Ministry since 1867. That was the only point discussed at the argument by Mr. Haliburton, representing the Govern-

ment of Nova Scotia, and he declared that the constitutional question had not been raised before the inferior court, that he did not expect it would be raised, that he did not intend to discuss it, and that he was not prepared to do so. None of the provinces had received notice, or knew that such an important question would be raised, and none was represented. This question was not the one dependent upon the issue, although this *ex parte* judgment, on a collateral issue not in point, given by a divided tribunal, without hearing the interested parties, has sufficed to reverse all precedents; to annul, virtually, all the local statutes passed; to supersede all the deliberate opinions, formally expressed, by the law officers of England, as well as by those of the Dominion. I might here quote the correspondence exchanged between the right hon. leader of this House and Lord Kimberley. After having quoted section 92, paragraph 14, of the British North America Act, omitting therefrom the word "exclusively," he says:

"Under this power, the undersigned is of opinion that the Legislature of a Province, being charged with the administration of justice and the organization of the courts, may, by statute, provide for the general conduct of business before those courts; and may make such provision with respect to the bar, the management of criminal prosecutions by counsel, the selection of those counsel, and the right of preaudience as it sees fit. Such enactment must, however, in the opinion of the undersigned, be subject to the exercise of the royal prerogative, which is paramount, and in no way diminished by the terms of the Act of Confederation."

Lord Kimberley answered, on the 1st February, 1872, very politely confirming or accepting the views taken and submitted to him by the right hon. the Premier:

"I am advised, he says, that the Governor General has now power, as Her Majesty's representative, to appoint Queen's Counsel, but that a Lieutenant Governor, appointed since the Union came into effect, has no such power of appointment. I am further advised that the Legislature of a Province can confer by statute on its Lieutenant Governor the power of appointing Queen's Counsel; and with respect to precedence or preaudience in the Courts of the Province, the Legislature of the Province has power to decide as between Queen's Counsel appointed by the Governor General and the Lieutenant Governor, as above explained."

I must protest against those *ex parte* cases submitted to the Home Government. In all such instances, the interested parties, the Provinces, should be invited to join and submit their own views in a joint case. I will not discuss the question as to whether a statute is necessary or not, to authorise the exercise of the royal prerogative in appointing the Queen's Counsel. Before the Union, even before Confederation, I know of no Quebec statute providing for those appointments, which, however, were freely made by the representative of the Crown, advised by his counsel as exercising a royal prerogative. The authorities in Canada appointed them by virtue of the public law of England, which became for us the common law of the land by the cession of this country to England. The more important point which I want to elucidate is this one: Does the Queen form part of the local Governments? If she does not, the appointments of magistrates, coroners, justices of the peace, sheriffs, gaolers, constables, and hundreds of others are null, because every one of these appointments is equally of royal prerogative: the Queen being the source, the fountain of all honors and powers. More than that, all our local statutes would be void, because they are all enacted by "Her Majesty, with the advice," etc. In the beginning of the Confederation, the dual mandate existed. I see here hon. members who were present when the first of those statutes was enacted for the Province of Quebec, it might even have been at their suggestion that the first statutes were so phrased. None of those statutes have ever been disallowed for such phraseology. Have all the public and leading men of Canada, all the judges, all the Bar of the Dominion been so long in error on such a point? Some of our statutes have been discussed before the Privy Council. Never has it occurred to the mind of any one that they were wrongly enacted. But let us examine the law more closely. By the 31st Geo. III (1791), chapter 31, section 2, it is provided:

"That there shall be within each Province of Upper and Lower Canada a Legislative Council and an Assembly to make laws, etc., and that such laws will be assented to by His Majesty or in His Majesty's name, by such person as His Majesty shall, from time to time, appoint to be the Governor or Lieutenant-Governor of such Province."

By section 30, the Governor or Lieutenant Governor is:

"Ordered to assent to the Bills in His Majesty's name."

The same Act provides for the establishment of the Courts by the Canadian Legislature. The 3rd and 4th Vict. (1840), chapter 35, section 3, again prescribes:

"That the laws of the United Canadas shall be assented to in Her Majesty's name by the Governor. Section 40 provides that the Lieutenant-Governor may receive the same powers as the Governor General."

The same Act declares that all the existing laws shall remain in force, specially as to the administration of affairs by the Executive Council, it gives power to create courts, etc. Section 61 is very explicit. It reads as follows:—

"And be it enacted, that in this Act, unless otherwise expressed therein, the words, 'Act of the Legislature of the Province of Canada,' are to be understood to mean, 'Act of Her Majesty, her heirs or successors, enacted by Her Majesty, or by the Governor on behalf of Her Majesty, with the advice and consent of the Legislative Council and Assembly of the Province of Canada;' and the words, 'Governor of the Province of Canada,' are to be understood as comprehending the Governor, Lieutenant-Governor, or person authorised to execute the office or the functions of Governor of the said Province."

Such was the law when the Confederation Act was passed. Not only was the Governor or Lieutenant-Governor allowed, but he was bound to act in the name of the English Sovereign. Nothing has been changed by the British North America Act in that respect. Section 129 says:—

"Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia and New Brunswick at the union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all affairs, judicial, administrative and ministerial, existing therein at the union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick, respectively, as if the union had not been made."

So the duty of the Governors or Lieutenant-Governors, the obligation by them to assent to the Bills, to act in the name of the Queen, remained in force, for such was then the law of the land. Now, let us see for the executive or administrative power. Section 69:—

"All powers, authorities and functions which, under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were, or are, before or at the union vested in or exerciseable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice or with the advice and consent of the respective Executive Councils thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the union in relation to the Government of Ontario and Quebec, respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec, respectively, with the advice or with the advice and consent of, or in conjunction with the respective Executive Councils or any members thereof, or by the Lieutenant-Governor individually, as the case requires * * *

Section 88 applies virtually the same principles to Nova Scotia and New Brunswick. Section 12 applies the same rule to the Governor-General. So it is clear, obvious, undeniable that the right and obligation of the Governor and Lieutenant-Governors to act in the name of the Sovereign remained, by the British North America Act, the same as they were before. Let us now see more closely the mechanism of government introduced by the Confederation Act. Each Province had, at the dawn of Confederation, its rights of self-government confirmed by the British Parliament. Each Province kept some parts of those rights, and consented to some other parts being delegated and transferred to a general Parliament and an executive responsible to the people of the new Dominion. A Parliament and Executive for the whole Dominion were created; the two Canadas were separated *de novo*, forming each a separate Province, and each Province of the Dominion was provided with a Parliament and Executive of its own. So as to avoid confusion, different names were given to each. By section 17, the legislative body for the Dominion is called the Parliament, and it consists of the Queen, the Senate and the House of Commons. This differs from the appellation of the Government of the United Kingdom, wherein the corresponding branches of the Parliament are called "The Queen's Most Excellant Majesty, the Lords Spiritual and Temporal, and the Commons." For the Executive body the words chosen (sec. 11) were "Queen's Privy Council for Canada." Section 9 provides that the executive government and authority of and over Canada shall continue to be vested in the Queen, but section 10 provides that the chief of the Execu-

tive shall administer "in the name of the Queen." *De facto* it is the Governor or his representative who administers. We substitute the word "Queen." It is a mere fiction of the law. The Queen never signed any of our laws, our proclamations, our official documents. Any other word than "Queen" might have been chosen to designate the chief of the Executive. The result would not have been changed; the laws and acts of the Executive would have been equally valid, in virtue of the powers conferred upon us by the British Parliament. That the chief of the "Queen's Privy Council for Canada" only acts in the name of the Queen is made again very clear by section 55, which says:—

"Where a Bill passed by the House of Parliament is presented to the Governor-General for the Queen's assent, he shall declare either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the Bill for the signification of the Queen's pleasure."

For the Provinces, other words were chosen to designate the divers powers. So the legislative body, instead of being called Parliament, was termed "Legislature"; the expression "Lieutenant-Governor" was substituted for "the Queen;" the expression "Legislative Council" was substituted for the "Senate," the Upper House; and the expression "Legislative Assembly" was substituted for "Commons," the Lower House. (Sections 69 and 71.) As to the administrative power, the words "Executive Council" were adopted instead of "Queen's Privy Council." (Section 63.) The Queen, acting with the advice of her own council, might have kept the right of appointing herself the Lieutenant-Governors. She delegated that power to the Governor appointed by her, acting in her name. When once appointed, by virtue of that authority, a Lieutenant-Governor, within the limit of his attributions, represents the Queen as fully as the Governor-General also acting within the limits of his attributions. He derives his powers directly from the Queen, through the Governor her mandatory. It is of common and universal law that the acts of the mandatory bind his principal. Both the Governor and Lieutenant-Governors have the same powers, under different names, in different fields of action, with jurisdiction on different subjects and matters. They all take the same oath (section 61). The members of the Privy Council are sworn as such (section 11). The members of the Executive Councils are sworn as they were before the Union (sections 64 and 135). By comparing sections 12 and 65, it is easy to ascertain the identity of powers of the Privy Council and of the Executives, each within the limits of the attributions conferred by the British North America Act. By these quotations, it is easy to see that the Queen forms part of the local executives and legislatures as well as of the Privy Council and Parliament of Canada. The names and appellations are changed, but the effect remains the same. The principle that the Queen forms part, virtually, by fiction of the law, of every Parliament of her colonies, has been broadly laid down as far back as 1774, in a case of Hall *v.* Campbell, in which Lord Mansfield, delivering the unanimous judgment of the Court of King's Bench, decided that the King had no power, by letters patent, to impose duties on the Island of Grenada. He said:

"We therefore think that, by the two proclamations and the commission to Governor Belleville, the King had immediately and irrevocably granted to all who were and should become inhabitants, or who had or should acquire property in the Island of Grenada, or, more generally, to all whom it might concern, that the subordinate legislation over the island should be exercised by an assembly with the consent of the Governor and council, in like manner as the other islands belonging to the King."

And further on, he says:

"To use the words of Sir Philip Yorke, Sir Clement Wearge, it can only now be done by the assembly of the Island, or by an Act of the Parliament of Great Britain."—(1 Cowper's Reports, page 213.)

The Supreme Court of Canada, in deciding that the Queen did not form part of the Local Legislatures, doubtless overlooked the then recent decision of Her Majesty's Privy Council, in the case of Théberge *v.* Landry, decided in 1876, in which Lord Cairns, delivering the unanimous judgment of the court, and speaking of the Quebec Controverted Elections Act, called it "an Act which is assented to on the part of the Crown, and to which, therefore, the Crown is a party." (Law Reports, Appeal Cases, 2, 1876-1877, page 108.) In the case of the Queen *v.* Coate, the Privy Council had

decided, in 1873, that the Quebec law appointing fire marshals with power to investigate, swear witnesses and commit to gaol, was within the competency of the Province. (1st Cartwright, page 97.) In fact, there is no possible law, in any dependency of England, as well as in England itself, without the Governor-General being a party to it; the same principle applies to the Executive powers. Authorities on that point are innumerable:

"The constituent parts of Parliament are, the King, the House of Lords and the House of Commons.—(Stephens: The Rise and Progress of the English Constitution, page 531.)

"The first prerogative of the King, in his capacity of supreme magistrate, has, for its object, the administration of justice. 1st. He is the source of all judicial power in the state: he is the chief of all the courts of law, and the judges are only his substitutes; everything is transacted in his name; the judgments must be with his seal, and are executed by his officers. 2nd. By a fiction of the law, he is looked upon as the proprietor of the Kingdom. 3rd. The second prerogative of the King is, to be the fountain of honor.—(Stephens: The Rise and Progress of the English Constitution, page 566.)

"A Bill does not become an Act of Parliament until it has received the Royal assent."—(Cox: Institutions of the English Government, page 48.)

"In other cases, Parliament has expressly delegated to the Colonies a power of making laws for their own internal economy."—(Cox: Institutions of the English Government, page 10.)

"That the several enactments of Parliament should receive the Royal assent, will appear very clearly, if we consider the nature of the Coronation oath."—(Cox: Institutions of the English Government, page 51.)

"No doubt the assent of the Governor is needed, in order to turn Colonial Bills into laws; and further investigation would show our enquirer that, for the validity of any Colonial Act there is required, in addition to the assent of the Governor, the sanction, either expressed or implied, of the Crown."—(Dicey: Lectures on the Constitution, page 96.)

"The King is a constituent part of the supreme legislative power."—(1 Blackstone, page 256.)

"The making of statutes is by the King with the assent of Parliament." (Bacon's Abr. tit. Prerogative, 487.)

"The King has the prerogative of giving his assent, as it is called, to such bills as his subjects, legally convened, may present to him, that is, of giving them the force and sanction of a law."—(Bacon's Abr. tit. Prerogative, 489.)

"No Acts of Colonial Legislatures have force until they have received either the assent of the Governor in the Queen's name, or the Royal assent when reserved and transmitted for consideration."—(Cox's British Commonwealth, 525.)

What is true of the legislative power, is equally true of the executive and judicial powers. The Queen is the fountain of all power.

"All jurisdiction exercised in these kingdoms, that are in obedience to our King, is derived from the Crown; and the laws, whether of a temporal, ecclesiastical, or military nature are called his laws; and it is his prerogative to take care of the due execution of them. Hence, all the judges must derive their authority from the Crown, by some commission warranted by law, and must exercise it in a lawful manner, and without any the least deviation from the known and stated forms.

"So although the King is the fountain of justice and entrusted with the whole of the executive power of the law, yet he hath no power to change or alter the laws which have been received and established in these Kingdoms; for it is by those very laws that he is to govern; and as they prescribe the extent and bounds of his prerogative, in like manner do they declare and ascertain the rights and liberties of the people........"—(VI. Bacon's abridgement, page 428.)

"Privy Councillors are made by the King's nomination."—(Cox, page 298.)

"The King is said to be the fountain of justice, *fons justitiæ*, and in that capacity has the right of erecting courts of judicature, though the right is subjected to many restrictions by Acts of Parliament. All jurisdictions of courts of justice are either mediately or immediately derived from the Crown; their proceedings were generally in the name of the Sovereign, and are executed by ministerial officers of the Crown."—(Cox, page 300.)

"Another capacity in which the Sovereign is considered in domestic affairs, is as the fountain of justice and general conservator of the peace of the Kingdom. By the fountain of justice the law does not mean the author or origin, but only the distributor. Justice is not derived from the Sovereign, as from his free gift; but he is the steward of the public, to dispense it to whom it is due. The original power of judicature, by the fundamental principles of society, is lodged in the society at large; but as it would be impracticable to render complete justice to every individual, by the people in their collective capacity, therefore every nation has committed that power to certain select magistrates, who with more ease and expedition can hear and determine complaints; and in England this authority has immemorially been exercised by the Sovereign or his substitutes. He, therefore, has alone the right of erecting courts of judicature; for, though the Constitution of the Kingdom has entrusted him with the whole executive power of the laws, it is impossible, as well as improper, that he should personally carry into execution this great and extensive trust; it is consequently necessary that courts should be erected, to assist him in executing this power; and equally necessary that, if erected, they should be erected by his authority. And hence it is, that all jurisdictions of courts are either mediately or immediately derived from the Crown, their proceedings run generally in the Sovereign's name, they pass under his seal, and are executed by his officers."

"But at present, by the long and uniform usage of many ages, our Sovereigns have delegated their whole judicial power to the judges of their several courts * * * "—(1 Blackstone, page 261.)

[To be continued.]

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, March 15.

Judicial Abandonments.

Narcisse Edouard Cormier, lumber merchant, Aylmer, March 11.

George Darveau, merchant, Quebec, March 13.

Josephine Valade, doing business as J. Hénault & Co., Montreal, March 3.

William A. Douglas, township of Chatham, district of Terrebonne, March 7.

Stanislas Gendron, Sherbrooke, March 6.

Francis Giroux, trader, Montreal, Jan. 30.

Elzéar Gosselin, Sherbrooke, Feb. 18.

Ambroise Moussette, hatter and furrier, Montreal, March 6.

Ed. St. Amour & Co., boot and shoe dealers, Montreal, March 12.

Curators appointed.

Re Ephrem Bolduc, Joliette. — Kent & Turcotte, Montreal, joint curator, March 10.

Re John C. Campbell, Montreal.—Kent & Turcotte, Montreal, joint curator, March 7.

Re Hilaire Chevalier, farmer, parish of St. Elizabeth.—F. X. O. Lacasse, St. Elizabeth, curator, Mar. 10.

Re Frs. Côté, Quebec.—Wm. Doyle, Quebec, curator, March 12.

Re Esther Dannilivitch.—W. A. Caldwell, Montreal, curator, March 15.

Re Josephine Valade (Jos. Hénault & Cie.).—C. Desmarteau, Montreal, curator, March 10.

Re Joseph Gélinas.—P. Héroux, St. Sévère, curator, March 13.

Re J. H. Méthot.—W. C. Hutcheson, Montreal, curator, March 13.

Re Ambroise Moussette.—John Fulton, Montreal, curator, March 13.

Re Cyrille Quintal, butcher, Montreal.—N. P. Martin, Montreal, curator, March 8.

Re Nap. Théroux.—C. Desmarteau, Montreal, curator, March 4

Dividends.

Re F. Arpin & Co.—First and final dividend, payable April 2, C. Desmarteau, Montreal, curator.

Re Ferdinand Bégin, Lévis. — Dividend, payable April 1, Chs. J. Labrie, Lauzon, curator.

Re N. Bourgeois & Co.—First dividend, payable April 4, C. Desmarteau, Montreal, curator.

Re Joseph Donati, jeweller.—Second and final dividend, payable April 2, N. Matte, Quebec, curator.

Re John Henry Hodges. — First dividend, payable April 1, W. A. Caldwell, Montreal, curator.

Re J. B. Labelle, grocer, Montreal.—First and final dividend, payable April 3, C. Desmarteau, Montreal, curator.

Re Robert Neill, Sheffington.—First dividend, payable April 1, A. W. Stevenson, Montreal, curator.

Re J. A. Rolland & Co.—First and final dividend, payable April 3, C. Desmarteau, Montreal, curator.

Re Hormisdas St. Germain.—First and final dividend, payable April 2, C. Desmarteau, Montreal, curator.

Separation as to Property.

Marie Eugénie Boucher vs. Joseph Oscar Hétu, trader, Berthier, March 10.

Emma Côté vs. Zoël Turcotte, trader, St. Thomas de Pierreville, March 1.

Marie C. Dallaire vs. Nazaire Provost, undertaker, Sorel, March 10.

Whillelmène Lucas vs. François Xavier Audett carriage-maker, Sherbrooke, March 7.

Marie Louise Niverville vs. Cyrille Collin, Montreal, Feb. 24.

Salome Provencher vs. Isaac Dubord, trader, Victoriaville, March 10.

Cadastre.

Notice is given of deposit of plans of sub-divisions 1772*a* and 1772*b*, and 1475*a* and 1475*b*, Jacques Cartier ward, City of Quebec.

GENERAL NOTES.

SPARKLING WINES.—It is common knowledge that aërated waters, such as soda-water and lemonade, are manufactured by injection of carbonic acid gas; but, until Mr. Hermann Graeger was summoned to the Mansion House, we had no idea that any sparkling wine was made in the same way. Certainly the 2s. 6d. a dozen import duty, levied by the chancellor of the exchequer on champagne and other sparkling wines, has always appeared to us at least an onerous and vexatious impost; but the genius of the tradesman is great, and for contriving to evade this duty without committing any breach of law we are inclined to applaud Mr. Graeger. His method of so doing is extremely ingenious. He gets still wine imported from Epernay, the Moselle district, the Rhine district, and Burgundy, and metamorphoses it at his place at Clapton into sparkling wine by the above simple process. In doing so he has shown himself very clever, and has committed no breach of the law. Unfortunately, for *humanum est errare*, one part of his method has erred. He affixed to the bottles, in which he sold this sparkling champagne, hock and Burgundy, labels, which the court held indicated that the wine was imported sparkling, so that an offense was committed against the Merchandise Marks Act, for which Mr. Alderman Davies fined Mr. Graeger £20. Mr. Goldberg, solicitor, who appeared for Mr. Graeger, promised that every objectionable label should be destroyed, and that in future the labels should bear such indications as would show that the wine was made sparkling in this country. We do not doubt that Mr. Goldberg's promise will be duly observed, but we may be permitted to doubt the allegation made by him that "the wine was not only as good as the other, *but better.*" Possibly it is to his taste. *Experto credite.* However that may be, it is the duty of our magistrates to see that the Merchandise Marks Act is most stringently enforced, and we are pleased that Mr. Alderman Davies is also of that opinion.—*London Law Journal.*