THE LEGAL NEWS.

Vol. IX. MONTREAL, FEBRUARY 27, 1886. No. 9.

Editor.—JAMES KERR, D.C.L., LL.D., Advocate.
Office, 67 St. François Xavier Street, Montreal.

CONTENTS OF Vol. IX., No. 9.

NOTICE.—The Indexes, &c., to Vol. I. of the Queen's Bench and Superior Court Series of the Montreal Law Reports will be issued in a few days.

Montreal:
GAZETTE PRINTING COMPANY.
1886.

The Legal News.

Vol. IX. FEBRUARY 27, 1886. No. 9.

In *De Freece* v. *Rosa*, Judge Collier, in the Liverpool County Court, has held that the proprietor of a theatre may exclude any one he pleases, without being obliged to give any reason. The plaintiff paid a shilling for admission to the pit of the Royal Court Theatre, Liverpool, but on presenting his ticket at the inner door, he was refused admission. He brought an action claiming the shilling, and also two guineas damages. (It may be remarked parenthetically that ideas as to damages in England appear to be extremely modest. Had Mr. de Freece been subjected to such an indignity in Montreal his lawyer would have claimed on his behalf at least two thousand guineas.) The defendant tendered the shilling which had been paid, with another shilling as damages. The facts elicited at the trial were that Mr. de Freece, who is a "dramatic agent," had formerly been on the "free list" of the theatre, but having made himself obnoxious by talking too loudly in the passage at the back of the dress circle, the privilege was withdrawn, and he was informed that the check-takers had been instructed to refuse him admission. It was after this that he purchased the ticket and was not permitted to enter, as above stated. The judge gave judgment for the defendant, with costs, remarking that it was for the public interest that the proprietors of theatres should be able to exclude any one without giving any reason.

In Mr. Justice Stephen's observations on the prisoner's right to make a statement (*ante*, p. 62) his lordship referred to the case of John Frost, as a case of treason in which the prisoner had been invited to speak. What took place on that occasion appears in Townsend's State Trials, vol. 1, p. 71. After the conclusion of the speech for the defence of Mr. Kelly (who followed Sir F. Pollock), Lord Chief Justice Tindal said:—"John Frost, now is the proper time for you to be heard if you wish to address anything to the gentlemen of the jury beyond what your learned counsel have said. You will not be allowed to be heard after the Solicitor-General has closed the case on the part of the prosecution." John Frost: "My lord, I am so well satisfied with what my counsel have said that I decline saying anything upon this occasion." Thereupon the Solicitor-General replied on behalf of the Crown.

The esteemed correspondent referred to on p. 49 has returned to the charge, and says that the publication of holdings in advance of the regular reports is useless. That may be true; yet to show how great minds differ upon apparently simple matters we may refer to the course pursued by the Law Society of Ontario, the proprietors of the Ontario reports. Although every lawyer there is compelled to take the regular reports, even where five or six or more are associated in one firm, yet the Law Society has been paying a considerable subsidy to the *Law Journal* for thirty years past, for the publication of the head notes in advance, and if we are not very greatly mistaken, it is now subsidizing both the *Law Journal* and the *Law Times* for the publication of the head notes to the same cases in each journal. This shows at least that there is room for difference of opinion upon the point. We do not propose to discuss it further. What we venture to urge strongly upon our country readers is that they should do something to rescue the valuable decisions of the rural districts from the oblivion which has fallen upon them in the past. No one can gainsay that since the country judges have commenced to lend their aid to the overworked judges of the city, they have acquitted themselves well. Their decisions in their own districts are often equally worthy of preservation, and if each of our readers in the country would, in the course of a year, contribute a note of at least one case in which he has been specially interested, it would work very much to the advantage of all.

COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 4, 1886.

Before MONK, RAMSAY, TESSIER, CROSS and BABY, JJ.

LAVOIE, Appellant, and ST. LAURENT, Respondent.

Revendication—Forcible dispossession of defendant.

Held: Where a person is forcibly deprived of his possession of movables, that in an action of revendication he will not be held to establish his title as against the trespasser. It will be for the defendant to justify his act. *Spoliatus ante omnia restituendus.*

Judgment reversed.

COUR DE CIRCUIT.

JOLIETTE, 7 janvier 1885.

Coram CIMON, J.

BELLEROSE v. FOREST et al.

Poursuite entre locateur et locataire—Juridiction—C. Proc. arts. 887 *à* 899—*C. C. art.* 1624 — *Incompétence manifeste — C. Proc. arts.* 114, 115.

JUGÉ:—1o. *Qu'une demande, seulement pour loyer échu, bien qu'accompagnée d'une saisie-gagerie, ne tombe pas sous les dispositions spéciales établies par les arts.* 887 *à* 899 *du C. Proc.*

2o. *Que la Cour, siégeant en vertu de ces articles, dans ce cas, se déclarera ex officio incompétente même à juger une exception à la forme se plaignant de l'assignation seulement, sans invoquer le défaut de juridiction, et mettra le défendeur hors de cour.*

CIMON, J. N. A. Guilbault, un des défendeurs, a contesté l'action par une exception à la forme se plaignant de l'assignation. C'est cette contestation qui est soumise à cette cour siégeant en vertu des arts. 887 à 899 du C. Proc. L'action ne réclame que la somme de $153, pour loyer échu. Elle ne demande ni la résiliation ou rescision du bail, ni l'expulsion du locataire: elle n'allègue pas et ne demande pas de dommages. C'est donc une action de dette ordinaire, qui, comme toutes les autres actions de dette ordinaire, devait s'intenter et se poursuivre suivant les dispositions ordinaires du Code de Procédure. Il est vrai que le demandeur a joint à son action une saisie-gagerie, mais cela ne change pas l'action et ne la met pas dans les conditions voulues pour qu'elle puisse s'exercer en vertu des dispositions spéciales des arts. 887 et suivantes. Cette Cour, siégeant en vertu de ces dispositions spéciales, n'a donc pas juridiction pour connaître la présente instance. Il est vrai que le défendeur Guilbault ne se plaint pas de cette incompétence; mais cette action est *manifestement* hors de la compétence du présent tribunal, et l'art. 114 veut que, dans ce cas, le tribunal se déclare incompétent *ex officio*. Et si la Cour n'a pas juridiction pour juger la demande au mérite, elle n'a pas non plus juridiction pour juger l'exception à la forme. Le défendeur Guilbault doit tout simplement être mis hors de Cour.

Voici le jugement:

"Considérant que le demandeur a intenté la présente action comme poursuite spéciale entre locateur et locataire, en vertu des arts. 887 à 899 du C. Proc.;

"Considérant que la présente action n'est pas en résiliation ou rescision de bail, ni en recouvrement de dommages à raison d'infractions aux obligations résultant du bail, ou d'infractions à quelques-unes des conventions de bail, ou de dommages résultant de l'inexécution des obligations en découlant d'après la loi ou résultant des rapports entre locateur et locataire, mais que l'action n'est qu'une simple demande pour loyer accompagné de saisie-gagerie, et, par conséquent, ne tombe pas sous l'opération des dits arts. 887 à 899, et que cette Cour ne peut prendre connaissance de la présente action telle qu'intentée et la juger en vertu des dits articles, et que cette incompétence étant *ratione materiæ* et manifeste, la Cour doit d'elle-même se déclarer incompétente et les parties doivent être renvoyées sans adjudication ni sur l'action ni sur l'exception à la forme;

"Se déclare incompétente à prendre connaissance de la présente action *ratione materiae*, met le dit N. A. Guilbault hors de cour, sauf recours du demandeur;

"Et vu l'art. 115 du C. de Proc., condamne le demandeur à payer les frais au dit N. A. Guilbault, etc."

McConville & Renaud, avocats pour le demandeur.

Godin & Dugas, avocats pour Guilbault.

SUPERIOR COURT—MONTREAL.*

Banking Act, 34 *Vict.*, *c.* 5, *secs.* 26, 58—*Double Liability Calls—Responsibility of pledgees of stock—Savings Bank*—34 *Vict.*, *c.* 7, *secs.* 17, 18, 19.

HELD:—1. That a Savings Bank holding bank shares as pledgee is not the owner of such shares within the meaning of section 58 of the Banking Act, and therefore not subject to the double liability.

2. A Bank whose shares are transferred to a Savings Bank, is presumed to know that they are held by the latter as collateral security, inasmuch as under section 18 of the 34 Vict., c. 7, a Savings Bank cannot acquire bank shares or hold them except as pledgee. —*The Exchange Bank of Canada* v. *The Montreal City and District Savings Bank*, Johnson, J., December 21, 1885.

Cité de Montréal—Rues—Accident—Décès—Dommages—Héritiers.

JUGÉ:—Que lorsqu'une personne est morte par suite d'un accident causé par le mauvais état des rues, les enfants et héritiers de cette personne, lors même qu'il n'aurait prouvé aucun dommage, ont droit d'obtenir de la cité de Montréal une certaine somme d'argent par forme de consolation et soulagement.—*Labelle et al.* v. *La cité de Montréal*, Papineau, J., 14 oct. 1885.

Judgment—Death of one or more of the plaintiffs during pendency of suit—Appeal bond.

HELD:—1. That the death of several of the plaintiffs, during the pendency of the suit, does not render a judgment pronounced in their name absolutely null; the nullity being only relative and such as can be invoked only by the legal representatives of the deceased, on the ground that their rights have been prejudiced by the judgment.

2. That a bond given as security for debt, interest and costs, on an appeal by a defendant to the Court of Queen's Bench, to the effect, that the bondsman will pay the condemnation money in case the judgment be confirmed, is a conditional bond and becomes terminated, null and void, if the judgment in appeal reverses the judgment of the Court below and dismisses the plaintiffs' action.—*Lowrey et al.* v. *Routh*, Jetté J., Nov. 30, 1885.

Immeubles—Améliorations—Terrain d'autrui—Enregistrement—Hypothèque—Clause résolutoire—Frais d'enregistrement—Offres réelles et consignation.

JUGÉ:—1o. Que le propriétaire d'une bâtisse ou autres améliorations faites sur le terrain d'autrui peut, par l'enregistrement, acquérir un hypothèque sur ces améliorations.

2o. Que ces améliorations sont immeubles.

3o. Que, lorsque d'après les termes d'un contrat contenant une clause résolutoire, le défaut de paiement résout absolument le contrat, le tribunal ne peut intervenir.

4o, Que les frais d'enregistrement d'un contrat de vente sont compris dans ceux que l'acheteur est tenu de payer.

5o. Que pour être valable les offres réelles et la consignation doivent être telles qu'il soit loisible à la partie d'accepter purement et simplement sans aucune condition.—*Prud'homme* v. *Scott et al.*, en révision, Plamondon, Bourgeois, Loranger, JJ., 21 déc. 1885.

Cautionnement judiciaire—Hypothèque judiciaire—Justification — Enregistrement — Radiation.

JUGÉ:—1o. Qu'un cautionnement judiciaire où la caution s'oblige généralement à payer tous les frais et dommages qui seront adjugés, sans déterminer un montant quelconque qu'elle aura à payer, ne crée pas d'hypothèque judiciaire, et la caution peut par une action faire radier l'enregistrement fait de ce cautionnement sur ses immeubles.

2o. Que la justification sous serment que fait une caution de sa solvabilité jusqu'à concurrence d'une somme fixe ne fait pas partie du cautionnement et n'en détermine nullement le montant.—*Lavallée* v. *Paul*, en révision, Johnson, Doherty, Mathieu, JJ., 21 déc. 1885.

Faillite—Jugement—Réponse en droit.

JUGÉ:—Que rien n'empêche un créancier de prendre un jugement contre son débiteur,

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

quand même celui-ci serait sous l'effet d'une loi de faillite et n'aurait pas encore obtenu sa décharge, et un plaidoyer à l'encontre de l'action du créancier ne contenant que l'allégation de cet état de faillite sera rejeté sur réponse en droit.—*The Canadian Mutual Fire Insurance Co.* v. *Blanchard*, Taschereau, J., 29 janvier 1886.

Tiers-saisi—Examen du tiers-saisi—Jugement sur déclaration—Contestation.

JUGÉ:—Que les réponses d'un tiers-saisi aux questions qui lui sont posées par le saisissant et qui sont écrites à la suite de sa déclaration, ne forment pas partie de sa déclaration, et qu'un jugement ne peut être rendu sur ces réponses *de plano:* le saisissant doit contester la déclaration.—*Laframboise* v. *Rolland*, et *Rolland*, T. S., en révision, Torrance, Gill, Loranger, JJ., 30 novembre 1885.

Tuteur—Administration—Emploi des deniers.

JUGÉ:—Que le tuteur peut exercer une discrétion modérée dans l'emploi des deniers pupillaires, et acheter à crédit un immeuble, surtout s'il est établi que telle acquisition ne constitue pas un acte de mauvaise administration.—*La Société de Construction Jacques-Cartier* v. *Désautels et al.*, en révision, 30 janvier 1886.

LONDON LETTER.

No sooner have we recovered from one ministerial change than we are involved in another; but the political crisis of a few months ago is surpassed in difficulty and gravity by that which is now taking place. These mutations of power possess great interest for the gentlemen of the long robe, because of the many offices of dignity and emolument that fall to their share. The new Lord Chancellor (Lord Herschell) is endowed with talents every way equal to his position; and the appointment of Mr. Charles Russell to be the Queen's Attorney-General, though in many respects remarkable, gives entire satisfaction. This accomplished and skilful advocate is an Irishman and a Home-Ruler; and while the selection of a person holding such opinions has called forth the applause of the Irish party, it has certainly inspired distrust among Conservatives as well as Liberals, who value the integrity of the Queen's rule.

It is not yet clearly known who is to be the Solicitor-General, but common report points very confidently at Mr. Horace Davey; but, indeed, there is a universal uncertainty pervading every quarter; for the composition of the present government, in the face of the fixed convictions of the people on the Irish question, cannot possibly last many weeks.

The riotous and violent proceedings of 10,000 lawless men in London, three days ago, indicate the impression among many that Mr. Gladstone's policy is revolutionary and socialistic, and indulgent towards sedition.

Most of the judges are now on circuit, and they seem to have been more than usually engaged with actions for breach of promise to marry. But public curiosity has chiefly centered upon the scandal in high life which was opened up yesterday in the Divorce Court. The petitioner is a member of the House of Commons; the co-respondent was Sir Charles Dilke, who is a well-known author and was one of Mr. Gladstone's last administration; and it is moreover said that, in view of the pending suit, the Queen declined to name him to a place in her present government. The case against him, however, fell through, but under circumstances that cause his friends somewhat scanty satisfaction. There was no legal evidence against him, because the unsworn confession of the respondent (Mrs. Crawford) to her husband, was admissible against herself, but not against any person besides; and at the trial in court she was not called as a witness, nor did Sir Charles think fit to contradict the legally inadequate statement of the lady, and thereby subject himself to the disagreeable ordeal of a searching inquisition into his private life.

In the Court of Appeal this week there was a decision which I am afraid will hardly stand examination. A man who had contracted a voidable marriage, bequeathed property to his "children"; but at the time of his death there was no issue, save an infant in the womb of his reputed wife. The

court held that the child *en ventre* could not take, for being illegitimate; but this resolution appears to me wrong, because there were in fact no lawful children, and therefore other persons may be admitted to answer the description. The rule merely is that illegitimate children shall not *take with* lawful children; but if there be none whom the law accepts as children, the word "children" in a will gives rise to a "latent ambiguity" which must be explained by external evidence.

We are all looking forward with curiosity to the doings of the knights, citizens and burgesses in the Commons' House. We may expect a crop of crude laws which shall tax all ingenuity to construe; and some of the reformers, you will observe, have already brought in a bill to render it a misdemeanour for any man to hold more than 100 acres of land uncultivated; but the misdemeanant on conviction is not to be sent to prison, but merely ejected and deprived of the tenement.

Lincoln's Inn, 13th Feb., 1886.

LOST WILLS.

In *Goodtitle* v. *Otway*, 2 H. Bl. 516 (1795), and cases cited, declarations by the testator as to testamentary intentions and as to the making of a will are held proper. So in *Davis* v. *Davis*, 2 Addams, 226 (1824), declarations of the testator down to the very evening of his death were admitted to rebut the presumption of a revocation. In *Patten* v. *Poulton*, 1 S. & T. 55; 27 L. J. Prob. 41, it was held by Sir C. Cresswell that the presumption that a will left in the keeping of the testator, if it cannot be found at his death, has been destroyed by him *animo revocationis*, is a presumption of fact which prevails only in the absence of circumstances to rebut it, and that among such circumstances are declarations by the testator of good will toward the person benefitted by it, adherence to the will as made, and the contents of the will itself. It is also said in this case that the strongest proof of adherence to the will, and of the improbability of its destruction, arises from the contents of the will itself. In *Whitely* v. *King*, 17 C. B. (N.S.) 756, in order to rebut the presumption arising from the absence of the will and codicil, that the testator had destroyed them, evidence was offered of repeated declarations made by the testator, down to a short time before his death, expressing his satisfaction at having settled his affairs, and telling one person that he had named him one of his executors, and another that his will was at Sutcliffe's, an attorney. The evidence was objected to, but admitted on the authority of *Patten* v. *Poulton*, *supra*. Erle, J., says: "Surely you may look at a man's words to see what his intentions are. The question here was whether the testator had the intention to destroy the will and codicil. Down to the last moment of his life almost he is found declaring his satisfaction that he has settled his affairs." "Evidence tending to prove a contrary intention was admissible. For this purpose the ordinary channels of information may be resorted to. The declarations of the testator are cogent evidence of his intentions. The repeated declarations of the testator, down to within a very few days of his death, were abundant evidence that the testator did not intend to cancel or destroy his will." Byles, J., says: "I see no reason why the declarations of the testator should not be admitted as part of his conduct to show his intentions as to the disposition of his property." Keating, J., says the rule admitting declarations is "well established." (See also *Sugden* v. *St. Leonard's*, 34 L. T. (N.S.) 372. I have now quoted authorities in seven States, the Supreme Court of the United States, and the Courts of England, all in favour of admitting declarations of the testator to rebut the presumption of revocation. The rule is so strongly fortified by the opinion of the ablest American and English Courts that its position must be deemed impregnable.

Admitting that the will is genuine and was duly executed, and was legally in existence at the death of the testator, it cannot be established as a lost will unless "its provisions are clearly and distinctly proved by at least two credible witnesses; a correct copy or draft being equivalent to one witness." Code, s. 1865.

The Court of Appeals held in *Harris* v. *Harris*, 26 N. Y. 433, that the statutory provision, requiring two witnesses to establish a

lost will, only relates to a special proceeding instituted for the express purpose of establishing the will, and that it does not abolish the common law rule of evidence which allowed the proof of a lost will, in the same manner as that of a deed, by a single credible witness. Accordingly, where in an action of partition the plaintiffs established their title by sufficient common law evidence of the existence and fraudulent destruction of a will, held, that they were not concluded by the dismissal of a suit in which they had sought to obtain the probate and record of the will under the statute.

A "credible" witness is one who, being competent to give evidence, is worthy of belief—1 Bouvier Law Dict. 409; and it is added in a note that in deciding upon the credibility of a witness, it is always pertinent to consider whether he is capable of knowing thoroughly the thing about which he testifies; whether he was actually present at the transaction, whether he paid sufficient attention to qualify himself to be a reporter of it; and whether he honestly relates the affair fully as he knows it, without any purpose or desire to deceive, or to suppress or add to the truth.

The code does not make it necessary that the witnesses who testify to the contents of the will should have read it. Nor does it prescribe how they shall acquire their knowledge of its contents. In some cases the declarations of the testator would be the best evidence, because the witness might not understand the terms which are used in a will. The Legislature evidently felt the difficulty of establishing the contents of lost wills, and so provided for the use, as evidence, of a copy of the will. The relief afforded by this liberal provision is often inadequate, for it very rarely occurs that a copy of a will is preserved. Wills are usually made in secret, and kept in a secret place. The witnesses who attest the will do not usually read or know its contents. Generally the only persons who know the contents of a will are the testator and the draftsman, and it is not often that the latter person, especially if he is a lawyer and accustomed to draw wills frequently, remembers the contents. Then if there is no copy of the will, and no one has read or can remember its contents, how can its contents be proved? Unquestionably the only way left is by the declarations of the testator as to its contents. Who can know, or who can be expected to remember, the contents of a will so well as the testator himself? It is his act; it disposes of his property; it is the subject of reflection and careful consideration before it is drawn, and he often thinks of it afterwards. What better evidence can there be, in the absence of a copy of the instrument itself, than the declarations of the person whose property is to be disposed of by it? Can the testimony of two witnesses who have read the will be any stronger or more convincing than that of two persons who have heard the testator state its contents? They would be more likely to remember what the testator said than what they read. Conversation usually makes a stronger impression on the mind than reading, and the testimony of persons who have talked with the testator would probably be clearer and stronger than that of persons who had simply read the will, without discussing its contents. The Courts have felt the difficulties of the situation, and have therefore, in many cases, admitted the declarations of the testator to aid in establishing the contents of the lost will. I have found no New York decision in which the question of the admissibility of these declarations is raised or discussed.

In *Knapp* v. *Knapp*, 10 N. Y. 276, evidence of such declarations was admitted without objection. So in England, see the leading case of *Sugden* v. *St. Leonards*, 34 L. T. (N.S.) 372; also in full, L. R. Prob. 1875-6, 154, cited in 2 Greenl. Ev. s. 688 *a*, note 3.

In this case the testator had executed a will with several (7) codicils. These papers were locked up by him in a box which was kept in his daughter's room, he retaining the key. After his death the will was not found in the box, but several codicils were found there. His daughter, who had acted as his amanuensis, and who had been in his confidence in his business transactions, and who had read the will several times, wrote out the contents of the will from memory, and without consulting any documents, and the correctness of her memory was attested by the codicils and other papers in the handwriting

of the deceased found in the box. There was evidence that the testator had made declarations of his testamentary intentions within a few months of his death, which were in accordance with the alleged contents of the will, and that he enjoyed all his mental faculties until his death. The writing made by the daughter was admitted as the will of the deceased. There was also evidence of declarations made by the testator as to the contents of his will, made after the will was executed, and at various times and to different persons, up to the time of his death. The following propositions, among others, were decided:—

1. The contents of a lost will, like that of any other lost instrument, may be proved by secondary evidence.

2. Declarations, written or oral, made by a testator, both before and after the execution of his will, are in the event of its loss admissible as secondary evidence of its contents.

In *Morris* v. *Swaney*, 7 Heisk. (Tenn.) 591 (1872) a lost will was established upon secondary evidence alone. The will was alleged to have been made in 1845. Both the alleged subscribing witnesses were dead. No copy of the will was produced. No witness was sworn who ever read the will. The proof of the contents of the will rested alone upon the testimony of witnesses who repeated its contents from having heard it read by others, the witnesses themselves being illiterate. This proof was corroborated by the declarations of the testator and other circumstances. The chancellor charged the jury that the complainants were required to establish their case by the best evidence in existence; that, however, the law did not require an impossibility, and that if the will was lost, and the subscribing witnesses dead, the will might be proven by such evidence as would clearly and fully satisfy their minds of its execution and of its contents. The jury rendered a verdict for the complainant establishing the will, and the verdict was sustained on appeal, the Court holding that the testimony as to the contents of the will was proper.

The admissibility of this class of declarations must now be considered to be established by the highest authority, and it is founded on sound reason.

In proving the contents of a will, the gradations in the evidence may be stated as follows:—

1. The best evidence is the original will itself.

2. In case of its loss, an authenticated copy is the best evidence.

3. Witnesses may have read the original.

4. Witnesses may have heard it read.

5. The testator may have made declarations as to its contents.

Either of these methods is competent, according to circumstances, to establish the contents of a will.

The provisions of the Code (see 1865), which require that the contents of a lost or destroyed will must be clearly and distinctly proved by at least two credible witnesses before it can be admitted to probate, must be construed liberally in the furtherance of justice, and for the prevention of fraud; and the spirit of the Code is complied with by holding that it applies only to those provisions of the will which affect the disposition of the testator's property, and which are of the substance of the will (*Early* v. *Early*, 5 Redf. S. 376; *Hook* v. *Pratt*, 8 Hun. 102-9.) But a lost or destroyed will cannot be established on the testimony of two witnesses, if they differ materially either as to the beneficiaries or the amount of the bequests (*Sheridan* v. *Houghton*, 6 Abb. N. C. 234.) So in *McNally* v. *Brown*, 5 Redf. 372, where from all the evidence the Court could only surmise the probable effect of the will, no two witnesses pretending to give the whole, probate was refused.

To warrant giving parol evidence of a will not shown to be destroyed, it must be first proved that diligent search has been made, by or at the request of the party interested, at the place where it is most likely it would be found; as among the papers of the devisor at his residence, if the will do not appear to have been deposited in any public office. The search may be proved by a party in the cause, who made the search, though he be interested, as it is merely addressed to the Court in order to let in secondary proof (*Dan* v. *Brown*, 4 Cow. 483).—*C. Z. Lincoln* in *Albany Law Journal.*

COUR D'APPEL DE PARIS (6e CH.)

12 novembre 1885.

PRÉSIDENCE DE M. CHOPPIN.

Commerçant— Femme— Mandat— Obligation— Signature.

Si la femme d'un commerçant, qui assiste celui-ci dans son commerce, peut être considérée comme sa mandataire et l'engager par sa signature, ce n'est qu'à la condition que cet engagement ait été pris dans l'intérêt du commerce du mari.

Conte c. Caisse commerciale de Paris.

La Cour....

Considérant que si la femme d'un commerçant, qui l'assiste dans son commerce, peut être considérée comme sa mandataire et l'engager par sa signature, c'est à la condition que cet engagement ait été pris dans l'intérêt du commerce de son mari;

Considérant qu'il est constant, en fait, que l'acceptation donnée par la femme Conte sur une traite de 2,000 francs tirée par le sieur Léglise, son frère, l'a été dans l'intérêt de celui-ci, lequel étant banquier avait promis de faire les fonds pour l'échéance et n'avait fourni aucune marchandise aux époux Conte;

Considérant, en conséquence, que cette acceptation est sans valeur au regard du sieur Conte;

Par ces motifs,

Met l'appellation et ce dont est appel à néant;

Emendant,

Décharge l'appelant des dispositions et condamnations contre lui prononcées;

Déclare la Caisse commerciale de Paris mal fondée dans ses demandes, fins et conclusions, l'en déboute, etc., etc.

NOTE.—Le mari ne peut être tenu des engagements contractés par sa femme seule qu'autant qu'il lui a donné mandat de s'obliger. Mais ce mandat peut être tacite, s'induire des circonstances et l'on admet notamment que la femme qui gère habituellement les affaires de son mari doit être considérée comme ayant mandat tacite pour acheter les marchandises nécessaires à la profession ou au commerce de ce dernier, et même pour accepter des traites fournies sur lui. C'est au juge du fait qu'il appartient alors de déterminer, non seulement l'existence, mais aussi l'étendue et les limites de ce mandat. V. Aubry et Rau, t. IV, § 411, p. 636, note 1; Massé et Vergé, t. V, § 751, note 2, p. 38; Pardessus, Dr. comm., t. I, No. 65; Troplong, du Mandat, Nos. 119 et 137: Pont, Petits contrats, No. 849; Merlin, Rép., vo. Autoris. marit., sect. VII, Nos. 1 et 7; Duranton, t. XVIII, No. 219; Toullier, t. XII, No. 261. *Sic:* Angers 27 février 1819 (S. chr.); Cass. 25 janvier 1821, 2 avril 1822 et 1 mars 1826 (S. chr.); Bordeaux 29 mars 1838 (S. 38. 2. 289); Douai 21 novembre 1849 (J. du P. 51. 2. 292—D. 50. 5. 315); Nîmes 11 août 1851 (J. du P. 52. 1225. —D. 54. 5. 57); Aix 10 décembre 1864 (S. 65. 2. 336—J. du P. 65. 1244), V. aussi Cass. 29 mars 1881 (D. 81. 1. 320) et Cass. 16 mai 1881 (D. 83 1. 24).—*Gazette du Palais*, 17 déc. 1885.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Feb. 20.

Judicial Abandonments.

Dame Alicia Dillon, doing business as "John Mooney & Co.," Windsor Mills, district of St. Francis. Feb. 13.

Isidore Trudeau, trader. St. Bazile le Grand, district of Montreal, Feb. 13.

Froby Valentine, trader, Three Rivers, doing business as "Charles Valentine & fils," Feb. 15.

Amable Thomas Robert, for Robert & Paré, carriage makers, Montreal. Jan. 26.

Pelletier & Tardif, drygoods merchants, Quebec, Feb. 18.

Curators Appointed.

Re J. Bte. Pagnuelo.—J. O. Dion, St. Hyacinthe, curator. Feb. 12.

Re Mulligan & Moore, district of Ottawa.—Kent & Turcotte, Montreal, curator. Feb. 9.

Re Kennedy & Girard, district of St. Francis.—John McD. Hains, Montreal, curator. Feb. 16.

Re Elias Shutan, cigar-dealer, Montreal (E. Shutan & Co).—David Seath, Montreal, curator. Dec. 9.

Re Robert & Paré, carriage-makers, Montreal.—Seath & Daveluy, Montreal, joint curator. Feb. 4.

Re J. M. Gaudette, district of Bedford.—Kent & Turcotte, Montreal, curator. Feb. 16.

Re Marie Caroline Duval, Montreal, doing business as "J. O. Normand & Cie."—Seath & Daveluy, Montreal, joint curator. Feb. 8.

Dividend Sheets.

Re Gilbert Coderre. Div. sheet at office of Henry Ward, curator, Montreal.

Rules of Court.

Henry R. Beckett et al. vs. J. A. Wiggett et al. S.C. St. Francis. Creditors of defendant notified to file claims.

Walter Blue vs. Dame Alicia Dillon (John Mooney & Co.) Meeting to appoint curator, March 1, at Sherbrooke.