The Legal News.

Vol. X. NOVEMBER 5, 1887. No. 45.

The Supreme Court of the United States has decided against the Chicago anarchists, and it is to be hoped that this pestilent brood will now be removed, without further delay, from opportunity for mischief. The *Albany Law Journal* comments on the case as follows:—"A perusal of the opinion of the Illinois Supreme Court in the anarchists' case ought to convince any lawyer that the defendants had a fair trial, as free from error as possible in judicial proceedings, and that they are all guilty, and richly deserve extirpation. A more depraved set of scoundrels never infested the earth, and society will be safer for their permanent absence. 'Throttle the law or the law will throttle you,' said one of them in his incendiary speeches. So it will, if there is any justice under the heavens, and any backbone in society. 'Ruhe'—peace—was the preconcerted word published in their newspaper as the signal for the uprising. Society will get no peace until it makes a few examples of these socialistic firebrands, haters of mankind, spoilers of property, defiers of God and judgment. We recommend to every lawyer to read Judge Magruder's opinion. A more masterly and convincing one was never uttered. It should always stand as a monument to his intellectual powers. It is marked also by perfect calmness and impartiality, stating the *pros* and *cons* of the voluminous and sometimes conflicting evidence with admirable clearness and absence of bias. The evidence against all the prisoners but two is direct and overwhelming, and as to those two it is sufficient to justify the finding of the jury. The prisoners are all of German birth or descent but two, who are respectively English and American. The indictment was for an executed conspiracy to murder Policeman Degan. The bomb which killed him destroyed six other policemen and wounded sixty more. The evidence showed that Spies, Schwab, Parsons, Engel and Fielden, by numerous speeches and writings of the most bloodthirsty description, counselled the workingmen to arm for a conflict with the police and militia, and that they (excepting Engel and Fischer) were engaged in handling bombs and experimenting with dynamite. That Engel and Fischer organized a conspiracy to throw bombs into the police stations and shoot down the escaping policemen, as a preliminary to a general attack on capitalists and property. That Spies continually incited the attack through the columns of his newspaper, the *Arbeiter Zeitung*, with the co-operation of Schwab, an editorial writer for his newspaper, and that the two composed and published bloodthirsty circulars, and announced the time for striking by publishing in the newspaper the agreed signal 'Ruhe' on the evening in question. The Fielden, the Englishman, delivered an incendiary speech in the Haymarket, the scene of the conflict, on the evening in question, and fired several shots at the police. That Parsons, the American, played a similar part as to speech-making on the evening in question. That Lingg manufactured bombs of peculiar form and materials, like that which did the work, and distributed them among the socialists on the evening of the murder. That Spies not only made an incendiary speech on that occasion, but actually handed the bomb to Schnaubelt and lighted it, after which Schnaubelt threw it. (This last evidence was strongly controverted, as was also that of Fielden's shooting, but there was amply enough to justify the finding of direct action as to both.) That Neebe was a socialist, stockholder in the newspaper, and next to Spies and Schwab, the most active in its management; active in preparing for the movements counselled, presiding at meetings where the use of dynamite against the police was urged, distributing incendiary circulars on the night before the attack in question, his house full of arms and a red flag in it. The whole case shows that the socialists had been armed, drilled and instructed in the manufacture and use of dynamite-bombs for many months, and that a preconcerted attack on the police was fixed for about May 1, 1886. On Monday, May 3rd, the police broke up a strike riot

and killed one of the strikers, and this precipitated the attack in question on the next evening, in obedience to the publication of the signal 'Ruhe.' The evidence also showed that some of the policemen were wounded by pistol shots. The evidence against Parsons and Neebe is only somewhat less direct as to active participancy on the night of the murder; that they counselled such an attack, Parsons on the scene, and Neebe at other times and places, there can be no sort of question. In deference to the doubt about Neebe his punishment is fixed at imprisonment for fifteen years." Our contemporary urges that the report of the case should be read, and "then the community will wake up to a realization of what a volcano they have been sleeping on; what a viper this free and hospitable land has taken to its hearth. But we are prepared for the usual chorus of sentimental priests and whining women begging for pardon or mercy for a band of lawless Thugs who would despise them for their softness and cut their throats for their money. The might of Law for Dynamite! say we."

Experimental evidence was curiously illustrated in the case of *Osborne* v. *City of Detroit*, U. S. Circuit Court, E. D. Michigan, Oct. 25, 1886, (32 Fed. Rep. 36) The action was for injuries occasioned by a defective sidewalk, where the plaintiff claimed to be paralyzed by the fall. It was held not error to permit her medical attendant, who had not been sworn, to demonstrate her loss of feeling to the jury by thrusting a pin into the side plaintiff claimed to be paralyzed. The Court said: "Objection was made to this upon the ground that the doctor was not sworn as to the instrument he was using, nor was the plaintiff sworn to behave naturally while she was being experimented upon. It is argued that both the doctor and plaintiff might have wholly deceived the court and jury without laying themselves open to a charge of perjury, and that plaintiff was not even asked to swear whether the instrument hurt her when it was used on the left side, or did not hurt her when used on the right side; in short, that there was no sworn testimony or evidence in the whole performance, and no practical way of detecting any trickery which might have been practised. We know, however, of no oath which could be administered to the doctor or the witness touching this exhibition. So far as we are aware, the law recognizes no oaths to be administered upon the witness stand except the ordinary oath to tell the truth, or to interpret correctly from one language to another. The pin by which the experiment was performed was exhibited to the jury. There was nothing which tended to show trickery on the part of the doctor in failing to insert the pin as he was requested to do, nor was there any cross-examination attempted from the witness upon this point. Counsel were certainly at liberty to examine the pin and to ascertain whether in fact it was inserted in the flesh, and having failed to exercise this privilege, it is now too late to raise the objection that the exhibition was incompetent. It is certainly competent for the plaintiff to appear before the jury, and if she had lost an arm or a leg by reason of the accident, they could hardly fail to notice it. By parity of reasoning, it would seem that she was at liberty to exhibit her wounds if she chose to do so, as is frequently the case where an ankle has been sprained or broken, a wrist fractured, or any maiming has occurred. I know of no objection to her showing the extent of the paralysis which had supervened by reason of the accident, and evidence that her right side was insensible to pain certainly tended to show this paralyzed condition. In criminal cases it has been doubted whether the defendant could be compelled to make profert of his person, and thus, as it were, make evidence against himself. The authorities upon this subject are collated in 15 Cent. Law J. 2, and are not unequally divided, but we know of no civil case where the injured person has not been permitted to exhibit his wounds to the jury. In *Schroeder* v. *Railroad Co.*, 47 Iowa, 375, it was held not only that the plaintiff would be permitted, in actions for personal injuries, to exhibit his wounds or injuries to the jury, but that he might be required by the court, upon proper application therefor by the defendant, to submit his

person to an examination for the purpose of ascertaining the extent of such injuries, and upon refusal might be treated as in contempt. See also *Mulhado* v. *Railroad Co.*, 30 N. Y. 370."

Lord Fitzgerald, in the House of Lords, Sept. 14, in commending the claim of the widow and children of Head-Constable Whelehan, murdered in the discharge of his duty, to the favorable attention of the Government, remarked that as far back as the time of Alfred, if an individual lost his life in an endeavour to capture a criminal, the judge who tried the case had power to award compensation to bereaved relatives; and it was paid by the sheriff and recouped by the Treasury.

COUR SUPÉRIEURE.

SAGUENAY, 1886.

Coram ROUTHIER, J.

BURY v. LESLIE et al., et STOCKWELL, Adjudicataire, et FORSYTH, requérant en nullité de décret.

Signification entre procureurs.

JUGÉ:—*Que la signification de procédures entre procureurs, faite avant neuf heures du matin, est irrégulière.*

L'adjudicataire plaida à la requête en nullité de décret, par exception à la forme, que telle requête ne lui avait jamais été signifiée.

Le requérant, par motion, demanda le rejet de l'exception à la forme, vu qu'elle avait été signifiée avant neuf heures du matin.

Motion accordée et exception à la forme rejetée avec dépens.

Charles Angers, proc. du requérant.

J. S. Perrault, proc. de l'adjudicataire.

[C.A.]

Coram ROUTHIER, J.

MÊME CAUSE.

Rapport d'huissier—Requête pour s'inscrire en faux.

Dans son rapport de signification, l'huissier exploitant déclarait avoir signifié la requête en nullité de décret à l'adjudicataire, bien qu'il n'eût jamais fait telle signification.

L'adjudicataire voyant son exception à la forme rejetée pour les raisons ci-dessus, demanda par requête, permission de s'inscrire en faux contre l'exploit.

Requête en faux renvoyée avec dépens, parce que l'adjudicataire ayant comparu, ne se trouvait plus dans les délais pour invoquer l'irrégularité de l'assignation, son exception à la forme ayant été déboutée.

Charles Angers, proc. du requérant en nullité de décret.

J. S. Perrault, proc. du requérant en faux.

[C.A.]

MÊME CAUSE.

SAGUENAY, 17 octobre 1887.

Coram ROUTHIER, J.

Requête en nullité de décret—Assignation des parties absentes.

JUGÉ:—*Que l'assignation d'un absent sur une requête en nullité de décret, peut être faite par la voie des journaux en la manière ordinaire.*

Quelques-unes des parties intéressées en la présente cause, étant domiciliées en Europe, l'adjudicataire avait fait motion qu'il ne fût pas tenu de plaider au mérite avant que telles parties eussent été assignées. Sursis fut accordé jusqu'à assignation régulière et légale.

Sur motion en la forme ordinaire, avis fut donné par les journaux de comparaître sous deux mois.

Ce délai passé, demande fut faite des plaidoyers au mérite, et forclusion prise contre les parties en défaut, et spécialement contre l'adjudicataire.

Le 17 octobre 1887, ce dernier demanda le rejet de la forclusion, prétendant que la requête en nullité de décret devait être signifiée même aux absents, personnellement ou à domicile. Art. 715, Code de procédure.

Motion renvoyée avec dépens et assignation par les journaux déclarée valable.

Charles Angers, proc. du requérant en nullité de décret.

J. S. Perrault, proc. de l'adjudicataire.

[Appel doit être interjeté de cette décision.]

[C.A.]

SUPERIOR COURT.

SHERBROOKE, District of St. Francis.

Coram GILL, J.

LORD v. OLIVER.

Lien de droit — Contract for maintenance— Breach.

HELD, 1. *That if A, in consideration of a gift "inter vivos," made to him by B, of all the movable and immovable property of the latter, bind and oblige himself to maintain and support B in his own house, till B's death, and to pay for all necessary medical attendance, which might be rendered to B, and to pay B's funeral expenses; he will be bound, on B's leaving his house, to provide for her support and maintenance elsewhere, if B's departure from his house was justified by the treatment she had received there; and that if C in such circumstances, gives B board and lodging, and provides for B nursing and attendance, rendered necessary by her illness; and further, pays for necessary medical services rendered B, and for B's funeral expenses; he may recover from A the fair value of such board, lodging and attendance, as well as the amount paid out by him for the medical services rendered B, and for B's funeral expenses; although no contract have been previously entered into between A and C, with regard to such board, lodging, &c.*

2. *That if A, on being called upon by C, to pay him for the board and lodging so provided B, and the expenses so incurred on B's behalf, say that he is ready to do "what is right" with regard to the support of B by C; this will constitute an admission on the part of A, that he is indebted to C in such amount as is justly due the latter for his support of B, and for the expenses he has incurred on her behalf.*

3. *That A and C having made a submission to arbitrators of the matters in dispute between them, such submission, though informal, should nevertheless, under the circumstances, be taken as a further admission of A's indebtedness to C.*

4. *That by reason of these various admissions, all that remained to be done, was to establish the amount of A's indebtedness to C.*

The written judgment of the Court gives a sufficient *résumé* of the pleadings, and of the facts of the case:—

"The Court.... considering that the plaintiff alleges in his declaration, that the defendant was bound by a certain deed of donation *inter vivos* dated on the eighth day of November, 1881, before J. Fraser, Notary, made in his favour by Mark Bean, defendant's father-in-law, and by Mehitable F. Ford, the second wife of the said Mark Bean, and at the time living with him, of certain movable and immovable property, to maintain and provide for all the wants of the said Mehitable F. Lord, by keeping her in his own family; but that by ill-treatment and abuse, both by acts and by words, from the said defendant and his family, the said Mehitable F. Lord was actually driven out from and forced to leave defendant's house, and obliged to apply elsewhere for her support; that she at first provided for her own living by working, but that she afterwards fell sick, and took refuge at the plaintiff's, her brother, who took care of her and provided for all that she required, chiefly during her last illness, which lasted from October, 1884, to June, 1885, when she died, and the plaintiff now asks that the defendant be condemned to pay him $335.50 for the support of the said Mehitable F. Lord, and extra nursing and care during her sickness, as having paid the physician who attended her, and for all her burial expenses; plaintiff further alleging that two arbitrators having been appointed by the said parties to determine the amount plaintiff was entitled to, for said support, care and expenses, that the said arbitrators decided that the defendant should pay to plaintiff the above stated amount of $335.50.

"To which action and demand, the defendant pleaded the want of *lien de droit* between him and plaintiff, and that he was bound to maintain and support the said Mehitable F. Lord, only in his own house and family, which he had never refused to do, and never sent her away, nor ill-treated or abused her, and that she left of her own accord and free will, and that being of an irascible mood, she was herself the only cause of any dissatisfaction she may have met with during her stay with defendant's family; that the pretended arbitration was informal and fraudulent, and of

no legal effect whatever; that he never agreed to be bound by it, nor accepted it, but admits his liability to pay the doctor's bill, when properly called upon to do so, and the funeral expenses, for which he confesses judgment to the amount of $30.00 and costs of that amount uncontested.

"Considering that it is proved that the said Mehitable F. Lord did not agree with the defendant or his family, and that it was hardly possible, not to say impossible, for her to live in defendant's house and with him; and considering that the defendant has admitted his liability towards paying for the maintenance and support of the said Mehitable F. Lord, out of his own house, under the circumstances the parties were in, firstly by stating that he was ready to do what was right or fair concerning said support; and, secondly, by consenting to the arbitration referred to in plaintiff's declaration, for although the paper-writing signed by plaintiff and defendant, referring the matter to arbitration, did not constitute a formal deed of submission made out according to the Code of Civil Procedure, in all its requirements, so that the defendant should be held bound by the decision of the arbitrators, still it is an acknowledgement on the part of the defendant of indebtedness toward the plaintiff, the amount alone remaining to be determined.

"Considering there is abundant proof of the facts alleged, as to the support of the said Mehitable F. Lord by the plaintiff, her sickness and her extra nursing, and the care she required, the physician's attendance secured by the plaintiff, and the funeral expenses paid by him, arbitrating the amount to be paid by the defendant for the whole, taking into consideration all the circumstances of the case as gathered from the evidence, and the condition of life of the parties, doth condemn the defendant to pay the plaintiff the sum of $140.00 currency," &c.

Judgment for plaintiff.

J. L. Terrill, Q. C., for plaintiff.

Hall, White & Cate, for defendant.

(D. C. R.)

COUR D'APPEL DE DOUAI (AUDIENCE SOLENNELLE). 12 mai 1887.

Présidence de M. MAZEAUD, premier président.

PERSYN-GARS v. PERSYN.

Désistement—Interdiction—Ordre public.

L'action en interdiction, touchant à l'ordre public, doit suivre son cours normal, et ne saurait être arrêtée par le désistement du demandeur.

A la date du 14 janvier 1887, le Tribunal civil de Dunkerque avait rendu le jugement suivant :

" Attendu que de l'interrogatoire et des documents de la cause, il ne résulte pas que le sieur Charles Persyn soit en état d'imbécillité, de démence et de fureur; qu'il en ressort même que généralement il raisonne juste, et que, s'il présente une faiblesse d'esprit naturelle qui le gêne parfois pour établir certains comptes, il n'est ni démontré ni même allégué qu'elle ait entraîné de sa part des prodigalités, ou même eu pour lui des conséquences qui puissent y être assimilées; que, dès lors, il n'y a lieu d'accéder ni à la demande d'interdiction, ni pour le Tribunal de pourvoir d'office Charles Persyn d'un conseil judiciaire ;

" Par ces motifs,

" Déclare Persyn-Gars mal fondé dans ses demandes, fins et conclusions, l'en déboute; le condamne aux dépens."

Le sieur Persyn-Gars interjeta appel de ce jugement, puis il se désista de son appel, en offrant de payer les frais suivant droit; sur refus de l'intimé, la cour de Douai trancha l'incident par l'arrêt suivant:

La Cour,

Attendu que la nature de l'affaire légitime le décrètement du désistement de Persyn-Gars, que c'est donc avec raison que Persyn a refusé d'accepter purement et simplement ce désistement; que l'offre de Persyn-Gars est donc insuffisante;

Par ces motifs,

Décrète le désistement signifié par le sieur Persyn-Gars par acte d'avoué à avoué en date du 5 mai 1887, enregistré à Douai le 6 du même mois:

Donne acte au sieur Persyn des offres par lui faites;

Les déclare insuffisantes;

Condamne l'appelant aux dépens.

NOTE.—V. Poitiers 5 août 1831 (S. 32.2.205); Douai 8 décembre 1858 (Jurispr. de Douai, 1859, p. 42); Lyon 14 juillet 1853 (S. 53.2.618); Nancy 15 juin 1865 (S. 66.2.151); Cass. 14 juin 1842 (S. 42.1.742); Demolombe, Minorité, t. II, No. 474; Aubry et Rau, t. I, § 124, texte et note 9; Chauveau sur Carré, supp., questions 3013 *quater*, et 3031 *bis*; Laurent, t. V, No. 248.—*Gaz. Pal.*

TRIBUNAL CIVIL D'ESPALION.

26 septembre 1886.

Présidence de M. DEVIC.

M. GAUZIT, notaire, v. CAYRON-JUÉRY.

Notaire—Déboursés et honoraires—Action solidaire contre les cosignataires d'un acte—Intervention d'une femme dotale.

Le notaire qui reçoit un acte est seul juge de l'opportunité de la présence ou de l'intervention de l'une des parties dans l'acte.

S'il accepte comme partie dans l'acte une femme mariée sous le régime dotal, qui pouvait être représentée par son mari, il n'a point contre elle pour le recouvrement de ses frais et honoraires l'action solidaire qui est généralement reconnue au profit du notaire contre chacun des cosignataires d'un même acte.

LE TRIBUNAL,

Attendu que les parties de M. Cambournac, et Jeanne Bézamat, mère de François Cayron, ont fait opposition au commandement à elles signifié à la requête de Gauzit pour avoir paiement des déboursés et honoraires qu'il prétend lui être dus par les susnommés à propos de deux actes passés par lui les 1 mai et 15 juin 1881, pour régler sinon l'ordre au moins la situation des créanciers de François Cayron et Jeanne Bézamat;

En ce qui touche cette dernière:

Attendu qu'elle est décédée; que son décès a été dénoncé, que Gauzit déclare ne point vouloir suivre contre elle; qu'il y a donc lieu de lui donner acte de sa déclaration et d'examiner l'opposition formée par les autres parties;

En ce qui touche Jeanne Juéry, femme Cayron:

Attendu qu'elle n'avait rien à faire dans les actes passés par Gauzit et que dans tous les cas l'on ne voit pas quel intérêt elle y aurait; qu'en effet on n'y liquide point ses reprises, l'on ne lui en garantit point le recouvrement; que le notaire se borne à mentionner qu'elle se propose de faire restreindre son hypothèque légale que pour cela il a déjà réuni les parents indiqués par la loi, et lui a fait en tant que de besoin donner main-levée de son hypothèque légale; qu'en fait l'acquéreur des biens dont le notaire voulait distribuer le prix a été obligé de purger; et que, par suite, l'intervention de la femme, inutile d'ailleurs, puisqu'elle ne pouvait donner main-levée de son hypothèque, étant mariée sous le régime dotal, n'a servi de rien;

Attendu d'autre part que, aux termes de l'acte d'échange passé entre les opposants d'une part et Goutal, père et fils, d'autre part, les frais à faire pour purger les hypothèques dont les biens seraient grevés étaient à la charge de ceux dont elles proviennent, et que Antoinette Juéry en donnant main levée pouvait penser s'engager à payer les frais d'un ordre consensuel que se proposait de faire le notaire; et que, par suite, Gauzit qui sans doute s'est trompé de bonne boi aurait dû faire connaître à Antoinette Juéry sa situation, et ne saurait profiter de son erreur.

En ce qui touche François Cayron:

Attendu qu'il faut bien reconnaître que les actes dont Gauzit réclame le coût n'ont point obtenu le résultat que recherchaient soit le sieur Cayron, soit le notaire; qu'en effet, l'ordre dans lequel doivent être attaqués les créanciers n'est point déterminé; que leurs créances y sont liquidées, mais provisoirement, et que ces actes n'auraient d'autre utilité que de faire accepter par les créanciers le prix de la vente ou plutôt le montant de la soulte stipulée au profit des parties de Me Cambournac; que, par suite, la demande de Gauzit est exagérée et qu'il y a lieu de la réduire;

Attendu que les dépens suivent le sort du principal et doivent être distribués dans le sens de la présente décision;

Par ces motifs,

Donne acte à Me Gauzit de ce qu'il renonce à toute action contre Jeanne Bézamat;

Et faisant droit à l'opposition, etc.

NOTE.—Sans nier l'action solidaire généralement accordée au notaire contre chacune

des parties qui figurent dans un acte pour le recouvrement de ses déboursés et honoraires, le jugement ci-dessus décide en principe que le notaire doit s'établir juge de l'opportunité de l'intervention ou de la présence de l'une des parties, et qu'au cas où la nécessité de cette intervention n'apparaît point clairement, le notaire est dépourvu de toute action contre cette partie.

Dans l'espèce, le Tribunal ajoute que le notaire a à s'imputer de ne pas avoir prévenu la femme de l'inutilité de son intervention à l'acte et de l'obligation qu'elle contractait solidairement avec les autres parties de payer les frais de l'acte; ce dernier motif nous paraît manquer en fait rien n'indiquant dans le jugement que le notaire a négligé d'éclairer la femme soit sur l'inopportunité de son intervention, soit sur les conséquences de cette intervention.

Reste la question de savoir s'il était loisible au notaire de refuser son ministère soit à la femme, soit aux autres parties qui exigeaient la présence de la femme sous le prétexte qu'il jugeait, lui, cette présence inutile. Ce serait, ce nous semble, pousser bien loin les conséquences du principe admis en doctrine et en jurisprudence, qu'il incombe au notaire d'éclairer les parties ignorantes et illettrées qui viennent requérir acte de leurs conventions. Les conventions insérées dans l'acte retenu par Me Gauzit entre la femme Cayron et les autres parties ne paraissent présenter aucun des caractères de dol, de fraude ou d'immoralité qui, en certaines circonstances, peuvent autoriser le notaire à refuser son ministère.

Sur le principe de l'action solidaire du notaire contre chacune des parties qui ont figuré dans l'acte, solidarité basée sur l'art. 2002, C. civ., V. notamment: Cass. civ. 9 avril 1850 (D.50.1.124;—Journ. des not., art. 14047); Toulouse, 23 avril, 1847 (Jour. des not., art. 13183); Riom 18 décembre 1838 (*ibid.*, art. 10387); Paris 28 aout 1836 (*ibid.*, art. 9467; Cass. 10 novembre 1828 (*ibid.*, art. 6744).—*Gaz. Pal.*

THE IRISH PROSECUTIONS.

Lord Bramwell, who is noted for his outspoken utterances on the questions of the day, castigates Mr. Mundy pretty severely. Some points of interest are involved. His lordship says:—

Mr. Mundy tells you that he is an American lawyer, and that he writes as a lawyer. I should not say so.

He says, 'I am an American lawyer who has'—he means 'have'—'been travelling through Ireland to see what there was of the Irish question.' To see what there was of it? He says *he* suggested the defect in the *law* pointed out to the magistrate in the Lord Mayor's case. Now, there was no defect in the law. If there was any defect, it was in the proof, as M. Mundy proceeds to show. He says, 'As I said, *non constat* it was a Sunday-school meeting.' He means *non constat* it was *not* a Sunday-school meeting. He says the way to prove to the contrary would be by somebody who was present. He proceeds, 'There is a point, however, in the case at bar (the Lord Mayor's case) upon which I am afraid in the case proposed the judge will reverse the judgment.' Mr. Mundy is very fond of the word 'case.' He reminds me of the learned counsel who said, 'If ever a case was a hard case, this case is that case.' Mr. Mundy's case is that the judgment may be reversed, as the defendant said it was a meeting of the League. This, 'together with all other proven facts and circumstances, it may be held, makes out a *primâ facie* case for the Crown. The magistrate was right in his law, but the question is, Will not the higher Court hold that the proof was there, and that it lay with the defence to overcome it?' I offer no opinion on a matter *sub judice*. But Mr. Mundy does not say that the higher Court would be wrong—does not say that the suggestion he made was not an idle one—does not say that both law and evidence were sufficient. He says he thinks it poor policy to prosecute the proprietors of newspapers for publishing such things. But he very correctly adds, 'That is neither here nor there.'

He proceeds to deal with O'Brien's case, and asks how the conviction can stand. 'A man is charged with two offences; that is enough to defeat them both.' My answer is that this is downright nonsense. 'Besides, the Court would not compel the Crown to elect which offence it would try.' So is that. Mr. Mundy proceeds, 'When there are two counts

in one indictment, the prosecution must elect on which count it will go to trial; but two offences in one indictment is'—he means 'are' —'bad for duplicity.' This is a hash of blunders. There was no indictment in this case. *Two* counts are never bad for duplicity. Duplicity is a fault in *a* count, not in forming several. If two separate felonies are put in one indictment, it may be quashed, or the prosecution compelled to select one to go on. But in misdemeanors any number of different offences may be stated. And the charges against O'Brien were misdemeanors. Mr. Mundy proceeds: 'The witness was allowed to read from a memorandum made the next day, and that before he had exhausted his memory or recollection. Did any lawyer ever hear of such practice before?' Yes, always when the case arose. 'A witness may refresh his memory by referring to any writing made by himself at the time of the transaction, or so soon afterwards that the judge considers it likely that the transaction was at that time fresh in his memory' (Stephen's 'Digest of Evidence,' 128). Nor is he bound to try first if he can remember without. 'Again,' says Mr. Mundy, 'the witness swore he could not swear to the words used,' and asks whether men can be deprived of their liberty on such a flimsy pretext. Did Mr. Mundy never hear of evidence to the 'best of the knowledge and belief' of the deponent? Mr. Mundy says he was sorry to see such things in an English Court. Will it console him to remember that the Court was Irish? He says, 'When I return to America I shall be compelled to tell our people' dreadful things about the English —of one thing he says, 'if it was not horrible it would be laughable.' I will borrow his words with a change. His letter, if it was not laughable, would be horrible—if 'his people' agreed with it.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Oct. 22.

Judicial Abandonments.

Damase Moineau, trader, Montreal, Oct. 18.

Curators appointed.

Re Zoël Bessette, Granby.—J. L. Dozois, Granby, curator, Oct. 7.

Re Norris Best, hotel-keeper, Bord-à-Plouff.—Fulton & Richards, Montreal, curators, Oct. 20.

Re L. Collin & frère.—H. A. Bedard, Quebec, curator, Oct. 15.

Re Augustin Groulx.—R. Kornmaier, Montreal, curator, Oct. 15.

Re Dolphis Sigouin, saddler.—G. R. Falère, Montreal, curator, Oct. 11.

Re Louis Tremblay.—C. Desmarteau, Montreal, curator, Oct. 18.

Dividends.

Re Ferdinand Aubry.—Dividend, payable Nov. 9, at office of C. Desmarteau, Montreal, curator.

Re Joseph Corrivault. — First dividend, payable Nov. 11, J. J. Griffith, Sherbrooke, curator.

Re Hypolite Lanctot.—Dividend, payable Nov. 10, C. Desmarteau, Montreal, curator.

Re Myer Myers.—Dividend, W. A. Caldwell, Montreal, curator.

Separation as to property.

Sarah Raines vs. James Pringle, trader, Montreal, Oct. 12.

Vitaline Rousseau vs. Donville Gingras, mechanic, Ste. Pudentienne, Oct. 18.

Appointments.

Jean Octave Chalut, N. P., to be clerk of the Circuit Court, co. of Berthier, in the place of Pierre Tellier.

Quebec Official Gazette, Oct. 29.

Judicial Abandonments.

Fletcher Thompson, trader, Sherbrooke, Oct. 26.

Curators Appointed.

Re Bowen & Woodward, (contractors.—J. A. Archambault, Sherbrooke, curator, Oct. 20.

Re Wilfred E. Brunet, St. Sauveur de Québec.—H. A. Bedard, Quebec, curator, Oct. 25.

Re Joseph Charron, *fils*, St. Denis.—J. O. Dion, St. Hyacinthe, curator, Oct. 22.

Re André Gagnon, Lévis.—Kent & Turcotte, Montreal, curator, Oct. 25.

Re A. L. Lassonde, St. Zéphirin.—Kent & Turcotte, Montreal, curator, Oct. 21.

Re Israël Lemay.—C. Fortin, Beauharnois, curator, Oct. 14.

Re Rosario Roussil.—O. Forget, district of Terrebonne, curator, Oct. 13.

Dividends.

Re Nazaire Garon, Rimouski.—Dividend, payable Nov. 14, Kent & Turcotte, Montreal, curator.

Re Louis Houle.—Dividend on privileged claims, payable Nov. 14, Kent & Turcotte, Montreal, curator.

Re Hugh O'Hara, Chambly Canton.—Composition sheet prepared, payable Nov. 9, Thos. Darling, Montreal, curator.

Re Treffié Vanier.—Dividend, payable Nov. 14, Kent & Turcotte, Montreal, curator.

Separation as to Property.

Marie Azilda Charlebois vs. Joseph Ludger Damase Brasseur, trader, St. Policarpe, Oct. 27.

Asilda Hatte vs. Adolphe *alias* Delphis Papineau, Montreal, Oct. 17.

Maria Santa Impini vs. Bormetti Francesco, laborer, Montreal, Oct. 26.

Alice McGarvey vs. Arsène Neveu, trader, Montreal, Oct. 11.

Appointment.

Hon. Auguste Real Angers, Justice of the Superior Court, to be Lieutenant Governor of the Province of Quebec, Oct. 24.