The Legal News.

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THE SUGGESTED LAW REFORMS.

Since our last issue went to press we have received a copy of the "Rapport du Comité nommé " pour suggérer les mesures à adopter pour rendre " plus efficace l'administration de la justice dans " les Cours Supérieure et de Circuit dans et pour " le District de Montréal." The Committee were Messrs. S. Bethune, Q. C., R. Laflamme, Q. C., and S. Pagnuelo, Q. C. The report contains some valuable suggestions, and as it is desirable that it should be placed on record we print it below. It is to be hoped that the subject of law taxes will not be suffered to drop until some relaxation of the present heavy impositions is obtained. With regard to the Court of Appeal, the censure of the Committee seems to be somewhat premature. Sufficient time should be allowed to give the new system a fair trial before resorting to fresh measures to accelerate the progress of business. The wisdom of the suggestion with reference to the Court of Review is more than doubtful. It is proposed to add two new judges to a Bench already formidable in numbers. The expedient of taking a third judge from the rural districts is decidedly clumsy, and resembles too much the patch-work from which the bar have already suffered so grievously. Such a system would not only diminish the prestige of the tribunal but prove a serious hindrance to the continuous sittings of the Court. Then, if it be proposed to overcome this difficulty by appointing three new judges, we would have exactly the state of things so strongly condemned the other day by the first legal authorities of England. We would have three judges sitting in Review in one room, and four judges sitting in Appeal on the other side of the passage, and the latter overruling the judgments of the former. (See *ante*, p. 347.) If the political exigencies which control judicial appointments should happen to make the Review Court the stronger Court, very sad would be the state of affairs. Now, it is obvious that if three new judges were added to the Appeal Court, the Court might sit in two divisions at the same time, one at Montreal and the other at Quebec, and the difficulty caused by the increase of business would be effectually overcome. We do not say that such a change is necessary at present, but it will be necessary sooner or later, and we believe it would be infinitely better than a double appeal in the Province with a further appeal to Ottawa. The disbursements of the Court of Appeal should be reduced, and the attorneys' fees regulated more in accordance with the amount involved. We append the report:—

Le comité nommé à l'assemblée du barreau de Montréal, le trois Décembre courant, pour étudier les questions concernant l'administration de la justice qui demandent une réforme immédiate, a l'honneur de faire rapport:

Qu'il a tenu trois séances où, après discussion, l'on est tombé d'accord sur les suggestions suivantes que l'on considère propres à remédier aux griefs dont on se plaint d'avantage.

Quelques unes des réformes proposées peuvent être obtenues, comme on le verra, par l'initiative soit des juges ou du gouvernement sans l'intervention de la législature ; les autres demandent une législation nouvelle ; votre comité espère que les suggestions qu'il fait recevront, de la part de ceux qui sont le plus spécialement chargés de veiller à la bonne administration de la justice, toute l'attention et les égards que demande un sujet aussi important.

Juges Etrangers.

Le barreau de Montréal et le public ont de grandes obligations à plusieurs juges qui résident en dehors de cette ville, pour l'aide qu'ils ont donné depuis plusieurs années aux juges de ce district, et nous désirons leur en exprimer publiquement notre reconnaissance.

Il serait à désirer, dans l'intérêt de l'administration de la justice, que tous les juges résidassent dans les grands centres, d'où ils iraient à tour de rôle tenir les cours dans les districts ruraux.

La nomination d'un septième juge de la Cour Supérieure à Montréal, et les changements que nous suggérons dans le but d'abréger les enquêtes et de mettre fin aux longs délibérés, rendront peu nécessaire, à l'avenir, l'aide des juges étrangers. Lorsqu'il sera nécessaire d'y avoir recours nous espérons que l'hon. juge en chef consultera les juges de Montréal et notre bâtonnier afin d'éviter de demander des juges qui n'ont pas la confiance du barreau de ce district, ceux

surtout dont la présence à Montréal a soulevé des plaintes générales. Au cas où l'on n'aurait point d'égard à cette recommandation, il sera du devoir de notre bâtonnier de convoquer sans délai une nouvelle assemblée du barreau.

Nous croyons devoir signaler au gouvernement fédéral les inconvénients de nommer à la charge de juges de la Cour Supérieure, des hommes qui n'ont point les connaissances ou l'expérience nécessaires pour assurer à leurs décisions la confiance et le respect que requiert la justice, sous le prétexte qu'on leur assigne des districts où les affaires sont presque nulles. Ils devraient être en état de siéger devant toutes les cours de la province, où leurs services sont souvent requis ; de fait, ces juges siégent fréquemment dans les autres districts, obtiennent quelquefois un changement de territoire, et seront toujours un obstacle à la réunion de tous les juges dans les grands centres.

COUR DE RÉVISION.

Les frais énormes et les délais des appels à la Cour du Banc de la Reine rendent nécessaire le maintien de la Cour de Révision qui fournit d'une manière prompte et peu coûteuse, le, moyen de faire réviser la décision des premiers juges. Néanmoins, pour obvier à l'objection qui est souvent faite que les juges de première instance se consultent mutuellement sur les causes qui leurs sont soumises, ainsi qu'ils l'admetent eux-mêmes très fréquemment en rendant leurs jugements, ce qui les rend incompétents à siéger en révision sur des jugements qu'ils ont plus ou moins contribué à faire prononcer, ou du moins sur lesquels ils ont déjà exprimé une opinion, nous croyons devoir suggérer que deux juges résidant, l'un à Québec, l'autre à Montréal, devraient s'occuper exclusivement des causes portées en révision et former la Cour de Révision pour la province avec un troisième juge des districts ruraux qu'ils s'adjoindraient de temps à autre. Cette cour siégerait presqu'en permanence à Montréal et à Québec, soit quatre jours par semaine, suivant les besoins du service et jusqu'à épuisement du rôle.

COUR D'APPEL.

Nous regrettons que la nomination d'un sixième juge à la Cour d'Appel n'ait pas eu tout l'effet qu'on en attendait; le rôle est aussi chargé à Montréal qu'auparavant, et il faut encore attendre plus d'un an pour plaider une cause après qu'elle est inscrite. La nouvelle proclamation du Lieut. Gouverneur en Conseil qui nous accorde cinq termes au lieu de quatre est insuffisante. La Cour d'Appel devrait siéger à Montréal presqu'en permanence, soit quatre jours par semaine à l'exception des quatre termes ordinaires à Québec, et la Cour Criminelle ne devrait jamais être un empêchement aux séances de la Cour d'Appel. On pourrait facilement faire présider la Cour Criminelle par un juge de la Cour Supérieure, et nous suggérons qu'il en soit ainsi aussi longtemps que le rôle en appel ne sera pas épuisé. Pour parvenir à faire siéger la Cour d'appel en permanence, comme nous le demandons, nous croyons que la chose devrait être réglée par un ordre en conseil du Lieut. Gouverneur.

CODE DE PROCÉDURE.

Nous avons appris avec satisfaction que le gouvernement provincial avait mis à l'étude le code de procédure et la réorganisation des tribunaux de première instance. Mais nous croyons devoir signaler que cette œuvre difficile exige beaucoup d'étude, une grande connaissance des besoins du pays et surtout beaucoup de discussion. Ce résultat ne peut être obtenu que par la création d'une commission de quatre à cinq personnes y compris les secrétaires, qui devraient en outre soumettre son travail aux juges et aux différents barreaux de la province qui se réuniraient ensemble à cet effet à Québec et à Montréal.

FRAIS DE JUSTICE.

L'impôt sur les procédés judiciaires, plus particulièrement dans ce district, est injuste, exorbitant, et odieux, et grandement préjudiciable aux intérêts de la profession. Il est prélevé sur un nombre de personnes comparativement limité ; il pèse principalement sur la classe la plus malheureuse en infligeant au débiteur incapable de satisfaire ses créanciers une dette additionnelle qu'il lui faut payer à l'Etat.

L'accès aux tribunaux doit être libre, la justice comme la liberté individuelle ne pouvant être un objet de commerce ; la matière d'un contrat ne doit pas être imposable. Les tribunaux n'existent pas dans l'intérêt des plaideurs seulement, mais pour la protection de la société en général. Ceux qui ne sont pas dans la nécessité d'y recourir ne leur doivent pas moins la sécurité dont ils jouissent dans leur personne et leur propriété, et sont également tenus de contribuer à leur maintien. La préservation de

l'ordre et la répression de l'injustice dépend de l'existence et de l'efficacité des tribunaux. La règle établie dans une contestation entre deux plaideurs sur toute question de droit devient une garantie pour tous ceux qui sont dans le même cas. De toutes les charges d'une communauté civilisée, aucune n'exige une réparation plus universelle, plus équitable et plus en rapport avec les moyens des contribuables, et ce, proportionnellement à la propriété et à la richesse de chaque individu. Le système actuel met la plus forte partie de ce fardeau sur le plaideur malheureux.

Dans tous les pays où la nécessité des gouvernements commande la recherche de sources de revenus on a cru ne devoir exiger qu'une taxe légère, correspondant à peu près à celle prélevée sur les contrats généralement et comme contribution pour le salaire des officiers. Ici on en fait une taxe spéciale exorbitante, hors de toute proportion avec les impôts ordinaires.

Sous prétexte de prélever un impôt pour la construction du Palais de justice à Montréal, à une époque où le district comprenait un territoire aujourd'hui subdivisé en neuf districts indépendants, on avait d'abord imposé une taxe comparativement légère. On l'a depuis augmentée et multipliée, et notre district réduit aux présentes proportions a payé cinq fois et au delà cette construction. Après avoir fourni les frais de construction pour les cours dans les nouveaux districts, le gouvernement leur a imposé une taxe moindre que celle exigée des contribuables de Montréal, de sorte que le plaideur dans notre district contribue encore plus que celui d'aucune partie de la province après avoir payé tous les frais des constructions requises pour l'administration de la justice chez lui.

Ce système est en outre très préjudiciable aux intérêts de la profession en faisant de chaque avocat un percepteur de droits, un agent du fisc. Il ne peut suivre les intérêts de son client sans, à chaque étape de la procédure, avoir à lui signifier la nécessité de faire des avances de fonds en dehors de toute proportion avec ses honoraires tarifés. En ajoutant les frais de sténographie requis par notre système d'enquête et mérite, le seul aujourd'hui praticable et qui n'est nécessaire que pour faciliter le travail des juges qui devraient strictement prendre notes du témoignage, on peut affirmer qu'en moyenne l'avocat, pour obtenir son maigre honoraire de $60, dans une cause première classe contestée soit qu'il représente le demandeur ou le défendeur, doit percevoir pour le fisc une somme au moins égale et le plus souvent excédant de beaucoup ses honoraires.

En Cour de Circuit les déboursés sont de $4 à $12, environ, suivant la classe d'action.

En Cour Supérieure, ils sont de $25 à $35 en outre des frais d'enquête qui, avec le système de la sténographie tel que suivi actuellement, sont d'environ $50 par cause, formant un total de $75 à $85. A cela il faut ajouter la taxe sur les dépôts 2 p.c., et les taxes sur les ventes judiciaires, 4½ p.c.

Sur la vente d'un immeuble de $2,000 cela forme :

Déboursés du demandeur en Cour Supérieure.....	$50
Saisie, annonces et vente par le shérif.....	60
Taxes, 4½ p.c, sur $2,000..	90
Déboursés sur la collocation	25
	$225
Outre environ..... que le défendeur a payé au fisc pour se défendre.....	35
Total	$260 ou 13 p.c.

sans parler d'honoraires d'avocats.

En Cour d'Appel, les déboursés sont d'au moins $73 et souvent davantage ; en Cour Suprême, ils n'atteignent que $22 à $23.

Toute requête en Cour de Circuit, coûte 50 cents ; en Cour Supérieure, $1 ; en Cour d'Appel, $2 ; en Cour Suprême, dix cents.

Le système suivi en France et dans la province d'Ontario, d'accorder aux officiers de justice un traitement fixe, peu élevé, avec de légers honoraires d'office, est de beaucoup préférable à celui de faire supporter par les plaideurs tous les frais de ces officiers ; nous protestons surtout contre l'imposition de taxes sur les procédés judiciaires dans le but de payer le coût des bâtisses destinées aux Cours de Justice, l'indemnité des jurés, et même d'augmenter les revenus du gouvernement.

Quant aux sténographes, ils devraient être des officiers de la justice, payés par le protonotaire dont la fonction est de prendre des notes du témoignage, lorsque le juge ne le fait pas lui-même, ou par le gouvernement ; les plaideurs ne devraient payer qu'un honoraire fixe, peu élevé, pour chaque déposition quelqu'en soit la longueur.

Les notes du sténographe devraient être déposées au greffe, et transcrites seulement lorsqu'il y a révision ou appel. Le juge rendrait son jugement sur ses notes, et s'il a besoin de référer aux notes des sténographes, il pourrait le mander et lui faire lire la partie de la déposition dont il a besoin.

Pour la transcription, lorsqu'elle a lieu, il ne devrait être exigé, dans aucun cas, plus de dix centins par cent mots.

Quelques unes des recommandations qui précèdent exigent une législation nouvelle, d'autres, l'action du gouvernement ou des juges de la Cour Supérieure. Celles qui suivent peuvent être adoptées de suite par les juges de la Cour Supérieure, si elles rencontrent leur approbation.

[The suggestions which follow the Report are those which were published in our last issue.]

TREATMENT OF PRISONERS ON TRIAL.

The trial judge in the Guiteau case has been blamed in some quarters for not resorting to sharp measures in order to restrain the torrent of vituperative eloquence flowing from the prisoner. Even if it were proper to gag a person undergoing his trial, it is clear that such a course would have been bad policy in this case, because the prisoner's sole defence has been effectually rebutted by his own showing, and the jury can have little difficulty now in estimating the plea of insanity at its proper value. But an article which we copy elsewhere, from the *Irish Law Times*, shows how irregular would be any interference with the prisoner's freedom of utterance while on trial for his life. It appears that English judges have refused to allow an unruly prisoner even to be manacled while undergoing his trial. Some of the cases referred to probably go too far. Take the case of a powerful ruffian—a bushranger—who knows that his life has been forfeited half a dozen times over, by the most brutal crimes, and who has at last been apprehended by the police after a bloody struggle. Is he to be allowed a chance to commit fresh crimes in an effort to escape prompted by the removal of all impediments? A man may be restrained from violence to others without sensibly diminishing his personal ease or interfering with his liberty of defence. See also, in connection with this subject, 2 Legal News, p. 337.

NEW BOOKS.

DRINKS, DRINKERS, AND DRINKING; or the Law and History of Intoxicating Liquors. By R. Vashon Rogers, Jr., of Osgoode Hall. Albany, Weed, Parsons & Co.

This book, though published in the United States, is from the pen of a Canadian barrister, Mr. Rogers, of Kingston, Ont. We have already had occasion to notice one of Mr. Rogers' works —The Law of Hotel Life—(2 Legal News, p. 353), and we then indicated that we were favorably impressed by the ability with which the author, though treating a legal topic in an unusual vein, handled his subject. This impression has been in no respect weakened, but rather confirmed by an examination of the present production. Though "Drinks, Drinkers and Drinking" may suggest broad comedy, Mr. Rogers is more serious than usual in his essay upon the law as involved with the use of intoxicating beverages. But to compensate for this, he has given us some chapters which express in the purest English the result of considerable research into a not uninteresting branch of law. The historical chapter will well reward the reader. The lawyer who needs some light reading at Christmas time cannot do better than send to Albany for a copy of this work. We could easily find some good passages for quotation, but we do not like to spoil the feast.

THE RIGHT TO MANACLE PRISONERS.

The question of the right to manacle prisoners, which arose before the commission of Oyer and Terminer on Wednesday last, is one that has not frequently been the occasion of controversy in modern times. It may, however, occur at various stages of the prisoner's custody, —at the time of his arrest, of his committal to jail, and of his appearing at the bar; and a few words upon the law applicable to each of those contingencies may here be useful.

In the first place, as regards the arrest, we consider that ordinarily, and not merely when the apprehension takes place on mere suspicion (as laid down by Mr. Levinge, Justice of the Peace), an unconvicted prisoner ought not to be manacled, unless there is reasonable ground to fear an attempt at escape or rescue; and if without reasonable grounds the prisoner is manacled, the constable would seem to be

liable to an action for assault. *Wright* v. *Court*, 4 B. & C. 596; *Griffin* v. *Coleman*, 4 H. & N. 265; *Smith* v. *Brears and Beach*, 1 Ir. L. T. 611; 2 Hale P.C. 219. Neither, in the dubious interval between the commitment and trial, should the prisoner be loaded with needless fetters: Fleta, Lib. c. 26; Mirror, c. 5, § 1, n. 54; 4 Bl. Com. 300; 1 Rol. 807, 1; 2 Inst. 381; 1 Hale P.C. 601; 2 Hawk. c. 22, § 32; and if the jailer shall imprison a man so straightly by putting him in stocks, or putting more irons upon him than is needful, an action will lie against the jailer: Fitzh. Nat. Brev. 93; Dalton, c. 170, § 13; 1 Ed. III., st. 1, c. 7; 14 Ed. III, st. 1, c. 10; 17 St. Fr. 453.

Lastly, as to the trial at bar, we apprehend that the prisoner ought not to be handcuffed. This question arose in 1867, when the prisoners charged with the Fenian outrage at Manchester were brought in fetters before the police court, when their counsel, Mr. Ernest Jones, having failed in his peremptory demand for the removal of the manacles, went so far as to throw up his brief (See 1 Ir. L.T. 603.) But, in our opinion, such a demand could not be insisted upon as of right. That the prisoner ought to be unshackled we doubt not; the custom is so; but it is a matter lying within the discretion of the court. In *State* v. *Kring*, 1 Mo. 439, affirmed 64 id. 591, indeed, where the prisoner, having on a former trial assaulted a by-stander, was brought into court the second time ironed upon his wrists, and the court refused to order the removal of the irons, Bakewell, J., said: "It was no sufficient reason for compelling the prisoner to stand his trial for his life with gyves upon his wrists and his hands bound together. Officers of the court could have been placed around him if he was considered dangerous to by-standers, or he might have been placed in an enclosed space within the bar of the court, as was the English custom. Any proper precaution against escape, or to guard against danger or violence from a prisoner, may be taken during the trial. These may be such as will not deprive his counsel of free communication with him, and will not tend to inflict physical torture upon the prisoner, or to deprive him of the freest use of his limbs, and of all his faculties in that moment of extreme jeopardy. But it is certainly not permitted to fetter his hands, and if he is brought into court in irons he is entitled to have them removed whilst actually on trial; and it is error in the court to refuse to order the prisoner to be unbound." But in a later case, *Faire* v. *State*, 1 Southern L J. 348, we find it distinctly held that the right to manacle prisoners during their trial exists, and should be left to the discretion of the court. There the prisoner, who had been convicted of murder, appealed by reason of the court below having ordered his feet to be shackled at his trial. He had threatened that if he were found guilty he would never come out of the court house alive, but that he would escape, or that the officers would have to shoot him; and the sheriff, knowing his character, was persuaded that he would attempt to carry out his threat; on hearing which the judge ordered the sheriff to take any necessary precautions to prevent any attempted escape, but not to place the irons on his hands, nor to allow the jury to see what was done. His counsel asked to have the prisoner's feet unshackled. The court replied that the irons had been placed on the prisoner in consequence of representations made by the sheriff, and proposed to have him sworn as to the cause; but to this course counsel objected; and the shackles were not removed. The Supreme Court refused to reverse the conviction, holding that while it ought to require an extreme case to justify the placing of shackles or manacles upon a prisoner when undergoing trial, yet whether it is necessary or not should be left to the discretion of the trial court, and cannot be reviewed on appeal. An extreme case, certainly, was that which came before the Commission of Oyer and Terminer; yet we wholly approve of the humane determination of Baron Dowse. Peter Dillon, it will be recollected, was indicted for assaulting James Kelly. After a most violent scene, Dillon actually attempted, in the dock, to strike the governor of the jail, whereupon the learned judge ordered that handcuffs should be placed on the prisoner. This was accomplished after violent resistance, the prisoner kicking and striking about him; and then it was resolved to lash him by the hands to the bar of the dock. He then fell on the floor, and appeared as if working in a fit. "Remove him to the cells," said the learned Baron, "I will not try him in his present condition at all. Remove him; take the handcuffs off him; let

him be taken back to the prison from whence he came; and let the prison officer report to me in the morning his condition. It is impossible that he should be tried in his present violent condition. It is not a proper thing for the ends of justice to carry on the solemn form of a trial in the presence of a man in that state. That man appears to me to be out of his mind." The accused was then with difficulty removed, wrestling with the police and wardens as he disappeared, and uttering deep groans. Mr. Sheehan, Grangegorman Prison, stated that when he was stationed at Spike Island, the prisoner was a convict there, and he was very violent. He believed that the fit which the prisoner appeared to have was mere acting. "But," said Baron Dowse, "it would be indecorous in a court of justice to carry on the trial of a man in that condition. I for one will never sanction, as a judge, the trial of a prisoner at the bar of a court of justice while he is in irons—never." See 3 Inst. 34; 1 East P.C. c. 16, § 17; Leach, 36; 3 Burr. 1812; 4 St. Tr. 1303; 13 id. 221; Brit. c. 5.—*Irish Law Times.*

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 29, 1881.

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

SENECAL v. LA COMPAGNIE D'IMPRIMERIE DE QUEBEC.

Declinatory exception—Amendment of declaration—Changing nature of action.

Where an action is brought in the district of Montreal for libel in another district, and the defendant excepts to the jurisdiction, the plaintiff will not be allowed to amend by alleging publication in the district of Montreal.

The plaintiff petitioned for leave to appeal from a judgment of the Superior Court, Montreal, Jetté, J., refusing him permission to amend his declaration.

The judgment of the Superior Court, which follows, will serve to explain the nature of the action, and the amendment desired:—

"Considérant que par son action en cette cause, le demandeur réclame de la défenderesse, propriétaire du journal "*l'Electeur* publiée à Québec, une somme de $100,000 de dommages qu'il allègue lui avoir été causés par la publication d'écrits injurieux à son égard;

"Considérant que la défenderesse a décliné la jurisdiction de ce tribunal, attendu, 1o. que ce n'est pas celui de son domicile; 2o. qu'elle n'a pas été assignée dans les limites de ce district: et 3o. que la cause d'action n'a pas et ne paraît pas avoir pris naissance dans ce dit district;

"Considérant que les parties ont ensuite inscrit leur cause pour audition sur le mérite de la dite exception déclinatoire, mais qu'au jour fixé pour telle audition le demandeur, après en avoir donné avis à la défenderesse, a demandé par motion qu'il lui soit permis d'amender sa déclaration de manière à alléguer que les écrits reprochés ont été publiés et mis en circulation dans le district de Montréal, de manière à donner par là jurisdiction à cette cour sur la dite demande, et que l'inscription pour audition sur l'exception déclinatoire a été ensuite rayée du rôle du consentement des parties, en sorte que la dite motion est maintenant seule soumise à l'appréciation du tribunal;

"Considérant en droit que la compétence des tribunaux est rigoureusement déterminée par la loi, et qu'aucune cour ne peut de sa propre autorité étendre sa jurisdiction;

"Considérant que cette règle est absolue et sans modification possible lorsque la matière même du litige échappe à l'autorité du tribunal, et que si elle peut être modifiée dans le cas où l'incompétence n'est que relative à la personne, cette modification ne peut résulter que du consentement de la partie elle-même;

"Considérant que dans l'espèce la demande telle que formulée n'indique aucunement que le tribunal ait jurisdiction pour en connaître;

"Considérant que bien que l'incompétence dénoncée soit ici personnelle à la partie défenderesse, cette partie, loin d'accepter la jurisdiction de cette cour, la décline, et par son exception demande son renvoi devant le tribunal compétent;

"Considérant qu'en l'absence d'une telle exception de jurisdiction par la défenderesse, la cour ne peut passer outre et s'attribuer une jurisdiction qui ne lui a pas été donnée;

"Considérant que la motion faite par le demandeur demandant la permission d'amender sa déclaration aurait pour effet d'attribuer à ce tribunal, malgré le refus de la défenderesse d'y consentir, la jurisdiction qu'elle ne possède pas maintenant;

"Considérant en outre que du moment que la jurisdiction est contestée, le tribunal ne peut passer outre à prendre connaissance d'aucune demande incidente ou autre, tant que la compétence n'est pas certaine ;

"Renvoie la motion du demandeur avec dépens."

RAMSAY, J. The action sets up a libel at Quebec, and now the plaintiff seeks to turn it into an action for publishing in the district of Montreal. In other words he seeks to bring a totally new action. I think the Court was right in refusing leave to amend.

Petition rejected.

Archambault & David, for plaintiff.

Mercier, Beausoleil & Martineau, for defendant.

SUPERIOR COURT.

MONTREAL, Dec. 10, 1881.

Before MACKAY, J.

ROSS *et al. es qual.* v. GUILBAULT.

Liquidators—Canada Agricultural Insurance Company 41 *Vic. c.* 38. *(Can.)—Quality to make calls.*

The liquidators to the Canada Agricultural Insurance Company are duly qualified under 41 *Vic. c.* 38 *(Can.) to make calls.*

This action was brought by the plaintiffs as assignees of the Canada Agricultural Insurance Company for $200, being the amount of four calls of 10 per cent each upon certain shares of the company held by defendant. The first two calls were made by the directors of the company prior to its liquidation: the latter calls were made by the plaintiffs, *es qualité*, as liquidators of the company's affairs.

The defendant pleaded, principally, that the plaintiffs had no quality to make the calls, and that the special Act (41 Vic., c. 38. Can.), by which the company was placed in liquidation, only gave to the plaintiffs the powers of official or interim assignees, and that a meeting of creditors was necessary to confirm the appointment to entitle them to act as liquidators. It was further pleaded that the Acts incorporating the company as well as the Act putting it into liquidation were *ultra vires, quoad* the Dominion Parliament; that the company had commenced business before having the amount of stock required by its charter paid up, and that the directors of the company were guilty of extravagance and illegal acts.

PER CURIAM. By the preamble itself of the Act 41 Vic., c. 38, it appears that the plaintiffs were appointed liquidators by the creditors themselves, and that this appointment was confirmed, and a third (Geo H. Dumesnil) added by Parliament, and inasmuch as, had a meeting of creditors been called they would have had no power to replace the plaintiffs; and as by the general tenor of the Act it appears to have been the intention to give the plaintiffs full powers of liquidation, their quality is established, and the calls were legally made by them. As to the other pleas, there is nothing in them which the defendant, as shareholder of the company, could urge against the payment by him of his liability on the stock, and the judgment must go for plaintiffs for debt, interest and costs.

Church, Hall & Atwater, for plaintiffs.

T. Bertrand, for defendant.

Ritchie, Q. C., Counsel.

SUPERIOR COURT.

MONTREAL, Sept. 30, 1881.

Before PAPINEAU, J.

BINKS v. THE RECTOR AND CHURCH WARDENS OF THE PARISH OF TRINITY, and THE TRUST & LOAN CO. OF CANADA, opposants.

Immoveable by destination—Organ in Church.

An organ placed in a church used for public worship becomes an immoveable by destination under 375, 379 *C.C.*

The organ in Trinity Church, Montreal, having been seized, the opposants filed an opposition *à fin d'annuler*, on the ground that the organ was an immoveable by destination, and had already been seized with the Church by the opposants under a judgment obtained by them.

PAPINEAU, J., maintained the opposition.

Judah & Branchaud, for opposants.

L. H. Davidson, for plaintiff contesting.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

GAUVREAU v. ROY.

Resiliation of lease—Urgent and necessary repairs—Reduction of rent.

This action was for the resiliation of a lease made between plaintiff and defendant. The declaration alleged that while the plaintiff was

in possession of the premises the defendant rendered them uninhabitable by making repairs, which caused damage to plaintiff. The latter asked for the resiliation of the lease and to be compensated for the damages occasioned to him.

The plea was that the repairs were urgent and necessary, that the defendant had done all that was possible to prevent loss or injury to the plaintiff, and had endeavored to finish the repairs in the shortest possible time, and he further alleged, that the plaintiff had consented to the repairs being made while he was in the house.

The COURT on the authority of the following decisions dismissed the action:

Morison v. *Langevin*, A.D. 1870; tenant on a five years' lease quit abruptly because repairs were going on. The landlord succeeded. *Dufresne* v. *Hubert*, A.D. 1871; repairs not needlessly delayed, the tenant owing to less enjoyment got a reduction of rent allowed. The tenant in this case took no false position. *Langevin* v. *Senécal*, A.D. 1869, and *Wiseman* v. *Coultry*, A.D. 1874, where diminution of rent was claimed by tenants and they succeeded.

The judgment is as follows:

"The Court, etc.

"Considering plaintiff's right to resiliation "not seen, no other action than for diminution "of rent in any, the most favorable view for said "plaintiff, doth, maintaining the *plaidoyer* first "pleaded by defendant more particularly, dis- "miss the present action with costs."

Longpré & David for plaintiff.

Barnard, Beauchamp & Creighton for defendant.

SIR GEORGE BRAMWELL.

It is announced that Sir George Bramwell, late of the Court of Appeal, is to be raised to the Peerage. Sir George, who, in 1856, succeeded Baron Parke (Lord Wensleydale), says the London *Times*, has been upon the Bench twenty-five years, a longer period than any judge in our times except Baron Parke himself, who sat upon the Bench twenty-eight years. Sir Alexander Cockburn, the late Lord Chief Justice, was the only judge who had been raised to the Bench as long ago—he having been appointed in the same year—but he died and left Sir George still upon the Bench. The late Lord Chief Baron, Sir Fitzroy Kelly, though many years older than Sir George (who had been in early life his pupil), was far younger as a judge, having been appointed in 1866, when Erle and Pollock retired. The natural effect of such a long tenure of judicial office as that of Sir George Bramwell is, as regards not only the Bar, but the Bench, to invest a judge with very great authority. All the other judges, the oldest of whom have only been eight or nine years on the Bench (except Lord Justice Lush, who has been thirteen or fourteen) had practised before him for years, and consequently could not help looking up to him with the deference due to known experience and the long exercise of judicial authority. The career of Sir George Bramwell was, indeed, in every way remarkable. The mere dates suffice to show that his abilities must have been great and his progress rapid; for, as he was called to the Bar in 1838, he had been only forty-three years in the profession when he retired, and of these years he had been twenty-five on the Bench. He must soon have acquired a solid reputation, for thirty years ago, when he had only been twelve years at the Bar, he was appointed on the Common Law Commission, and six years afterward he was raised to the Bench, curiously enough just ten years before his old tutor Kelly, with whom, however, he afterward sat some years on the Bench. His career, therefore, covers a considerable period in legal history and one extremely eventful and important. He was very popular with the Bar. This was probably because he was so thoroughly natural. There was nothing stiff or formal in his manner on the Bench. He was the same man on the Bench as off—shrewd, natural and good humoured. There was nothing soft or honeyed in his tone; on the contrary, his way of speaking was rather sharp, short and incisive, and his style was always terse and almost curt, but never unkind, and always fresh, racy and original and full of novel illustrations and striking analogies. An entertainment was lately given him on the occasion of his retirement from the Bench.

GENERAL NOTES.

Edgar Dewdney, Esq., Commissioner of Indian Affairs in the Northwest Territories, has been appointed Lieutenant-Governor in and over the Northwest Territories.

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