The Legal News.

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WAREHOUSE RECEIPTS.

Two cases of considerable importance, bearing upon the law in relation to warehouse receipts, were decided at the sitting of the Court of Queen's Bench at Montreal, Jan. 29. In one, in which *Robertson et al.* were appellants and *Lajoie*, Assignee, was respondent, the action was brought by the respondent on warehouse receipts signed by the appellants in the following form :—

"Received from Ritchie, Gregg, Gillespie & Co., on storage, in yard Grey Nun street, the following merchandize, viz. :—

"(300) Three hundred tons No. 1 Clyde Pig Iron.

Storage free till opening of navigation.

"Deliverable only on the surrender of this receipt, properly endorsed.

"Montreal, 5th March, 1873.

"(Signed)

"Thomas Robertson & Co."

Robertson & Co. had sold a quantity of iron to Ritchie, Gregg, Gillespie & Co., and got notes for it. The iron, however, by the desire of Ritchie & Co., remained in the possession of the vendors, who gave receipts for it in the above form. These receipts were endorsed by Ritchie & Co. to Nelson Davis, who was at the time making large advances to Ritchie & Co. Davis subsequently made a demand on Robertson & Co. for the iron, but the latter, having become alarmed at the financial condition of Ritchie & Co., refused to deliver. Davis thereupon brought an action against Robertson & Co., praying that they be ordered to deliver over the iron to him, and in default to pay the value, $21,856. Davis having become insolvent, the suit was continued by his Assignee, Lajoie, the respondent.

The Court of first instance, after contestation, rendered judgment in accordance with the conclusions, ordering Robertson & Co. to deliver over the iron, or in default to pay the amount mentioned. It was from this decision that the appeal was brought by Robertson & Co. Their pretensions were substantially as follows :—

1st. That they had not been paid for the iron, and that, without payment, the sale was not complete.

2nd. That not being warehousemen by calling, the receipts given by them had no legal value as warehouse receipts, and the endorsement of them, so long as the iron was not paid for, conveyed no title.

3rd. That Davis was aware that Ritchie & Co. had not paid for the iron, and were unable to pay for it, and that the transaction between Davis and Ritchie & Co., was contrived with fraudulent intent. (This plea was unanimously held to be not proved.)

The judgment of the Court of Queen's Bench sitting in appeal, which was rendered by Ramsay, J., held:

1st. That the document recited above was a warehouse receipt, and not a mere delivery order.

2nd. That the parties signing such receipt, who were unpaid vendors of the iron, could not pretend, against a holder of such receipt in good faith, that it was not a warehouse receipt inasmuch as they were not warehousemen.

3rd. That such warehouse receipt might be transferred by endorsement as collateral security for a debt contracted at the time in good faith, the pledgee Davis having no notice that the pledgors were not authorized to pledge, the proof of such knowledge being on the parties signing the receipt.

4th. That an obligation contracted at the time may be made to cover future advances, but not past indebtedness.

Two of the Judges—Chief Justice Dorion and Mr. Justice Cross—differed from the majority, but the grounds of dissent did not imply that they took a different view of the law. They would have reversed the judgment inasmuch as the declaration averred that the warehouse receipts were transferred for advances, without setting forth that it was for advances *subsequent* to the transfer of the receipts. The majority of the Court concurred in the opinion that the declaration was defective in this respect, but held that the defect had been covered, the defendants not having demurred on this ground though the declaration had been specially demurred to, and having allowed the the plaintiff to prove the fact that advances to a much greater amount than the value of the iron mentioned in the receipts had been made by Davis to Ritchie & Co. subsequent to the transfer of the receipts to him. The appeal was therefore dismissed. As we understand

that the opinion of the Judicial Committee of the Privy Council will probably be obtained on the case, this statement of the points involved may suffice for the present.

The other case, in which *Hearle* was appellant and *Rhind* respondent, as the facts were found by the Court, presented less difficulty. The action was brought by Hearle on warehouse receipts purporting to be granted by the Moisic Iron Company. These receipts were signed in part by the president of the company, and in part by the secretary. The company had become insolvent, and Mr. Rhind, the assignee, pleaded that the Moisic Company were not by trade warehousemen, and that the president and secretary had no authority to grant such receipts. There was no evidence to establish such power on the part of the company's officers, or to show that the company was a warehousing company. The Court held unanimously that such receipts so signed did not bind the company, more particularly where there was no evidence of any connection between the pretended indebtedness (certain notes produced) and the warehouse receipts. The judgment of the Court below was therefore confirmed. The Court, taking this view, declined to express any opinion as to the effect of the limitation of the right to hold the pledge beyond six months, mentioned in Consol. Stat. Canada, chap. 54.

CONFLICTING DECISIONS.

Considerable embarrassment is often felt by members of the profession in determining the proper course to be followed in matters of procedure. That embarrassment is not lessened when, as sometimes happens, they find decisions by judges of the same Court, of equal authority, which are precisely opposite one to the other. An example of this appeared in our notes of cases last week, and as the point is presumably of some interest to those who are engaged in practice, it may be worth while to draw attention to it. In the case of *The Niagara District Mutual Fire Insurance Co.* v. *Macfarlane* (21 L. C. J. 224), it was held by Torrance, J., in September last, that the plaintiffs, an insurance company having their head office in St. Catharines, in the Province of Ontario, but having an office and doing business in Montreal, could be compelled to give security for costs. In January following, Dorion, J., having to decide the same point in *The Globe Mutual Insurance Co. of New York* v. *Sun Mutual Insurance Co.* (*ante*, p. 53), held that the company plaintiff could *not* be compelled to give security.

REPORTS.

SUPERIOR COURT.

Montreal, December 28, 1877.

DORION, J.

HOMIER v. BROSSEAU et al.

Sale of Debt—Guarantee.

Held, that the vendor of a *créance* with promise to *garantir, fournir et faire valoir* is surety for the solvency of his debtor only, and is not *obligé direct* for the payment of the debt transferred. And therefore the *cessionnaire* can exercise his recourse *en garantie* only after discussion of the property of the debtor and establishing his insolvency.

Archambault & Cie. for plaintiff.

Jetté & Cie., and *Lacoste & Cie.* for defendants.

SEMPLE v. MCAULEY.

Tender—Composition.

To an action on a note the defendant pleaded an agreement by plaintiff to accept a composition of twenty-five cents in the dollar, upon the amount of his claim, and alleged that he had tendered the amount; but he did not renew the tender by his plea, nor deposit the money in Court. *Held*, that the tender could not avail in defendant's favor as a payment, and the agreement to accept the composition rate being conditional on actual payment, the plaintiff was entitled to recover the full amount of the debt in consequence of defendant's default to pay the composition.

Macmaster & Co. for plaintiff.

A. & W. Robertson for defendant.

MACKAY, J.

BAYLIS v. CITY OF MONTREAL.

Assessment Roll.

The plaintiff had paid to the city certain sums of assessment exacted from him for the widening and opening of streets, the payment being made in accordance with an assessment roll prepared in the usual way, based on a reso-

lution of the City Council assessing the cost of the improvements on proprietors interested. He claimed to be reimbursed by the city the amount of these payments, alleging the nullity of the assessment roll, but without specifying particularly the grounds of nullity. *Held*, that he could not recover without getting the assessment roll set aside.

Barnard for plaintiff.

R. Roy, Q.C., for defendant.

WINDSOR HOTEL COMPANY v. LAFRAMBOISE.

Company—Subscription—Change of Name.

The company plaintiff brought action for unpaid calls on stock subscribed by the defendant. Plea, that defendant never subscribed for any stock in the Windsor Hotel Company, but in another company called the "Royal Hotel Company." He admitted his signature in a book produced at the trial, in which the name "Windsor" had been substituted for "Royal," and the capital had been changed from $600,000 to $500,000. *Held*, that, in default of proof by the plaintiffs that the alterations were made before the defendant signed the book, the action could not be maintained.

Abbott & Co. for plaintiff.

Kerr & Co. for defendant.

Montreal, Dec. 29, 1877.

TORRANCE, J.

LABELLE v. LES CLERCS DE ST. VIATEUR (JOLIETTE).

Corporation—Negligence.

Held, that a body incorporated for educational purposes is liable for the negligence of its members in the performance of their trust.

The plaintiff in her own name, as widow of the late Joseph Octave Boin *dit* Dufresne, and as tutrix to her two minor children, issue of her marriage with the said Boin *dit* Dufresne, claimed damages from the defendants. On the 24th June, 1872, the inhabitants of Joliette were celebrating the day of St. Jean Baptiste. A cannon of old fashioned construction, the history of which is not known, was discharged throughout the day in connection with the celebration on the grounds of the defendants. It was managed by two of their senior pupils, and after a twelfth or thirteenth discharge it burst, about six in the afternoon. A fragment of the cannon flew into the air and descended three or four arpents off on the land of the deceased, and struck him in the abdomen. He fell to the ground, was insensible, then recovered his consciousness for a few moments and expired. The action of damages was based upon the charge of negligence on the part of the defendants in allowing the cannon to be fired with this unhappy result. The defendants pleaded that they were incorporated for purposes of education, and could not be liable for the acts of imprudence or neglect of their members. They further pleaded that there was no negligence on their part; that the celebration was in the hands of the community; and that the death was by a *force majeure* for which they were not responsible.

TORRANCE, J. The first pretension of the defendants, that they could not be liable for the negligence of their members, being incorporated for the purposes of education, is easily disposed of. If, in the performance of their trust, as educators of the young, they or their members are guilty of negligence, they must answer for it. The facts show that the cannon was in their possession, discharged on their grounds by two of their oldest pupils, being a guarantee that the firing would be conducted with prudence. The director was from time to time looking on. I am quite ready, from the simple bursting of the cannon, to infer negligence, but it is, in addition, said that the cannon was loaded with turf for wadding, and the ramrod was a piece of iron which was used with some force or violence to drive home the charge of powder. The defendants have raised a question of contributory negligence in this, that deceased was participator in the celebration, and particularly in the discharging of the cannon. It is proved that in former years he had fired the cannon, and taken an active part in the celebration, and in the year of his death, when preparations were made for the fete, he was asked, among others, to contribute money towards the expenses, and among these expenses was the purchase of powder, used in loading the cannon. It is not proved that he was in any way connected with the discharge of the cannon on the 24th of June, 1872. He met with his death, not through any *force majeure* or inevitable accident, but, I am bound to believe and to say, through the negligent use of the ordnance in the hands of inexperienced boys. Finding negligence proved

against the defendants, it remains to me to assess the damages, and in view of the extreme youth of the minors, whose father was only 25 at the time of his death, I assess these damages at $600 for the widow and $600 for the infant children, in all, $1,200. No special damages are proved, but the deceased was engaged in commerce supporting his wife and household, and had the prospect of a long life before him, and his untimely end may well be regarded as a great blow and loss to his family.

Duhamel & Pagnuelo for plaintiff.

L. A. Jetté for defendants.

ANSELL v. SIMPSON.

Sale by Collector of Customs—Goods pledged for Customs Duties.

The plaintiff complained of the defendant in his quality of Collector of Customs at Montreal. The defendant was advertising for sale and proceeding to sell certain goods which he alleged had been transferred to defendant as security only. Plaintiff obtained an order from a judge on the 9th October last on which the sale was suspended. The defendant pleaded that the plaintiff being indebted to the Government in the sum of $3,900.85, transferred to defendant as security for such indebtedness the goods in question, and it was understood that plaintiff should have 60 days within which to pay his indebtedness, within which delay defendant agreed with plaintiff, with the permission of the Commissioner of Customs, that he should not sell or transfer said goods. That said goods were advertised for sale on the 10th of October, 1876, long after the expiration of said 60 days, after repeated notices to plaintiff, which defendant in his said capacity had a right to do.

TORRANCE, J. I do not think that the plaintiff has much to complain of. On the 23rd of June, 1876, he received a written notice from the defendant that if the duties payable by him to the Government were not paid on or before the 26th of June, the goods in question would be sold by public auction. The statute 31 Vic. c.6, sections 13 and 60, provides for the sale in this form of goods of importers for unpaid duties, and I am at a loss to see what ground there is for the complaint against the defendant.

Robidoux for plaintiff.

A. Robertson, Q. C., for defendant.

CALMEL v. CITY OF MONTREAL.

Assessment—By-law.

Held, that taxes paid under an existing by-law cannot be recovered until the by-law has been set aside.

The plaintiff, in May, 1876, instituted an action to recover from the city the sum of $500 alleged to have been unduly levied from him under a pretended by-law of the city imposing a tax of $500 upon butchers' stalls.

TORRANCE, J. The by-law has not been set aside or declared invalid, and clause 44, under which the tax of $500 has been imposed, seems to be plain enough in itself. It is true that a conviction made under the penalty clause has been quashed, but I am not prepared to say that the defendant has any action to recover until the by-law has been set aside, if such action could ever lie. It was admitted, I think, at the bar that such an action as the present would not lie in England. Under the circumstances, the plaintiff having paid his money under an existing by-law cannot recover.

W. H. Kerr, Q.C., for plaintiff.

R. Roy, Q. C., for defendant.

SUPERIOR COURT IN REVIEW.

Montreal, Nov. 30, 1877.

Present :—TORRANCE, DORION, and PAPINEAU, JJ.

THOMPSON v. MACKINNON.

Trade Mark—Sale of Business.

The defendant, Mackinnon, who had carried on for several years the trade of a biscuit maker, used a label, or trade-mark, consisting of the word, "Mackinnon's," under which was engraved a boar's head, holding a bone in his jaws. This label was used upon every box of biscuits manufactured by defendant, and the biscuits themselves were branded with the name "Mackinnon." The defendant having sold to the plaintiff his estate and effects, stock-in-trade, "with the good-will and all advantages "pertaining to the name and business of the "said John Mackinnon," *held*, that the sale passed the trade-mark.

DORION, J., cited Adams on Trade-marks, p. 103 : "Where a business is sold, the entire good-will and the right to use the trade-mark pass to the purchaser without any express mention being made of them in the deed of assignment, and the Court will restrain any subsequent

attempt on the part of the vendor to retain either for his own use." The judgment appealed from was, therefore, reversed, and the judgment of the Court of Review prohibited and restrained the defendant from using in future the trade-mark, and condemned him to pay $400 damages.

Judgment reversed.

Butler for plaintiff.
Abbott & Co. for defendant.

Present : — Justices JOHNSON, MACKAY, and RAINVILLE.

GAUTHIER v. BERGEVIN.

Election Expenses—When Statement Need not be filed.

Held, that the penalty enacted by Sect. 286 of the Quebec Act, 38 Vict., c. 7, for failure to deliver a statement of the expenses of the election, is not incurred where there has been no expenditure of money at the election.

Judgment confirmed.

Lareau & Lebeuf for plaintiff.
L. A. Jetté, Counsel.
Duranceau & Seers for defendant.

Montreal, Dec. 29th, 1877.

Present:—JOHNSON, MACKAY, and RAINVILLE, JJ.

ST. LOUIS v. SHAW; and E CONTRA.

Liability of Builders—Effects of Frost.

Held, that a builder is liable for damage occasioned to his work by frost, if he agreed to execute the work at a season when it was liable to injury from that cause.

The defendant, Shaw, complained of a judgment by which he had been condemned to pay a certain amount under a contract for the erection of a store on Craig street.

MACKAY, J., said the judgment must be reversed. The work done by plaintiff was injured by frost to such an extent that it was necessary to take down a wall and rebuild it. The plaintiff was bound to protect his works against frost, but did not do so, and they became valueless.

JOHNSON, J. The principle was this: A man undertook a voluntary contract with another, and the work was to be done at a season when he of all persons should have known best the difficulty of doing it. To build solid masonry in the extreme temperature of the winter was certainly a hazardous undertaking. But the plaintiff undertook to do the work, and must be held to all the accountability imposed by the law. The protest which he had put in subsequently was absurd, and could have no effect.

RAINVILLE, J., dissented.

Judgment reversed.

Loranger & Co. for plaintiffs.
Kerr & Co. for defendant.

WATSON v. GRANT.

Insolvency—Buying Goods on credit with intent to defraud.

Held, that in a judgment ordering the imprisonment of the defendant, under s. 136, Insolvent Act of 1875, it is not necessary to specify the particular offence for which defendant is imprisoned, though several separate acts were alleged.—(*See Caldwell and Macfarlane, ante p.* 4.)

The action was brought under the 136th section of the Insolvent Act of 1875, to recover from the defendant a large sum of money, and to have him imprisoned for fraud in having obtained credit while he knew himself to be insolvent.

JOHNSON, J. There were grounds of fact and also grounds of form urged by the defendant for invalidating the judgment of Mr. Justice Papineau, which condemned him to pay $851.83, and to six months' imprisonment, unless it was sooner paid. The grounds of fact relate to the knowledge which the defendant may have had of his insolvency. We all think the case is a bad one for the defendant, and we see nothing to mitigate it. It was mentioned that though the amendment of 1877 only required that the defendant should have probable cause for believing himself insolvent, the old law applicable to this case required a positive knowledge on his part. It does not seem to me that this amendment has very seriously altered the position of an insolvent debtor who gets credit; but it was mentioned only as affecting the grounds or reasons of the judgment; not the judgment itself; but in looking at the judgment itself we see that it imputes knowledge and belief under the old law which governs this case, and, therefore, the *motif* of the judgment is good. Then, as to the form, it was contended that as the declaration set up a great number of separate acts, and concluded generally, the

judgment should have specified which offence he was imprisoned for. That doctrine may do very well to apply to penalties, but no penalty is asked for here. The imprisonment is in the nature of a *contrainte par corps*—mitigated by the Insolvent Act to two years instead of enduring until payment of the debt. A case of *Caldwell* and *Macfarlane* was cited; but since the argument that case has been reversed in appeal. In looking at this section of the Act, and considering how to apply it, we must have strong and reasonable grounds for saying that this defendant knew or believed himself to be unable to meet his engagements, and concealed the fact from his creditor with intent to defraud him. He was asked whether he had endorsed accommodation paper. He positively denied it. He certainly must have known whether he had or had not; and if he had, as there is certain proof that he had, the denying it is surely a sufficient concealing from his creditor; and if the intent to defraud is not to be inferred from falsehood, it would be difficult to say when or how it can be held to exist. The unanimous opinion of the Court is to confirm the judgment, and it is confirmed accordingly.

Geoffrion & Co. for plaintiff.

Robertson & Co. for defendant.

SUPERIOR COURT.

DUNKIN, J.

Sweetsburg (Bedford Dstrict), January 18th, 1878.

Ex parte McWilliams, petitioner for *Habeas Corpus*.

Quebec License Act—District Magistrate—Jurisdiction—Amount of Penalty.

Held, 1. That a prosecution under the Quebec License Act may be brought in any district, if the offence has been committed on board of any steamboat or other vessel.

2. Such prosecution may be brought before a District Magistrate at places within his district, other than those where a Magistrate's Court has been established.

3. Under the Act of 1875 (*Que.*, 39 Vic., c. 6, ss. 20 & 21) the penalty for unlicensed retailing of spirituous liquors is $75.

The written opinion of the Judge (for a copy of which we are indebted to the courtesy of Mr. O. N. E. Boucher, N.P.) fully explains the points in issue.

DUNKIN, J. The petitioner rests his application on what may be stated as these three several grounds:—

1. That the commitment recites his alleged offence, viz., the "having, at a place called Knowlton's Landing, in the township of Potton, in the said district of Bedford, * * retailed and bartered and vended certain spirituous liquors, to wit, about three half-pints of gin in a bottle, on board of that certain steamboat called *Minnie*, on Lake Memphremagog, at the wharf on said lake at Knowlton's Landing aforesaid, * * without having previously obtained the license required by the statutes in such case made and provided, and contrary to the statutes in such case made and provided,"—as not having been committed in the district of Bedford, and therefore as not falling within the local jurisdiction of the District Magistrate for that district, by whom it is issued.

2. That it purports to be issued, and to rest, upon a conviction rendered here at Sweetsburgh,—where the District Magistrate (as the petitioner contends) could exercise no jurisdiction to that end.

3. That it recites the conviction as for a penalty of $75, being in excess (as he contends) of the amount limited by law.

As to the first of these grounds, it is enough to say that section 155 of the License Act (*Que.*, 34 Vic., c. 2) is express, that any prosecution under it may be "brought within any district whatever, if the offence has been committed on board of any steamboat or other vessel." It may perhaps admit of question whether the word "district" here means a revenue district under the interpretation clause (s. 196) of the Act, or a judicial district, as the immediate context of section 155 would rather import. But, for the point here pending, the distinction is practically immaterial. The intention of the law clearly was to bring the offence of sale on board of any vessel under jurisdiction anywhere. This commitment declares the offence here in question to have been committed at Knowlton's Landing in this district. It goes on to say it was committed on board a steamboat at a wharf there. I cannot here gratuitously assume that a steamboat at a wharf laid as in this District, was not in the District. And even if I could, I should yet have to hold,—whether I took the strictest letter, or simply the plain intention, of this section 155—that this prose-

cution was one that might be brought in this District, as it has been.

As his second ground of objection, the petitioner contends, that prosecutions of this class can be well brought before a District Magistrate, at those places only within his District where a Magistrate's Court has been established; cannot be well brought before him here, at Sweetsburgh.

Under the provincial Statutes on this subject, every District Magistrate has all the civil powers (or it might possibly be better to say, all the non-criminal powers) of any one or more Justices of the Peace, or any Judge of Sessions of the Peace. And not being limited as to these to any particular localities, "he may appoint in the different localities within the limits of his jurisdiction, as many clerks * * and as many constables as he may require." (*Que.* 32 Vic., c. 23, ss. 2 & 6.)

Under Dominion legislation, he has extensive criminal powers also; some, but not all, of which can only be exercised at the *chef-lieu* of his District.

Besides all this, he further holds what is distinctively called a "Magistrate's Court" in certain places, with a jurisdiction partly peculiar to itself, and partly not. As one matter of such jurisdiction, the District Magistrates' Act (*Que.* c. 23, s. 15, subs. 3) specified suits for penalties under the then laws regulative of Licenses in the Province. But this specification was not so made as to exclude any of the various jurisdictions then subsisting as to them. On the contrary, the License Amendment Act of the same year (*Que.* 32 Vic., c. 24, s. 4.) makes explicit provision with reference to such suits whenever "brought before any Judge of the Sessions of the Peace, Recorder or District Magistrate," or "before any two other Justices of the Peace." It is clear, therefore, that the Legislature then took for granted, that although jurisdiction was specially given to the Magistrate's Court, it attached also, (and equally) to the District Magistrate personally. This state of the law, it is true, has been amended since, as regards suits under what are now the License laws of the Province; but it has been so, in a sense that is even unfavourable to the pretension of the Petitioner. By section 152 of the License Act, (*Que.* 34 Vic., c. 2,) in default of other express provision for the special case, suits under that Act, if involving more than $100, are to be brought in the Circuit or Superior Court, and if for less, then "before two Justices of the Peace for the District, or a Judge of the Sessions of the Peace, or a Recorder or a Police Magistrate, or a District Magistrate, or (except in the Districts of Quebec and Montreal) before the Sheriff of the District." The Magistrate's Court jurisdiction (as contradistinguished from that of the District Magistrate personally) over this class of cases,—originally given by the Act of the year before,—is thus in effect cut off. And I fail to find any indication that it has since been again given.

His Magistrate's Court jurisdiction he can of course exercise only at the places fixed for his holding of that Court. An important part of his other or personal jurisdiction, he can only exercise at this place. I fail to see that there is any part of it that he can only exercise elsewhere than at this place.

There remains the third ground; that the commitment is bad, because the fine of $75 is excessive.

In 1870, by the License Act, (*Que.* 34 Vic., c. 2, s. 2,) the penalty for the retailing of liquor by or under sufferance of "any person," "in his house or premises, or in his boat, barge, craft, or other construction, floating or moored in any river, lake or stream, or in any house, shanty, hut, or other building, erected upon any frozen water, without the license required by this Act, or contrary to its true intent and meaning," was fixed (within the organized parts of the Province) at $50, and (beyond them) at $25. By section 6 of the same Act, the penalty, as against the "owner, master, or person in charge of a steamboat or vessel," for retail of liquor by him or under his sufferance, "on board such steamboat or vessel, without having previously obtained a license," was (somewhat unnecessarily—unless perhaps as regarded any such possible offence beyond the organized parts of the Province) fixed at $50. And under the head of "obligations and restrictions on persons licensed," it was further provided by the same Act, (s. 34) that "the owner, master, or person in charge of any steamboat or vessel," allowing the sale of liquor on board "during the time the same shall be laid up in winter," shall incur a penalty of $40, "notwithstanding

his having obtained a license under this Act," ("*bien qu'il ait eu une license sous l'autorité de cet Acte.*")

In 1874, by the then amending Act, (*Que.* 37 Vic., c. 3, s. 1) all the words relative to place of sale were struck out of section 2 of the Act of 1870; so that it has ever since stood, as simply imposing its penalties on the act done by any one anywhere, whether on land or water.

In February, 1875, by a further amending Act, (*Que.* 38 Vic., c. 5, s. 7) a sub-section was added to section 34 of the Act of 1870, to the effect that such owner, master, or person in charge, allowing sale of liquor "on board of such steamboat or vessel while it remains at any port or stopping place, wharf or other place of discharge," shall incur the penalty of $40,—as before provided by that section, with regard to the vessel at winter quarters; the English version closing with the words, "whether they have a license under this Act or not;" and the French version, with words closely following those of the older sub-section, as already quoted, "*bien qu'il ait eu une license sous l'autorité du présent Acte.*"

In December, 1875, by a still further amending Act (*Que.*, 39 Vic., c. 6, ss. 20 and 21), the penalties under section 2 of the Act of 1870 were raised—the one from $50 to $75, the other from $25 to $35; and the penalty under section 6 of the same Act was raised from $50 to $75.

The petitioner contends that the true reading of the subsection thus added in February, 1875, to section 34 of the Act of 1870, is that given by the English version, and that the subsection therefore operates an indirect repeal of section 6 (as so amended) in respect of the case of liquor sold on board a vessel while at a "port or stopping place, wharf or other place of discharge," limiting its operation, in fact, to the case of a vessel without license and at the moment of the sale actually under way.

I cannot take this view. My duty, where the two versions of an Act differ in sense, is to do my best to gather from them the true intent and meaning of the Legislature. In this instance, I am satisfied that such true intent and meaning are to be found in the language of the French version; and that the English, in so far as it varies from the French, must be held for a mere mistranslation. The French version alone fits in with the context of the Act as amended—as also with the history of the amendments of the Act, taken as a whole. The English version, so viewed, is a *non sens*—a reading the Legislature cannot have intended. Even had the French run with it, I must have seriously doubted as to their sufficiency, together, to control the concurrent sense of sections 2 and 6. As it is, I have no doubt. The $75 penalty, established by those sections as amended in December, 1875, is the penalty settled by law for this case.

The petitioner fails, therefore, to make out a case for the issue of the writ, and can take nothing by his petition.

S. W. Foster and *W. W. Lynch* for petitioner.
E. Racicot for the revenue officer.

CURRENT EVENTS

ENGLAND.

THE SUITS AGAINST THE JUDGES.—The *Times* announces the end of a persevering litigant. On Jan. 12, in the Supreme Court, when the case of *Cobbett* v. *Lopes*—one of the numerous actions brought by Cobbett against various Judges for supposed misconduct with regard to the claimant in the Tichborne case—was called, Mr. Muir Mackenzie, for the defendant, mentioned the fact that Mr. Cobbett, on his way to the Court that morning, had fallen down dead suddenly in the lobby of the House of Lords. The case was postponed.

The London *Telegraph* says of the deceased (a son of the historian):—"The name of this aged and eccentric gentleman, for many years past has been a kind of household word in Westminster Hall, owing to his persistency in bringing futile actions and pestering the Judges with trivial applications, and on Saturday he was making his way through the central lobby of the House of Parliament, toward one of the Lords' committee rooms, where he was bent on prosecuting an appeal before the Lords Justices in the phantom action of '*Cobbett* v. *Lopes*,' when he was seen to stagger and fall. Assistance was promptly rendered, but it was in vain. He had died on the scene which for many years had been his field of battle. In the Queen's Bench and the Common Pleas, in the Exchequer and the now defunct Bail Court, the contentious William Cobbett's more contentious son,

had, during more than a quarter of a century, waged fierce but fruitless war. He always conducted his own case—unless, indeed, Mrs. Cobbett was good enough to move the court for him—for bold would have been the barrister who consented to hold a brief for a plaintiff who habitually fought with shadows, and was accustomed to make his giants first before he tried to slay them. For some years Mr. Cobbett lay, mainly through his own choice, in the Queen's Bench Prison; and his delight was then to bring actions on all kinds of occult grounds, against the Governor and the Deputy-Governor. A writ of Habeas Corpus could in those days be obtained for the moderate sum of two pounds ten shillings; and it was rarely indeed that, in the course of a term, Mr. Cobbett did not indulge himself with one or two of these little legal luxuries, for the purpose of being brought up to Westminster, and moving for something against somebody. We always return to our first loves; and in the evening of his life the litigious patriarch reverted to his earliest passion for the Palladium of our liberties. The case of '*Cobbett* v. *Lopes*,' a record now withdrawn forever, was only one of a series of suits which this indefatigable plaintiff had brought against Her Majesty's Judges in connection with an attempt on his part to obtain the release of the 'unhappy nobleman,' lately 'languishing at Dartmoor,' but now seemingly getting on very nicely at Portland (the Tichborne claimant) on a writ of Habeas Corpus. Mr. Cobbett was very well known to the judicial bench—as well, indeed, as crazy Miss Flyte and the aggrieved 'Man from Shropshire' in 'Bleak House' must have been known to the Lord Chancellor. But poor Mr. Cobbett will tease the court no more, and the Great Hall of Pleas will lose one of its most constant visitors. Its analogue in the French Palais de Justice is called 'La Salle des Pas Perdus.' How many thousands of footsteps must not old Mr. Cobbett have utterly squandered and wasted in Westminster Hall!"

CODIFICATION OF THE CRIMINAL LAW.—The Speech from the Throne at the opening of Parliament, contains the following important paragraph:—

"Among other measures for the amendment of the law, a bill will be laid before you to simplify and express in one act the whole law and procedure relating to indictable offenses."

It has been rumored for some time that it was the intention of the Lord Chancellor to bring in a bill of this nature.

UNITED STATES.

COMMON CARRIER.—The Supreme Court in the case of *Pratt* v. *Grand Trunk R.R. Co.*, has had under consideration the question of what will amount to a delivery by an intermediate carrier to a succeeding carrier, sufficient to discharge the former from further responsibility. The opinion of the Court was delivered by Hunt, J., as follows:—

"The defendant is a corporation engaged, as a common carrier, in the transportation of persons and property. This action seeks to recover damages for a violation of its duty in respect to certain merchandise shipped from Liverpool to St. Louis, and carried over its road from Montreal to Detroit. The goods reached the city of Detroit on the 17th of October, 1865, and, on the night of the 18th of the same month, were destroyed by fire.

"The defendant claims to have made a complete delivery of the goods to the Michigan Central Railroad Company, a succeeding carrier, and thus to have discharged itself from the liability before the occurrence of the fire.

"If the liability of the succeeding carrier had attached, the liability of the defendant was discharged. *Ransom* v. *Holland*, 59 N. Y. 611; *O'Neil* v. *N. Y. C. R. R. Co.*, 60 id. 138.

"The question, therefore, is: Had the duty of the succeeding carrier commenced, when the goods were burned?

"The liability of a carrier commences when the goods are delivered to him, or his authorized agent, for transportation, and are accepted. *Rogers* v. *Wheeler*, 52 N. Y. 262; *Grovesnor* v. *N. Y. C. R. R. Co.*, 59 id. 34.

"If a common carrier agrees that property intended for transportation by him may be deposited at a particular place, without express notice to him, such deposit amounts to notice, and is a delivery. *Merriam* v. *Hartford R. R. Co.*, 24 Conn. 354; *Converse* v. *N. & N. Y. Tr. Co.*, 33 id. 166.

"The liability of the carrier is fixed by accepting the property to be transported, and the acceptance is complete whenever the pro-

perty thus comes into his possession with his assent. *Illinois R. R. Co.* v. *Smyser*, 38 Ill. 354.

"If the deposit of the goods is a mere accessory to the carriage,—that is, if they are deposited for the purpose of being carried, without further orders,—the responsibility of the carrier begins from the time they are received; but, when they are subject to the further order of the owner, the case is otherwise. *Ladere* v. *Griffith*, 25 N. Y. 364; *Blossom* v. *Griffin*, 13 id. 569; *Wade* v. *Wheeler*, 47 id. 658; *Michigan R. R.* v. *Shurtz*, 7 Mich. 515.

"The same proposition is stated in a different form, when it is said that the liability of a carrier is discharged by a delivery of the goods. If he is an intermediate carrier, this duty is performed by a delivery to the succeeding carrier for further transportation, and an acceptance by him. Authorities *supra*.

"The precise facts upon which the question here arises are as follows: At the time the fire occurred, the defendant had no freight room or depot at Detroit, except a single apartment in the freight depot of the Michigan Central Railroad Company. Said depot was a building several hundred feet in length, and some three or four hundred feet in width, and was all under one roof. It was divided into sections or apartments, without any partition wall between them. There was a railway track in the centre of the building, upon which cars were run into the building, to be loaded with freight. The only use which the defendant had of said section was for the deposit of all goods and property which came over its road, or were delivered for shipment over it. This section, in common with the rest of the building, was under the control and supervision of the Michigan Central Railroad Company, as hereinafter mentioned. The defendant employed in this section two men, who checked freight which came into it. All freight which came into the section was handled exclusively by the employés of the Michigan Central Railroad Company; for which, as well as for the use of said section, said defendant paid said company a fixed compensation per hundred-weight. Goods which came into the section from defendant's road, destined over the road of the Michigan Central Railroad Company, were, at the time of unloading from defendant's cars, deposited by said employés of the Michigan Central Railroad Company, in a certain place in said section from which they were loaded into the cars of said latter company, by said employés, when they were ready to receive them; and, after they were so placed, the defendant's employés did not further handle said goods. Whenever the agent of the Michigan Central Railroad Company would see any goods deposited in the section of said freight building set apart for the use of the defendant, destined over the line of said Central Railroad, he would call upon the agent of the defendant in said freight building, and, from a way-bill exhibited to him by said agent, he would take a list of said goods, and would then, also, for the first time, learn their ultimate place of destination, together with the amount of freight charges due thereon; that from the information thus obtained from said way-bill, in the hands of the defendant's agent, a way-bill would be made out by the Michigan Central Railroad Company, for the transportation of said goods over its line of railway, and not before.

"These goods were, on the 17th of October, 1865, taken from the cars, and deposited in the apartment of said building used as aforesaid by the defendant, in the place assigned as aforesaid for goods so destined.

"At the time the goods in question were forwarded from Montreal, in accordance with the usage in such cases, a way-bill was then made out in duplicate, on which was entered a list of said goods, the names of the consignees, the place to which the goods were consigned, and the amount of charges against them from Liverpool to Detroit. One of these way-bills was given to the conductor who had charge of the train containing the goods, and the other was forwarded to the agent of the defendant in Detroit. On arrival of the goods at Detroit, the conductor delivered his copy of said way-bill to the checking-clerk of defendant in said section, from which said clerk checked said goods from the cars into said section. It was the practice of the Michigan Central Railroad Company, before forwarding such goods, to take from said way-bill in the custody of said checking-clerk, in the manner aforesaid, the place of destination, and a list of said goods, and the amount of accumulated charges, and to collect

the same, together with its own charges, of the connecting carrier.

"We are all of the opinion that these acts constituted a complete delivery of the goods to the Michigan Central Company, by which the liability of the Grand Trunk Company was terminated.

"1. They were placed within the control of the agents of the Michigan Company.

"2. They were deposited by the one party, and received by the other, for transportation, the deposit being an accessory merely to such transportation.

"3. No further orders or directions from the Grand Trunk Company were expected by the receiving party. Except for the occurrence of the fire, the goods would have been loaded into the cars of the Michigan Central Company, and forwarded, without further action of the Grand Trunk Company.

"4. Under the arrangement between the parties, the presence of the goods in the precise locality agreed upon, and the marks upon them, "P. & F., St. Louis," were sufficient notice that they were there for transportation over the Michigan road, toward the city of St. Louis, and such was the understanding of both parties.

"The cases heretofore cited in 20th Conn. 354, and 33 id. 166, are strong authorities upon the point last stated.

"In the latter case, a railroad company and a steamboat company had a covered wharf in common, at their common terminus, used as a depot and a wharf, and it was the established usage for the steamboat company to land goods for the railroad, on the arrival of its boats in the night, upon a particular place in the depot, whence they were taken by the railroad company at its convenience, for further transportation, both companies having equal possession of the depot. There was no evidence of an actual agreement that the goods deposited were in the possession of the railroad company, and the goods in question had not been in the manual possession of the railroad company when they were destroyed by fire on the Sunday afternoon following their deposit on the previous night. It was held that there was a tacit understanding that the steamboat company should deposit their freight at that particular spot, and that the railroad should take it thence at their convenience. The delivery to the succeeding carrier was held to be complete, and a recovery against the first carrier for the loss of the goods was reversed.

"*Merriam* v. *Hartford R. R. Co.*, 20 Conn. 355, it was held, that, if a common carrier agree that property intended for transportation by him may be deposited at a particular place without express notice to him, such a deposit alone is a sufficient delivery; and that such an agreement may be shown by a constant practice and usage so to receive property without special notice.

"The plaintiff contends that the goods were not in the custody and under the control of the Michigan road, for the reason that the case states that they 'are in a section of the freight depot set apart for the use of the defendant.' This is not an accurate statement of the position. The expression quoted is used incidentally in stating that when the agent of the Michigan road saw 'goods deposited in the section of the freight building set apart for the use of the defendant, destined on the line of said Central Railroad, he would call upon the agent of defendant, and from a way-bill,' obtain a list of the goods and their destination. Just how and in what manner it was thus set apart appears from the facts already recited. It was a portion of the freight-house of the Michigan company, in which a precise spot was selected or set apart where the defendant might deposit goods brought on its road, and intended for transportation over the Michigan road, and which, by usage and practice and the expectation of the parties, were then under the control of the Michigan company, and to be loaded on to its cars, at its convenience, without further orders from the defendant.

"We are of the opinion that the ruling and direction of the circuit judge, that, upon the facts stated, the defendant was entitled to a verdict and judgment in its favor, was correct, and the judgment should be affirmed."

—Coroners usually enjoy sublime visions of their importance and powers; but sometimes they are baffled. James Higgins, a workman, fell into a blast furnace at South Stockton, Eng., a short time since, and his body was almost instantly consumed. A coroner was summoned, but no inquest took place, as there were no remains to view.

RECENT ENGLISH DECISIONS.

Master and Servant.—1. The defendant's servant, with his master's horse and waggon, was employed to take out beer for defendant to customers, and on his way home he called for empty casks, for which on delivery to his master he received a penny a piece. On March 5th, 1875, he took the horse and waggon, without his master's knowledge, and carried a child's coffin to a relative's house. On his way home he picked up a couple of empty casks, and subsequently negligently came in contact with the plaintiff's cab, and damaged it. On his arrival home, he received his usual fee for the empty casks.—*Held*, that he was not in the discharge of his ordinary duties, when the injury happened, and the master was not liable.—*Rayner* v. *Mitchell*, 2 C. P. D. 357.

2. The plaintiff was employed by a contractor engaged by the defendants to do certain work on their road, in a dark tunnel on a curve, where trains were passing at full speed without any signal every ten minutes, and the workmen could not know of the approach of the train until it was within thirty yards of them. There was just room enough between the rail and the wall for the men to get out of the way. No look-out was stationed, though it appeared that on a previous occasion, when repairs were going on, there had been one. Plaintiff had worked in this place a fortnight, and while reaching out across the track for a tool, he was struck and hurt by defendant's train. The jury found negligence, and awarded £300 damages. *Held*, on appeal (Mellish and Bagallay, L. JJ., dissenting), reversing the decision of the Court of Exchequer, that the plaintiff must be held to have been aware of the extraordinary risk he was running, and the defendants were not liable for injury resulting from his voluntary exposure. *Woodley* v. *The Metropolitan District Railway Co.*, 2 Ex. D. 384.

Negligence—1. The defendant, Cox, was the owner of premises on which he contracted with the other defendants to build a house. The outside of the house was finished, and the scaffolding which had been erected to protect the public on the sidewalk had been taken down. The servant of a sub-contractor employed to plaster the interior, moved a tool too near the edge of a plank before an open window, and the tool fell out and hurt the defendant passing under. The jury found that the scaffolding was properly removed, but found the defendant contractors negligent in not putting up some other protection, and found for the plaintiff. *Held*, that the defendants were not liable, the accident not being one which they could have foreseen. *Semble* that, if anybody, the sub-contractor was liable.—*Pearsons* v. *Cox et al.*, 2 C. P. D. 369.

2. The plaintiff, a waterman looking for work, saw a barge belonging to defendant being unlawfully navigated on the Thames, by one man alone, and remonstrated with the man in charge of it, hoping thereby to be employed to assist. The latter referred him to defendant's foreman, and plaintiff went to defendant's wharf about the matter. While there, a bale of goods fell upon him through the negligence of defendant's servants, and injured him. *Held*, that the plaintiff could maintain an action for injuries.—*White* v. *France*, 2 C. P. D. 308.

Practice.—In an indictment for publishing an obscene book, the title only was set forth. The jury found the book obscene, and the defendants moved to quash the indictment or to arrest judgment, on the ground that the exact words relied on, that is, the whole book, should have been set forth. Motion refused, with an intimation that the point being a doubtful one, might, however, well be taken in error.—*The Queen* v. *Bradlaugh and Besant*, 2 Q. B. D. 569.

GENERAL NOTES.

THE NEW LEGAL SYSTEM IN IRELAND.—The High Court of Justice sat for the first time in Dublin on the 11th January. The name "Four Courts" disappears now, and it is believed the new arrangements will cause a good deal of business to be done in the country which was formerly transacted in Dublin. Under the altered plans the present puisne common law judges will receive £3,800 a year, instead of £3,725 and £3,688, but their successors will have only £3,500. The Lord Chief Justice will receive £5,074, and the Chief Justice of the Common Pleas and the Chief Baron each £4,612, but the future Lord Chief Justice will receive only £5,000, and the other two chiefs £4,600. When the scheme is in full operation the salaries of the eighteen paid judges will be £72,000 a year.