The Legal News.

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The subject of punctuality has come opportunely to the front at the beginning of the new legal year in England. One of the jury engaged in trying a case which had lasted several days, being absent at the opening of the Court, was fined ten pounds. The juror walked in afterwards, and on stating that he had been mistaken as to the hour, was relieved of the fine. The Lord Chief Justice observed that the juror had kept the Court waiting, and that "the only person who can with impunity keep the Court waiting is the judge." The *Pall Mall Gazette* says: "It is to be hoped that the Lord Chief Justice's reported observation made yesterday, that 'the only person who can with impunity keep the Court waiting is the judge,' will not be taken seriously. This was really the 'Chief's' little joke, and a sly poke at Mr. Justice Hawkins, which will be much appreciated in the profession. Some time ago the presence of a learned silk was required in Court at eleven o'clock, the case having commenced a few minutes before, and he was sent for. Addressing him in lofty tones of reproof, Mr. Justice Hawkins asked, "Why were you not here at the sitting of the Court, Mr. B.?' to which Mr. B., being bolder than most of his brethren, calmly replied, 'I was here, my lord, at the hour fixed for the Court to sit, but as there was no Court I left,' and his lordship wisely allowed this delicate point to drop." The *Law Journal* points out that the other form of unpunctuality—sitting after the hour—is also inconvenient. "There are several kinds of the judicial vice of unpunctuality. Judges who sit in Banco and are guilty of it are unpolite to their brethren, as well as the bar, the solicitors, and the rest of the attendants at Courts of justice. The worst form of it occurs when a judge is unpunctual himself and fines a juryman for being late. The large majority of judges are conscientiously punctual, but it is a form of unpunctuality which is a degenerate conscientiousness, to sit after four o'clock to the disturbance of the appointments made after that hour in the Temple and Lincoln's Inn by those engaged before him. The perfectly punctual judge is he who sits and rises punctually, and not he who sits early and late takes rest, still less he who comes in late and rises early. The best example of it is Baron Huddleston in town and on circuit."

The resignation of Sir Andrew Stuart, Chief Justice of the Superior Court for this province, is announced. The retiring Chief Justice has held judicial office for a period of over thirty years, and is therefore well entitled to relaxation from labour. He was called to the bar in 1834, and appointed a Q.C. in 1854. In 1859 he was raised to the bench as an assistant judge of the Superior Court. The following year his appointment was made permanent. After the retirement of Chief Justice Meredith from the bench in 1885, Mr. Justice Stuart was appointed his successor.

COUR DE CIRCUIT.

MALBAIE, septembre 1886.

Coram ROUTHIER, J.

BOUCHARD *v.* GILBERT.

Actions pénales sous Code Municipal—Au nom de qui peuvent-elles être intentées.

JUGÉ:—Que sous l'empire de l'article 1046 C.M., l'action pour pénalité peut être intentée soit au nom d'une personne majeure en son nom particulier, sans qu'il soit besoin de joindre à telle personne, comme demanderesse, la corporation de la municipalité dans les limites de laquelle la pénalité a été encourue; soit au nom des deux; que la personne poursuivant en son nom particulier peut conclure légalement à ce que la pénalité lui soit payée en entier, sauf à la corporation intéressée à se faire rembourser par telle personne la part qui lui revient. *Vide Labelle* v. *Gratton*, 7 R. L. 325; *Graham* v. *Morrissette*, 5 Q. L. R. 346.

Charles Angers, pour le demandeur.

J. S. Perrault, pour le défendeur.

(C. A.)

COUR DE CIRCUIT.

MALBAIE, 1886.

Coram ROUTHIER, J.

TREMBLAY *v.* CASTONGUAY.

Tuteur ad hoc—Responsabilité personnelle, quant à frais de poursuite intentée par lui sans droit.

Le défendeur en qualité de tuteur *ad hoc*, avait poursuivi le demandeur pour séduction et frais de gésine.

L'action fut rencontrée par défense en droit, le défendeur prétendant que Castonguay ne pouvait poursuivre comme tuteur *ad hoc*, et aussi parce que l'enregistrement de l'acte de tutelle n'était pas allégué.

Castonguay se désista de son action.

Action par Tremblay en dommages pour le montant des frais par lui encourus, sur le principe que le défendeur n'avait aucune qualité pour poursuivre, qu'en fait l'acte de tutelle n'avait jamais été enregistré, et que Castonguay était responsable des frais personnellement.

Le demandeur prouva que l'acte de tutelle n'avait jamais été enregistré—et cita les autorités suivantes: C. C. 1053; 2 R. L. 95, Loranger, J.; 1 Q.L.R. 379, en Rév.—Quant à la nullité de la tutelle *ad hoc*. 4 L. C. J. 298.

La Cour a jugé que le demandeur devait avoir jugement:

1. Parce qu'avant de poursuivre, le tuteur devait faire enregistrer l'acte de tutelle;

2. Que sans admettre que dans l'espèce, la tutelle *ad hoc* fût radicalement nulle, le fait qu'en qualité de tuteur *ad hoc*, Castonguay ne pouvait se mettre en possession des biens de sa pupille, et ne pouvait s'en servir pour payer les frais qu'il avait fait encourir, le rendait responsable personnellement.

Charles Angers, proc. du demandeur.

M. Bouchard, proc. du défendeur.

(C. A.)

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*DECISIONS AT QUEBEC.**

Diffamation — Procédure — Serment du Sténographe—Irrégularités.

Jugé:—1o. La partie est responsable des injures ou propos diffamatoires contenus dans ses plaidoyers à une action;

2o. Le sténographe étant un officier de la Cour, il n'est pas nécessaire qu'il soit assermenté chaque fois qu'il agit, ni dans chaque cause où il agit; le serment qu'il doit prêter en entrant en fonctions suffit;

3o. Les irrégularités dans la production des pièces de procédure et dans la conduite de l'enquête, sont couvertes par l'audition au mérite de la partie qui a passé outre sans s'en plaindre.—*Landry* v. *Choquette*, en révision, Casault, Caron, Andrews, JJ., 30 sept. 1887.

Preuve Testimoniale—Art. 1234, *C.C.*

Jugé:—Que la preuve testimoniale d'une convention verbale changeant la position et les obligations respectives des parties, telles que réglées et détaillées à un écrit, est illégale.—*Anderson & Battis*, en appel, Tessier, Cross, Church, Bossé, Doherty, JJ., 7 dec. 1888.

Election Municipale—Manœuvres Frauduleuses — C.M., 346.

Jugé:—Que sur contestation d'une élection municipale, non seulement les votes entachés de corruption doivent être retranchés, mais l'élection elle-même doit être annulée, s'il y a preuve suffisante de corruption générale commise par les cabaleurs et membres du comité du candidat élu, et cè, même dans le cas où, en retranchant les votes nuls, il resterait encore une majorité en faveur de tel candidat.—*Parent* v. *Patry*, C.C., Larue, J., mai 1889.

Charge dans une Corporation—Charge Publique —Prêtre—Sec.-Trésorier—Description erronée d'une Charge Publique—Quo Warranto —Recours donné par les Art. 1016 *et seq. C. P. C.*

Jugé:—1o. Un prêtre, étant dans les ordres sacrés et ministre d'une croyance religieuse, est inhabile à occuper une charge municipale;

2o. La charge de secrétaire-trésorier d'un conseil municipal est une charge dans une corporation, et une charge publique, dans le sens de l'art. 1016 du C. P. C.

3o. La description d'une charge par les mots, "secrétaire-trésorier de la Corporation de Metgermette-Nord," dans un bref et une requête libellée sous l'art. 1016 C. P. C., alors que le nom légal de la charge est, "le secrétaire-trésorier du Conseil municipal de la

*15 Q.L.R.

partie nord du Township de Metgermette," constitue une erreur fatale et suffit pour faire renvoyer les dits bref et requête;

4o. Le recours que donne le Code de Procédure, aux articles 1016 et suivants, n'est pas le *quo warranto*, ni l'information dans la nature de ce bref; c'est un recours particulier qui n'exclut pas les autres et n'est pas exclu par eux.—*Vannier* v. *Meunier*, en révision, Stuart, J. C., Casault, Caron, JJ., 30 sept. 1887.

Promesse de Vente — Condition Résolutoire — Pacte Commissoire—Demande en Justice.

Jugé:—La promesse de vente, avec tradition, qui est faite sous condition résolutoire pour défaut de l'accomplissement des obligations de l'acheteur, n'équivaut pas à vente. L'évènement de la condition, *i.e.*, le défaut de l'acheteur, opère la résolution du contrat de plein droit sans l'intervention de la justice, qui n'est nécessaire que lorsque la stipulation n'est qu'un pacte commissoire.—*Price* v. *Tessier*, en révision, Casault, Caron, Andrews, JJ., 31 mars 1887.

Teacher—Engagement—Dismissal—Notice.

Held:—That the notice required by the Statute 35 Vict., (Q.) ch. 12, sect. 7, to terminate the engagement of a school-teacher, must be given, two months before the close of the current scholastic year, by the secretary-treasurer, under the authority of a resolution of the school commissioners, duly passed and entered on their registers,—otherwise the engagement will continue in force for the next ensuing year.—*School Commissioners of St. Dominique & Desmeules*, in appeal, Tessier, Cross, Church, Bossé, Doherty, JJ., Dec. 6, 1888.

Tierce-Opposition—Art. 510, *C. C. P.*

Held:—To maintain a *tierce-opposition*, the third party opposing must not only establish a contrary interest to that of the party who obtained the judgment attacked, but also, that such interest is based upon a superior right.

The object of a *tierce-opposition* is not alone to seek the annulment of the judgment complained of, but to obtain a decision of the Court upon the respective rights of the opposant and of the party in whose favor the judgment attacked was rendered.—*Moreau & Price*, in appeal, Dorion, C. J., Tessier, Cross, Baby, Church, JJ., Dec. 7, 1888.

Fire Insurance—Condition of Policy—Proof—Agent.

Held:—1. That, under the circumstances of this case, the company were bound by the notice given to their agent by the insured that, being about to leave the country, his dwelling-house would be left uninhabited, but in charge of a neighbour—notwithstanding a condition in the policy that the same should be void if the company's consent to any dwelling being so left were not obtained from the head-office and endorsed on the policy.

2. That the refusal of the company to recognize or entertain the plaintiff's claim, amounted to a waiver of their right to demand from him the details of his loss, prior to his bringing suit.—*Agricultural Insurance Co. & Ansley*, in appeal, Tessier, Cross, Church, Bossé, Doherty, JJ., Dec. 6, 1888.

"WHAT IS A VOUCHER."

It is a well-settled principle that where, on an accounting, the accounting party produces a proper voucher for a disbursement, the burden is thrown upon the contestant to show that the payment was unwarranted. *Boughton* v. *Flint*, 5 Abb. N. C. 215, 74 N. Y. 477; *Valentine* v. *Valentine*, 3 Dem 602; *Matter of Frazer*, 92 N.Y. 239.

This is clear, but the question still remains, What is a proper voucher? Is a mere receipt or check enough to constitute a voucher, or must the voucher show the nature of the transaction? Or does the check or receipt made to, or signed by, a party who is entitled to payment from the estate, constitute a proper voucher? To constitute a voucher, must the paper be such a complete evidence of the transaction that an indictment for forgery can be predicated upon it if not genuine?

These are all questions of some importance, and it is worth while examining the cases to see what have been held to be vouchers.

We think the most satisfactory rule for the protection of all the parties in interest is laid down by the Surrogate in *the matter of White*, 6 Dem. 376, where it is held that where an executor or an administrator who has paid out money on account of expenses of administration produced a voucher, showing the nature of the disbursement and stating facts, which, if true, show the same to have been reasonable and necessary for the good of the estate, a presumption is raised in favor of the correctness of the charge, which must be opposed by affirmative evidence on the part of one contesting the demand for credit.

A somewhat careful search shows the fact to be that the authorities upon this question are not very numerous, and not altogether in harmony. We give them below.

A voucher ordinarily means a document which serves to vouch the truth of an account, or to confirm and establish facts of any kind. A merchant's books are the vouchers of the correctness of his accounts, or a receipt is a voucher, but neither is conclusive. The voucher of a board of supervisors is that the claim or account submitted to them is correct and should be paid as a valid charge against the county. People ex rel. *Brown* v. *Green*, 5 Daly, 199.

In the accounts of an executor, the disbursement of sums over $20 must be verified by vouchers, or by other satisfactory evidence in lieu thereof. If vouchers are produced, they are of themselves *prima facie* evidence of disbursements, without any other proof, and should be admitted, unless impeached; if lost, the accounting party should make oath to that fact, and state the contents and the purport of the voucher. When a claim is presented to an executor or administrator, he may require satisfactory vouchers and the affidavit of the claimant in support thereof; but the want of such verification is not sufficient ground for the rejection of a voucher on accounting before the surrogate. *Metzger* v. *Metzger*, 1 Bradf. 265.

Checks, payable to the order of a distributee, were delivered by the administrator to the husband of the distributee and payee on account of the wife's distributive share. They were indorsed, in the name of the payee, by the husband, and collected by him. These checks were offered in evidence as vouchers, to prove the payments, but it was held that they were not sufficient alone for that purpose. But it appearing that the husband had acted as his wife's attorney in several proceedings affecting the estate, and that an account being made to her showing such payments, she made no objection, and that a considerable part had been applied toward the improvement of her separate estate, *held*, that she was estopped from denying the agency of her husband, and that the administrator was entitled to credit for the payments. *Fowler* v. *Lockwood*, 3 Redf. 466.

Voucher implies evidence, written or otherwise, of the truth of a fact that the services had been performed, or the expenses paid or incurred; not evidence of a legal or mutual conclusion on the question whether the services or expenses, assuming the services or expenses to have been in fact performed, paid or incurred, are properly county charges, or are properly allowable when the account for them is presented for allowance, or should be allowed to A B or C D. *The People ex rel. Brown* v. *Green*, 2 T. & C. 18.

A voucher is any instrument which attests, warrants, maintains, bears witness. *State* v. *Hickman*, 8 N. J. L. 299.

Voucher designates an account book in which charges and acquittances are entered, or some acquittance or receipt, discharging a person, or being evidence of payment. *Whitwell* v. *Willard*, 1 Metc. 216.—*Chicago Legal News.*

CONDITIONAL PARDONS.

The proposed application by Mrs. Maybrick's friends for a *habeas corpus* does not merit and cannot expect success. The Crown has always claimed the prerogative of mercy, and though the mode of its exercise has been to some extent limited by early statutes still in force (27 Ed. III. st. 1, c. 2; 13 Rich. II. st. 2, c. 1; and 16 Rich. II. c. 6), its existence is most clearly recognized by 27 Hen. VIII. c. 24, s. 1, which enacts that the whole and sole power and authority to pardon and remit any treasons, murders, manslaughters, &c., should be united and knit to the Imperial Crown of this realm, as of good right and equity it appertaineth, any grants, usages,

prescription, Act or Acts of Parliament, or any other thing to the contrary thereof, notwithstanding. The Act in question, be it observed, was intended *inter alia* to get rid of pardons except under the Great Seal in Palatine counties, such as Lancashire, where Maybrick's offence was committed and tried. Since that Act, with the exception of the Revolution period, the existence of the prerogative does not seem to have been seriously questioned, and the Crown has been admitted to have a prerogative of mercy (described by Foster, p. 184, as the equity of the Crown) and to be able to exercise it without Parliamentary assistance as to every form of public offence except, perhaps, nuisance, where to pardon might infringe upon private rights; and it seems also clear that the Crown could, in its grant of mercy, pardon either absolutely or conditionally.

Throughout the reign of Charles II., and probably from at least as early as 1618, clergyable felonies were pardoned on the petition of the offender, and upon condition of transportation, with or without bond service in America; and the legality of this procedure as to all felonies is recognized by section 13 of the Habeas Corpus Act (31 Car. 2, c. 2). And though a conditional pardon affects a commutation of sentence, and an alteration by the Crown of the order of the Court of trial, it never seems to have been cavilled at in the same way as was alteration of the mode of executing a capital sentence. Conditional pardons are expressly recognized by the first Transportation Act (4 Geo. IV. c. 11, s. 1), with reference to non-clergyable felonies; and the courts were empowered to order persons pardoned, on condition of transportation, to be transported for the term, if any, mentioned in the pardon, or, if the pardon were general, then for fourteen years. The object of the enactment would seem to have been (1) to empower the Courts to give effect to pardons upon a condition not accepted by the prisoner; or (2) to get rid of a doctrine, then asserted by some, that a man could not assent to his own imprisonment even in matters criminal, which appears in *Somersall's Case;* but seems to have been rejected in the case of the Canadian prisoners (9 Ad. & E. 786). Whatever new powers this Act gave did not apply to *petit* treason, the offence of which, under the common law, Mrs. Maybrick was guilty, but which, by 24 & 25 Vict. c. 100, s. 8, has been merged in murder. Conditional pardons for *petit* treason are not likely to have ever been numerous, as that offence, when proved, must be of the most heinous character. But they were certainly granted as to treason and murder, the contention that the Crown could not pardon murder having been rejected by Lord Holt (*Rex* v. *Parsons*, Holt's Rep. 519), who said that the form of the coronation oath (1 Wm. & M. c. 6, s. 3), referring to justice in mercy, implied the existence of the prerogative of mercy.

1. As to treason, besides the very numerous cases of transportation after 1715, in 1747 Angus Macdonald, who was convicted and attainted of treason for his share in the '45, was pardoned on condition of leaving the realm and dwelling abroad for the rest of his natural life (Foster, 'Cr Law,' 59, 62.)

2. In 1757 a boy, who at the age of ten had in 1748 been convicted of murder (after many reprieves by the Court and a respite by the Secretary of State), was pardoned upon consideration of his immediately entering the sea service, a condition very commonly imposed in those days (Foster, 'Cr. Law,' 73), and which obviously involved a restraint upon liberty. No limit seems to have existed to the terms and conditions upon which a pardon might be granted but the willingness of the convict to accept them. But it would be inconsistent with the due exercise of a prerogative discretion, which could be styled the equity of the Crown, to impose alternative punishments which could be deemed cruel or unusual within the meaning of the Bill of Rights. A condition not illegal in itself cannot be invalidated except on the ground of non-acceptance by the person to whom the pardon is tendered. And decisions at the end of the last century make it quite clear that, unless the condition of a pardon was accepted and complied with, the convict could take no benefit from the pardon, and if found at large could either be punished as an escapee or remanded to prison and to his *status quo ante* (*Miller's Case*, 1 Leach, 69; *Madan's Case*, ib. 197; *Aickle's Case*, ib. 303).

Any doubts on the subject appear to have

been finally settled in 1839 in *Leonard Watson's Case* (9 Ad. & E. 783, 786), where it was decided that as soon as a conditional pardon was granted the Crown was entitled to enforce the condition, while the Transportation Act of 1824 (5 Geo. IV. c. 84, ss. 1, 2, 13, 22) and the Penal Servitude Act (16 & 17 Vict. c. 99, s. 5) both recognise the competence of the Crown to grant pardons in capital cases, conditional on transportation (now penal servitude) for life or any less term. By 7 & 8 Geo. IV. c. 28, s. 13, the warrant under the royal sign-manual, countersigned by a Secretary of State, is substituted for the more formal and cumbrous machinery of a pardon under the Great Seal. If Mrs. Maybrick escaped from prison she would be liable—either (1) to instant arrest upon her original sentence, and, if she set up the pardon, it would be disallowed for breach of condition; or (2) to arrest on the charge of being at large during her sentence, and to penal servitude for life on that charge (5 Geo. IV. c. 84, s. 22, as amended by 5 & 6 Wm. IV, c. 67); and if her would-be friends persevere in their efforts by means of the writ of *habeas corpus* they will find themselves in this quandary—either (1) the prerogative of mercy does not exist, or is taken away as to murder; or (2) the pardon is void, as imposing an illegal condition; or (3) the pardon is ineffectual, on the ground that Mrs. Maybrick has not assented to the condition. To succeed in any one of these, perhaps, equally hopeless contentions would ensure the remission of the convict to the condition of a prisoner sentenced to death, but under respite; and, even if her advisers take up the ancient ground that the Crown cannot commute a sentence, exactly the same result must follow. —*Law Journal* (*London*).

THE LABOURS OF A CHIEF JUSTICE.

At the recent meeting of the State Bar Association of Alabama, Judge Somerville, in responding to the toast assigned him, "The Supreme Court of Alabama," made the following allusions to Chief Justice George W. Stone:—

"I trust," said he, "in alluding to the subject assigned me, it may not be considered in bad taste to say a few words, personally, in reference to one member of our court, whose judicial history is so honorably and so long associated with the past history of that tribunal. I allude, of course, to our distinguished Chief Justice, who has been a conspicuous figure in the proceedings of the present meeting of this association—the orator of the occasion, now venerable in years and in honors. It is an interesting fact that he has been a member of the Alabama judiciary, with an interval of a few years since the late war, either as a Circuit or Supreme Court Judge, for the period of nearly fifty years. If he lives through his present official term, of which there seems to be every prospect, he will lack but a few months of having judicially interpreted our laws for one-half a century. No other man has ever, within my information, either in England or America, where the principles of the common law prevail, so long sat upon the woolsack, administering the principles of our jurisprudence. Nor can I recall any civilian whom history records to have so long been a judge.

"During this period he has been upon the Supreme Court bench of Alabama for nearly a quarter of a century, and has during that time, rendered over 2,000 reported decisions, which will be found embraced in the 28th to the 39th, and the 53d to the 86th volumes of our State Reports. I know of no other judge in any Appellate Court, on either side of the Atlantic, who has rendered so many. It was said of Judge Metcalf, of the Supreme Judicial Court of Massachusetts, who was a prodigy of judicial learning and industry, that he had promulgated 1,700 decisions during his judicial career of nearly twenty years.

"An average number of reported decisions per annum by the judges of several Supreme Courts of the American States does not exceed eighty cases to each judge. The judges of the United States Supreme Court, last year rendered about fifty cases to each member of that tribunal. Judge Stone, when our docket was crowded so greatly between the years 1876 to 1878, by reason of the legacy of litigation left on hand by the reconstruction courts, decided in one year

175 reported cases—more, perhaps, than any Supreme Court judge ever decided in any one of our thirty-eight States. I cannot recall a single one of those deliverances which has since been reversed.

"To me these are very interesting facts, and they should be to every member of our bench and bar who takes any just pride in his State; and I may add that the character of these decisions for learning and high moral tone will favorably challenge comparison with those of any contemporary judge."

RECENT UNITED STATES DECISIONS.

Parent and child—Claim for services.—The law regards the services performed by a son in nursing an aged parent during his last illness, as but the performance of a filial duty which every man owes his parents, and implies no contract for compensation therefor; but a recovery may, of course, be had on an express contract. A child's claim for services against his deceased father's estate, based on declarations made by the decedent in his last sickness, will not be countenanced unless accompanied with clear proof of an agreement not depending upon idle and loose declarations, but on unequivocal acts of the intestate, as, for example, a settlement of an account, or money paid by the father to the son as wages, distinctly thereby manifesting that the relation which subsisted was not the ordinary one of parent and child, but master and servant. *Zimmerman* v. *Zimmerman*, Supreme Court of Pennsylvania, June 28, 1889.

Drafts—Days of Grace.—A draft for money drawn on a bank, payable at a day subsequent to its date, and subsequent to the date of its issue, is not a "check," but a bill of exchange," and is entitled to days of grace. The Court said: "The question is one which has given rise to considerable discussion and some conflict of opinion. About all the law there is on it, as well as all the arguments on each side, will be found in Morse, Bank. (3rd ed.), § 381 *et seq.* The two principal authorities holding such an instrument a check are *In re Brown*, 2 Story, 562, and *Champion* v. *Gordon*, 70 Penn. St. 474. Both of these are entitled to great weight, but they stand almost alone, the Supreme Court of Rhode Island (*Bank* v. *Wheaton*, 4 R. I. 30) and perhaps of Tennessee being, so far as we know, the only ones which have adopted the same views. All other courts which have passed upon the question, as well as the text writers, have almost uniformly laid it down that such an instrument is a bill of exchange, and that an essential characteristic of a check is that it is payable on demand. This was finally settled, after some conflict of opinion, in New York—the leading commercial State of the Union—in the case of *Bowen* v. *Newell* (several times before the courts), 5 Sandf. 326; 2 Duer, 584; 8 N. Y. 190, and 13 id. 290. Nearly every definition of a check given in the books is to the effect not only that it must be drawn on a bank or banker but that it must be payable on demand. 1 Rand. Com. Paper, § 8; Byles Bills, 13; 2 Dan. Neg. Inst., § 1566; 1 Edw. Bills, § 19; Big. Bills & N. 116; Chalm. Dig. Bills & N., art. 254; Shaw, C.J., in *Bullard* v. *Randall*, 1 Gray, 605; Bouv. Law Dict.; Burrill Law Dict. Occasionally the expression is used 'payable on presentation,' but evidently—except perhaps in Story on Bills—as synonymous with 'payable on demand.' Perhaps the weightiest argument in favor of holding such an instrument a check is the practical one advanced by Sharswood, J., in *Champion* v. *Gordon*, viz., that if held to be a bill of exchange, the holder might immediately present it for acceptance, and if not accepted, he could sue the drawer, or if accepted, it would tie up the drawer's funds in the hands of the bank, and thus, in either case, frustrate the very object of making it payable at a future day. In answer to this, it may be said that the drawer, if he wished, could very easily avoid such consequences by inserting appropriate provisions in the instrument. On the other hand, if we hold that an instrument not payable on demand may be a check, we are left without any definite or precise rule by which to determine when the paper is a check, and when a bill of exchange. The fact that it is drawn on a bank is not alone enough to distinguish a check from a bill of exchange, for nothing is better settled than that a bill of exchange

may be drawn on a banker. Neither will the fact that the maker writes it on a 'blank check' be any test, for the kind of paper it is written on cannot control the import and legal effect of its words. Neither can the question whether it is drawn against a previous deposit of funds by the drawer with the drawee furnish any criterion, for nothing is clearer than that a bill of exchange, as well as a check, can be drawn against such a deposit, and that an instrument may be a check although the drawer has no funds in the hands of the drawee. Neither will it do to say that if it is entitled to grace it is a bill, but if not entitled to grace it is a check, because the legal character of the instrument has first to be determined before it can be known whether or not it is entitled to grace. In short, if we omit from the definition of a check, the element of its being payable on demand, bankers and business men are left without any definite rule by which to govern their action in a matter where simplicity and precision of rule is especially desirable. It might be expedient to enact, as has been done in New York and some other States, that all checks, bills of exchange, or drafts, appearing on their face to be drawn on a bank or banker, whether payable on a specified day or any number of days after date or sight, shall be payable on the day named in the instrument without grace; or, what might be better still, to abolish days of grace altogether as a usage which has already long outlived the condition of things out of which it had its origin. But it is a matter for Legislatures and not for Courts. We are therefore of opinion that the better rule is to hold that such an instrument is a bill of exchange, and hence entitled to grace. We may add that it is always desirable that the decisions of the courts should be in accord with the business usages and customs of the country. Such usages are entitled to special weight on a question like this, for the whole matter of grace on bills and notes had its origin in the usage of bankers. And so far as we are advised, the general practice of bankers in this State has been to treat instruments like this as bills of exchange and not checks."—*Harrison* v. *Nicollet National Bank*, Minnesota Supreme Court, Oct. 18, 1889.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Nov. 16.

Judicial Abandonments.

Euclide Bernard, trader, parish of Belœil, Nov. 8.

Maurice Bernard, trader, parish of St. Germain de Grantham, Nov. 6.

Frank Decost and Thomas Decost, pump manufacturers, Salaberry de Valleyfield, Nov. 5.

Louis Ovide Roy, trader, St. François, Nov. 13.

Curators appointed.

Re J.W. Barrette, Montreal.—C. Desmarteau, Montreal, curator, Nov. 8.

Re Michel Bertrand, Montreal.—C. Desmarteau, Montreal, curator, Nov. 12.

Re Jos. Beaulieu & Cie., Quebec.—H. A. Bedard, Quebec, curator, Nov. 14.

Re W. Brière, St. Monique.—Kent & Turcotte, Montreal, joint curator, Nov. 6.

Re James G. Davie, Montreal.—C. Desmarteau, Montreal, curator, Nov. 13.

Re F. & T. Decost, Salaberry de Valleyfield.—R. S. Joron, Salaberry de Valleyfield, curator, Nov. 11.

Re Joseph Donati, jeweller, Quebec.—N. Matte, Quebec, curator, Nov. 11.

Re Field Bros. & Co., Montreal.—A. W. Stevenson, Montreal, curator, Nov. 12.

Re P. W. & E. Huot, Montreal.—Kent & Turcotte, Montreal, joint curator, Nov. 9.

Re J. B. A. Lambert, tobacconist, Quebec.—H. A. Bedard, Quebec, curator, Nov. 12.

Re J. A. Laguerrier, Ste. Thérèse.—Bilodeau & Renaud, Montreal, joint curator, Nov. 6.

Re F. X. Morency, carpenter, Quebec.—P. Beland, Quebec, curator, Nov. 5.

Re C. Morin & Co., district of Richelieu.—Kent & Turcotte, Montreal, joint curator, Nov. 14.

Re Parker Bros., Scotstown.—Millier & Griffith, Sherbrooke, joint curator, Nov. 11.

Re F. Pennée *et al.*, Quebec.—D. Arcand, Quebec, curator, Nov. 12.

Dividends.

Re Blais & Emond, dry goods, Quebec.—Third and final dividend, payable Dec. 3, H. A. Bedard, Quebec, curator.

Re N. Dion & Cie., Quebec.—Second and final dividend, payable Nov. 25, D. Arcand, Quebec, curator.

Re Frank A. Gross —First and final dividend, payable Nov. 30, J. G. Ross, Montreal, curator.

Re J. & H. Taylor, Montreal.—Second and final dividend, payable Dec. 4, W. A. Caldwell, Montreal, curator.

Re J. H. Warmington.—First and final dividend, payable Dec. 4, A. Mathieu, Montreal, curator.

GENERAL NOTES.

THE CHIEF JUSTICESHIP.—The chief justiceship of the Superior Court of the province has been rendered vacant by the resignation of Sir Andrew Stuart. Public opinion with one accord points to Mr. Justice Johnson as the rightful successor to the honor. He is the senior justice for this district, and one of the ablest occupants of the bench in the province. It would be difficult to adduce stronger claims than his for the position, and the Government would, we are convinced, be doing both a wise and a popular thing by making the promotion.—*Gazette.*