The Legal News.

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THE MONTREAL COURT HOUSE.

The exterior of the Montreal Court House looks so imposing and its extent is so great, that the public may be taken by surprise when they learn that it is totally insufficient for the accommodation of the Courts. The truth is that the selection of the design adopted was a gross mistake of the then Department of Public Works. It was seen at the time that the plan was devised without skill, and that a quantity of space had been wasted without object. We have no wish to insist on the mistakes of our predecessors: these remarks are only made to preface the observation that what was scarcely adequate for the wants of 1850 is totally insufficient in 1882. In spite of adaptations and minor improvements, it is now painfully apparent to the judges and the officers of the Courts that some extension of the accommodation is not only desirable but necessary. The Court rooms are insufficient in number, the offices are too small, the vaults are stuffed full, the judges have no privacy in their Chambers, and it is only in the passages there is room.

What is the best way of getting over the difficulty? Bricks and mortar are dangerous allurements for governments, and therefore great caution is requisite before deciding to build. Repairs or alterations of old buildings lead to endless cost and are seldom satisfactory. They have also the disadvantage, if extensive, of requiring a new *habitat* during the operations of transformation. It seems to me, however, that what is required for the Montreal Court House may be carried out with a minimum of these drawbacks.

The most defective portion of the present building is the entrance. The stairs which lead to the great door of the building are so placed as to receive a double avalanche from the roof at each snow storm, and the consequence is that we are reduced to shut up the principal door, and creep in by the vaults, for nearly six months in the year. I would therefore suggest to take down the colonnade, bring it down to a line with the City Hall, and build up between it and the present building. A space of about 40 feet by 100 feet might thus be gained at a very moderate cost. The present stair-case, which is almost the only handsome part of the building, would be preserved and be easily made available as a mode of communication with the different stories of the addition, and the business of the Courts could be carried on in the meantime without displacement. Objections to this scheme will no doubt present themselves to the critical eye; but I undertake to say that there is none of a serious character or none that cannot be easily overcome by the advice of a good architect. Of course, if the old system of getting the plan from the contractor or builder is followed, excellent masonry may be procured, but an inconvenient building will be the inevitable result. R.

NEW PUBLICATIONS.

Blackstone's Commentaries, for the use of Students at law and the general reader, by Marshall D. Ewell, LL.D., Professor in the Union College of Law, Chicago.—Publishers, Soule & Bugbee, Boston.

In a compact and convenient little volume of 600 pages, Prof. Ewell has given us the four books of Blackstone. The compression is achieved by leaving out obsolete matter, as well as some portions which are merely historical, explanatory, or argumentative. Leading principles are displayed in full-faced type, and the more important parts of the text are printed in brevier, while matter which may be passed over by the student in his first perusal of the work, is printed in a smaller type. The original paging is indicated by figures in brackets, and a few references and explanations are also included in brackets; but, while the exact words of the author have for the most part been preserved, there is no attempt at annotation. In this way, by the exercise of a little ingenuity in economizing space, the student is presented in a small compass with a very fair edition of this standard author, without being embarrassed by many pages of obsolete law. The editor's experience as an instructor of young men entering upon the study of law has no doubt been useful to him in the task of selection and excision. Altogether, this work will be found extremely valuable by those who wish to gain an insight into the English system of law, and the time devoted to its perusal by students in this Province will by no means be lost. The fourth book, "of Public Wrongs," will form a good introduction to the study of criminal law. We feel bound to add a word of commendation of the mechanical execution of the book. The type is unusually clear, and even the portions printed in nonpareil may be read with the greatest ease. This student's edition will doubtless supply a want, and become very popular.

DISTRIBUTION OF JUDICIAL WORK IN THE PROVINCE OF QUEBEC.

The following tables have been compiled by Mr. Justice McCord from the judicial statistical returns published every year as required by law in the Quebec Official Gazette, and are intended to show the number of cases of all kinds *decided* by the Judges of the Superior Court. They are the statistics referred to by Mr. Justice Ramsay in his letter to the Attorney-General.

Table 1, which comprises the five years from 1875 to 1879, was prepared in 1880. Table 2, comprising the years 1880 and 1881, has been prepared quite recently, and brings these statistics as nearly as possible down to date.

Leaving out Iberville in both tables (there being no Iberville returns for Table 2), it will be found that the latter table shows a decrease of nearly 9 per cent. in the amount of judicial work. The decrease in Montreal is about 13 per cent., but Quebec shows an increase of about 6 per cent.

For the purposes of Table 2, and of its comparison with Table 1, it has been assumed, as the nearest approximation possible in the absence of returns, that the Iberville statistics would be the same as in Table 1, less the 9 per cent. decrease just mentioned.

A variety of conclusions, says the author, may be drawn from these tables, but the following are perhaps the most salient, and they differ so slightly for each table that they show the result not only of a five or of a two years, but also of a seven years, average.

TABLE 1.

1. The total number of cases decided being 9699, the equal share of each of the 26 judges would be 373.

2. Each Montreal judge has more than double his proportionate share of the total work of the province.

3. Fifteen judges out of the twenty-six do (each in his own district) less than their proportionate share of work. Of these, fourteen decide less than 300 cases, eight decide less than 200, and two have almost literally no cases to decide.

4. Fourteen judges, in their own districts, have less to do than would be the proportionate share of seven.

5. The six Montreal judges have more to do than the sixteen judges outside of Quebec and Montreal.

6. The six Montreal judges have (within 331 cases) one half of the work of the whole province.

7. Ten judges out of the twenty-six, (those of Montreal and Quebec), have, within 176 cases, two-thirds of the work of the whole province, while the other sixteen have only 176 cases more than the remaining one-third.

8. There are eight judges, out of the 26, who, all together, in their own districts, have only one-ninth of the work of the whole province, and the work of these eight, compared with that of the six in Montreal, stands in the proportion of 1 to 4.

9. In the three counties of Beauce, Terrebonne and Chicoutimi, in which *no* judge is required to reside, there is twenty times more work to do than in the two counties of Gaspé and Bonaventure where *two* judges are required to reside.

10. The two judges of Gaspé and Bonaventure, have together, in their own districts, about one-twentieth of the amount of work to do that would be the proportionate share of one judge.

11. The three judges of Rimouski, Bonaventure and Gaspé, together, have not one half of the work to do, in their own districts, that would be the proportionate share of one judge.

TABLE 2.

1. The total number of cases decided being 8828, the equal share of each of the 26 judges would be 340.

2. Each Montreal judge has, (less a very small fraction) double his proportionate share of the total work of the province.

3. Fourteen judges out of the twenty-six do (each in his own district) less than their proportionate share of work. Of these, thirteen decide less than 300 cases, nine decide less than 200, and two have almost literally no cases to decide.

4. Fourteen judges in their own districts have less to do than would be the proportionate share of seven.

5. The six Montreal judges have over two shares more to do than the sixteen judges outside of Quebec and Montreal.

6. The six Montreal judges have (within 502 cases) one half of the work of the whole province.

7. Ten judges out of the twenty-six, (those of Montreal and Quebec), have, within 98 cases, two-thirds of the work of the whole province, while the other sixteen have only 98 cases more than the remaining one-third.

8. There are eight judges, out of the twenty-six, who, all together, in their own districts, have not one tenth of the work of the whole province, and the work of these eight, compared with that of the six in Montreal, stands in the proportion of 1 to 4½.

9. In the three counties of Beauce, Terrebonne and Chicoutimi, in which *no* judge is required to reside, there is very nearly ten times more work to do than in the two counties of Gaspé and Bonaventure where *two* judges are required to reside.

10. The two judges of Gaspé and Bonaventure, have together, in their own districts, about one eighth of the amount of work to do that would be the proportionate work of one judge.

11. The three judges of Rimouski, Bonaventure and Gaspé, together, have not one half of the work to do, in their own districts, that would be the proportionate share of one judge.

TABLE 1.

	Suits and Oppositions. — Circuit Court.						Suits and Oppositions. — Superior Court.						Prerog. Writs.—Ejectments.—Jury Trials. Lessors and Lessees, &c.						Criminal and Review.						Averages.	
	1875.	1876.	1877.	1878.	1879.	Average.	1875.	1876.	1877.	1878.	1879.	Average.	1875.	1876.	1877.	1878.	1879.	Average.	1875.	1876.	1877.	1878.	1879.	Average.	Total average per annum.	Average per annum for each Judge.
Arthabaska	100	91	198	149	311	170	53	—	49	39	67	52	8	—	2	1	2	3	30	—	11	9	13	16	241	241
Beauharnois	41	42	63	69	56	54	18	24	20	39	44	29	3	4	6	10	7	6	5	9	13	6	—	8	97	} 286
Terrebonne	70	156	22	133	196	115	42	52	40	74	106	61	9	4	2	2	2	4	7	5	8	12	12	9	189	
Bedford	126	304	180	304	173	217	61	32	—	51	—	48	8	4	—	19	—	10	9	5	—	20	—	11	286	286
Bonaventure	1	1	5	6	6	4	2	0	0	0	2	1	0	0	0	0	0	0	0	0	1	0	0	0	5	5
Gaspé	0	6	3	8	7	5	—	4	2	1	6	3	0	0	0	0	0	0	—	23	0	0	0	6	14	14
Iberville	107	8	215	3	158	98	36	—	44	—	145	75	3	—	4	—	2	3	8	—	2	—	1	4	180	180
Joliette	10	110	182	101	211	123	—	2	47	56	102	52	—	3	1	2	0	1	—	2	8	8	18	9	185	185
Kamouraska	—	108	117	142	155	130	—	16	36	54	47	38	—	1	5	0	4	2	—	2	3	2	7	4	174	174
Montmagny	44	34	34	23	62	39	29	47	33	61	70	48	0	4	7	1	1	3	0	0	0	0	3	1	91	} 234
Beauce	59	125	117	145	72	104	19	22	34	34	29	28	8	8	4	2	4	5	4	5	6	11	6	6	143	
Montreal	9	2452	2901	20	444	(1) 2706	—	975	1262	1141	1375	1188	—	307	188	140	159	198	—	97	166	156	149	*426	4518	753
Ottawa	57	112	160	194	221	149	19	9	23	12	11	15	8	4	8	3	6	6	17	19	34	7	0	15	185	185
Quebec	783	873	872	857	1007	878	278	479	253	—	755	(2) 571	20	31	53	—	24	32	101	103	93	..	92	*97	1772	443
Richelieu	275	95	232	127	301	206	57	38	66	53	120	67	1	5	8	2	0	3	9	10	—	9	0	7	283	283
Rimouski	—	176	105	51	96	107	—	40	35	7	51	33	—	8	13	5	3	8	—	6	6	7	0	5	153	153
Saguenay	60	93	64	61	116	79	1	1	3	0	6	2	2	3	2	3	0	2	0	2	4	0	0	1	84	} 134
Chicoutimi	52	6	48	41	67	43	0	—	6	5	15	7	0	—	0	2	0	0	0	—	0	1	0	0	50	
St. François	258	278	109	262	354	252	71	138	—	145	229	146	7	3	—	9	8	7	5	11	—	14	7	9	414	414
St. Hyacinthe	178	259	343	213	219	242	16	11	30	33	49	28	1	2	3	0	1	1	2	5	2	8	—	4	275	275
Three Rivers	279	230	241	210	260	244	91	63	137	43	61	79	9	47	67	5	7	27	12	1	18	10	8	10	360	360

(1) Average of 1876-'77, for Suits; 1876-'77-'79, for Oppositions. *The number of cases in Review multiplied by 3, as each case requires three judges.

(2) Average of 1876-'77-'79, for Suits; 1875-'76-'79 for Oppositions. NOTE.—The dash (—) means that there is no return published.

TABLE 2.

	Suits and Oppositions.						Prerog. Writs, Ejectments, Jury Trials, Lessors and Lessees, &c.			Criminal and Review.			Total average per annum.	Average per annum for each Judge.
	Circuit Court			Superior Court										
	1880.	1881.	Average.	1880.	1881.	Average.	1880.	1881.	Average.	1880.	1881.	Average.		
Arthabaska	160	135	148	59	51	55	12	8	10	21	11	16	229	229
Beauharnois	48	42	45	47	6	27	6	2	4	25	—	25	101	331
Terrebonne	132	190	161	61	50	56	2	5	3	7	13	10	230	
Bedford	196	120	158	44	15	30	2	7	5	7	11	9	202	202
Bonaventure	4	12	8	0	—	0	0	—	0	0	—	0	8	8
Gaspé	40	17	29	5	7	6	0	0	0	4	0	2	37	37
Iberville	—	—	—	—	—	—	—	—	—	—	—	—	164	164
Joliette	100	84	92	36	40	38	1	0	1	13	14	14	145	145
Kamouraska	98	96	97	40	33	37	0	1	1	26	2	14	149	149
Montmagny	84	88	86	36	50	43	8	2	5	0	0	0	134	283
Beauce	83	93	88	53	44	49	11	2	7	5	4	5	149	
Montreal	2203	1863	2033	1137	1198	1168	122	114	118	212	184	*594	3913	652
Ottawa	127	86	107	11	37	24	13	5	9	6	12	9	149	149
Quebec	916	746	831	938	719	829	62	47	55	68	37	*159	1874	468
Richelieu	183	111	147	68	43	56	4	1	3	3	2	3	209	209
Rimouski	68	56	62	20	18	19	9	3	6	0	7	4	91	91
Saguenay	63	111	87	2	3	3	5	2	4	0	0	0	94	149
Chicoutimi	76	0	38	15	—	15	0	—	0	2	—	2	55	
St. François	174	267	221	154	180	167	5	3	4	9	3	6	398	398
St. Hyacinthe	85	84	85	53	30	42	2	4	3	1	—	1	131	131
Three Rivers	304	167	236	109	89	99	5	3	4	51	3	27	366	366

*The number of cases in Review multiplied by three, as each case requires three judges.

Note.—The dash (—) means that there is no return published.

COMPARATIVE LISTS IN THE ORDER OF THE RELATIVE AMOUNT OF WORK FOR EACH JUDGE.

(TABLE 1.)

Montreal	753
Quebec	443
St. François	414
Three Rivers	369
Beauharnois and Terrebonne	286
Bedford	286
Richelieu	283
St. Hyacinthe	275
Arthabaska	241
Montmagny and Beauce	234
Ottawa	185
Joliette	185
Iberville	180
Kamouraska	174
Rimouski	153
Saguenay and Chicoutimi	134
Gaspé	14
Bonaventure	5

(TABLE 2.)

Montreal	652
Quebec	468
St. François	398
Three Rivers	366
Beauharnois and Terrebonne	331
Montmagny and Beauce	283
Arthabaska	229
Richelieu	209
Bedford	202
Iberville	164
Ottawa	149
Kamouraska	149
Saguenay and Chicoutimi	149
Joliette	145
St. Hyacinthe	131
Rimouski	91
Gaspé	37
Bonaventure	8

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, March 24, 1882.

DORION, C.J., MONK, RAMSAY, TESSIER & BABY, JJ.

THE CANADA SHIPPING Co. (plffs. below), Appellants, and THE VICTOR HUDON COTTON Co. (defts. below), Respondents.

Sale—Undiscovered principal—Tender.

A, acting for B, his undiscovered principal, sold to C a cargo of coal to arrive, C to have the option of taking the coal at the weight given in the bill of lading or of having it re-weighed at seller's expense. C accepted the coal without re-weighing, but afterwards weighed it in his own yard, without notice to the seller, and mixed it with other coal. Held, (1) *that B, the undiscovered principal, might sue on the contract in his own name.* (2) *That C, by tendering in his second plea the price of the coal admitted to have been received, acknowledged that the action had been properly brought by B.* (3) *That C, by accepting the coal without re-weighing, forfeited his rights in respect to a deficiency.*

The appeal was from a judgment of the Superior Court, Montreal, Mackay, J., dismissing the appellants' action. The judgment of the Superior Court will be found in 3 Legal News, p. 170, where the facts are explained.

In appeal the decision of the lower Court was reversed, Dorion, C. J., and Ramsay, J., dissenting. The judgment of the Queen's Bench is as follows:—

"The Court, etc.....

"Considering that the appellants, plaintiffs below, have proved, by legal and sufficient evidence, the liability of defendants' company, the now respondents, towards them, as alleged in this demand;

"Considering that on the 13th of August, 1879, the appellants acting by Thompson, Murray & Co., through their broker, James S. Noad, sold to respondents a cargo of coal, then to arrive on the ship "Lake Ontario," at $3.75 per ton of 2,240 lbs., said cargo to contain, according to the Bill of Lading, 810 tons 5 hundred weight, and the terms of payment being net cash, or at 30 days with interest added, at respondents' option, and with the further option of taking the cargo at the weight given on the face of the Bill of Lading, or of having it reweighed at the expense of said appellants, brokerage payable by the latter;

"Considering that the said appellants through their said agents Thompson, Murray & Co., acting as aforesaid by the said James S. Noad, delivered the said cargo to the respondents who accepted the same without having it re-weighed at seller's expense as they had a right to do, according to the terms of the said sale, such as mentioned in the bought and sold note addressed by the said J. S. Noad to the said Thompson, Murray & Co. on the said 13th day of August, 1879;

"Considering that it was only after the delivery of the said coal and its acceptance, that the respondents caused it to be weighed, and found that the said coal was considerably defective in quantity, it being, in fact, short of 89 tons;

"But considering that said weighing was so made by the said respondents in the absence of the appellants, and without notice to them, and that, at a time when the said respondents were bound by the option they had previously made, and therefore had no right to refuse payment for the said cargo on the ground of a deficiency in the delivery;

"Considering that the liability of the principal towards third parties for the acts of his agents is reciprocal, and that actions and remedies which could be waged by third parties against a principal not named in the contract, could also be enforced by the principal against third parties, according to the nature and extent of the former's rights;

"Considering that the appellants are a Canadian corporation, and would have been jointly with their said agents or severally liable towards the respondents for the said deficiency of 89 tons in the quantity of coal sold by them to the respondents through their said agents acting as aforesaid, had not the respondents forfeited their rights in that respect by their acceptance of the coal as above stated;

"Considering, moreover, that the respondents in tendering, as they have done, in this suit, and depositing into Court the sum of $2,890.72 as the value of the quantity of coal actually received by them, have acknowledged their liability towards the said appellants, and that the action in this cause has been properly brought, and should have been maintained by the judg-

ment appealed from, and that such tender is insufficient ;

" Considering, therefore, that in the said judgment appealed from, to wit, the judgment rendered by the Superior Court sitting at Montreal on 31st of March, 1880, by which the action of the plaintiffs now appellants, was dismissed with costs, there is error ;

" The Court now here, proceeding to render the judgment which the said Court below ought to have rendered, doth condemn the defendants, now respondents, to pay to the appellants, plaintiffs below, the sum of $3,038.44, as the value of the said cargo of coal, according to the said Bill of Lading, with interest from the 3rd of September, 1879, at the rate of 6 per cent. per annum, and the costs incurred by the said plaintiffs, appellants, as well in the Court below, as in this Court (the Hon. Sir A. A. Dorion, Chief Justice, and Mr. Justice Ramsay dissenting).

The dissentient opinion of Mr. Justice Ramsay was as follows :—

RAMSAY, J. The appellants sued the respondents for the price of a quantity of coal, $810.05, on a special action setting up that Thompson, Murray & Co. were their agents for a long period, and that through them appellants sold to respondents the coal in question.

The respondents met this action by a plea in which they said they never knew appellants in the matter, that they bought from Thompson, Murray & Co., and that they were ready to pay them and were not bound to pay appellants.

It appears that in England a special action of this sort can be brought, even when there is a contract in writing, provided the contract be not under seal (Collyer on Partnership, 653); and the contract may probably be produced in proof. But the action cannot be brought *on* the writing : (Dunlap's Paley Ag., No. 324, Note A.) It seems to me that such a rule is contrary to strict principle, and English writers know well enough that the rule of the civil law differs from the rule of the common law (Story, Agency, 164). We must be governed by the law of France on the point. It seems perfectly clear that under our system no such action can be brought. Many authors hold that not only the principal cannot sue, but he cannot be sued. It was argued that this was true, but that our code had laid down a rule that necessarily implied that the principal must have such an action. Article 1727 C. C. having given to the purchaser the right to sue the undiscovered principal to force him to fulfil the obligations of his agent, the reciprocal action must lie. But I do not see that this follows, and in France many writers held with Pothier that the purchaser might go past the agent and attack the principal directly. (See Troplong, Mandat, 435 and following, and the decisions he reviews.) The principle is this—a legal relation is created by equity between the undiscovered mandator and the other party, and not by the contract. There is no inconvenience in his proceeding without calling in the mandatary, or at any rate it is an inconvenience only to himself. But if the undiscovered principal sues the other party without putting the mandatary *en cause*, the defendant is liable to another suit. No evidence, not even an admission, would put him in the position he has a right to be in. He is entitled to be enabled to plead the *res judicata*. It has been said, if the agent is insolvent can't you follow your property? I think you can, but that case involves different principles ; and the necessity of putting the interested parties *en cause*, equally exists.

Judgment reversed.

Davidson, Monk & Cross for Appellants.
Beique & McGoun for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, September 20, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

THE CANADA PAPER CO. (defts. below), Appellants, and THE BRITISH AMERICAN LAND CO. (plaintiffs below), Respondents.

Sale of stolen effects—Trading in similar articles—C. C. 1489.

A farmer selling cordwood from his land is a trader dealing in similar articles within the meaning of C.C. 1489.

Wood cut and sold from land held under a "location ticket" containing a prohibition to cut wood, is not stolen property within the meaning of the above article.

The appeal was from a judgment of the Circuit Court, at Sherbrooke, condemning the appellants to restore and deliver over 130 cords of wood, or to pay $159.50 as the value thereof.

The appellants, the Canada Paper Company, during the winter of 1879-1880, amongst a large quantity of wood purchased from different parties for the purposes of their paper manufactory in the village of Windsor Mills, bought 130 cords from a young man named Edward Martin. The respondents alleged that this wood was stolen from them, and that it came into the possession of the appellants unlawfully, and they asked that the wood be given up to them, or that they be paid its value. The Court below maintained this demand.

White, for the appellants, submitted that the judgment was unfounded. The Land Company, respondents, on the 9th July, 1879, gave one Antoine Martin a location ticket for a lot of 200 acres, about four miles from the village of Windsor Mills. The price was $5 per acre. The location ticket contains a prohibition to cut timber. The appellants require a large quantity of cordwood for their establishment, and in the fall of 1879, among 105 persons who came to their office for the purpose of contracting to supply cordwood during the winter was Edward Martin, who, it subsequently appeared, was the son of Antoine Martin, and who was then eight months under age. The Company's agent, however, was not aware at the time that Edward Martin was related in any way to Antoine Martin. From the latter they would not have bought at all, as he had been guilty of trespassing on a previous occasion. The Company's agent made the purchase in good faith, and believed Edward Martin to be a dealer in wood. The appellants submitted that the Land Company never owned this cordwood. All they ever owned in it was the "stumpage,"—the trees or material from which the cordwood was manufactured. The trees had been cut down, and from them had been manufactured cordwood, which was an article of commerce, just as much as railway ties, shingles, fence rails or telegraph posts. The stumpage was worth less than twenty cents per cord. The distance to the village was four miles, and it was worth seventy cents per cord to haul it. The labor of chopping and cutting was worth more than double the value of the material. Secondly, it was submitted that the cordwood was not stolen from the respondents in the criminal sense, which would affect the rights of third parties. The cutting of the timber without permission was a breach of the contract between Antoine Martin and the Loan Company, and would be ground for a *capias*. The cutting and removing trees from the land of another is by statute a larceny, but here Antoine Martin, the father, was in possession of the land under a location ticket, and it was his property subject to the condition of payment. Antoine Martin could not have been convicted, under the circumstances, of stealing cordwood from the Land Company. Further, even if the Land Company were the owners of the cordwood after it had been cut, chopped and hauled, the sale to the appellant was not a nullity. The Paper Company bought in good faith from a person dealing in wood, and Article 1489 of the Code says: "If a thing lost or stolen be bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it without reimbursing to the purchaser the price he has paid for it." Martin was in actual possession of the wood as proprietor, and under Article 2268 actual possession of a moveable by a person as proprietor creates a presumption of lawful title. It was a commercial matter, and the appellants in any case were entitled, under Article 2268, to be reimbursed the price which they had paid for the wood.

Brooks, Q.C., for the respondents, contended that the appellants were shown to be in bad faith. Their agent (Travis) admitted that he would not have bought the wood from Antoine Martin, and yet he bought, without any enquiry whatever, from his son, a young man only twenty years of age. As to the fact of larceny, it was submitted that the theft need not be such as would render the party subject to indictment for larceny. The wood was unlawfully taken and carried away from their possession, without their knowledge and against their will, by Edward Martin, with intent to appropriate it to his own use. The respondents were proved to be owners of the wood, and the change of form from trees to cordwood did not affect their right to revendicate their property. The appellants' pretension that it was a commercial matter was not sustained by the evidence, it appearing merely that one person had bought one cord and another had bought three or four cords from Edward Martin.

RAMSAY, J. This action arises out of the rights retained by the respondents over lands conceded by them. It seems they give location tickets to settlers containing certain reserves, and amongst others a prohibition to cut wood. These location tickets are *sous seing privé*, and they are declared to create only a personal covenant between the parties. One Antoine Martin obtained one of these tickets for a lot of land belonging to respondents, and in violation of his covenant with respondents he cut a quantity of wood, converted it into cordwood, and through his son, Edward Martin, sold 130 cords of it to appellants. Respondents attached the cordwood as being their property, and prayed that the wood might be restored to them or that appellants should pay them $1000 damages.

The judgment of the Court below condemned the appellants to deliver up the 130 cords of wood or pay the respondents $159.50.

The theory on which this judgment appears to be founded is that the wood was stolen property, that cutting it into firewood did not alter its nature, that it was not a commercial contract, and that it was not sold in open market or in the ordinary course of business.

The governing principle with regard to moveables is that *possession vaut titre*. The exception that stolen effects may be recovered by the owner even from the innocent purchaser. That is to say, the thief could not convey a title. To this exception there were exceptions. This system has been modified by the Code. It starts from the doctrine that "the sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles." This is not only a novelty, it is a rule incompatible with other parts of the Code, and, above all, it is absurd, as being physically untrue. The sale of another's property gives rise to prescription, and, followed by possession, it creates a presumption of lawful title. These are not provided for in "the three next following articles," but by Article 2268. Again, A sells B a penny roll, which B eats; the sale cannot be null. It has had its fullest effect. It may be said that the Code merely refers to the legal effect, but this answer, as I have shown, is insufficient. The legal effects are as apparent as the physical. The truth is the doctrine of the old law was set aside to make room for a false doctrine, presumed to be more in accordance with the rule of morality, the mischief of which was to be remedied by exceptions. It may, perhaps, be said that Article 1487 C. C. should be interpreted as though it only applies strictly between the parties. But be this as it may Articles 1488 and 1489 establish two categories which are notable exceptions to Article 1487 however interpreted. Article 1488 excepts the sale in all commercial matters. Article 1489 lays down a rule for articles lost or stolen; they can only be revendicated from a purchaser in good faith who has bought at a fair or market, at a public sale or from a trader dealing in similar articles, on repayment of the price of acquisition.

Now admitting, for the sake of argument, that this cordwood was lost or stolen, it seems to me it was bought in good faith by appellants from a person trading in similar articles. It was not, of course, a commercial matter, but trading, in Article 1489, does not appear to me to be restricted to commercial matters. A farmer does not do an act of commerce in selling cordwood from his land, but he certainly trades or deals in similar matters. The respondents, then, taking the most favorable view of the case for them, should have offered to reimburse the appellants the price they paid for the wood.

But another question arises. Was this wood lost or stolen? I think not. At most, the breach of the covenant between Martin and the respondents was merely a trespass—a question of title subject to some difficulty. It is very true that under our Registry laws the holding of Martin was precarious in the extreme, and might be defeated. The Company respondents might have sold the land out and out, but this does not appear to me to depend in the least on the declaration of the location ticket that the covenant is personal, but on Article 2098. See also Article 1478.

There is a third reason why I think the judgment cannot be maintained. Respondents had no right to more than the value of their timber as against appellants in any case.—Article 435. To convert their action of damages against their impecunious purchaser into a claim against an opulent company is ingenious, but scarcely calculated to succeed.

Allusion has been made to the case of *Cassils & Crawford*. In the case of *The City Bank & Barrow* (L. R. 5 House of Lords, p. 669), that decision has been the object of what I may almost call bitter invective in the House of Lords, with what show of reason I am not called upon now to discuss. It will always remain a question of taste how to deal with judicial utterances. It may seem witty in some circles to read this Court a lecture on the Titles of our own Code. To reasoning persons it will probably appear to be superficial. For my part I am a thorough democrat in the republic of letters, and I seek no quarter for my judicial opinions. If I cannot sing with Longfellow, "I shot an arrow in the air," in expressing an opinion, I may so far borrow his idea as to say that I have sent forth a warrior to do battle for truth, and to help to create a jurisprudence, or be overwhelmed, according to its deserts. Being of this mind, it signifies little to me whether a Lord Chancellor is pleased to transfer the tactics of a debating society to the benches of the House of Lords or not. But I am not indifferent to misrepresentation in such matters, and it seems to me to be fair to the public, as well as to myself, to state that I never said broadly or the reverse that pledge was implied in sale; but I did say this, that if a thief could not sell he could not pledge, and to this I adhere. It is obvious that what the law intended to strike was the crime and the profit to the probable criminal, and not any particular form by which he tried to secure the profit of his delinquency.

Judgment reversed.

Hall, White & Panneton for the appellants.

Brooks, Camirand & Hurd for the respondents.