THE LEGAL NEWS.

Vol. IX. MONTREAL, APRIL 17, 1886. No. 16.

Editor—James Kirby, B.C.L., LL.D., Advocate.
1709 Notre Dame Street, (Royal Insurance Chambers, opposite the Seminary.)

CONTENTS OF Vol. IX., No. 16.

Montreal:
GAZETTE PRINTING COMPANY.
1886.

The Legal News.

Vol. IX. APRIL 17, 1886. No. 16.

The members of the Bar of the district of Bedford have been constituted a separate section of the Bar, under the name of "the Bar of Bedford." The proclamation is made under the authority of the Act respecting the Bar of Quebec, 44-45 Vict., which enacts that whenever the members of the Bar, duly qualified to practise and practising in any new district, exceed fifteen, it shall be lawful for them to constitute themselves into a section of the Bar, in and for such district.

The resignation of Mr. Justice Rainville creates a fourth vacancy on the bench of the Superior Court. It is with much regret we learn that this step has been rendered necessary by the continued ill-health of the learned judge. Judge Rainville was one of the youngest men ever appointed to the bench, but he speedily attained a very honorable distinction, and it is much to be lamented that an indisposition, probably due in part to the onerous nature of the duties, should have compelled his retirement while still young in years.

A semi-official announcement has appeared of the appointments and changes about to be made. Until they are formally gazetted we will not say more than that, while there are some good features about them, the list upon the whole has occasioned a good deal of surprise. One is sometimes inclined to doubt whether, after all, we gain as much as is commonly supposed by the system of nomination instead of popular election.

In a copy of the *Law Journal* (London) of March 6, which has just come to hand, (having been submerged in the ill-fated *Oregon*), we find the following extract from a speech made by Sir Henry James to his constituents at Bury on March 1. As it reflects honor upon the profession as well as upon the speaker, we have much pleasure in presenting it to our readers:—"It is permitted to me to say that as soon as the office was at Mr. Gladstone's disposition he was pleased, in terms of the most generous character, to recommend me as a fitting person to be Lord Chancellor. In like manner he placed at my disposal an office of the greatest responsibility, the acceptance of which would have enabled me to remain a member of the House of Commons. As you know, I declined those offices. I belong to a profession often slandered. It has many great prizes which must be gained by some member of it, and so it comes to pass that the accusation is often made that members of the bar enter upon and fashion their political career in order to obtain some of these prizes. To that great profession I am more indebted than most men. I worked my own way into its ranks. For thirty years I have remained there. If you deem it presumptuous for me to say that I have succeeded in my calling, still some would call me ungrateful if I had failed to say so. For five years I have been the leader of the bar, and I felt that there was a duty, almost a special duty, cast upon me that I should so act that no man should be enabled to point to my conduct as a proof that the bar of England was composed of men who were unfit to take their part in political life." Sir Henry James, it may be remembered, could not accept Mr. Gladstone's policy on the Irish question.

Wyatt v. *Rosherville Gardens Co.*, Q. B. Div. Feb. 1, was a case of some peculiarity in the matter of damages. The case being tried before Baron Huddleston and a jury, the jury found for the plaintiff, and awarded £300 more than he had claimed, and the Court allowed an amendment so as to include this additional amount! The action was to recover damages for injuries sustained by the plaintiff by the bite of a bear which belonged to the defendants, the proprietors of the Rosherville Pleasure Gardens at Gravesend. A she-bear was kept in a cage or cave partially enclosed in artificial rock-work. The plaintiff being anxious to feed the bear, approached the bars of the cage, when the bear put a paw through, caught the plaintiff's arm, dragged it into the cage and seized it in her mouth. She "munched and crunched" it

for some minutes, the result being that his hand was permanently injured, and he lost his situation at 29 shillings a week. He brought his action for £200 or about $1,000, but the jury found £500, or nearly $2,500, and, as above stated, judgment was entered for the increased amount. The Court refused a stay of execution, Mr. Baron Huddleston remarking "in my opinion the jury are perfectly right, and I should have found the same way." As to the question of responsibility, the Court ruled, "if persons choose to keep wild and savage animals they do so at their own risk, and if such animal causes injury to anyone, they are liable for the injuries." As to the amendment, when counsel for defendants objected, the judge asked "Why not?" Counsel replied, "Such a thing, my lord, is never done." Mr. Baron Huddleston rejoined, "Indeed, it is; and I shall certainly permit it."

---

*SUPERIOR COURT—MONTREAL.**

Vente—Fraude—Garantie.

JUGÉ:—Que lorsque le vendeur et les acheteurs dans un acte de vente sont poursuivis conjointement et solidairement pour faire déclarer que par fraude et collusion le dit acte a été simulé, le vendeur ne peut appeler en garantie les acheteurs, ses co-défendeurs, sur le principe qu'il n'a lui commis aucune fraude; car, dans ce cas, l'action principale sera déboutée quant à lui; et, s'il y a eu fraude commune, le vendeur n'a aucun recours en garantie contre ceux qui auraient avec lui participé à la fraude. — *Benoit* v. *Bruneau*, Taschereau, J., 31 déc. 1885.

Procédure—Folle Enchère.

JUGÉ:—1o. Que la description de l'immeuble dont la vente est demandée par folle enchère n' a pas besoin d'être donnée dans la requête pour obtenir la dite folle enchère.

2o. Qu'un créancier hypothécaire colloqué comme tel au jugement de distribution a le droit de demander la folle enchère, malgré qu'il ne soit pas partie en la cause.—*Vincent* v. *Roy dit Lapensée*, Mousseau, J., 28 déc. 1885.

---

* To appear in Montreal Law Reports, 2 S.C.

Donation—Usufructuary—Action by nu propriétaire.

1. Where a person intervened in the marriage contract of his niece, and made her a donation of $200,000 payable at his death, the intended husband to have "the adminis- "tration and enjoyment of the said sum of "$200,000 from the time of the same becom- "ing due," and the only condition of the husband's administration and enjoyment was the birth of children, which was a fact admitted, *held*, that the husband was usufructuary, and the wife had the *nue propriété*.

2. In such case the action against the donor's universal legatee, for the recovery of the amount of the donation, can be brought by the usufructuary alone. An action by the wife, even with her husband's authorization, will be dismissed.—*Kimber* v. *Judah*, Cimon, J.; confd. in Review, Johnson, Torrance, Papineau, JJ., June 30, 1885.

Délégation de paiement—Acceptation—Garantie—Durée de la garantie.

JUGÉ: 1o. Qu'une délégation de paiement acceptée ne change pas la nature de la dette du débiteur et n'augmente pas ses obligations; de sorte que si la dette vient à s'éteindre, hors le fait du débiteur, vis-à-vis le premier créancier, elle l'est également vis-à-vis le dernier.

2o. Que pour que la garantie pour cause d'éviction cesse lorsque l'acheteur n'appelle pas son vendeur en garantie, il faut que ce dernier prouve qu'il avait des moyens suffisants pour faire renvoyer la demande d'éviction dirigée contre l'acheteur.—*Drapeau* v. *Marion*, Cimon, J., 27 fév. 1886.

Capias ad respondendum — Bilan — Emprisonnement—Cautions—Responsabilité—Défense en droit.

JUGÉ:—Que le fait d'un débiteur arrêté sous *capias ad respondendum* de ne pas produire son bilan dans les trente jours du jugement et de ne pas se remettre sous la garde du shérif, ne rend pas ses cautions responsables, à moins qu'il n'ait été requis de le faire par une ordonnance du tribunal, ou qu'il ait été condamné à être emprisonné et ait fait défaut de se livrer.—*Leclerc* v. *Latour et al.*, Caron, J., 12 fév. 1886.

Registrar's Certificate—Cancelled Hypothecs—Fees.

HELD :—1. That in the case of the seizure and sale of several lots of lands, the registrar is bound to embody all the entries respecting such lots in one certificate.

2. That the registrar has no right to include in such certificate and charge for entries respecting hypothecs which appear by his books to have been discharged.—*De Bellefeuille* v. *Gauthier*, Taschereau, J., Dec. 7, 1885.

Billet promissoire—Prête-nom—Droit de poursuivre—Fraude.

JUGÉ :—Que le preneur dans un billet promissoire, quand même il ne serait qu'un prête-nom, a un intérêt suffisant pour poursuivre le recouvrement du billet en justice, pourvu qu'il n'y ait pas de fraude et que le débiteur n'en subisse aucun préjudice.—*Biron* v. *Brossard*, Sicotte, J., 12 mars 1880.

Saisie-arrêt—Transport illégal—Collocation—Tiers—Intervention.

JUGÉ : —Qu'un créancier peut saisir par saisie-arrêt une créance pour laquelle son débiteur est colloqué, quand même ce dernier se serait fait illégalement transporter cette créance, laquelle appartiendrait réellement à un tiers, le recours de ce tiers est contre le le débiteur.—*Senécal* v. *Exchange Bank*, Mathieu, J., 5 fév. 1886.

Banque incorporée—Suspension de paiements—Créancier—Poursuite.

JUGÉ :—Qu'un créancier d'une banque incorporée qui a suspendu ses paiements peut, même avant l'expiration des 90 jours à dater de la dite suspension, poursuivre la banque et obtenir un jugement pour le montant de sa créance.—*Senécal* v. *La Banque d'Echange*, Rainville, J., 16 janv. 1884.

Legs particulier—Terme et condition—Usufruit—Renonciation—Intérêt.

JUGÉ :—1o. Qu'un legs fait dans les termes suivants : "*Je donne* à E. une somme de $500, "*à lui être payée une année après le décès de* "*ma dite épouse, ou une année après son convol* "*en secondes noces ; quant à la jouissance de la* "*dite somme je la donne à ma dite épouse tant* "*qu'elle gardera viduité,*" n'est ni à terme, ni conditionnel, mais est un legs absolu à E. sujet du dit usufruit ; de sorte que la renonciation de l'usufruitière à son usufruit donne à E. le droit de toucher et de jouir de son legs immédiatement ;

2o. Qu'un legs d'une somme d'argent fait à une personne en propriété et à une autre en usufruit, donne à l'usufruitière le droit de toucher la somme léguée et de la faire fructifier à sa guise pendant la durée de son usufruit ;

3o. Que l'intérêt sur ce legs ne coure que la demande en justice.—*St. Aubin* v. *Lacombe* Cimon, J., 20 fév. 1886.

THE INFERIOR MAGISTRATES.

To the Editor of THE LEGAL NEWS :

By the Statute Law of Ontario, no Attorney or Solicitor can be a Justice of the Peace—or Police Magistrate—during the time he continues to practise as an Attorney or Solicitor; except such practising Attorney or Solicitor be at the same time a member of Her Majesty's Executive Council, Her Majesty's Attorney-General, one of Her Majesty's Counsel in the Law, or a Mayor, Alderman, Reeve or Deputy-Reeve of any Municipality. (R.S.O.C. 71, S.S. 5, 22, and C. 72, S. 4.) We ask is there any reason for these exceptions? Why strongly bar the gate, and yet remove some of the palings from the fence connected with it? Why allow a wolf to enter the fold of the Judiciary, because he can clothe himself in the sheepskin of any one of seven offices? The rule is a good one, the reason for it good ; why defeat its object by an exception directly opposed to the law of the leading countries in the world? Why does Ontario alone retain this unjust and impolitic plurality of employments under the guise of exceptions? Let us examine: 1st—The laws and jurisprudence of various countries on the subject of the qualifications of Judges and Justices of the Peace; and 2nd—Consider the reasons which actuated their Legislators, Judges and Jurisconsults in framing such enactments, rendering such decisions, or holding such opinions.

In England or Wales no person shall be capable of becoming or being a justice of the

peace for any county in which he shall practise and carry on the profession or business of an attorney, solicitor, etc. (34-35 Vict., 1871, c. 18.) The same disqualification for stipendiary magistrates (see 26 and 27 Vict., c. 97). It is true that by 18 Geo. 2, c. 20 (Imp.) there are persons excepted from the general rule of 5 Geo. 2, c. 18, by which latter Act attorneys in England are incapacitated from being Justices of the Peace so long as they continue in the business and practice of an Attorney—but the persons are either those who could not by any possibility be Attorneys, or, if Attorneys, could not find time or opportunity to act as Justices of the Peace. In Scotland, under 19 and 20 Vict., c. 48, sec. 4: Any Writer, Attorney, Procurator or Solicitor who may be elected to the office of Magistrate or Dean of Guild of any Burgh, the Magistrates or Dean of Guild of which are *ex officiis* Justices of the Peace by virtue of their election to such offices, shall, so long as he holds any such office, be entitled to act as a Justice of the Peace, provided he intimates to the Clerk of the Peace for the County in which such Burgh is situated, that he and any partner or partners in business with him cease to practise before any Justice of the Peace Court in such county, so long as he continues to hold such office as aforesaid; and it shall not be lawful for him or them thereafter, and during his continuance in office, so to practise.

By the laws of France, the functions of a Justice of the Peace are incompatible with those of a Mayor, Prefect and Sub-Prefect, Councillor of the Prefecture, Councillor at the Royal Court, Bailiff, any employee in the Customs, Post Office, Public Accountant, Ecclesiastic, Notary, Advocate, and paid Teacher. If the person who has been appointed a Justice of the Peace is engaged in incompatible employment or duties, he is obliged to give up such employment or duties within ten days from notice of his appointment, under pain of having his appointment revoked. It is true that in France these Justices are salaried—but so are our Police Magistrates—and it might be better to increase the fees of the Justices of the Peace if they were deprived of the power of holding incompatible offices as they are in France. (See Bioche, Dictionnaire, vol. 4.)

In the United States of America, Justices of the Peace are elected by the people for four years, and they may be removed in due manner by those who elected them. In this way all malversations of office or other irregularities are easily cured and remedied. This four years' probation in office is a very useful provision, for "we must not, upon supposition only, admit judges deficient in their office, for so they would never do right; nor, on the other side, must we admit them unerring in their judgment, for so they would never do anything wrong." (See Coventry & Hughes' Digest, p. 832.)

Let us now consider the reasons which actuated the framers of the foregoing enactments. Why is the cumulation of employment forbidden under all free governments? The general reason against the plurality of employments in the hands of a single person is that this monopoly is unjust and impolitic. By heaping upon a small number of persons the objects of general desire, you deprive so many individuals of a portion of enjoyment, and you take away from public competition so many rewards which might be applicable to the encouragement of true merit. Heap three portions upon a privileged favorite, you do not triple the enjoyment which each portion separately would have given him; and, above all, you are very far from producing the same amount of satisfaction as if you had admitted three persons to a share in the division. But there are more conclusive reasons against uniting any other employment with that of the Judge. 1st—The good of the public service. The obligation to attend daily at Court or Chambers is incompatible with any other public duty. If he is not always engaged as a Judge, it is necessary that he should always be ready so to act. Give him other duties, the parties are exposed to delays, and justice to the frittering away of evidence. If your Judges have plenty of time for other business, they are too numerous or their jurisdiction is too limited; you may learn from this that your judicial establishment is on too extravagant a scale. When the cumulation of two employments is permitted, of which either is sufficient to occupy the time of a single individual, the law ought to explain and set

forth which of the two does it intend that the duties shall be neglected. 2nd—The danger to uprightness or the reputation for uprightness. All employments entail a diversity of social relations and combinations of interests; all connections are sources of partiality. It is possible that the probity of a Judge might not suffer from these things, but his reputation might suffer and the confidence in his judgments will be weakened. (See Bentham, Organisation Judiciaire.)

"In jure non debet fieri acceptio personarum," and "A good judge should do nothing from his own arbitrary will, or from the dictates of his private wishes; but he should pronounce according to law and justice." (*Coke.*) "Le devoir d'un juge consiste à rendre la justice sans avoir égard à aucune recommandation, &c." (Ferrière, Dict. vo. Juge.)

See also Guyot (Répertoire vo. Juge), who thus writes:—"One of the most necessary qualifications for a Judge is impartiality. Before giving an opinion in any matter whatsoever, he ought to assure himself that there does not exist in the recesses of his heart either passion or private affection for either of the parties. The ancients, in representing Themis with a bandage over her eyes and a balance in her hand, have given us a just idea of the true character of a Judge. It is in order to avoid the effects of hatred or friendship, which would not fail to incline this balance, that the Act called Recusation takes place. A righteous Judge will not wait until he is threatened with Recusation before before signifying his determination to abstain from pronouncing judgment in any case whatsoever, because there may be grounds for Recusation unknown to the parties interested. Nobody knows as well as he does if he is in his mind more disposed towards one of the parties than the other—if he does not still cherish some old grudge. One is so inclined to find good the cause of the person one esteems; one is so greatly disposed to believe that he is unjust or guilty for whom one has an aversion, that in undertaking to judge between them a man often runs the risk of committing an act of injustice without intending it. The Judge should, for these reasons, be very cautious, and probe his heart to its depths before giving his opinion in a matter in which the parties are known to him."

A writer in the *North American Review* (vol. 57) thus ably expresses the same idea:—"The breath of an imputation cannot obscure the mirror of justice. And this immunity is essential to the working of the system, and to the preservation of that public confidence in the judicial tribunals, which is the surest guarantee of public order. The judges must not only be, but seem just. The character which they bear is a thing of quite as much importance for the common weal as the intrinsic equity of their proceedings. It is little for me that a man at a distance, of whom I never heard before, is defrauded of his due in the Courts. But it is much for me to feel the assurance, that, if my person or property is ever wrongfully attacked, I shall find a just and powerful protector in the Law. Such an assurance conduces much to the security and happiness of life, though one may never have occasion to invoke the aid of this strong champion. We say, that all temptations are removed as far as practicable; for it cannot be denied that, even in this independent and honorable station, an avaricious judge may, if he chooses, contaminate his fingers with base bribes, and sell the judgment and his own integrity. But those who lay stress upon this danger show that they have little knowledge of human nature. The gross temptation of a bribe may not allure a man to a flagrant violation of his oath, though the secret promptings of self-interest, the desire of pleasing a powerful friend, the hope of obtaining a re-appointment to a lucrative office, may bias his reason by insensible degrees, and finally lead to a judgment as iniquitous as if it had been purchased in Court. Virtue is usually sapped and mined, not taken by storm. Put a man out of the reach of these insidious temptations, which do not call upon him to sacrifice his honor and integrity at once, and with a full consciousness of what he is doing, but which beset and perplex the mind with the prospect of great ultimate good to be obtained by trifling and gradual deviations from the straight path—put him away, we say, from these cunning enticements, and he will angrily repel the

shameless rogue who comes in the broad light of day to buy his conscience. When passion, or avarice, or ambition is tugging at the heart strings, a man becomes a sophist to himself, and will try all the wiles of casuistry in order to varnish over the crime, and give it the poor semblance of virtue. Anyone can resist Apollyon when he comes in his proper shape, with horns and hoof, or as a grovelling snake; but the cunning Devil appears as a beautiful woman, or a judicious friend, and the poor dupe clasps him to his bosom and is entangled in the snare. Now the practice of the Courts abounds with dangers of the very class which we have here described. Perplexed and difficult cases are continually arising, in which the rights of the respective parties are separated by the difference of a hair. So evenly does the matter lie between them, so doubtful is the rule of law to be applied to such an obscure and intricate question, that all the acumen of a sharp and vigorous intellect can hardly determine on which side equity and legal authority incline. Let self-interest, in the mind of the judge, put a feather into the balance, and it will turn the scale. He must be a poor sophist, in so nice a case, who cannot blind himself so far as to believe that justice actually requires that decision which is most accordant with his own feelings and ulterior views."

The duties of the Magistrates were laid down in no ambiguous language by the ancient Roman law:—"Rationibus non precibus, judices vinci debent." "Judex non debet clementior esse lege." "Nemo debet esse judex in propria sua causa." "Ne quis in sua causa judicet, vel jus sibi dicat." "Nemo sibi jus dicere debet, in re enim propria iniquum est judicare." "Judex non potest injuriam sibi datam punire," etc.

Under the old English statute, 18 Edward 3, stat. 4, the following was the oath of the Justices of the Peace—which it would be well to revive in the present day:—"Ye shall swear that well and lawfully ye shall serve our lord the King and his people in the office of justice; and that ye shall do equal law and execution of right to all his subjects, rich and poor, without having regard to any person; and that ye take not, by yourself or by other, privily nor apertly, gift nor reward of gold nor silver, nor of any other thing which may turn to your profit, unless it be meat or drink, and that of small value, of any man that shall have plea or process hanging before you, as long as the same process shall be so hanging, nor after for the same cause; and that ye take no fee as long as ye shall be justice, nor robes of any man, great or small, but of the King himself; and that ye shall give none advice nor counsel to no man, great nor small, in no case where the King is party. And that ye by yourself, nor by other, privily nor apertly, maintain any plea or quarrel hanging in the King's Court or elsewhere in the country. And that ye deny to no man common right, by the King's letters, nor none other man's, nor for none other cause; and in case any letters come to you contrary to the law, that ye do nothing by such letters but certify the King thereof, and proceed to execute the law notwithstanding the same letters. And that ye shall do and procure the profit of the King and of his crown, with all things where ye may reasonably do the same. And in case ye be from henceforth found in default in any of the faults aforesaid, ye shall be at the King's will of body, lands and goods, thereof to be done as shall please him. As God you help and all saints."

In more modern times we find Couchot writing in the following manner in his "Praticien Universel" (Paris, 1747): "When you are fully confirmed as a Judge, you must shew respect unto decency in your habits, and be assiduous and ever ready to render justice in the places and at the times customary, receive no presents, judge according to the laws, and never act apart from them in order to give your private opinion, supply the deficiencies due to the ignorance of the attorneys and the parties, and never abuse your authority, listen with patience to the barristers, read their writings, and punish with severity those who speak falsely."

I have now set forth the theoretical rules of conduct for Magistrates and Judges, and also the legislative enactments giving all the force of punitive law to provisions in accord with these dicta of wisdom; forbidding certain acts and limiting the offices and employ-

ments of those holding the responsible position of Judge or Magistrate. Space forbids my enlarging further. But I may conclude by saying that these maxims, sayings and rules of wise men, these statute laws, ordinances and judicial decisions are not axioms or self-evident truths. They are the result of synthetic reasoning, or the conclusions obtained from experience. Nearly all laws are, in a sense, *ex post facto;* they are remedial or made with the intention to counteract and remove certain evils.

In Great Britain, France and the United States, irregularities and mischiefs were found to arise after uniting any other employment with that of the Magistrate or Judge. Moralists and jurisconsults wrote against the union, and legislators adopted their suggestions and forbade the banns.

The Province of Ontario still permits Queen's Counsel learned-in-the-law, and others, to practise their professions and engage in other pursuits, and at the same time exercise the grave duties of a Police Magistrate. It is to be hoped that this anomaly will cease and determine by an Act of the Legislature doing away with all exceptions—enacting that a Police Magistrate shall be a Police Magistrate and nothing more. It would be superfluous to argue that this is a consummation devoutly to be wished. Men are the same everywhere, and at all times. If abuses sprang up in Europe, and were checked by a similar Act on the part of the governing bodies—by an *argumentum ad homines*, without further enquiry, Ontario should have such a measure passed. But we all know that the very abuses and immoralities practised in Europe wherever a cumulation of employments was and is permitted to the Judge, exist at the present moment in Ontario. The same temptations to a Justice of the Peace to deliver a wrong judgment and deviate from the straight path abound, and we know that they are not always successfully resisted.

RICHARD JOHN WICKSTEED.

APPEAL REGISTER—MONTREAL.

April 8.

Senécal & Millette.—Judgment confirmed, but appellant to pay only costs as of a motion to dismiss appeal.

Low & Bain.—Judgment confirmed.

Kennedy & Exchange Bank of Canada.—Judgment confirmed.

Riordan & Bennet.—Judgment confirmed, Monk, J., *diss.*

Bourgeois & La Banque de St. Jean.—Judgment confirmed, but reformed as to interest allowed, which is reduced to 7 per cent.

Jobin & Terroux.—Judgment confirmed.

Arpin & Bornais.—Judgment confirmed.

Viger & Robitaille.—Judgment reversed, Tessier, J., *diss.*

Irish Catholic Benefit Society & Gooley.—Judgment confirmed, Monk and Baby, JJ., *diss.*

Canada Atlantic Railway Co. & Prieur.—Judgment confirmed, Monk and Cross, JJ., *diss.*

COUR D'APPEL DE PARIS (FRANCE).

FIZET v. HONORÉ.

Décembre 1885.

Accident—Feu d'artifice—Responsabilité.

JUGÉ:—*Qu'un artificier est responsable des dommages qu'il cause par son feu d'artifice, là où il n'y a pas force majeure, quand même il serait chargé de faire ce feu d'artifice pour d'autres personnes.*

Le 23 juillet 1882, le sieur Fizet se trouvait sur le boulevard de l'Hôpital au moment où l'artificier Honoré faisait partir, dans le square situé en face la mairie du 13e arrondissement, un feu d'artifice dont il avait été chargé par la municipalité, lorsqu'il fut atteint et blessé à la joue gauche par une fusée.

Fizet avait assigné Honoré en réparation du préjudice éprouvé par lui du fait de cet accident. Le tribunal avait condamné l'artificier à payer à Fizet la somme de 4,000 fr. à titre de dommages-intérêts, par les motifs suivants. Il était établi que Fizet se trouvait à 150 mètres environ de l'endroit où le feu d'artifice était tiré et en dehors des limites de précaution assignées au public pour sa sécurité; par suite il devait se croire à l'abri de tout danger et n'avait aucune précaution à prendre. Aucune faute ne pouvait lui être imputée. Honoré, au contraire, devait indiquer à l'autorité chargée de prendre les mesures de précaution destinées à garantir le

public, la portée possible et probable de ses engins; s'assurer que la direction de ses engins était régulière et ne pouvait permettre aucun accident. Ce ne peut être que par la faute ou la négligence de Honoré ou de ses agents que la fusée qui a blessé le demandeur a pu venir l'atteindre. Honoré doit donc être responsable des conséquences de cet accident du moment où il n'établit pas que c'est par un cas de force majeure que le fait s'est produit.

Honoré ayant interjeté appel, la Cour a confirmé le jugement du Tribunal.

(*Journal de Paris. Rapport de Maître Albert.*)

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, April 10.

Judicial Abandonments.

Joseph Cléophas Brault (Brault & Co.), Sherbrooke, April 5.

Sophronie Boulois, *marchande publique*, Chambly Canton, April 2.

Josephine Paquette, *marchande publique* (M. Paquette & Cie.), Pointe Claire, March 23.

Sylvester Dunn, confectioner, St. John's, April 7.

Amable Godin, trader, St. Michel d'Yamaska, Apr. 3.

Lucien Godin, baker, St. Michel d'Yamaska, Apr. 3

Duncan King, innkeeper, Portage du Fort, March 26

Curators appointed.

Re Bruno Brodeur, Richelieu.—Kent & Turcotte, Montreal, curator, April 7.

Re Desmarais & Frère.—Kent & Turcotte, Montreal, curator, April 5.

Re Magloire Gascon.—John Ogilvie and W. R. Adams, Montreal, curator, March 24.

Re Phileas Guillet.—J. O'Cain, St. John's, curator, April 7.

Re Joseph E. Labrecque, undertaker, Quebec.—H. A. Bedard, Quebec, curator, April 7.

Re Josephine Paquette.—C. Desmarteau, Montreal, curator, April 8.

Re Joseph Pariseau.—Kent & Turcotte, Montreal, curator, April 6.

Re Benjamin M. Pettes.—John E. Fay, Knowlton, curator, March 26.

Re Alexander Waters, Tp. of Melbourne.—F. J. Penfold, Richmond, curator, April 1.

Dividends.

Re Cléophas Langhan.—At office of C. A. Parent, Quebec, curator, April 5.

Re Savage & Lyman, Montreal.—Final div. at office of J. M. M. Duff, curator, Montreal.

Separation as to Property.

Dame Caroline Trudeau vs. Joseph Dalpé dit Pariseau, trader, Belœil, April 3.

Cadastre Deposited.

St. Louis Ward, Montreal East, plan of sub-division comprising 152-1, 152-2, 152-3, 152 A 1, 152 A 2, 152 A 3 and 152 A 4.

GENERAL NOTES.

PUNISHMENT IN OLDEN TIME.—At the risk of wearying readers with a repetition of what has already been printed in the *Courant*, the following brief record is reprinted from this paper under the date of September 7, 1-61: Last week, David Campbell and Alexander Pettigrew, were indicted before the Superior Court, sitting in this town, for breaking open and robbing the house of Mr. Abiel Abbot, of Windsor, of Two Watches, to which Indictment they both plead guilty, and were sentenced each of them to receive 15 Stripes, to have their Right Ears cut off, and to be branded with a Capital Letter B on their Foreheads; which punishment was inflicted upon them last Friday. Pettigrew bled so much from the Amputation of his Ear that his Life was in Danger.—*Hartford Courant, March 9.*

A CURIOUS VERDICT.—Probably one of the most curious and remarkable cases on record of a verdict rendered by a jury and sustained by the Court against the evidence produced on the trial has just been disposed of by the Queen's Bench in England. It was a suit against an accident insurance company that refused to pay a policy on the ground that the person insured had killed himself. The latter was a commercial traveller who had met his death while a passenger on a Great Eastern train. Besides himself there were but two persons—a young girl and her brother—in the car in which he was travelling. They testified that between the two named stations he suddenly got up from his seat, arranged his papers, put his head out of the window, looked up and down the road, then opened the door and jumped out. When found he was insensible and soon after died. There was no other direct evidence. The two eyewitnesses who testified as above were not contradicted; they were not impeached. Nevertheless the jury found that the man had not deliberately jumped out of the car, and accordingly rendered a verdict against the company. This verdict might be explained on the theory that corporations are often mulcted by juries without regard to the weight of evidence. But the most curious aspect of the case is the view taken by the appeal judges who sustained the verdict. Justice Stephen believed that "there was a strong antecedent probability that the man would not commit suicide," while Justice Grove thought it "inexplicable that a person should kill himself in the manner and under the circumstances described by the two witnesses." Neither judge questioned the veracity of the witnesses, but both thought that "they must be mistaken in their observation." The theory of the Court was that the man had not jumped out of the car, but had accidentally fallen out, and on this ground the verdict was sustained.—*N. Y. Herald.*