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THE EXTRADITION OF LAMIRANDE.

[*Second Notice.*]

On the 28th of August, when Mr. Justice DRUMMOND had finished reading the statement or judgment which appeared in our last issue, he adjourned the further consideration of the case to the 24th of September following. The *Saturday Review*, and other English journals, have expressed surprise at this long postponement. It does indeed seem rather singular that the learned Judge should have fixed so distant a day, especially as the full court of Queen's Bench was about to sit in appeal at Montreal, on the 1st of September. However, the inquiry, as we have stated, was adjourned to the 24th of September, when the September term of the Court of Queen's Bench, sitting on the Crown side, commenced, Mr. Justice DRUMMOND himself presiding. The Judge on that day formally exonerated Mr. Deputy Sheriff SANBORN from any blame in the matter, that gentleman having been in ignorance of the proceedings for *habeas corpus*, when he signed the order for the jailer to hand over the prisoner under the Governor's warrant. Mr. SCHILLER, the Deputy Clerk of the Crown, was also exculpated, on the ground that he had simply acted in obedience to instructions. The learned Judge, in his address to the Grand Jury, directed the attention of that body to the carrying away of LAMIRANDE, and strongly urged the necessity for an investigation.

Mr. Justice DRUMMOND then produced two copies of the *Montreal Gazette*, one of which contained the letter of Mr. RAMSAY, reprinted in our last issue, and the other contained another letter written by that gentleman, criticising the Judge's statement of the case, and censuring him for not issuing the writ at once, when application was made to him. These letters were printed in the *Gazette* over Mr. RAMSAY'S signature. The learned Judge having ordered the papers to be filed, inquired of Mr. RAMSAY whether he was the author of the letters. This question Mr. RAMSAY declined to answer, unless informed of the object. The Judge then directed that subpœnas should be issued, requiring the attendance of Messrs. LOWE and CHAMBERLIN, proprietors of the *Gazette*, on the following morning. His Honor declined to proceed with business till the matter of "discipline" was settled, and adjourned the Court.

On the morning of the 25th, Messrs LOWE and CHAMBERLIN failed to appear—not, we believe, through want of respect for the Court, but on account of what they conceived to be informality in the subpœnas ordering their attendance. No further proceedings, however, were adopted with respect to them, but the Judge stated that he must now treat the matter in a less lenient manner, and ordered a rule to issue against Mr. RAMSAY, returnable on Thursday, the 27th of September. Mr. RAMSAY expressed his readiness to reply at once, but the Judge would not alter the order. Further, his Honor waived the objection he had apparently entertained on the previous day, to Mr. RAMSAY'S representing the ATTORNEY GENERAL, and the business of the term was proceeded with.

It would be idle to deny that the general impression of the bar on that morning was, that the Judge had receded from the position he had taken up, and that the matter was not to be carried further. Insinuations were even made that the influence of the Attorney-General had been brought to bear upon the Judge to induce him to give way, and an article appeared soon after in *Le Pays* on the subject, which gave so much offence to Mr. Justice DRUMMOND that he ordered a rule to issue against Mr. LUSIGNAN, the editor of that journal, to show cause why he should not be held in contempt of Court.

In the meantime, the argument on the rule against Mr. RAMSAY was adjourned from week to week, on the plea that public business must not be interrupted by taking up a matter of discipline; and Mr. LUSIGNAN having appeared and put in a written reply, the argument on the rule against him was fixed for the same day as the other, and also adjourned from time to time. At the date we write this, (Oct. 22) the argument has been fixed for Wednes-

day the 24th Oct.; and we trust to be able to give some account of what transpires in our next issue.

We have now to revert to the action taken by the Grand Jury. In his charge, at the commencement of the term, Mr. Justice DRUMMOND instructed that body as follows:—

"In the investigation of any charge, either on an indictment, or for the purpose of a presentment, you can receive no evidence other than such as is *given by witnesses produced and sworn before you, or furnished by confession made upon voluntary examination before a magistrate, or by other legal documentary evidence. No affidavits or depositions should be received by you in evidence, except such as contain dying declarations in cases of alleged murder and manslaughter.* Even these should not be read as evidence before you, without previous consultation with the Counsel for the Crown, or in his absence, with the Clerk of the Crown, or by *permission of the Court.*

If, however, you deem it proper to make any such presentment, you should annex *notes of the evidence taken in support of it, signed by your foreman, and you should not announce in open Court the name of the person accused; while the Court, if, in its discretion it should order further proceedings, would be bound to prevent publicity being given to the proceedings of such a presentment, until an arrest had been effected.*"

Nevertheless, the gentlemen of the Grand Jury thought proper to prepare a series of interrogatories which they sent to the ATTORNEY GENERAL, the SOLICITOR GENERAL, and also to Mr. GODLEY, Civil Secretary, and Mr. GAUTHIER, Consul General of France. These interrogatories required the gentlemen above named to state all they knew about the LAMIRANDE case, and, as might be expected, they unanimously declined to reply. The only evidence in fact obtained by the Grand Jury was a deposition made by Mr. DOUTRE, Q.C., detailing the facts of the case; and reflecting rather severely upon the part taken in it by Mr. RAMSAY.

The Grand Jury having made their presentment, with copies of the correspondence and Mr. DOUTRE'S deposition, Mr. Justice DRUMMOND (Oct. 13) adverted in Court to the extraordinary course adopted by the Jury, in sending interrogatories to the officers of state and even to the GOVERNOR GENERAL, instead of applying to the Court to enforce the attendance before them of such witnesses as they might require.

The inquiry by the Grand Jury, therefore, proved wholly abortive—a result not surprising, when we reflect on the difficulties which must attend an investigation of this sort by men ignorant of the first principles of law.

We mentioned in our last impression that LAMIRANDE had been taken to Paris, notwithstanding the efforts of Mr. DOUTRE'S correspondents in London to detain him. It appears, besides the embarrassment occasioned by the absence of the Judges from London during vacation, that the telegrams sent from this side by the GOVERNOR GENERAL and Mr. DOUTRE, were too meagre to admit of an affidavit being founded upon them, and LORD CARNARVON, the Secretary of State for the Colonies, with singular indifference, neither telegraphed for more information, nor authorized the detention of the prisoner till the mail should arrive. The case, however, has since been taken up by the English press, which, almost without a dissenting voice, has loudly denounced the carrying away of LAMIRANDE, and urged that he should be restored to the jurisdiction of our courts. Copies of all the documents connected with the case have been transmitted to the Home authorities, and the GOVERNOR GENERAL has no doubt been called upon for a full explanation. In the meantime, it is stated that the French authorities have been requested by the English Government to postpone the trial of LAMIRANDE.

THE GRAND JURY SYSTEM.

The attention of the English public has again been drawn to the consideration of the utility or inutility of grand juries. The juries themselves throughout the country have of late been complaining of the unnecessary demands made upon their time. At the Middlesex Sessions recently, the grand jury made a presentment to the effect that they did not think a grand jury was of the least use. They urged that the cases all underwent preliminary examination by professional men, and

therefore there was no need of the services of a grand jury. The Judge promised to forward their presentment to the proper quarter. So, too, at the last session of the Central Criminal Court of London, the grand jury expressed their firm conviction that the functions which they had been discharging were useless, and that the ends of justice would in no way be defeated, if bills of indictment ceased to be subjected to this preliminary examination.

When men are dragged together against their will, to do what they believe to be totally superfluous and unnecessary, it is not to be expected that their faculties will be even moderately roused into activity while engaged in such duties. It is therefore not to be wondered at, that the jury last referred to should have backed up their own confession of their inefficiency, by committing an error with singular consequences. A man was charged before them with committing an unnatural offence, and although there seems to have been little room to question his guilt, the grand jury rejected the bill. By a strange mistake, however, the words "a true bill," were endorsed on the indictment, instead of "no bill," and the prisoner was placed on his trial, convicted, and sentenced to ten years' penal servitude. Subsequently, the attention of the foreman being directed to the report of the trial in the newspapers, he attended in Court, and made an affidavit that the grand jury had rejected the bill. As, however, the bill and subsequent proceedings were all regular, the Judge could not interfere, and it only remained to communicate the facts to the Home Secretary. It is expected that a pardon will be granted to the convict in the general interest of justice.

Another singular instance occurred at Clerkenwell. A man and woman being jointly charged with robbing furnished lodgings, the grand jury found a true bill against the man, but ignored the bill as against the woman. With the natural indolence of men engaged in what they believe a useless task, they omitted to strike out the female prisoner's name. She was accordingly arraigned, pleaded *guilty*, and sentenced to a term of imprisonment. At the last moment, however, the error was discovered, and the woman, to her great astonishment, set at liberty.

At the last term of the Court of Queen's Bench at Montreal, the grand jury found a true bill against a prisoner, on an indictment which lacked the necessary signature, without observing the defect. And, it may here be not out of place to notice, though we do it without expressing any opinion on the merits of the case, at the previous term a number of true bills were found against a gentleman, who has since published a pamphlet loudly denouncing the iniquity of secret indictments by grand juries, as affording facilities for concocting conspiracies, and gratifying private animosities.

These incidents have revived the discussion as to the expediency of the grand jury system, and the wakeful English public will probably not allow the matter to rest till the subject has been thoroughly weighed and examined. We see little to be urged in favour of the system. The gentlemen who act as grand jurors are utterly ignorant of the rules of evidence, and the first principles of criminal law. Or, if they have any ideas on the subject, it is probable that they are of such a nature as rather to mislead than to aid them. We have just seen the way in which a grand jury attempted to investigate the LAMIRANDE case; and as for the presentments with which these bodies usually wind up their functions, it is well known that they are invariably received by the public with the utmost indifference.

THE PRICE OF JUSTICE.

"*Nulli vendemus, nulli negabimus aut differemus justitiam, vel rectum.*"—MAGNA CHARTA, CAP. XXIX.

"To none shall we sell, to none deny or delay right or justice."

Upwards of six centuries and a half ago, this sentiment was expressed in written words as one of the settled axioms of the English Constitution, and thirty-nine times since have the Kings of England sworn to abide by the promise of their predecessor.

Then, it was necessary to oppose it to open bribery, tyranny and corruption. Since, the nations have been growing in learning, in wealth, and in civilization; until now the sense of freedom and of justice is so deeply

ingrafted in the breast of every citizen of the great civilized states of to-day, that any such gross neglect or fraud in the administration of justice, as was of common occurrence some hundred years ago, would at once be rectified by the common voice or power of the people. But there are more ways of selling justice than doling it out at so much per judgment. If the aid of the enforcing hand of the law be so entrenched with costs and disbursements as to be only accessible to the rich, is that not virtually a selling of justice to those who can afford to pay for it? Is not the poor man, by these means, as thoroughly debarred his rights as in the old days of iron, when might was right, and strong-handed castled injustice rode it rough-shod over the lands of our ancestors? And making the costs of obtaining a judgment, often proverbially an uncertain one, as heavy as they are at present in Lower Canada, is a lengthening out of the reign of injustice into days of liberal and enlightened thought—when justice should be had for the asking—unworthy of a free people.

There is scarcely a practising advocate in the country who has not met with numerous instances in which poor men have been deterred from prosecuting just claims, by the large disbursements which they would be obliged to make in order to obtain a judgment against their debtor—disbursements which they would willingly make, if they were able; but which come upon them in the hour of their sorest need, and when they most require all the aid and support of the law.

"Taxes on Justice," says Dr. Heron, in his Introduction to the History of Jurisprudence, "are unjust and indefensible upon the sound principles of juridical science." Mr. Hume considered the whole machinery of government to have as its sole aim the distribution of justice, while Lord Brougham has forcibly expressed the same idea, in saying that "the end of the whole paraphernalia of king, lords, commons, army and navy, is to place twelve honest men in a jury-box."

We pay taxes, to quote again from Dr. Heron, for the security afforded by government to our properties and liberties, and it is worse than absurd to discourage, by a tax, the very means by which an injured subject seeks redress through the laws of the realm.

In the old times every sovereign kept up his revenue as best he could, and no means seemed easier or less obnoxious to the people than a tax upon suitors. To the rude reasoners of those days nothing appeared more equitable than that he who got a right enforced should pay for it, inasmuch as he reaped the principal advantage from it. From them was hidden the fallacy in this argument which is clear to us. By courts of law, supported by public authority, and backed by public might, the rights of all are protected, and every judgment, often obtained after long contestation and great costs,) is a new rivet serving to fix the rights and liberties of all. Therefore, the parties who suffer some injury to their rights ought not to defray the expense of the public justice by which they are redressed; for they are the persons who have been least benefitted by the protection of the law. As Bentham says, "the protection which the law affords them is not complete, since they have been obliged to resort to a court of justice to execute their rights and maintain them against infringement, whilst the remainder of the public have enjoyed the immunity from injury conferred by the law and its tribunals, without the inconveniences of an appeal to them."

A tax upon the administration of justice is a direct reward offered for injustice. Is it right? Is there not an inconsistency and want of sound ratiocination in this, that the same legislators should at the same time give rewards for informers, and impose taxes on justice, or, in other words, throw difficulties in the way of the legal redress for wrongs? Courts of justice should be paid for out of the general taxation, in the same way as the army and navy: for every man has as great an interest that justice should be upheld in the land as the parties actually in the case. In fact, were it possible, it would be meet that private as well as public wrongs should be settled entirely at the public expense. But this can never be; for there must always be some who make it their business to manage legal proceedings, and these, if paid by the state could not be expected to be as deeply

interested, or have the same zeal in individual cases as if personally interested in the result. Let, then, the public machinery of justice be paid for out of the public treasury; and let private suitors retain their own legal advisers. But this will encourage useless and annoying litigation, some will reply. Not at all. No doubt many more cases will be tried, but justice demands that there should, for many are now debarred from prosecuting just claims. If the sole end of administrative law be to do away with litigation, why then shut up the courts of justice at once; but if its aim be to establish right, what matter a few more cases in the courts, and a little more work for the legal functionaries, provided justice be done; and the loser in the cause having to pay the retainers on both sides, and a stringent law against the common barrator (annoying litigator) will always be a sufficient check against useless litigation.

In Lower Canada the administration of justice is sadly trammelled by law costs, and, as I have attempted to prove, there is a crying need of a reform. Let, then, some practical legislator, at the next session of parliament, take the matter in hand, and introduce a bill to do away with, or at all events lighten, the burden of the existing tariff of law costs; and, if he succeeds in carrying it, he will have the satisfaction of feeling that he has attained the proudest position that a statesman can reach, that of a real benefactor of his country; while let every one who opposes it remember that to him may be applied these powerful words of Jeremy Bentham :—"The statesman who contributes to put justice out of reach, the financier who comes into the house with a law-tax in his hand, is an accessory after the fact to every crime: every villain may hail him brother, every swindler may boast of him as an accomplice. To apply this to intentions would be calumny and extravagance; but as far as consequences only are concerned, clear of criminal consciousness, it is incontrovertible and naked truth."

WYVANT.

NOTICES OF NEW PUBLICATIONS.

THE AMERICAN LAW REVIEW.—The first number of this new legal Quarterly, published by Messrs. Little, Brown & Co., of Boston, augurs well for the success of the undertaking. The editorial labour has been performed with great care and ability, and the contents are such as to render the *Review* a welcome visitant. The October number embraces articles on legal subjects, United States Cases, Digest of English Law Reports, Notices of New Publications, Summary of Events, Lists of the Judiciary, and other interesting and valuable information. We cordially commend the *Review* to the reader who wishes to be well informed of what is passing in the neighbouring republic.

SECRET INDICTMENTS BY GRAND JURIES.—We have barely had time to glance over this pamphlet, written by Mr. ASHLEY HIBBARD, of Montreal. It is mainly a narrative of the proceedings in cases in which Mr. HIBBARD was personally concerned, and which the writer uses to illustrate the evils of secret indictments by grand juries—a system which, he believes, affords facilities for carrying out conspiracies.

CHANGES IN THE LAW EFFECTED BY THE CODE.—We have before us two treatises on this subject; one by Mr. GIROUARD, published in the *Montreal Gazette*, and the other, a pamphlet published by Mr. MCCORD, who for some time acted as English secretary to the Codification Commission. These treatises will be found useful in assisting the student to comprehend and master the changes which have been made in our law by the Civil Code now in force.

SUMMARY OF CURRENT EVENTS.

QUEEN *v.* BURROWS.—An interesting trial for manslaughter took place, at Montreal, on the 16th and 17th of October. The facts were these:—During the night of the 30th August, Mr. John G. Burrows, a gentleman residing with his sister in Montrose Terrace, Drummond Street, was twice called up by his sister, who was informed by the servant maid, that she had heard a noise as of some one scraping at her window in the basement, and had observed a man outside working at the wire screen. On the first occasion, Mr. Burrows took a lamp and searched the house, but saw no one. On the second alarm, Mr. Burrows armed himself with a revolver, and again de-

ascended to the servant's room. Seeing a man in the act either of getting in or out of the window, and supposing him to be a burglar, Mr. B. fired, and by a singular fatality the intruder was mortally wounded, and died almost instantaneously. It turned out that the intruder was one Felix Prior, a coachman, and a man of good character, who could hardly be suspected of burglarious intention. Nevertheless, the wire screen was found to have been forced open, and although the body was found some paces from the window, lying in the close, yet the evidence of Dr. Reddy was to the effect that the deceased, if he were in the act, or had the intention, of retreating at the time the ball struck him, might have staggered forward that distance, from the impulse of previous volition. The wound, moreover, indicated that the ball had been fired by a person on a level with the deceased, a fact which favoured the hypothesis that Prior was actually on a table below the window, inside the apartment, at the time the shot was fired.

Mr. Burrows, of course, immediately gave himself up. An inquest was held, and a verdict obtained that Mr. Burrows killed the deceased in the defence of his life and property. This verdict seeming to leave an imputation on the memory of Prior, proved very distasteful to his friends and relatives, though, it must be observed, that the real motive of Prior in endeavouring to enter the room has never been cleared up.

At the last term of the Court of Queen's Bench, Mr. Burrows was indicted before the grand jury, and a true bill found for manslaughter. Messrs. Kerr and Houghton were his counsel at the trial, Mr. Devlin appearing for the private prosecution. No new facts were elicited at the trial, and the jury found a verdict of *excusable* homicide, not *justifiable*, thereby clearing the character of the deceased from the imputation of felonious intention.

THE MONTREAL BAR.—The first examinations of candidates, under the amended by-laws, for admission to practice and study, took place on the 16th of October. The examinations, after this year, are to be held quarterly, and will be conducted by a number of sub-committees.

ADMISSIONS TO STUDY.

The following are the names of the gentlemen who have been admitted to the study of the law, by the Montreal Board of Examiners, since the 1st day of May, 1866.

Henry C. St. Pierre	7th May.
Emile Fauteux	"
Gustave Piché	"
Arthur Lacoste	"
A. F. D'Eschambeault	"
Adolphe Daoust	"
R. M. Howard	"
Stanislas Côté	4th June.
A. Roi	"
M. B. Bethune	"
W. J. Watts	"
Hector Marcheldon	"
J. N. Bienvenu	2nd July.
L. A. Brunet	"
A. B. Irvine	"
T. Vaillancourt	"
Joseph Dubuc	6th Aug.
John Keller	3rd Sept.
C. Arpin	"
L. Laflamme	"
A. Marsan	"
W. Fauteux	"
E. Cornwallis Monk	16th Oct.
Wentworth B. Monk	"

ADMISSIONS TO PRACTICE.

Name.	Date of Examination.	Date of commission.
Alphonse Lachapelle	2nd April.	5th April.
Ulderic Bellemare	7th May.	8th May.
Jean Robidoux	7th May.	15th May.
C. A. Geoffrion	4th June.	4th June.
Anthime Pilon	4th June.	4th June.
C. B. Carter	6th Aug.	5th Sept.
Thomas P. Butler	"	27th Sept.
Pierre U. Duprat	3rd Sept.	
Thomas A. Corriveau.	"	7th Sept.
Joseph U. Pouliot	"	10th Sept.
R. A. A. Jones	"	5th Sept.
Gustave A. Drolet	"	16th Oct.
Joseph T. St. Julien	"	4th Sept.
Alphonse Jacques	16th Oct.	17th Oct.
Wm. O. Farmer	"	17th Oct.
Louis Tellier	"	16th Oct.
John P. Noyes	"	"

H. L. SNOWDON, *Secretary.*

COMPLIMENTARY DINNER BY THE MONTREAL BAR.—On the 25th of September, a complimentary dinner was given by the members of the bar for the district of Montreal to the General Council of the bar for Lower Canada. Mr. DAY, Q. C., presided. Only two members of the General Council were present, and many other distinguished members of the bar, who were expected to be present, were prevented from attending by various causes. The entertainment, therefore, can hardly be said to have met with the success anticipated.

REGINA *v.* DAOUST.—In the Court of Queen's Bench, Oct. 19, Mr. Justice Mondelet presiding, Mr. Ramsay moved for sentence on Daoust, convicted of forgery. The learned judge said that although the judges sitting on the Appeal side had refused to permit a new trial, (ante p. 29), yet that that part of his (Mr. Justice Mondelet's) judgment which set aside the previous verdict had been left untouched, and therefore there was no verdict. The motion, accordingly, was rejected.

CHIEF BARON POLLOCK.

[The following sketch (from the *Pall Mall Gazette*) of Chief Baron Pollock, who has retired during the present year, will be read with interest. The Chief Baron is the son of David Pollock, a saddler at Charing Cross; and brother of the late Sir David Pollock, an Indian Judge, and of General Sir George Pollock. He was born in 1783; educated at Trinity College, Cambridge, where he was Senior Wrangler; and was called to the bar of the Middle Temple, in 1805. He joined the Northern Circuit; became a King's Counsel in 1827, Attorney-General in 1834 and 1841; and succeeded Lord Abinger as Chief Baron in 1844.]

The judges are probably the best known of all our public men. A great politician addresses the House of Commons a certain number of times in the course of a session; but to the public at large he is but a name, representing particular political opinions. Even when he addresses a public meeting, or makes an after-dinner speech, he is more or less of an actor. A judge, on the other hand, transacts all his business in public. He is one of the shows, not only of London, but of every country town; and is constantly brought into direct personal relations, not only with every member of a large and most active profession, but with men in all ranks of life and on every sort of subject. He is, moreover, perfectly independent of those with whom he has to deal. His position is as secure as law and public feeling can make it. If he is ill-tempered, lazy, tyrannical, or even merely disobliging, he can indulge his failings without any special risk. No man can with perfect impunity give so much offence, or do so many and such deadly injuries, as an ill-disposed judge; nor is any man so continually on his trial. It is pleasant to reflect that, under these circumstances, the fifteen judges are, with hardly an exception, exceedingly popular, not only with the profession to which they belong, but with the public at large; and we shall doubt whether any one ever took with him into retirement a larger share of hearty, affectionate admiration than the kind old man, who, after presiding over the Court of Exchequer for nearly a quarter of a century, retires into private life, full of freshness and vigor, and surrounded as closely as ever man was by all that should accompany old age. No doubt the Chief Baron had his failings. He had been so consummate an advocate at the bar that he never quite threw off his old habits. He belonged to that class of judges who distinctly take a side in the course of a case, and makes no mystery to the jury of the opinion which they have formed. It may admit of a good deal of argument, whether this habit does or does not favour substantial justice. To hit the exact line between fairly directing and unduly pleading from the bench is very difficult. Certainly the attempt to be scrupulously neutral often ends in puzzling the jury, and in suggesting doubts to them on points which are in reality quite plain. Whether the Chief Baron always hit the golden mean, no one could possibly doubt of the goodness of the motives by which he was actuated. He may sometimes have been a little too much of an advocate, but he was always an advocate for what appeared to him the cause of justice, truth, and good morals; and of these he was no bad judge. There were two characteristics about his behaviour on the bench, which

no one could mistake,—his extraordinary gifts, and the extreme kindliness and even tenderness of his nature. When fairly roused in a case which put him on his mettle, he would speak with a vivacity, a choice of language, and a dignity and power of manner, which recalled the old leader of the Northern Circuit in its best days, to those who had known him before he was a judge. His lighter gifts were singularly winning. He was full of humor. The solemn orations which he used to make on Lord Mayor's day—a distinct and separate oration for each new Lord Mayor—were as good as a play, and will long form a pleasant tradition in Westminster Hall. His knack of committing innocent forgeries was another specimen of the general adroitness and dexterity of mind and body which distinguished all that he did. He once directed a letter to a barrister in a hand so exactly like that of the barrister himself (and a wretchedly bad hand it was), that his correspondent supposed that he must have left at his chambers an envelope addressed to himself. His talents, however, were not the most characteristic point about him. We should doubt, whether, after all his long career, he had an enemy in the world, or even a casual acquaintance who did not feel towards him as a friend. Every tone of his voice, every expression that he used, when the occasion required it, was full of good nature and warmth of heart, though without a trace of weakness. He belonged to a race and generation which is hardly being renewed, but the felicity of his career will always be exceptional. A man who is distinguished from one end of life to the other— who, from being Senior Wrangler, develops rapidly into being the leader of the Northern Circuit, Attorney-General, and Chief Baron —is, as the phrase goes, "commoner in fiction than in real life." Those who had the opportunity of seeing from day to day how very pleasant such a reality might be, learnt something from it which they are not likely to forget.

LEGAL APPOINTMENTS IN IRELAND.—The Right Hon. Francis Blackburne was, on the 23rd of July, sworn in as Lord Chancellor, and Mr. Whiteside as Lord Chief Justice of Ireland.

LAW JOURNAL REPORTS.

COURT OF QUEEN'S BENCH.

APPEAL SIDE.

QUEBEC,* Sept. 19.

FREER *et al.*, (defendants in the Court below) Appellants; and MAGUIRE *et al.*, (plaintiffs in the Court below) Respondents.

Shipbuilder—Liability of Mortgagee of Vessel.

The defendants advanced money to G., to enable him to complete a vessel, and as security for their advances, the vessel was mortgaged to them, and it was "expressly covenanted and agreed by and between the said parties, that the said vessel shall be and is the absolute property of the said defendants, so that they shall take and obtain the register of the said vessel in their own name, and may sell and dispose of the same, and give a good and valid title thereto":—

Held, that the defendants were not liable for goods sold by the plaintiffs to G., before the vessel was registered, for the purpose of furnishing it.

This was an appeal from a judgment of the Circuit Court, Montreal, on the 31st of May, 1865, condemning the appellants, Messrs. Freer, Boyd & Co., to pay the sum of $165.05 for goods sold and delivered to them by the respondents during the year 1864. The action was an ordinary action for goods sold and delivered, with the usual *assumpsit* counts, and the plea was a general denegation. The facts were simple:—In the autumn of 1863, one James Goudie, a shipbuilder, commenced building the barque *Annie McKenzie*, on his own account, and in January, 1864, made arrangements with the appellants for advances to the extent of $14,000, to aid him in completing the vessel. These advances were made under a notarial contract, and, as security for them, Goudie mortgaged the vessel to the appellants, with a power of sale in case of non-payment. The agreement contained the following clause:—"It is expressly covenanted and agreed by and between the said parties,

* In the ten cases reported below, the argument took place at Montreal, but judgment was rendered at Quebec. We have, therefore, no note of the Judges' remarks, and have been obliged to rely upon the recorded judgment.

that the said vessel shall be and is the absolute property of the said Freer, Boyd & Co. (the defendants), so that they shall take and obtain the register of the said vessel in their own name, and may sell and dispose of the same, and give a good and valid title thereto." Instead of $14,000, the appellants actually advanced $24,000, from time to time, and then refused to go any further, and insisted upon the delivery over of the vessel. Goudie then refused to sign the builder's certificate, necessary to enable the appellants to register the vessel, unless they would pay various demands against him by parties who had supplied materials and stores used in furnishing. Finally, he signed the certificate upon the appellants paying two of the claimants 10s. in the £. Thereupon the respondents, Maguire & Co., who were among the claimants that the appellants refused to pay, instituted the present action, seeking to hold the appellants liable. The only witnesses examined were Goudie and his son, and McIntosh, one of the furnishers to whom the appellants had paid 10s. in the £. The only question was whether the appellants had in any way rendered themselves liable for the goods. The Court below having held them liable, the present appeal was brought.

The reasons urged in support of the appeal were as follows:—That there was not a word of evidence to show that the respondents ever had anything whatever to do with the appellants, whether by purchase of goods or otherwise. The goods were proved by the respondents' witnesses, to have been bought by Goudie's son for his father; and, by the same witnesses, to have been delivered to the elder Goudie, and used by him in the construction of a vessel he was building for his own benefit. They never ordered the goods or authorized their being ordered; they never used them, and never undertook any responsibility in respect of them. *Bridgman* and *Ostell*, 9 L. C. R. 445, was referred to, in which case it was held in appeal (reversing the judgment of the lower Court) that a person contracting for a house to be built for him, is not responsible for materials furnished by third parties to the contractor for finishing the house, where such materials were sold to the contractor, and not to the proprietor.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) Considering that by the evidence adduced in this cause, it appears that the goods mentioned in the plaintiffs' declaration were sold by the plaintiffs to James Goudie and not to the defendants; therefore, that in the judgment of the Court below, condemning the defendants to pay for the said goods, there is error, &c., the Court doth reverse the judgment, and dismiss the action of the plaintiffs, with costs of both Courts.

Judgment reversed.

Abbott, Q. C., for the Appellants.

Curran, for the Respondents.

NORDHEIMER *et al.*, (plaintiffs in the Court below) Appellants; and MARIE R. R. DUPLESSIS, *et vir*, (defendants in the Court below) Respondents.

Revendication—Sale by Bailiff out of District—Practice—Purchase from Lessee.

The plaintiffs revendicated a pianoforte which had been purchased by the defendants at a judicial sale of the goods of a party to whom the plaintiffs had leased the instrument. This sale was made by the bailiff in a different district from that in which the instrument was seized:—

Held, that the sale was null and void, and could not convey any right of property as against the proprietors.

Held, also, that the Court had power to declare the sale null, without any conclusions to that effect in the plaintiffs' declaration or special answers.

This was an appeal from a judgment of the Superior Court, at Montreal, rendered by *Monk*, J., on the 30th of June, 1865, dismissing the appellants' action with costs. The action was brought to revendicate from the respondent, Duplessis, a piano which the appellants had leased to one Cordelia Martin, wife of Thomas Dagenais.

The plea of the defendant was that she had purchased the instrument at a sale made at Montreal, by one Beaulac, a bailiff from the district of Richelieu, in execution of a judgment of the Circuit Court for that district against Thomas Dagenais. The plaintiffs answered, that the piano had only been leased to Cordelia Martin, the wife of Dagenais, from whom she was separated as to property; that the sale

by the bailiff was illegal and void; and that the defendant, being the mother of Mrs. Dagenais, was aware of the lease, and of the fact that the piano was the plaintiffs' property.

It appeared from the evidence that the piano was first seized in Dagenais' possession at St. Ours, under a judgment of the Circuit Court for the district of Richelieu. Madame Dagenais put in an opposition, which was dismissed. Then Dagenais having left St. Ours, and settled at Montreal, took the piano with him. Then the bailiff went beyond the district of Richelieu, and seized and sold the piano in Montreal, the defendant, Madame Dagenais' mother, becoming the purchaser. The Court below dismissed the action, on the ground that though the sale of the piano by the bailiff was illegal, yet it was impossible for the Court to declare the sale null and void, without any conclusion to that effect either in the plaintiffs' declaration, or in their special answers.

From this judgment the plaintiffs appealed, submitting that it was not necessary to bring an action to set aside the bailiff's sale, or to take any conclusions to that effect. The only question was, who was the proprietor of the piano at the time of the institution of the action. If the defendant's title was bad, the plaintiffs' action should have been maintained.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) Considering that by the evidence adduced, it is established that the pianoforte claimed by this action, is the property of the appellants, who had the legal possession thereof, and that the sale and adjudication alleged to have been made to the respondent are illegal, null and void, and could convey no right of property in the same to the respondent; considering, therefore, that the action of the plaintiffs revendicating the piano was well founded and should have been maintained, and that in the judgment of the Superior Court dismissing the plaintiffs' action there is error, this Court doth annul, reverse and set aside the judgment, and doth maintain the plaintiffs' action, declaring them to be the true and lawful owners of the said pianoforte, and condemn the defendant to deliver the same to the plaintiffs within eight days from the service of the present judgment, and in default of her so doing within the delay, condemn her to pay $250.

Judgment reversed.

Dorman, for the Appellants.

Leblanc, Cassidy & Leblanc, for the Respondents.

GRANT, (defendant in the Court below) Appellant; and LOCHEAD, (plaintiff in the Court below) Respondent.

Landlord and Tenant—Damages—Mode of rendering Judgments.

The plaintiff leased from the defendant a farm for a term of years, with a stipulation that the landlord might cancel the lease on giving six months' notice, but in such case he was to take, at a valuation, the manure on the land, in excess of the usual quantity left by outgoing tenants. The landlord having sold the land cancelled the lease, but the tenant continued in possession, under the new proprietor, at an increased rent:—

Held, that the tenant was entitled to recover for the excess of manure on the land at the time the lease was cancelled.

Quære as to mode of rendering judgments.

This was an appeal from a judgment rendered by *Badgley*, J., in the Superior Court at Montreal, on the 31st of May, 1865.

The action was brought by the respondent to recover from his landlord £250 damages, *ex contractu*, for having cancelled his lease. On the 5th of July, 1861, the defendant leased to the plaintiff a farm at Hochelaga, for the term of seven years, at £75 per annum. The lease stipulated amongst other things that, in the event of the termination of the lease by sale or otherwise as therein provided, the manure drawn upon the farm by the lessee, beyond the quantity usually left upon a farm by outgoing tenants, should be taken at a valuation. It was also provided that either party might rescind the lease on giving the other six months' notice. On the 20th June, 1862, the defendant notified the plaintiff of the termination of the lease to take place on the 1st of May, 1863, as the land was to be sold to the Hon. S. Gale. The plaintiff alleged that in 1861 and 1862, previous to the notice, he had placed a large quantity of manure upon the farm. For the value of this he offered t

accept an arbitration, but the defendant having refused an arbitration, the plaintiff instituted the present action, claiming the value of the manure and of certain fall ploughing. The claim for fall ploughing was dismissed, but the Court found from the evidence that at the termination of the lease, the plaintiff had put upon the farm (over and above the quantity agreed to be left) 325 loads of manure, which at the valuation established by the evidence of record, amounted to $315, and the defendant was condemned to pay this sum.

An appeal was taken, and the points submitted by the defendant were, 1st, on the merits, that the plaintiff could not recover, because the manure placed on the farm had been worked into the soil, and the plaintiff had had the benefit of it in the green crop of 1862. Further, that the plaintiff had remained in possession of the farm as the tenant of the purchaser, Judge Gale, after he brought his action. It was true he remained at the advanced rate of £90, but he got an additional extent of land. The principal point, however, that was urged by the appellant was irregularity in the mode of rendering the judgment in the Court below. It appeared that judgment was first rendered in open Court on the 31st of March, 1865, dismissing the plaintiff's action. The plaintiff inscribed the case for review, but in the meantime the judge, having discovered an oversight, recalled the judgment, and on the 25th of April, again rendered judgment verbally for $315 in plaintiff's favour. Subsequently, a re-hearing was ordered, the defendant did not appear at this, and finally the judgment appealed from was rendered on the 31st of May. The defendant submitted that the rendering of a judgment in open Court constituted a final judgment, and could not be subsequently altered by the judge.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) There is no error in the judgment appealed from, and consequently it must be confirmed.

Kerr, for the Appellant.

Mackay & Austin, for the Respondent.

HUNTER, (plaintiff in the Court below) Appellant; and GRANT, (defendant in the Court below) Respondent.

Payment—Collateral Security.

An action for goods sold and delivered. Question of evidence as to whether a transfer of instalments coming due under a deed of sale was given in full payment of the debt, or merely as collateral security.

This was an appeal from a judgment of the Superior Court, rendered at Montreal by *Monk*, J., on the 30th of June, 1865, dismissing the plaintiff's action.

In September, 1864, the plaintiff sold goods to the defendant to the amount of $623. 12, and in February following brought an action for $600, balance alleged to be due on this sale. The plea of the defendant was, that he had paid for the goods by making a transfer to the plaintiff, on the 12th of September, 1864, of $600, being the last five instalments payable to the defendant, under a deed of sale by one Regis Petel; and that he had paid the balance, $23. 12, in cash. The plaintiff answered that the transfer was received only as collateral security, and did not discharge the defendant.

The Court below dismissed the action on the ground that the transfer contained a clause of warranty, *de fournir et faire valoir*, and that the delays and terms of credit mentioned in the transfer, for the payment of the amount therein specified, were available by the defendant, and operated in his favour, under the terms and considerations of the transfer.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) Considering that the appellant hath fully proved the sale and delivery to the respondent of the goods and merchandize, for the value of which the action was brought; considering that the allegations of the plea have not been proved, and that the transfer referred to in the plea was not given in full payment of the appellant's debt, but merely as collateral security for the payment thereof; considering, therefore, that in the judgment there is error, &c. Judgment reversed, and respondent condemned to pay $600.

Dorion & Dorion, for the Appellant.

Leblanc, Cassidy & Leblanc, for the Respondent.

HOGLE, (plaintiff in the Court below) Appellant; and McCORKILL, (defendant in the Court below) Respondent.

Petitory Action—Prescription of Ten Years.

Petitory action by vendee of person to whom land was patented. The defendant having proved more than ten years' open, uninterrupted and peaceable possession, under title, by himself and predecessor :—

Held, that he had acquired prescription, and the plaintiff's action could not be maintained.

This was an appeal from a judgment of the Superior Court, rendered by *McCord*, J., on the 19th of October, 1864.

The action was a petitory action, brought for the recovery of Lot. 36, in the first range of Farnham, district of Bedford, which the plaintiff alleged was patented on the 25th of October, 1832, to one Samuel Tubby, who sold to the plaintiff on the 6th of October, 1859. He further alleged that the defendant, on or about the 8th of October, 1859, did unlawfully enter upon and take possession of, &c.

The defendant pleaded, 1st, that by himself and *auteurs*, he had possessed for more than forty years; that about the year 1820, Matthew Sax took possession, and held until the 8th of July, 1841, when he sold to Joseph Russell, who continued in possession till the 13th of December, 1853, when he sold to the defendant, who possessed up to the institution of the action in 1860. The defendant further alleged that the grant of letters patent, in favour of Tubby, had been given on the express condition, that if he should not within a year plant and cultivate at least two acres for every 100 acres, and at least seven acres for every 100 acres in seven years, the grant was to be absolutely null and void, and that as this condition had never been complied with, and the patent in the origin was obtained by fraud and deception, the grant was null and void. 2nd, That defendant, by himself and his *auteurs*, had been in uninterrupted and peaceable possession *animo domini* for a period exceeding thirty years. 3rd, Possession under a title for more than ten years, *dix ans entre presens*. 4th, That defendant had made improvements to the value of $13,000, and could not be compelled to give up the land, unless he were repaid this sum.

The action was dismissed in the Court below, on the ground that the plaintiff had "failed to establish in evidence the material allegations of his declaration." From this judgment the plaintiff appealed, submitting, 1st, That the thirty years' prescription was not proved. 2nd, That the attempt on the part of the defendant to urge, in his own behalf, the rights of the Crown under the letters patent, was manifestly unfounded. The defendant could not insist upon the pretended escheat to the Crown. 3rd, That the ten years' prescription was not made out.

The respondent submitted that neither the appellant nor his *auteur*, Tubby, ever had or pretended to have any kind of possession whatever; he rested his action upon the naked allegation of title; whereas the respondent had held possession for nearly seven years under his own title, and his *auteur*, Russell, more than twelve years under title from Sax. He referred to the case of *Stuart* v. *Ives*, 1 L. C. R. 193, and *Stodart* v. *Lefebvre*, 8 L. C. J. 31.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) Considering that the respondent had for ten years and upwards before the institution of the present action, under a good title and in good faith, as well by himself as by his predecessors openly and peaceably, and without interruption or disturbance, between persons of full age and not privileged, possessed and enjoyed the lot of land and premises in question in this cause; considering, therefore, that the said respondent had, before the institution of this action, acquired prescription, and a title by prescription, in the said lot of land and premises, and was at the time of the institution of the said action, the sole lawful owner and proprietor thereof, this Court doth confirm the judgment of the Court below, with costs in both Courts, &c.

A. & W. Robertson, for the Appellant.
Cross & Lunn, for the Respondent.

Sept. 20.

BURROUGHS, (opposant in the Court below) Appellant; and PATRICK KIERNAN, (defendant contesting opposition in the Court below) Respondent.

Sale of property under seizure.

The appellant purchased from F., by a deed

sous seing privé, a piece of land under seizure at the suit of P. This deed was not enregistered, and, moreover, the property had been donated to F. by P., with the condition that F. should not alienate it during P.'s lifetime. The appellant having put in an opposition, based on his purchase, to the sale of the property:—

Held, that his opposition was unfounded.

This was an appeal from a judgment rendered at Montreal by *Monk*, J., on the 31st of December, 1864, dismissing an opposition filed by the appellant. The following were the facts of the case:—The respondent, Patrick Kiernan, who was defendant and incidental plaintiff in the Court below, having obtained a judgment against Francis Kiernan, seized an immoveable belonging to the latter. Francis Kiernan put in an opposition to the sale, and his opposition was maintained, by a judgment rendered 12th August, 1864. Patrick Kiernan appealed from this judgment, but while the appeal was pending, Francis, with a view of terminating the difficulties with Patrick, desisted from the judgment on the opposition, and consented to allow Patrick, the respondent, to proceed with the seizure. The respondent accordingly filed the *acte de désistement* with the Prothonotary, and issued a writ of *vend. ex.* for the sale of the immoveable previously seized. To this proceeding, the appellant, Charles S. Burroughs, put in an opposition, alleging that he had been the attorney of Francis Kiernan on the opposition which had been maintained, and that Francis Kiernan, on the 9th of May, 1864, had sold the property seized to him, Burroughs, to pay his costs. Patrick Kiernan, the respondent, answered, that this pretended sale had not been followed by tradition, and could not have any effect, as the property was under seizure. Subsequently, the respondent amended his contestation, by alleging that the deed of sale *sous seing privé*, invoked by the appellant, had not been enregistered; and that by a deed of donation in 1843, the respondent had given Francis Kiernan this same piece of land, on condition that he should not alienate it during the respondent's lifetime.

The opposition being dismissed, the opposant appealed.

Per Curiam. (DUVAL, C. J., AYLWIN, MEREDITH, and MONDELET, JJ.) There being no error in the judgment appealed from, it is confirmed with costs.

J. & W. A. Bates, for the Appellant.

Dorion & Dorion, for the Respondent.

LATOUR *et al.*, (defendants in the Court below) Appellants; and GAUTHIER *et al.*, (plaintiffs in the Court below) Respondents.

Promissory Note—Aval.

A note, payable to the order of the plaintiffs, was endorsed first by L. L. and P. G. L., and underneath these names by the plaintiffs:—

Held, that L. L. and P. G. L. endorsed as *avals* and security for the maker.

This was an appeal from a judgment of the Superior Court, rendered at Montreal by *Berthelot*, J., on the 30th of April, 1864.

The action was instituted by the respondent, against Joseph Lacroix, the maker, and L. A. H. Latour and P. G. Lemoine, the endorsers of a promissory note for $300, payable three months after date, to the order of Gauthier & Desmarteau, at the Banque du Peuple. The note was endorsed by Latour and Lemoine, and then underneath by Gauthier & Desmarteau. The plaintiff sued Latour and Lemoine as *avals*. The maker of the note did not appear, but Latour and Lemoine, the present appellants, appeared and pleaded—1st, That they had not put their names on the note as *avals*, but as last endorsers. 2nd, That the maker of the note had only received a value of $150.

The evidence showed that Lacroix, the maker of the note, wishing to buy a quantity of flour from the respondents, offered them the names of the appellants as sureties, and that the latter endorsed the note as such. This was confirmed by the form of the note, and the position of the names on the back of it. The Court below having maintained the plaintiffs' pretentions, and held the appellants liable as *avals* and *cautions solidaires*, the present appeal was instituted.

Per Curiam. (DUVAL, C. J., AYLWIN, MEREDITH, and MONDELET, JJ.) There being no error in the judgment of the Court below, it is confirmed with costs.

Barnard, for the Appellants.

Bondy & Fauteux, for the Respondents.

Sept. 19.

ROLLAND, (defendant in the Court below) Appellant; and ST. DENIS *et al.*, (plaintiffs in the Court below) Respondents.

Partnership—Separate Debt.

The defendant bought wood from one of the partners in a firm, in ignorance of the existence of the partnership. This partner owed him money, but the wood was the property of the partnership:—

Held, that the defendant could not set off the amount of his purchase against the debt due him by the partner from whom he bought, although the latter managed the affairs of the partnership:—

This was an appeal from a judgment of the Superior Court, rendered at Montreal by *Badgley*, J., on the 30th of June, 1865, in favour of the plaintiffs.

The action was brought by J. Bte. St. Denis and Adolphe Roy, to recover the sum of $534.55, for wood sold and delivered to the defendants by the plaintiffs, whilst the latter were partners. The plea of the defendant was that he had bought the wood from J. Bte. St. Denis, one of the plaintiffs, who had sold in his own name, and in set off to a sum of $960 which St. Denis owed him. That at the time the defendant purchased this wood, St. Denis was carrying on business in his own name at Montreal and elsewhere, and no partnership was registered. The defendant further alleged that at the time he bought the wood, it was expressly agreed between him and St. Denis that the price was to be set off against St. Denis' debt.

By the judgment of the Court below, it was held that the wood was the property of the copartnership of the plaintiffs, under the firm of J. Bte. St. Denis & Co., established under articles of copartnership dated 18th Dec., 1860; that the defendant, as a separate creditor of St. Denis, one of the partners, could not legally set off the amount of his purchases from the copartnership against the separate debt due by St. Denis, who, moreover, without the consent of his copartner, could not pay the defendant his separate debt out of the goods of the copartnership.

From this judgment the defendant appealed, submitting that St. Denis, being the administrator and manager of the affairs of the copartnership, had the right to contract as he did in his own name; and, further, that the defendant had no opportunity of becoming acquainted with the existence of the partnership, and that the moneys he had advanced to St. Denis were employed about the partnership business.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) There being no error in the judgment, it is confirmed with costs.

F. X. Archambault, for the Appellant.

Leblanc, Cassidy & Leblanc, for the Respondents.

LEGER, (plaintiff in the Court below) Appellant; and TATE *et al.*, (defendants in the Court below) Respondents.

Sale of Raft.

Question of evidence as to terms of sale and value of a raft.

This was an appeal from a judgment rendered by *Monk*, J., on the 30th November, 1865, in the Superior Court, Montreal. The action was brought for the sum of $822.47, balance alleged to be due on account of a raft of timber, sold and delivered by the plaintiff to the defendants, containing 22,373 feet, at the rate of fourpence per foot. The declaration alleged the contract of sale on the above terms, and also contained the *quantum meruit* count. The plea was to the effect that the plaintiff sold the raft, with the stipulation that he was to get one halfpenny per foot more than he had paid for it to one Brodie, viz. twopence three farthings per foot, and that the balance due was only $58.58, which the defendants brought into Court with their plea.

The plaintiff failed to prove the alleged contract of sale at fourpence, and did not establish any higher value than that admitted by defendants in their plea which was maintained by the Court below. The plaintiff appealed.

Per Curiam. (DUVAL, C. J., MEREDITH, and DRUMMOND, JJ.) The judgment was right and is confirmed with costs.

MONDELET, J., dissented.

Denis & Lefebvre, for the Appellant.

Mackay & Austin, for the Respondents.

MORIN, (plaintiff in the Court below) Appellant; and PALSGRAVE, (defendant in the Court below) Respondent.

Possessory Action—Uninterrupted Possession.

Held, that in order to maintain an action *en complainte*, the plaintiff must have had exclusive and uninterrupted possession of the property during the year and day previous to the institution of the action.

This was an appeal from a judgment of the Court of Review,* at Montreal, on the 31st of October, 1865, by *Badgley, Berthelot*, and *Monk*, JJ., reversing a judgment rendered by *Loranger*, J., in the Superior Court for the district of Richelieu, on the 19th of April, 1865.

The plaintiff brought a possessory action, setting out that for more than a year and a day, namely, for more than thirty years before the beginning of the current year, he had possessed peaceably and without interruption a certain property in St. Ours. That within a year and a day he had been troubled in his possession by the defendant, who had entered on the land and carried off wood. The plaintiff accordingly prayed that he be maintained in his possession, and that the defendant be ordered to desist from his encroachments, and be condemned to pay £60 damages.

The defendant, among other grounds of defence, pleaded that he had been in possession of the land, and was the lawful proprietor.

Loranger, J., maintained the plaintiff's action, holding that the defendant had committed *saisine et nouvelleté*, and that he had failed to prove the contrary possession invoked by him. The defendant having inscribed this judgment for review, it was reversed, as above stated, *Badgley*, J., who rendered the judgment of the Court, stating that it was clear from the evidence that both parties had been in possession of the property previous to the institution of the action, and, therefore, the plaintiff's possessory action could not be maintained. His recourse, by petitory action, was reserved. From this judgment the plaintiff instituted the present appeal.

Per Curiam. (DUVAL, C. J., MEREDITH, and DRUMMOND, JJ.) The judgment of the Court of Review was correct, and is confirmed.

MONDELET, J., dissented.

Germain, for the Appellant.

Lafrenaye & Bruneau, for the Respondent.

*1. L. C. Law Journal 95.

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*QUEBEC, September Term, 1866.

Coram DUVAL, C. J., AYLWIN, MEREDITH, DRUMMOND, and MONDELET, JJ.

GUILLEMETTE, (defendant in the Court below) Appellant; and LAROCHELLE, (plaintiff in the Court below) Respondent.

Action en complainte—Trouble.

Held, that the possession of a year and a day, upon which may be founded an action *en complainte*, must *immediately* precede the *trouble* complained of, and must also be continuous and decided.

That carrying away wood already cut is not a *trouble de fait* sufficient to found an action *en complainte*.

This was an appeal from a judgment of the Court of Revision, confirming a judgment of the Superior Court rendered in the district of Beauce.

The action was a possessory one, and the facts of the case were as follows:—The appellant held a certain lot of land in the parish of Ste. Marguerite (Beauce) since 1856, *à titre de censitaire*, upon which he was in the habit of working from time to time, though not very frequently, as he lived in another parish. In the autumn of 1862, the respondent, during the absence of the appellant, took possession of the lot in question and commenced to work upon it. Shortly afterwards, by a verbal agreement, the appellant promised the respondent to sell him the lot in question, for the sum of $40, and 400 stakes, and allowed him to continue in possession. In the month of October following, Larochelle visited the seignior of the land, (the Hon. J. T. Taschereau), and by false representations that Guillemette had abandoned the lot, obtained from him a promise of a concession of the same, and a receipt for part of the arrears of *cens et rentes* due upon it. About a month after, the appellant summoned the respondent either to hold to

*The report of this, and of the three following cases, has been contributed by Mr. I. T. Wotherspoon, of Quebec.

his bargain and purchase the land for the amount previously agreed on, or else to quit and deliver it up. This, relying upon his receipt from the seignior, the respondent refused to do; but yet, from that time (Nov. 1863) until the institution of the action (Feb. 1864) he ceased to work upon the land, except in the absence of Guillemette, and whenever, during that period, he happened to meet him there, upon the appellant's ordering him off, he would leave promising never to return. Notwithstanding this, in February, 1864, Larochelle instituted an action *en complainte* against Guillemette, whereby he claimed damages to the amount of £60; inasmuch as on the 1st of February then instant, and at different times since, the said defendant had carried away a certain quantity of felled wood from the said land; and concluded that he might be declared to be the only true and lawful possessor of the lot in question. To this declaration the appellant answered by a *défense au fonds en fait*, and a perpetual peremptory exception *en droit*, pleading a contrary possession, and the non-fulfilment, by the respondent, of the verbal agreement already referred to; upon which pleas issue was joined. The evidence, as is usual in these cases, was contradictory; but from an analysis of it the above facts, at least, seem to be proved.

MONDELET, J., remarked, that the proof in this case was most extraordinary, being replete with contradictions, and served to show the necessity of country judges paying more attention to the taking of evidence before them. But it was evident that the respondent's possession was only one of *tolerance*, which did not entitle him to bring the action he did, and which possession, even supposing it to have been legal, he had abandoned to the appellant since November, 1863; that is, for four months before the *trouble de fait* complained of.

Judgment of the Court of Revision and of the Superior Court reversed with costs.

Henri T. Taschereau, for the Appellant.

Taschereau & Blanchet, for the Respondent.

DIONNE *et al.*, (defendants in the Court below) Appellants; and VALLEAU *et al.*, (plaintiffs in the Court below) Respondents.

Practice—Conclusions of declaration—Inscription.

Held, that the fact of a plaintiff attempting to capitalize interest already accrued, is not a sufficient ground for the dismissal of his action, although the Court may refuse to grant that part of it which claims such compound interest.

That notice that a cause has been inscribed upon the roll of enquêtes and merits, given with the prescribed delay before the day fixed, is sufficient, provided the cause is actually inscribed before the day fixed.

In this case, which was on a promissory note, the above points were decided.

Taschereau & Blanchet, for the Appellants.

Campbell & Hamilton, for the Respondents.

LARUE, (plaintiff in the Court below) Appellant; and EVANTUREL, (defendant in the Court below) Respondent.

Promissory Note—Forged Endorsement.

Held, that the holder of a promissory note, who has alleged that his title thereto is derived from an endorsement, which is afterwards proved to be a forgery, even although he may be acting in good faith, cannot recover the amount of the note from any of the previous endorsers.

This is a case which arose out of one of the numerous forgeries of Octave Crémazie, who fled the country on the 11th Nov., 1862; and was brought to try the title of the many holders of promissory notes drawn by him with certain endorsements, which, although forged, are yet, by the holders of the said notes, alleged to have been forged with the tacit consent of those whose names have been made use of.

The facts are as follows:—When Crémazie left Canada, Nazaire Larue, the plaintiff in this cause, found himself the holder of a promissory note, payable to the order of Jacques Crémazie, drawn by the firm of J. & D. Crémazie, signed by them, and endorsed with the names of Jacques Crémazie, François Evanturel, and Augustin Côté & Co. On the 22d Dec. following (1864), the day when the note became payable, it was duly protested for non-payment, and notice of the same served upon the endorsers.

In the spring of 1864, Larue brought his action against Evanturel, and in his declaration alleged the above facts, and further, that Augustin Côté & Co. had endorsed and delivered the note to him; that Evanturel had denied his signature, but as he had formerly been in the habit of endorsing for Crémazie, and knew that Crémazie had continued to use his name to give circulation to his notes, that he was liable to the plaintiff.

To this declaration the defendant pleaded by a *défense au fonds en fait* and a *défense au fonds en droit*, in which the principal allegation was that the signature of the defendant on the back of the said note was forged, and that the plaintiff could acquire no right of action from a forged title. After a long and voluminous *enquête*, Judge Stuart, sitting in the Superior Court, on the 9th Oct., 1865, gave judgment maintaining the defendant's plea. From this judgment the present appeal was instituted.

In arguing the appeal the respondent's counsel dwelt strongly upon the fact that the indorsation of Côté's name was a forgery; and in rendering judgment in his favour,

Duval, C. J., remarked, that the proof of the signature being genuine was the first and great link in the chain of evidence necessary to establish the plaintiff's claim; that all the judges were of opinion that the decision of the Court below should be confirmed, based as it was upon the forgery of Evanturel's signature, and that there was nothing in the criminal law of England (a point urged by the plaintiff) which could justify a civil action.

Judgment of the Court below confirmed.

Fournier & Gleason, for the Appellant.

Casault, Langlois & Angers, for the Respondent.

ENNIS, (plaintiff in the Court below) Appellant; and THE GRAND TRUNK RAILWAY COMPANY, (defendants in the Court below,) Respondents.

Saisie-Revendication—Institution of action.

Held, that the emanation of a writ of *saisie-revendication*, is an institution of an action within the meaning of 12 Vic. c. 30 (C. S. C. cap. 23), sufficient to entitle the grantee of timber limits, after the expiration of the license which he holds, to proceed with such action in revendication against any person unlawfully holding timber which has been cut upon his limits, even if the declaration in the cause should not be served upon the defendant until after the expiration of the license.

That the defendant in an action in revendication is answerable, when the moveables seized were so upon his land, if he fails to properly inform the plaintiff in the cause who their real possessor is.

The judgment, from which this appeal was instituted, was rendered by *Gauthier*, J., in the Superior Court, sitting at Montmagny, on the 17th January last, in an action of revendication, brought under Cap. 30 of the 12th Vic. (C.S.C. cap. 23), in which the points in issue were:—1st, The interpretation to be given to that portion of section 2 of the statute, which is couched as follows: "And such licenses shall entitle the holders thereof to seize in revendication or otherwise, such trees, timber or lumber where the same are found in the possession of any unauthorized person, and also to institute any action or suit at law or equity against any wrongful possessor or trespassers, and to prosecute all trespassers and other offenders to punishment, and to recover damages if any: and all proceedings pending at the expiration of any such license may be continued to final termination as if the license had not expired;" and 2nd, Whether the Grand Trunk was in possession of the property seized.

The facts of the case were as follows:—On the first of March, 1858, the plaintiff obtained from Charles Dawson, agent of the Crown timber lands, a grant of power and permission to cut all kinds of timber upon certain lands in the townships of Bourdages and Lessard, with the right of possessing and occupying the said location to the exclusion of all others, from the 1st November, 1857, until the 30th April, 1858.

On the 29th March, 1858, the affidavit which necessarily preceded the emanation of the writ of *saisie-revendication* in this cause, was sworn to. On the 29th of April, 1858, (during the continuance of the license) the said writ issued; but was only executed on the first of May, 1858, and the declaration in the cause was served some time afterwards.

By his declaration the plaintiff alleged his license as above, and stated that he had fulfilled the conditions which it imposed upon him; further, that the defendants in the cause, since the 15th November previous, until that date, in contravention of the license, and the Provincial statute above cited, without the permission and against the will of the plaintiff, had cut, and caused to be cut by their agents and employees, within the limits described in the license, a quantity of over 5000 cedar stakes, of the value of $5 a hundred, and 3200 cedar pickets of the value of $3 a hundred, making together the sum of £86.10s. currency &c., and concluded as in an ordinary action in revendication.

To this declaration the defendants replied simply by a *défense en fait*, whereupon issue was joined and the parties proceeded to proof.

Under the above mentioned writ of revendication, it is necessary here to remark, the sheriff to whom it was addressed seized 6136 cedar stakes, and 2256 pickets upon the land belonging to the G. T. R. Co., in the parishes of L'Islet and Cap St. Ignace, in the district of Montmagny.

At the *enquête* in the case it was proved in favor of the plaintiff, 1st, that a license had been granted to him, as stated in his declaration; 2nd, that the conditions of this license had been fulfilled; 3rd, that the wood revendicated in this cause had been cut upon his grant between the 1st November, 1857, and the 30th April, 1858; 4th, that this wood had been transported to the defendants' land where it was seized; and 5th, the value of this wood. The defendants, on the other hand, proved, that this wood belonged to sub-contractors of the company and was destined to their use, and had not been delivered to the Railway Company, although they did not allege this in their pleading.

Upon this case the Superior Court rendered the following judgment: The Court having heard &c: Considering that the present action was only instituted by the said plaintiff, after the first of May, 1858, after the expiration of the time and period of the license or permission of the said plaintiff, mentioned in the declaration in this cause; considering that by law it is declared that all actions pending at the expiration of any such license, shall and may be continued in the same manner as if the said license had not expired; considering that it is established that the wood seized in this cause was so, being neither in the possession nor the property of the said defendants, but of their contractors for the line of railroad, dismisses the present action with costs."

The plaintiff having appealed, this judgment was reversed with costs.

Fournier & Gleason, for the Appellant.
Lelievre & Caron, for the Respondents.

RECENT ENGLISH DECISIONS.

EQUITY CASES.

Charity—Grammar School.—Upon evidence of the decrease in value, during the last thirty years, of the property of the Free Grammar School, founded at Manchester in the reign of Henry VIII., and of the impossibility, for want of funds, of fully carrying out the extended system of gratuitous education, including instruction in modern languages and the physical sciences, which was sanctioned by a scheme settled in 1849, the Court, having regard to the manifest intention of the founder, not to make it a school for the poor only, but to establish a liberal system of education, so as to fit boys for the university, allowed the admission of boys, beyond the existing number of free scholars, on payment of capitation fees, which should be applied in increasing the educational funds, and not paid to the masters directly. To obviate any invidious separation of the boys into two classes of rich, or paying, and poor, or non-paying, the Court at the same time directed that, for the future, admission to a gratuitous education upon the foundation should depend upon proficiency in examination, without reference to the means of the parents. Manchester School Case, 1 Eq. 55. This case is interesting in an antiquarian point of view. The *Manchester Free Grammar School* was founded in the reign of Henry VIII., by Hugh Oldham, Bishop of Exeter, and endowed with property then stated to be of the yearly value of £40, including the corn-mills of the town. The stipend of the "high master" was fixed at £10 a year, and £5 a year for the usher. In 1833, the net annual income of the charity, which was principally derived from the *mono-*

poly of grinding malt for Manchester at the school mills, had increased from £40 to £400. Soon after this date the Court of Chancery, in order to make use of the surplus funds, directed an extended system of strictly gratuitous education; but, at the present time, in consequence of most of the Manchester brewers having removed out of the city limits, in order to escape the offensive tax for grinding malt, the profits of the school mills had dwindled down to £372, and it became necessary to see how the revenue of the charity could be supplemented. This was effected by admitting paying scholars, the privilege of entering on the foundation being reserved to lads of superior ability, in order to prevent any invidious distinction between the rich and the poor.

Policy — Deposit — Bankruptcy.—Bankers with whom policies of insurance were deposited by the assured as security, gave no notice in writing to the offices, though the secretaries were casually made aware of the fact of the deposit. The assured became bankrupt and died. On bill by the assignees, *Held*, that the policies remained in the bankrupt's order and disposition, and that his assignees were entitled to the proceeds, less the premiums paid by the bankers. Edwards *v.* Martin, Eq. 121. This action was instituted by the assignees of one Glenn, a bankrupt, against certain bankers with whom Glenn had deposited two policies of insurance, one in the *Victoria Life*, and the other in the *Britannia Life Assurance Company*, to secure a debt due from him. The deposit was not accompanied by any deed or memorandum. The secretaries of the companies deposed that it was the practice in the offices of their companies to enter the particulars of all notices of assignments forthwith, after the receipt of them, in books kept specially for that purpose; that verbal notice would not be recognized, at all events, unless the particulars were specially entered at the time. The secretary of the *Britannia* recollected that Glenn had made a casual statement, in the course of general conversation, that the policy was held by his bankers, but no memorandum was made. Vice-Chancellor Stuart said: "The only question is as regards notice to the insurance companies, and I think the evidence shows that no sufficient notice was given. It is, therefore, plain, upon the authorities, that the right of the assignees to the proceeds of the policies has not been displaced."

Bankruptcy —Composition —Secret bargain.—On a bill by a bankrupt, who had compounded with his creditors for eight shillings in the pound, and where bankruptcy had been annulled, the Court set aside, with costs, a secret bargain, whereby the bankrupt agreed to pay one creditor in full, in consideration of his becoming surety for payment of the composition.

Vice-Chancellor Stuart observed: "Upon the principle laid down by Lord *Eldon*, in the case of *Jackman v. Mitchell*, it is impossible that this transaction can stand. In this case, one creditor, without the knowledge of the body of the other creditors, gets more than double the amount received by them. It is not, however, the amount that vitiates the transaction. It cannot be said that a private bargain, by which one creditor secretly obtains an advantage for himself, is a bargain for the benefit of the other creditors, because the secrecy puts them to this disadvantage, that but for the secrecy they might be willing to forego the guarantee in consideration of receiving a higher rate of dividend. It is plain that the concealment prevented them from exercising this option." Wood *v.* Barker, Eq. 139. (Vide Sinclair and Henderson, 1 L.C. Law Journal, p. 54.)

Sewage—Nuisance.—Injunction granted to restrain commissioners for draining a town, from causing the sewage to be discharged into a stream passing through the plaintiff's land, and feeding a lake therein situated, when the sewage injuriously affected the water of the stream and lake, and had done so for some years, and the pollution of the water perceptibly increased as new houses contributed their sewage to the stream. *Semble*, in such a case no prescriptive right could be claimed by the commissioners to discharge the sewage through the stream.—Sir J. Romilly, M. R., said: "I think the evidence in this case establishes that the sewage water from the town of *Tunbridge Wells*, which flows into the brook which passes through the plaintiff's land, injuriously

affects the water in that brook, and also the water of the lake in the park of the plaintiff. I think, upon the evidence, that it has done so for a considerable time; that it has increased of late; and that it is perceptibly increasing from time to time, according as fresh houses contribute their sewage to the brook. This is a matter of very great importance; and it has been suggested to me in argument, as a matter that ought to be regarded, that private interests must give way to public interests, that the Court ought to regard what the advantage to the public is, and that some little sacrifice ought to be made by private individuals. I do not assent to that view of the law on the subject. My firm conviction is, that in this, as in all the great dispensations and operations of nature, the interests of individuals are not only compatible with, but identical with the interests of the public; and although in this case I have only to consider an injury to a private individual, yet I believe that the injury to the public may be extremely great by polluting a stream which flows for a considerable distance, the water of which cattle are in the habit of drinking, the exhalations from which persons who reside on the banks must necessarily inhale, and this at a time when the attention of the public and the Court is necessarily called to the fact that the most scientific men who have examined the subject are unable to say whether great diseases among cattle, and contagious diseases affecting human beings, such as cholera or typhus and the like, may not in a great measure be communicated or aggravated by the absorption of particles of feculent matter into the system, which are either inappreciable or scarcely appreciable by the most minute chemical analysis. It is impossible in that state of things to say what amount of injury may be done by polluting, even partially, a stream which flows a considerable distance." Goldsmid *v.* Tunbridge Wells Improvement Commissioners, Eq. 161.

Release—Covenant.—A voluntary declaration by a creditor, that he intends to release his debtor from a debt, though not amounting to a release at law, may, nevertheless, be held in equity to be a representation which the creditor is bound to make good. Where, therefore, a mortgagee, on hearing that his son-in-law, the mortgagor, was about to sell the mortgaged property, (a house occupied by the mortgagor,) in order to pay off the debt, wrote that he might continue to live there without paying any rent, it was held that the mortgagor was entitled to redeem, on paying the principal, together with interest from the last day on which interest fell due, previously to the death of the mortgagor. Yeomans *v.* Williams, Eq. 184.

User—Dedication.—A dedication from user can only be presumed in favour of the public generally, and not in favour of the inhabitants of a particular parish. Vestry of Bermondsey *v.* Brown, Eq. 204.

Company—Contract to take Shares.—The *Leeds Banking Company* having decided upon issuing their reserved shares, addressed a circular to the shareholders, offering them one new share for every five shares held by them, to be paid for on a day named, and requesting to know whether, in the event of any shares remaining, they would wish to have any additional shares. *Addinell* was offered four shares in respect of the twenty held by him, and in answer to the circular he agreed to take his proportion of allotment, and asked for additional shares if he could have them. The reply stated that the directors had allotted him four extra shares in addition to the four shares already accepted by him. In this reply there was a further clause not contained in the first circular, that if the amount were not paid by the day named, the shares would be forfeited. Nothing further was done, and no payment was made in respect of any of the shares:—*Held,* that a contract was constituted in regard to the first four shares by the offer and the acceptance; but the contract was not complete as to the four extra shares, by reason of the clause of forfeiture, which was a new term added to the contract and not accepted by payment within the time specified. Addinell's case, Eq. 225.

Nominal Consideration.—A nominal consideration being expressed in a deed, does not prevent the admission of evidence *aliunde* of the real consideration, provided such real consideration be not inconsistent with the deed. Leifchild's case, Eq. 231.

Marriage in England—Divorce in Scotland.—A testator in England gave and devised real and personal estate, situate in England, to his great-niece for life, with remainder, as to the personalty, to her children, and as to the realty, to her first and other sons lawfully begotten, with remainders over. The great-niece, in 1830, married in England, but never lived with her husband, and a decree of divorce *a vinculo*, on the ground of the husband's adultery, was pronounced by the Court of Session in Scotland, the husband having been induced, with the wife's connivance, to go to Scotland, to bring himself within the jurisdiction of the Scotch Courts. The great-niece, in 1846, married in Scotland an Englishman domiciled there, and had by him two daughters and a son, all born in Scotland, during her first husband's lifetime. Upon petition by these three children claiming as children, the son claiming also as eldest son lawfully begotten, two funds representing portions of the testator's real and personal estate, which had been paid into Court:—*Held*, that the English marriage being indissoluble, the decree of divorce pronounced by the Court of Session must be treated as a nullity; that the second marriage in Scotland was invalid, and therefore that the children, whatever might be their *status* in Scotland, must in England be treated as illegitimate; and could not, upon the construction of an English will by an English court, be held to come within the term "children" or "eldest son lawfully begotten," as used in such will, and were not entitled to the funds in Court.

The circumstances under which the questions arose were of a somewhat remarkable character. In 1828, *Elizabeth Hickson*, (the grand-niece referred to above,) being then a girl of about sixteen, was induced by fraud, without the knowledge of her family, to consent to a marriage with a farmer named *Buxton*. The marriage was solemnized at Manchester on the 10th of June in that year; but on the same day her friends interfered and got possession of her, and separated her from her husband, and they never lived together for a single day. *Buxton* was indicted for his conduct in bringing about the marriage, and convicted and sentenced to three years' imprisonment. Steps were taken to procure an Act of Parliament to dissolve the marriage, but without success. After many attempts to recover possession of his wife, *Buxton*, in 1838, was induced, in consideration of an annuity during the joint lives of himself and his wife, to consent to a deed of separation, which was accordingly executed in December, 1838. No question was raised as to the validity of this marriage with *Buxton*. In 1844, one *Shaw*, who was then a student of *Gray's Inn* preparing for the bar, fell in love with *Elizabeth Hickson*, or Mrs. *Buxton*. His addresses were favourably received, but the existing marriage with *Buxton* was a bar to their wishes. In order to remove that impediment the parties devised the scheme of procuring a dissolution of the marriage with *Buxton*, by a sentence of the Court of Session in Scotland, on the ground of adultery committed by *Buxton;* and in order to give that Court jurisdiction, *Buxton* was prevailed upon by pecuniary inducements to go and remain in Scotland for forty days, and thereupon Mrs. *Buxton* raised an action against him in the Court of Session, for a divorce on the ground of adultery, which there was no doubt he had committed. The suit was carried on with all due solemnity, and it ended in a sentence of divorce *a vinculo* being pronounced by the Court on the 20th of March, 1846. On the 17th of June, 1846, a marriage was solemnized at Edinburgh between John Shaw and Elizabeth Buxton, who thenceforth resided in Scotland as man and wife. Vice-Chancellor Kindersley remarked, that the English marriage was indissoluble, (the Divorce Court not being in existence at the time of these transactions,) and if the validity of the marriage with *Shaw* were to be recognized by English Courts, the consequence would necessarily follow, that an English Court of justice must hold that Elizabeth Hickson had two husbands simultaneously, *Buxton* and *Shaw*. Wilson's Trusts, Eq. 247.

Trade Mark—Measure of Damage—Onus probandi.—On an inquiry whether any and what damage has accrued to the plaintiffs from an unlawful use by the defendant of their trade mark, the onus lies on the plaintiffs of proving some special damage by loss of custom or otherwise; and it will not be intended,

in the absence of evidence that the amount of goods sold by the defendant under the fraudulent trade mark would have been sold by the plaintiffs, but for the defendant's unlawful use of the plaintiffs' mark. Vice-Chancellor Wood observed: "There were, or there may have been, persons licensed by the plaintiffs to use their trade-mark and to sell goods manufactured by their process; or there may have been, and doubtless were, persons who had purchased from the plaintiffs, with a view of selling again; how can the court assume that the supposed purchasers would have passed by all these persons, and have purchased direct from the plaintiffs? Yet this is what the Court is called on to infer from the mere fact that certain goods were sold by the defendant, and that some of those goods were marked with imitations of the plaintiffs' marks. Principle would seem to determine that no such assumption can be made, and that it lies on the plaintiffs to prove some distinct damage from the use of their trade-mark, by showing loss of custom or something of that kind, which has not been done in this case." Leather Cloth Co. *v.* Hirschfield, Eq. 299.

Company—Forfeiture of Shares.—A shareholder in a company received a notice that on non-payment by him of arrears of calls on a certain day, his shares "would be forfeited without further notice." He also knew that the question of winding up the company was under consideration. Two days before the day appointed for the payment of the arrears, he went to the company's office, paid the arrears on a few of his shares, and took a receipt, saying that on the rest he should submit to a forfeiture. The directors, at a board meeting, five days afterwards, examined the list of defaulters, and declared the shares of some of them, whom they considered as not solvent, to be forfeited; but they did not declare the shares of this particular shareholder to be forfeited; and they continued to treat him as the holder of the whole number of shares. The articles of association of the company provided, that "in the event of non-payment at the time and place appointed by the notice, any share might thereupon be forfeited without any further act to be done by the company:"—*Held*, that the shares upon which the arrears were not paid up, were not absolutely forfeited by the non-payment, and that the company's right of option remained; and, as the company had declared their intention of retaining the shareholder on the list, that he must, upon winding up, be held to be a contributory in respect of the full number of shares. Bigg's Case, Eq. 309.

Attestation of Deed.—A deed attested by one witness, though executed and acknowledged for the purpose of enrolment, in the presence of two persons who are parties to and execute the deed, but do not sign the attestation clause, is not a deed sealed and delivered in the presence of two or more credible witnesses. Wickham *v.* Marquis of Bath, Eq. 17.

QUEEN'S BENCH.

Principal and agent—Liability of principal for act of agent.—A. employed B. to manage his business, and to carry it on in the name of "B. & Co."; the drawing and accepting bills of exchange was incidental to the carrying on of such a business, but it was stipulated between them that B. should not draw or accept bills. B. having accepted a bill in the name of "B. & Co.":—*Held*, that A. was liable on the bill in the hands of an indorsee, who took it without any knowledge of A. and B., or the business.

In this case Jones, the principal, had strictly forbidden Bushell, his agent, to accept bills, and finally dismissed him for having done so on several different occasions. Several of the bills had been paid at maturity, being made payable at the bank where Jones had an account, but payment of one, for £184, was refused, and this gave rise to the action. Cockburn, C. J., remarked: "The defendant carried on business both at Luton and in London. In London the business was carried on in the name of Bushell & Co., Jones at the same time employing Bushell as his manager; Bushell was therefore the agent of the defendant Jones, and Jones was the principal, but he held out Bushell as the principal and owner of the business. That being so, the case falls within the well-established principle, that if a person employs another as an agent in a character which involves a particular authority,

he cannot by a secret reservation divest him of that authority. It is clear, therefore, that Bushell must be taken to have had authority to do whatever was necessary as incidental to carrying on the business; and to draw and accept bills of exchange is incidental to it, and Bushell cannot be divested of the apparent authority, as against third persons, by a secret reservation. I think Jones was properly held to be liable on the bill." *Edmunds* v. *Bushell*, Q. B. 97.

Railway—Lands injuriously affected.—The owner of a house, none of whose lands have been taken for the purposes of the railway, cannot recover compensation in respect of injury to the house depreciating its value, caused by vibration, smoke, and noise, in running locomotives with trains in the ordinary manner, after the construction of the railway. *Brand* v. *Hammersmith and City Railway Co.*, Q. B. 130.

COMMON PLEAS.

Nuisance—Negligence—Occupier.—The plaintiff, in passing along a highway at night, fell into a "hoist hole," which was within fourteen inches of the public way and unfenced. The hole formed part of an unfinished warehouse, one floor of which the defendants were permitted to occupy whilst a lease was in course of preparation, and the aperture was used by the defendants in raising goods from the basement to an upper floor:—*Held*, that the defendants had a sufficient occupation of the premises to cast upon them the duty of protecting the hoist-hole; and that the hole was near enough to the highway to constitute a nuisance. *Hadley* v. *Taylor*, C. P. 53.

Bill of Lading—Power to Shipowner to land Goods.—By proviso in a bill of lading, simultaneously with the ship being ready to unload the whole or any part of the goods, (forty pipes of lemon juice,) the consignee was bound to be ready to receive the same from the ship's side; and in default, the master or agent of the ship was authorized to enter the goods at the Custom House, and land, warehouse, or place them in lighters at the risk and expense of the consignee. After part of the goods had been landed by the shipowner, but not before, the consignee was ready and offered to receive the remainder, but the shipowner refused to deliver them to him, and landed them himself:—*Held*, that the contract was divisible; and that unless the shipowner had been prejudiced in the delivery of the remainder, by the default of the consignee in not being ready to receive the whole, he was bound to deliver them. *Wilson* v. *London, Italian, and Adriatic Steam Navigation Co.*, C. P. 61.

Partnership—Agency—Perception of profits.—S., being about to commence business as an underwriter at Lloyd's, through the agency of one Fenn, in consideration of the defendant (the father of S.) engaging with Fenn to hold a sum of £5000 available for his son, for the purpose of carrying out the arrangement, gave the defendant the following memorandum:—"In consideration of your guaranteeing me to the extent of £5000 in my business of underwriter, until by such business I shall make or acquire from the profits thereof £5000 after providing for all known losses, I hereby promise and agree to pay to you, during your life, in case I shall so long live, an annuity of £500, being equal to 10 per cent. per annum on £5000; and further, that, if at the end of three years from the date hereof, it shall appear that one-fourth of the net average annual profits during that period made by me in the said business shall amount to more than £500, the said annuity shall thenceforth be increased to a yearly sum equal to one-fourth of such net average annual profits made by me in the said business during the said three years;" and the memorandum concluded with these words:—"moreover, in no case are you to be considered as a partner with me in the said business of an underwriter:"—

Held, by the Exchequer Chamber, in accordance with the judgment of the Court of Common Pleas, that the above memorandum did not constitute the defendant a partner with his son.

By a settlement afterwards made on his marriage, S. assigned to the defendant and one D., *as trustees*, "all and singular the sums of money, earnings, *profits*, and emoluments which are now in the hands of Fenn,

and all such as shall hereafter come into the hands of Fenn, on account or in respect of the said underwriting business." The deed also contained a power of attorney, authorizing the defendant and his co-trustee to receive *the whole proceeds of the business;* and the first trust was, to pay the defendant £500 a-year, with an additional sum when the profits of the business should have realized a given sum, and a covenant, that, when the accumulated profits should have reached £8500, and continued at that amount without reduction for two years, the trustees should reassign to S. "the said moneys and *profits* arising from the aforesaid underwriting business."

In an action upon a policy signed by Fenn in the name of S., a special case was stated, in which were set out the above-mentioned memorandum and marriage settlement, and by which it was agreed that the Court should draw any reasonable inferences of fact:—*Held*, by the majority of the Exchequer Chamber,—reversing the judgment of the Court below,—that the marriage settlement did not, either alone or in conjunction with the memorandum, render the defendant liable as a partner with S. in his underwriting business. *Held*, by *Pigott*, B., and *Shee*, J., that the effect of the settlement was, to give the defendant such a substantial interest in the business as to render him liable as an insurer on the policy. *Bullen* v. *Sharp*, C. P. 86. [In the opinions of the judges who sat in this case will be found a very full and interesting discussion of the question—what will make a person liable as a partner? The dissenting judges stated their views with great energy and distinctness, and Mr. Justice Blackburn and Barons Channell and Bramwell with equal force and emphasis on behalf of the majority of the Court. Baron Channell observed: "I think that henceforth we may take it that the true test, where a person is sought to be made liable on the ground of his being a partner, is to see whether he has constituted the other alleged partner *his agent in respect of the partnership business;* and that, taking a part of the profits, though cogent evidence of this, is not conclusive. Mere participation in the profits is not sufficient to make a man bound by alleged partnership contracts, if the facts show that he had not constituted the other his agent." Baron Bramwell was still more emphatic. In the course of his remarks he observed: "They say that the defendant is a partner with his son; and that, if not partners *inter se*, they are so as regards third parties. A most remarkable expression! Partnership means a certain relation between two parties. How, then, can it be correct to say that A. and B. are not in partnership as between themselves, they have not held themselves out as being so, and yet a third person has a right to say they are so as relates to him? But that must mean *inter se;* for, partnership is a relation *inter se*, and the word cannot be used except to signify that relation. * * * How many men in a thousand, not lawyers, could be got to understand, that, of the two servants of a firm, the one who received a tenth of the profits was liable for its debts, and the other who received a sum equal to a tenth was not? This Mr. Justice Story calls 'satisfactory.' (*Story on Partnership*, § 32.) Satisfactory in what sense? In a practical business sense? No; but in the sense of an acute and subtle lawyer, who is pleased with refined distinctions, interesting as intellectual exercises, though unintelligible to ordinary men, and mischievous when applied to the ordinary affairs of life. Lord Eldon did not think it satisfactory. Such a law is a law of surprise and injustice, and against good policy. It fixes a liability on a man contrary to his intent and expectation, and without reason, and gives a benefit to another which he did not bargain for and ought not to have, and prevents that free use of capital and enterprise which is so important."]

PROBATE AND DIVORCE.

Judicial Separation—Adultery.—A charge of adultery, in a suit by a wife for judicial separation, rested upon the evidence of one witness, who was a woman of loose character. The Court, without deciding affirmatively whether or not the adultery charged had been committed, declined to pronounce a decree upon her uncorroborated testimony, and dismissed the petition. *Ginger* v. *Ginger*, P. & D. 37.