The Legal News.

Vol. XI. JULY 7, 1888. No. 27.

In *Borthwick* v. *Evening Post, Limited*, (58 L. T. Rep. (N.S.) 252,) the English Court of Appeal was called upon to decide an interesting question of protection of title. The *Morning Post* has been published in London by the plaintiff and his predecessors, every morning for about a century. Some time ago the plaintiff commenced to publish later editions of the paper, but still under the same title, and it was not suggested that the plaintiff had any intention of publishing an evening edition under the name of *The Evening Post*. The defendants having commenced to publish a daily evening newspaper in London, at the same price, under the title of *The Evening Post*, the plaintiff brought an action for an injunction. It was shown that just before and just after the publication of the defendants' paper, about twenty persons altogether had applied at *The Morning Post* office for copies of *The Evening Post*. In the advertisements of the latter paper the publishing office was stated to be at 108 Fleet street, whereas *The Morning Post* was published at a large house in Wellington street, Strand. Kay, J., granted a perpetual injunction restraining the defendants from publishing, or selling, or advertising for sale any newspaper of the name of *The Evening Post*, or by any other name calculated to induce the public to believe that such newspaper was an edition of *The Morning Post*, or was owned, edited or written by the owner, editor or staff of that newspaper. The Court of Appeal has reversed this decision, holding that there being no injury or damage, or prospect thereof, to the plaintiff, the injunction must be dissolved. Chief Justice Coleridge, however, remarked that he could not clear his mind of a lurking suspicion that the name, *The Evening Post*, was taken because there was a *Morning Post*, and that although the latter may never be hurt to the extent of one penny, yet the public may possibly think there is some connection with the older paper. In these circumstances his lordship thought the action should be dismissed without costs. Lord Justices Bowen and Cotton concurred.

The *American Law Review* publishes letters from a number of eminent English jurists, written in answer to an inquiry about the working of the jury system. Lord Herschell approves the jury for questions of tort, commercial usage, etc., but not for questions of mixed law and fact. Sir James Hannen speaks warmly in favor of the jury — his "confidence in juries is increased rather than diminished," and praises their impersonality. Sir Charles Edward Pollock thinks that for simple issues or questions of mercantile usage "a jury is our best and usual tribunal, and is so considered by all." Lord Coleridge, who has had some personal experience before juries, says: "Long experience and much reflection have led me to give up the opinion in favor of it which I formerly entertained, and to adopt strongly an opinion adverse to it in civil cases," and he adds that if he had a question of character or property, he "would far rather run his chance of getting a bad judge to try it than a good jury." Lord Justice Lindley and Sir James Charles Matthews are reported as orally expressing themselves in favor of the jury.

The lists of recent calls to the bar in England show that a large number of natives of India are adopting the legal profession. Some of these gentlemen have already attained distinction at English universities. Chan-Toon, a young Burmese gentleman, who has been educated at Calcutta University and University College, London, gained no less than seven prizes or distinctions, notably in Roman law and jurisprudence. Are these gentlemen destined to play a conspicuous part hereafter as leaders of a movement for Home Rule for India?

The *Law Journal* (London), referring to Lord Salisbury's bill to provide for the appointment of life peers, says it proposes to revive a prerogative of the Crown which had so far fallen into abeyance that in 1856, on Lord Wensleydale's patent of peerage 'for the term of his natural life' being submitted

to a committee of privileges of the House of Lords, it was reported that it did not give him a right to sit or vote. Many lawyers, including Lord Wensleydale himself, were of opinion that the decision was wrong, and the patent was altered to the usual form without any practical effect on Lord Wensleydale's peerage, as he died without male issue. The prerogative under the bill is hedged round to prevent its being abused by flooding the House of Lords with political partisans of the Minister, as happened in the last century when at a stroke twelve peers were created, whom the Duke of Wharton asked, when they made their appearance in the House, whether they voted one by one or by their foreman. There are not to be more than fifty life peers at one time in the House, and no more than three a year are to be made, and if three are made one must belong to the classes specially qualified, being judges of two years' standing, admirals, generals, ambassadors, Privy Councillors in the Civil Service, and colonial governors of five years' standing. Persons not specially qualified may also be appointed life peers so long as more than two are not made in one month. The dignity proposed to be given to the new peers is the same as that given to the lords of appeal, except that the latter hold it during office, and it is exactly the same as the bishops, who differ from their peers in being not 'of trial by nobility.'

SUPERIOR COURT.

AYLMER, (district of Ottawa,)
May 25, 1888.

Before WURTELE, J.

CHARLEBOIS v. RABY.

Procedure—Demand in warranty.

HELD:—1. *That an action in warranty can be brought after the expiration of the delays fixed by articles* 123 *and* 107 *of the Code of Civil Procedure, but that in such case the suit cannot be stayed thereby.*

2. *That in such case, however, the principal demand and the demand in warranty may be adjudicated upon together, if it can be done without retarding the principal demand.*

PER CURIAM. The plaintiff has sued the defendant, who is a notary, for damages caused by delay in the registration of a deed which it is alleged that he had undertaken to register, and the defendant has pleaded to the action; and the parties are at proof. The defendant now alleges that he has a recourse in warranty against one Sauvé and a Mrs. Frappier, and he moves that he be allowed to call them in warranty and that all the proceedings in the suit be stayed until his warrantors have been put in the suit.

The delay to call in warrantors is fixed by article 123 of the Code of Civil Procedure, and is eight days after the service of the principal demand; and article 122 provides that a defendant who is exercising his recourse in warranty may, by means of a dilatory exception, obtain a stay of proceedings until his warrantor has been called in and held to plead to the merits, and the delay to file such dilatory exception is four days from the return of the writ.

In this case the delay to file a dilatory exception has expired long ago, and the defendant cannot therefore claim a stay of proceedings; and even if he was within this delay, he could not ask for a stay of proceedings, as he did not institute a demand in warranty within the prescribed delay, and he would have to show that he had done so to obtain a stay. (*Belle* v. *Dolan*, 20 L. C. J. 302.)

But can he, at all events, take an action in warranty and bring his warrantors in the suit after the expiration of the delay fixed by article 123? I am of opinion that he can, but without however having the right to stay the principal demand or to have the demand in warranty joined with it; I hold that the article is not restrictive of the right to bring an action in warranty, but that it confers certain privileges when steps are taken within the delay. Our article is the same in substance as articles 175 and 176 of the French Code of Civil Procedure, and what I now hold has been held in France. Carré & Chauveau say in their question 766: "Doit-on conclure des articles 176 et 177, " qu'on ne puisse appeler des garants après " les délais qu'ils prescrivent? Non, sans " doute: on ne peut conclure de ces ar- " ticles rien autre chose, si ce n'est que, sur

" les conclusions du demandeur originaire, " la demande en garantie formée après les " délais ne peut plus arrêter la poursuite de " la demande principale;.... le tribunal " peut donc et doit même refuser de joindre " la demande en garantie à l'instance prin- " cipale."

But, if it can be done without retarding the principal demand, the demand in warranty brought after the delays may be adjudicated upon at the same time as the principal demand. And Carré & Chauveau so decide in the answer to their question 768 *bis*: "La demande en garantie formée après " le délai ne pourrait-elle pas néanmoins être " jugée avec la demande principale, si toutes " deux étaient en état? Oui, sans doute: " l'article que nous examinons permet d'as- " signer en garantie même après le délai, " pourvu que la demande principale n'en soit " retardée. Il est donc clair que, si l'on est " à l'abri de cet inconvénient, le législateur " n'a point voulu priver les parties de l'im- " mense avantage de faire juger les deux " causes en même temps."

The defendant is unfounded in his demand for a stay of proceedings; and he requires no permission of the Court to be allowed to in his warrantors.

Under these circumstances, I need say nothing about the grounds of warranty invoked, and the motion is dismissed, with costs.

The judgment reads as follows:—

"La Cour, après avoir entendu les parties, par leurs avocats, sur la requête sommaire ou motion du défendeur, demandant qu'il lui soit permis d'assigner et d'appeler en garantie en cette cause Jean Evangéliste Sauvé et Dame Edwidge Parent, veuve de feu Jos. Frappier, et que les procédures en cette cause soient suspendues jusqu'à ce qu'il les ait contraints d'intervenir dans l'instance, et ayant délibéré;

"Attendu que le délai pour appeler garants est expiré dans cette cause depuis longtemps, et que le délai pour obtenir, au moyen d'une exception dilatoire, une suspension des procédures pour mettre des garants en cause est aussi expiré depuis longtemps;

"Considérant qu'il est loisible d'appeler garants après l'expiration de ces délais, mais que la demande en garantie formée après les délais ne peut pas arrêter la poursuite de la demande principale et ne doit pas être jointe à l'instance principale;

"Considérant que la demande en garantie formée après les délais peut bien être jugée avec la demande principale, si toutes deux sont en état, mais qu'il n'est pas permis de retarder la demande principale dans le but d'arriver à faire juger les deux causes en même temps;

"Considérant qu'aucune permission du tribunal n'est nécessaire pour autoriser une partie dans une cause à appeler et assigner des garants après l'expiration des délais mentionnés dans le Code de Procédure Civile;

"Considérant que la dite requête sommaire ou motion du défendeur est par conséquent mal fondée;

"Attendu que le demandeur s'est opposé formellement à toute suspension de la poursuite de sa demande, pour permettre l'assignation et la mise en cause de garants;

"Rejette la dite requête sommaire ou motion, avec dépens, mais sans se prononcer sur la question du droit du défendeur d'appeler les dits Jean Evangéliste Sauvé et Dame Edwidge Parent en garantie en cette cause et sur la question de l'obligation des sus-nommés de garantir le défendeur contre la demande portée contre lui dans cette instance."

Motion dismissed.

C. B. Major, for plaintiff.

Rochon & Champagne, for defendant.

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*SUPERIOR COURT—MONTREAL.**

Lois de douane—Paiement des droits—Preuve.

JUGÉ:—Que d'après les statuts qui régissent la perception des droits de douane sur les marchandises qui entrent dans notre pays, dans toute poursuite où doit se faire l'application de ces lois de douane, il incombe au propriétaire des marchandises de faire la preuve que tous les droits ont été régulièrement payés et que les prescriptions de la loi ont été remplies.—*Lanctot v. Ryan*, Mathieu, J., 5 février 1887.

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*To appear in Montreal Law Reports, 4 S.C.

Requête en nullité de décret—Délais—Amendements.

JUGÉ:—Que l'article 116 du Code de Procédure Civile qui prescrit que la requête en nullité de décret de la part du saisi, doit être présentée dans les mêmes délais que ceux prescrits pour l'appel du jugement de la Cour Supérieure, s'applique également à une demande d'amendement de la requête en nullité de décret déjà présentée, lequel amendement ne peut être permis après les susdits délais.—*Bolduc v. Lefuntun*, Mathieu, J., 23 avril 1888.

Recorder—Ajournement de la cause—Audition de la cause avant l'heure fixée—Certiorari.

JUGÉ:—Que lorsqu'une cause criminelle devant la Cour du Recorder a été ajournée à un certain jour et à une heure fixée de ce jour, un verdict et une sentence (conviction) prononcés contre le prisonnier avant l'heure fixée, et en l'absence des témoins et de l'avocat de la défense qui avait obtenu le dit ajournement, sont nuls et peuvent être cassés sur *certiorari*.—*Martin & De Montigny*, Doherty, J., 13 avril 1888.

Douaire coutumier—Tiers de bonne foi—Fruits et revenus—Mise en demeure.

JUGÉ:—Qu'une femme qui, sans mise en demeure préalable, poursuit en réclamation de son douaire coutumier, un tiers possesseur de bonne foi d'un immeuble affecté à ce douaire, n'a droit aux fruits et revenus de l'immeuble qu'à partir de l'institution de l'action.

Dans l'espèce l'action n'étant que pour arrérages des fruits et revenus, a été déboutée. —*Lamirande v. Lalonde*, Taschereau, J., 30 avril 1888.

Chose jugée — Judgment maintaining saisie-gagerie.

HELD:—A judgment obtained against a tenant by default in a case of *saisie-gagerie*, declaring the seizure good, is not *chose jugée* against him as to the ownership of the effects seized, in a *capias* case in which he is accused of fraudulently secreting such effects; and it is competent for him to prove that they are the property of his wife.—*Morris v. Wilson*, in Review, Jetté, Wurtele, Tait, JJ., March 31, 1887.

Privity of contract—Partnership—Work done by firm—Set off.

HELD:—Where work was executed by a firm of printers, duly registered, composed of three persons, they have a right to recover the value of such work, although the parties entrusting them with the work believed they were dealing with two members only of the firm, who were at the same time carrying on business as a registered firm of publishers—more especially as the two persons composing the publishing firm were parties to the suit, and similar work, previously executed by the printing firm on the order of the same agents, had been paid for on accounts rendered by the printing firm.

2. An account due to a defendant's attorney cannot be opposed in compensation of a claim against a client, and evidence of such alleged contra account is inadmissible. —*Fulton et al.* v. *Darling*, Tait, J., April 30, 1887.

TRIBUNAL CIVIL DE DAX.

29 décembre 1887.

Présidence de M. VILLENEUVE.

ROUX v. B...

Louage d'ouvrage—Devis et marches—Résiliation—Dommages-intérêts—Préjudice moral.

Les dommages-intérêts, dus par le maître qui résilie le contrat de louage d'ouvrage (art. 1794), doivent être appréciés comme les dommages-intérêts dus par la partie, qui, en n'exécutant pas ses engagements, amène la résiliation de tout autre contrat (art. 1184).

Le maître doit donc un dédommagement à celui qu'il congédie pour toute la perte causée par la résiliation inopportune, et même pour le préjudice moral en résultant.

M. B... avait chargé un architecte, M. Duc, de l'édification d'une villa à Biarritz.

Un autre architecte, M. Roux, devait sous le contrôle de son collègue exécuter des plans et dessins. M. Duc étant mort et son mandat

ayant été transféré à un nouvel architecte, il en résulta des dissentiments ; avant l'achèvement des travaux, M. Roux fut remercié par le propriétaire. Il réclama de celui-ci : 1o. la remise d'usage sur tous les travaux exécutés depuis son départ, et gain sur lequel il devait compter ; 2o. une indemnité pour le préjudice moral que lui causait ce brusque renvoi.

Le Tribunal a statué en ces termes :

Le Tribunal,

En ce qui concerne le premier chef de la demande (sans intérêt).....

En ce qui concerne le préjudice moral résultant de la perte des avantages qu'aurait valus à Roux la renommée acquise en attachant son nom, à l'exclusion de tout autre, à la construction de la villa :

Attendu, en droit, que le dédommagement dû à l'entrepreneur et à l'architecte en vertu de l'art. 1794, C. civ., par le maître, qui résilie par sa seule volonté le contrat de louage d'ouvrage et d'industrie, est aussi complet que celui qui est dû lorsque dans un contrat synallagmatique, une partie n'a pas exécuté par sa faute les engagements dont elle était tenue ; que le maître doit, par conséquent, dédommager de toute perte causée par la résiliation inopportune du contrat, et même du préjudice moral qui en résulterait ;

Attendu, en fait, qu'il résulte des documents fournis que Roux n'a pas été réduit absolument au rôle modeste consistant à faire purement et simplement exécuter les plans et dessins conçus par le sieur Duc, architecte ; qu'il paraît légitimement fondé à revendiquer dans une certaine mesure auprès de B... une paternité collective avec le sieur Duc dans la création de plans et dessins de la villa ;

Attendu que, depuis le décès du sieur Duc, pendant un an, il a eu la direction, non-seulement effective, mais encore nominale, de la construction dans les dessins, modèles, maquettes, projets de toutes sortes, et les avait fait exécuter après les avoir soumis au visa du sieur Vaudremer ; qu'il pouvait légitimement compter pouvoir achever la villa et attacher son nom, à l'exclusion de tout nouvel architecte, à cette construction, monument élevé à l'art, en se fondant sur l'engagement pris par B... dans le traité du 25 avril 1879 précité ;

Attendu qu'il est résulté de la résiliation imposée par B... et du transport du mandat à un nouvel architecte un certain préjudice dont il convient de tenir compte à Roux ; que le préjudice ne peut être cependant qu'en rapport avec l'importance des travaux réellement confiés à Roux par contrat et non exécutés par lui ; que s'il est établi qu'un nouvel architecte en a élevé pour une somme supérieure à 150,000 francs, montant de l'évaluation dont il a été parlé, il est constant qu'il n' a pas atteint 350,000 francs ; qu'il sera fait bonne justice en lui allouant une somme de 1,900 fr.

Par ces motifs, etc.

COUR D'APPEL DE PARIS.

21 février 1888.

Présidence de M. Bresselles.

Beer v. Ettlinger.

Modèles de fabrique—Eventails—Assemblage de matières connues—Dépôt—Propriété—Contrefaçon.

L'assemblage de matières connues, mais combinées de manière à produire un effet nouveau, peut constituer un dessin de fabrique susceptible de dépôt et de propriété privée.

Sur les poursuites de M. Beer, propriétaire d'un modèle d'éventail régulièrement déposé au secrétariat du Conseil des prud'hommes, la 10e Chambre du Tribunal correctionnel avait rendu, à la date du 3 décembre 1887, le jugement suivant :

"Attendu que Beer a déposé le 25 mai 1886, au conseil des prud'hommes, un modèle d'éventail dont il revendique la propriété comme constituant un modèle de fabrique nouveau dans les termes de la loi du 18 mars 1806 et qu'il a par procès-verbal du 15 novembre 1886, fait saisir chez la veuve Ettlinger et chez Emile Ettlinger deux éventails qu'il prétend être la contrefaçon du modèle par lui déposé ;

"Attendu que de l'examen du modèle déposé par Beer, modèle qui a été représenté au Tribunal, il résulte que ce modèle ne présente, ni dans son ensemble ni dans ses détails, des

caractères de nouveauté qui permettent de le considérer comme un modèle de fabrique nouveau protégé par la loi de 1886; qu'en effet la monture à vingt-six brins revendiquée par Beer, n'est autre que la monture ordinaire, que le nombre des brins importe peu; que la garniture de plumes ne saurait davantage être considérée comme nouvelle, cette garniture ayant été dès longtemps employée dans ce genre d'industrie; que le nœud de ruban sur le panache, qui n'est d'ailleurs qu'un accessoire insignifiant, a été également employé comme ornement d'éventail sous forme de cocarde ou de rosette à des époques bien antérieures au dépôt fait par Beer; que la demande de Beer n'est donc pas justifiée;

"Renvoie la veuve Ettlinger et Emile Ettlinger des fins de la plainte sans dépens; condamne Beer aux dépens, lesquels ont été par lui avancés."

Mais sur l'appel de Beer, la Cour, après avoir entendu les plaidoiries de Me. Desjardins pour M. Beer et Me. Allard pour M. Ettlinger, rendit l'arrêt infirmatif que nous reproduisons:

La Cour,

Considérant que, s'il est exact de dire que le genre de monture employé par Beer pour la fabrication du modèle d'éventail, dont il revendique la propriété dans les termes de la loi de 1806, a été usité antérieurement à son dépôt, qu'antérieurement à cette date également, on avait employé les plumes plates pour la garniture des éventails et on les avait ornés de nœuds de rubans appliqués sur le panache, il est constant pour la Cour que, par la réunion de ces trois éléments, jusque-là employés séparément, et par la disposition spéciale qu'il a su donner à leur ensemble, Beer a créé un objet qui a son caractère et son aspect propres et qui est de nature à constituer un modèle de fabrique susceptible d'être protégé par la loi du 18 mars 1806;

Considérant qu'à la date du 25 mai 1886, Beer a régulièrement déposé un modèle d'éventail au conseil des prud'hommes de Paris; que la veuve Ettlinger et Ettlinger ont, depuis cette époque, fabriqué, vendu, et mis en vente, au mépris des droits de Beer, des éventails absolument semblables à ceux dont Beer avait déposé le modèle; qu'ils ont ainsi commis le délit prévu par l'art. 15 de la loi précitée du 18 mars 1806 et par l'art. 425 C. pén. et punis par l'art. 427 du même Code;

Par ces motifs,

Infirme le jugement dont est appel; décharge Beer des condamnations prononcées contre lui;

Déclare Ettlinger et veuve Ettlinger mal fondés dans leur demande reconventionnelle;

Condamne la veuve Ettlinger et Ettlinger, chacun et solidairement, à 500 fr. d'amende;

Ordonne la confiscation des objets contrefaits et leur remise à Beer, conformément à l'art. 419 C. pén.;

Et pour le surplus du préjudice causé,

Attendu que la Cour n'a pas, quant à présent, les éléments suffisants pour en évaluer le montant;

Condamne la veuve Ettlinger et Ettlinger, solidairement, à payer à Beer des dommages-intérêts à fixer par état, les condamne néanmoins quant à présent à payer sous la même solidarité, à Beer une somme de 1,500 fr. à titre de provision sur les dommages-intérêts qui peuvent être dus;

Rejette le surplus des conclusions de Beer; condamne la veuve Ettlinger et Ettlinger solidairement aux dépens de première instance et d'appel.

RECENT UNITED STATES DECISIONS.

Master and Servant—Negligence—Extraordinary Accident—Explosion of Benzine in Paint.

A workman was ordered by his employer to paint the inside of a water-tank twelve feet deep. He entered the tank with a lamp and began work. Soon after an explosion occurred in the tank, resulting in the death of the workman. It appeared that the paint used contained a large quantity of benzine; that it was a well-known brand, and had been in use many years; that the employer had used it for ten years, purchasing it in large quantities direct from the factory ready for use. *Held*, that the accident was outside of the range of ordinary experience, and was not due to negligence for which the employer could be held liable. It is not easy to see

what more could have been expected from an employer. The general rule requires of the master that he provide materials and implements for the use of his servant such as are ordinarily used by persons in the same business, but he is not required to secure the best known materials, or to subject such as he does provide to a chemical analysis, in order to settle by experiment what remote and possible hazard may be incurred by their use This rule is recognized in the recent case of *Payne* v. *Reese*, 100 Penn. St. 301, in which the present chief justice said that the "duty of the master is to provide machinery and materials of an ordinary character." So also in *Crawford* v. *Stewart*, 19 Weekly Notes Cas. 418, which was an action to recover damages for injuries resulting from the falling of a scaffolding upon which men were at work the master was held not liable. The reason is stated by Justice Paxson, with his usual directness, in these words: "There is no evidence that the men who erected the scaffold were not competent workmen, nor that they were not supplied with suitable materials." The same rule is also stated in *Lewis* v. *Seyfert*, 20 Wkly. Notes Cas. 148. In the presen case the work at which McCormick was em ployed was not a dangerous one. The place was not one that could be regarded as in any sense dangerous. The materials were those in common use for the purpose for which they were used by the defendant. The work was done under the supervision of a competent painter. The accident, happening under such circumstances, was outside the range of ordinary experience, and one therefore against which the measure of care due from the employer could not protect the servant. To hold otherwise would be to disregard the well-settled law upon the subject, and to make the employer an insurer of the safety of his employee. Penn. Supreme Court, Jan. 30, 1888. *Allison Manufg. Co.* v. *McCormick.*

Schools—Authority of Teacher—Corporal Punishment.

A pupil having been guilty of insubordination, his teacher, the appellant, after consulting with the township trustee, offered him his choice of a whipping or expulsion. He chose the former, which was inflicted with a two-pronged switch from a tree, nine sharp blows being received. The pupil made no outcry, and the next morning came back to school as usual without showing any injury. The whipping was painful, and some abrasion of the skin was produced; but there was nothing to show any intentional, undue severity or improper motive on the part of the teacher. *Held*, that the evidence did not justify a conviction of assault and battery. The switch used was not an inappropriate weapon for a boy of Patrick's age of sixteen years and apparent vigor. Patrick's offence as a breach of good deportment in a school was not one to be overlooked or treated lightly. It was calculated, and was most likely intended to humiliate Vanvactor in the presence of his pupils, and its tendency was to impair his influence in the government of his school. The motive was apparently revenge for having been required to stand by the stove for a time, as a punishment for a previous violation of good order. When the alternative of leaving the school or taking a whipping was presented to him, Patrick did not object to it, either as unreasonable or unjust. After consultation and mature deliberation, he decided to accept a whipping, on condition that it be administered privately. In a spirit of evident forbearance, the request thus implied was acceded to. With all these preparations in view, Patrick had no reason to expect that the chastisement would be a merely formal and painless ceremony. The legitimate object of chastisement is to inflict punishment by the pain which it causes as well as the degradation which it implies. It does not therefore necessarily follow that because pain was produced, or that some abrasion of the skin resulted from a switch, the chastisement was either cruel or excessive. When a proper weapon has been used, the character of the chastisement, with reference to any alleged cruelty or excess, must be determined by the nature of the offence, the age, the physical and mental condition, as well as the personal attributes of the pupil, and the deportment of the teacher, keeping in view the presumptions to which we have alluded. All the circumstances lead us to the conclusion that if Vanvactor really gave harder blows than ought to have been given, the error was one

of judgment only, and hence not one of improper or unlawful motive. The statement of Patrick that Vanvactor laid on the blows hard, as if he was angry, was, when explained and taken in connection with other evidence as stated, too trivial to materially conflict with the conclusion thus reached. It must be borne in mind that Patrick was not peremptorily required to submit to corporal punishment, but that he accepted that kind of punishment with all its unpleasant consequences, in preference to a milder and latterly a much more usual and more approved method of enforcing discipline in the schools when grave offences are committed, and that he made no complaint or protest at the time the blows, since complained of, were given. Indiana Supreme Ct., Feb. 9, 1888. *Vanvactor* v. *State.*

RECENT ENGLISH DECISIONS.

Judge—Disqualification for bias.

A magistrate who was a surgeon, attended a patient professionally for injury caused by an assault. He endeavored to induce his patient not to prosecute for the assault and conveyed to him a message, sent by the person who had committed the assault, offering an apology and suggesting a settlement. A summons was issued for the assault, the magistrate was subpœnaed to give evidence for the prosecution, and a writ of prohibition was obtained to prohibit him from sitting at the hearing. The magistrate moved to set aside the prohibition. *Held*, that the acts of the magistrate did not show that he had such a substantial interest in the result as to make it likely that he would have a bias, and that the fact of his being subpœnaed did not disqualfied him from sitting, and therefore the prohibition must be set aside. 20 Q. B. Div. 58. *Queen* v. *Farrant.*

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, June 30.

Judicial Abandonments.

Hormidas Laplante, farmer, parish of St. Dominique, June 25.

Curators appointed.

Re David H. Cameron, Coaticook,—Otis Shurtleff and J. J. Griffith, Coaticook, joint curator, June 26.

Re William Little, lumber merchant, Montreal.—S. C. Fatt, Montreal, curator, June 27.

Dividends.

Re H. R. Beveridge & Co., Montreal.—Second and final dividend, payable July 17, A. W. Stevenson, Montreal, curator.

Re Narcisse Turgeon, Lévis.—First and final dividend, payable July 12, D. Arcand, Quebec, curator.

Separation as to Property.

Evélina Hétu, vs. Narcisse Olivier Bergeron, carriage-maker, Upton, June 19.

APPOINTMENTS.

Ernest D. Tétreau, N.P., Acton Vale, to be registrar for the registration division of the County of Bagot, in place of J. C. Bachand, deceased.

Quebec Official Gazette, July 7.

Judicial Abandonments.

Sophie Paré (Mrs. B. Dupuis), township of Barnston, *marchande publique*, July 3.

Curators appointed.

Re Dunn & Healey, traders, Windsor Mills.—Wm. C. Craig, Montreal, curator, April 26.

Re P. A. Guay, trader, Chicoutimi.—H. A. Bedard, Quebec, curator, July 5.

Dividends.

Re Elliot & Fox (American House), Montreal.—First and final dividend, payable July 24, C. Desmarteau, Montreal, curator.

Re Joseph Lacasse, Valleyfield.—First dividend, payable July 24, Kent & Turcotte, Montreal, joint curator.

Re Henry R. McCracken.—Report of distribution, W. S. Maclaren, Huntingdon, curator.

Separation as to Property.

Adèle Marie Bérée vs. Jean Jules Giroux, accountant, Montreal, July 5.

Marie Ritchie vs. James H. Michaud, broker, Montreal, July 3.

GENERAL NOTES.

SWEARING IN A JUSTICE OF THE UNITED STATES.—The *Washington Law Reporter* gives the following account of the installation of Mr. Justice Lamar, recently appointed to the office of Associate Justice of the Supreme Court of the United States: 'At twelve o'clock the justices, wearing their black silk robes, filed into the Court, followed by Mr. Lamar, who wore a suit of black, and took his seat to the right of Mr. Justice Blatchford and beside the clerk of the Court. The proclamation—"Oyez! oyez! all persons having business before the Honourable Supreme Court of the United States are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this honourable Court"—having been made, Chief Justice Waite unrolled a parchment, and announced that they had received the commission of L. Q. C. Lamar as associate justice of the Court, and ordered that it be read by the clerk, which was accordingly done. The Chief Justice then inquired: "Is Mr. Lamar ready to take the oath?" Mr. Lamar bowed, and the clerk handed him a parchment, upon which was inscribed the following oath: "I, L. Q. C. Lamar, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as associate justice of the Supreme Court of the United States, according to the best of my abilities and understanding, agreeable to the constitution and laws of the United States. So help me God." Mr. Lamar read the oath and kissed the Bible, retired to robe, and, on his return, was escorted by Marshal John M. Wright to his seat on the extreme left of the Chief Justice. The justices all bowed to their new associate, who in return bowed to them and to the members of the bar and audience.'