THE

LEGAL NEWS,

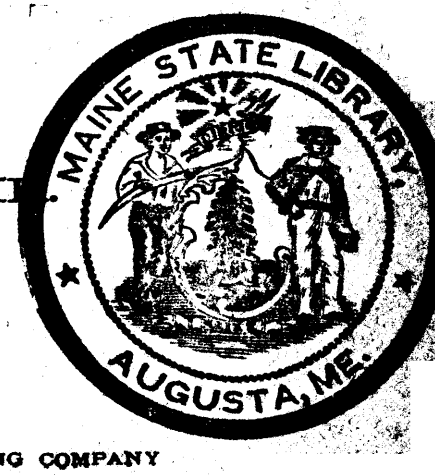
EDITED

BY

JAMES KIRBY, D.C.L., LL.D.,

Advocate.

VOL. VII.



MONTREAL:
THE GAZETTE PRINTING COMPANY
1885.

TABLE OF CASES

REPORTED, NOTED, AND DIGESTED

IN VOL. VIII.

ERRATA.

On p. 217 the first paragraph should begin: "A case bearing a slight resemblance to the cabman's case, etc."
On p. 250 for "La Rue" read "La Reine."
On p. 337, for 1152 C.C. read 1067 C.C.
On p. 369, 2nd col., for "93" read "90."

The Legal News.

VOL. VIII. JANUARY 3, 1885. No. 1.

There has been some difference of opinion in our courts as to the right of the higher tribunal to interfere with the discretion of the lower in the matter of costs, where nothing else is complained of. It seems to be pretty well settled now that a case may be taken to Review, and the judgment reformed, on a mere question of costs; and although the Court of Appeal does not encourage appeals for costs, the majority of the judges have never laid down a cast-iron rule forbidding such appeals, where the Court below appears to have acted on a wrong principle. In England, the Court of Appeal does recognise the right of appeal for costs, and in a recent case, *Pool* v. *Lewin*, noted in the *Law Journal*, the Court restored the plaintiff his costs, of which he had been deprived by the judge at the trial, no misconduct of any kind being shown on his part. The principle on which the English Court acted is laid down by the late Master of the Rolls (Jessel) in *Cooper* v. *Whittingham*, 49 Law J. Rep. Chan. 752, in these terms:—"Where a plaintiff comes to enforce a legal right, and there has been no misconduct, omission, or neglect on his part which should induce the Court to deprive him of his costs, the Court has no discretion, and cannot take away the plaintiff's right to costs. There may be misconduct of many sorts. For instance, there may be misconduct in conducting the proceedings, some miscarriage in the procedure, or some oppressive or vexatious conduct on the plaintiff's part or in his mode of conducting the proceedings, or other misconduct which will induce the Court to refuse costs; but where there is nothing of the kind the rule is plain and well settled, and is as I have stated it."

A telegram appeared in the papers lately about a man who came out to America in order to marry his aunt. The *Law Journal* (London) says:—"The man who is said to have travelled 4,000 miles in order to marry his aunt did not gain much by his journey. No doubt he managed to obtain a marriage ceremony which he could not have obtained in England without concealing his relationship; but although he fled to Wisconsin, his domicile was still in England. If his taste had been a little more mature, and he had chosen his great-aunt, there would have been no difficulty whatever."

That milk is milk, after the cream has been taken off, has been decided by the English Queen's Bench Division in *Lane* v. *Collins*, a note of which appears elsewhere. The process of skimming may not be an adulteration, but it affects the consumer more seriously than a slight addition of water to fresh milk. The buyer, it would appear, in order to be protected, must ask for "unskimmed milk."

The *New York Herald*, of Dec. 25, refers to a decision of the General Term of the Supreme Court in that city, which, it remarks, if allowed to stand, will subject wharf owners to a very stringent liability. A boat loaded with sand reached a dock at Port Chester during the night. The sand was consigned to the owner of the wharf. The captain asked a watchman on the dock where he should land. The latter replied that he did not know, but pointed to a part of the dock where he said sand had been unloaded before. The captain landed at this place, and when the tide went out the boat settled on the bottom and was badly damaged by reason of the ground being uneven. An action for damages was brought against the owner of the dock. The defence was that it was not the business of the watchman, nor had he any authority, to give directions about the landing of boats, and that in this case the captain had moored at a place where the defendant was not in the habit of receiving sand. The Court says:—"But the fact that the watchman was on the premises, in their apparent charge and possession, was a direct indication that he so far represented the defendant as to be authorized to indicate what might properly be done by a vessel arriving at the wharf in the defendant's business during the night time, when no other

person was to be found who could be consulted. The fact of his being there in the service of the defendant was an indication that it was his duty, as well as his authority, to look after his employer's affairs, and in so simple an act as the mooring of a vessel could indicate where she might be properly and safely placed." From this decision Judge Davis dissented, on the ground that the watchman had no authority and that the captain of the boat was guilty of contributory negligence.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Nov. 28, 1884.

Before LORANGER, J.

SMITH v. WHEELER.*

Evidence—Action en séparation de corps.

Held, 1. That the admission of the consort, defendant in an action *en séparation de corps*, whether the admission be judicial or extra-judicial, is inadmissible in evidence. The prohibition contained in Articles 186, 193 and 1231 of the Civil Code is absolute, and leaves the judge no discretion in the matter.

2. In such case, an allegation of the declaration in these words, "the whole as confessed and admitted by the defendant," may be rejected on motion.

Motion granted.

Robertson, Ritchie, Fleet, & Falconer for the plaintiff.

Greenshields, McCorkill, & Guerin for the defendant.

SUPERIOR COURT.

MONTREAL, Nov. 22, 1884.

Before TASCHEREAU, J.

CATY et al. v. PERRAULT. *

Vente de biens substitués—Conseil de famille—Effet de l'Ordonnance du juge—Formalités—Nullités.

JUGÉ:—1o. Que d'après le droit et la jurisprudence existant en France avant l'ordonnance de 1747, tout grevé de substitution pouvait et devait, avec l'autorisation judiciaire, aliéner les immeubles sujets à la substitution, pour cause nécessaire et lorsqu'il y avait urgence d'acquitter des dettes grevant les biens substitués et de prévenir la vente par décret des dits biens, et que telles aliénations étaient finales et ne pouvaient être résolues à l'ouverture de la substitution.

2o. Que dans un conseil de famille composé d'amis, le défaut d'y avoir convoqué tous les parents et alliés résidant dans le district, n'entraîne pas la nullité des actes de l'assemblée, si d'ailleurs les parents n'y ont pas été systématiquement exclus, et si cela ne cause aucun préjudice aux mineurs.

3o. Que l'ordonnance judiciaire prononçant sur l'avis du conseil de famille couvre toutes les irrégularités antérieures de manière à protéger les tiers, spécialement dans une vente de biens de mineurs.

4o. Qu'avant l'ordonnance de 1747, la présence seule du tuteur ou du curateur à la substitution, à une vente de biens de mineurs était suffisante, le concours d'un tuteur aux appelés alors nés n'était pas nécessaire.

5o. Que l'absence du concours des appelés à une substitution dans les procédés judiciaires faits pour arriver à la vente des biens substitués ne peut être invoquée que par les dits majeurs eux-mêmes.

Mercier, Beausoleil & Martineau pour les demandeurs.

Lacoste, Globensky, Bisaillon & Brosseau pour les défendeurs.

COUR DE CIRCUIT

MONTRÉAL, 17 déc. 1884.

Coram LORANGER, J.

VÉZINA v. GIBEAU, & GIBEAU, Opposant.

Affidavit—Commissaire de la Cour Supérieure—Opposition.

JUGÉ:—*Que les lettres C. C. S. à la suite du nom du commissaire de la Cour Supérieure qui a reçu un affidavit, sont une indication suffisante de sa qualité et de sa juridiction.*

Le demandeur prétendant que par cette indication laconique, le commissaire ne faisait pas apparaître de sa juridiction, et que

*To appear in Montreal Law Reports.

c'était là une cause de nullité de l'opposition, en demanda le renvoi par la motion suivante :—

Motion du demandeur, qu'attendu qu'il n'appert pas par l'*affidavit* produit au soutien de la présente opposition, que la personne qui a reçu cet *affidavit*, Jos. Chartrand, soit une personne autorisée à recevoir des *affidavits* pour ce district, ladite opposition soit en conséquence renvoyée avec dépens.

Et au soutien de sa motion, le demandeur a cité les décisions rendues dans les causes suivantes :—*Leclerc* v. *Blanchard*, 12 L. C. J. 236; *Duhaut* v. *Lacombe*, 16 L. C. J. 111.

De son côté, l'opposant a cité une cause beaucoup plus récente, dans laquelle le contraire a été décidé, celle de *Wood* v. *Ste. Marie & Ste. Marie*, opposant, 21 L. C. J. 306.

Et la cour, après délibéré, a renvoyé la motion du demandeur avec dépens.

Motion renvoyée.

Longpré & David, pour l'opposant.
Loranger & Beaudin, pour le demandeur.
(J. G. D.)

COUR DE CIRCUIT.

MONTRÉAL, 17 avril 1884.

Coram LORANGER, J.

VINCENT v. MOORE.

Vente—Défauts non apparents—Action rédhibitoire.

JUGÉ :—*Que les vices ou défauts non apparents, mais pouvant être découverts par un examen minutieux, ne donnent pas lieu à l'action rédhibitoire, bien que le vendeur n'ait pas déclaré à l'acheteur les vices de la chose vendue qui étaient à sa connaissance et bien qu'il fût de mauvaise foi.*

Le demandeur avait acheté du défendeur, pour consommation alimentaire, deux cochons chez lesquels il ne découvrit qu'après la vente, des défauts qui les rendaient impropres à l'objet pour lequel il les avait achetés. De là la présente action demandant l'annulation de la vente pour vices rédhibitoires.

Le défendeur a plaidé à cette action, que la vente avait été faite ouvertement, dans un marché, et sans aucune garantie de sa part et que du reste les cochons par lui vendus au demandeur n'avaient ni défauts cachés, ni vices rédhibitoires et que l'action du demandeur était mal fondée et devait être renvoyée.

A l'enquête, il fut prouvé que les cochons en question étaient tout simplement propres à la reproduction de l'espèce, ce à quoi ne s'attendait pas le demandeur qui les avait achetés dans un autre but; mais il fut également établi que par un examen minutieux, il aurait pu facilement découvrir les défauts qu'il traitait comme vices rédhibitoires par son action.

PER CURIAM. Je crois les prétentions du demandeur mal fondées; il invoque comme vices rédhibitoires, ce qui n'en était pas. Il aurait dû faire avant l'achat, un examen plus minutieux des cochons en question et nul doute qu'il aurait alors découvert les défauts dont il se plaint maintenant. Il ne l'a pas fait, et s'il a été trompé, il ne peut en imputer la faute qu'à lui seul. Il est vrai qu'il invoque aussi la mauvaise foi du défendeur, mais dans le cas actuel, rien ne justifie l'action rédhibitoire du demandeur et elle est renvoyée avec dépens.

Action renvoyée.

J. B. Doutre, pour le demandeur.
Quinn & Purcell, pour le défendeur.
(J. G. D.)

COUR DE CIRCUIT.

MONTRÉAL, 13 novembre 1884.

Coram MATHIEU, J.

LEPROHON v. ROBB, & DUPUIS et PRINGLE, *Intervenants.*

Saisie-gagerie — Sous-locataires — Interventions —Dépens.

JUGÉ :—*Que vu que le demandeur savait que les intervenants étaient sous-locataires du défendeur, bien qu'il ne sût pas s'ils avaient payé leur loyer, ces derniers avaient droit non-seulement à la distraction de leurs effets, mais encore aux frais de leur intervention respective contre le demandeur.*

Le demandeur a fait pratiquer contre le défendeur, son locataire, une saisie-gagerie pour arrérages de loyer s'élevant à la somme de $80.

Au nombre des effets saisis, se trouvaient ceux des intervenants, sous-locataires du défendeur.

Lors de la saisie, le demandeur savait que les intervenants étaient sous-locataires du défendeur, mais ignorait s'ils lui devaient ou non du loyer.

A l'encontre de la saisie pratiquée sur leurs meubles et effets, les sous-locataires, Dupuis et Pringle, ont fait des requêtes en intervention, par lesquelles ils ont demandé non-seulement la distraction de leurs effets, mais de plus à ce que le demandeur fût condamné en leurs dépens. Il fut prouvé qu'ils avaient payé leur loyer en entier.

Voici, du reste, le jugement de la cour qui met en pleine lumière tous les faits relatifs à ces interventions et toutes les questions qui s'y rattachent:

"La cour....

"Attendu que le demandeur n'avait pas stipulé comme condition de son bail au défendeur, que ce dernier n'aurait pas le droit de sous-louer ou de céder son bail, et que par l'art. 1638 du Code Civil, le locataire a droit de sous-louer ou de céder son bail, à moins d'une stipulation contraire;

"Et attendu qu'il a été admis à l'audience par le demandeur, que le défendeur avait sous-loué aux intervenants en cette cause, partie des lieux à lui loués par le demandeur et que celui-ci qui connaissait cette sous-location, n'en a pas moins fait saisir, en vertu du bref de saisie-gagerie émané en cette cause, les effets mobiliers des dits intervenants, mentionnés dans leurs interventions;

"Considérant que le demandeur a admis lesdites interventions, mais prétend qu'il ne peut être condamné à en payer les frais, vu qu'il ne connaissait pas si les intervenants avaient ou non payé le loyer qu'ils devaient au défendeur;

"Considérant que les intervenants ont prouvé qu'ils avaient payé tout le loyer qu'ils devaient au défendeur;

"Considérant qu'il résulte des faits ci-dessus que le demandeur a, sans droit, fait saisir les effets mobiliers des dits intervenants et qu'il n'est pas juste, dans les circonstances, que les intervenants soient forcés de payer des frais qu'ils ont été obligés de faire pour se soustraire à la saisie pratiquée par le demandeur sur leurs biens meubles; et que si quelqu'un doit supporter ces frais, ce doit être le demandeur, qui a attaqué et fait saisir les intervenants sans aucun droit et lorsqu'il n'avait pas de privilège sur leurs biens meubles et effets:

"A maintenu et maintient les interventions des dits Ernest Dupuis et James Pringle, et a distrait de la dite saisie-gagerie, comme appartenant respectivement aux dits intervenants, les effets mobiliers mentionnés dans lesdites interventions, et a donné aux dits intervenants, mainlevée de ladite saisie-gagerie et a condamné et condamne ledit demandeur, à payer aux dits intervenants respectivement, les frais des dites interventions, lesquels sont distraits à Mtres Downie & Lanctot, avocats des intervenants."

Interventions maintenues.

DeBellefeuille & Bonin, pour le demandeur
Downie & Lanctot, pour les intervenants.

(J. G. D.)

QUEEN'S BENCH DIVISION.

LONDON, Dec. 16, 1884.

LANE, Appellant, v. COLLINS, Respondent.—(Law J., Notes of Cases.)

Sale of Food and Drugs Act, 1875 (38 & 39 *Vict. c.* 63), *s.* 6—*Adulteration—Sale of Milk with Cream Abstracted—Prejudice of Purchaser.*

The respondent was charged, under section 6 of 38 & 39 Vict. c. 63, with selling an article of food—viz. milk—which was not of the nature, substance, and quality of the article demanded by the purchaser.

A pint of the milk in question was sold to the appellant for twopence, and was admittedly "60 per cent. butter-fat deficient."

The magistrate held that no offence had been committed under section 6 by the skimming of the milk, the purchaser having only asked for "milk."

S. Day, for the appellant, submitted that the purchaser, having asked for milk, should have been supplied with unskimmed milk, and that an offence had therefore been committed by the vendor under section 6 of the Act of 1875.

The Court (MATHEW, J., and DAY, J.) held that the magistrate's decision was right.

Appeal dismissed.

SUPREME COURT OF CANADA.

OTTAWA, Jan. 16, 1884.

Before RITCHIE, C. J., STRONG, FOURNIER, HENRY and GWYNNE, JJ.

TREACY et vir (defts.), Appellants, and LIGGETT et al., (plffs.) Respondents. (9 S. C. Rep. Can. 441.)

C. C. P. 803, 1034—*Donation in marriage contract—Proof of insolvency of donor at date of donation necessary to set aside.*

On the 28th June, 1876, the plaintiffs sold to T., a property for $12,250, of which price $3,789 were paid in cash. On the 16th June, 1879, T.'s daughter married one K., and in the contract of marriage T. made a donation to his daughter of real estate of considerable value, the only property remaining to him being that sold to him by the plaintiffs. In July, 1881, the plaintiffs brought an action to set aside the gift in question, claiming that the property sold had become so depreciated in value as to be insufficient to cover their claim for the balance remaining due to them and secured only by the property so sold; that the gift in the marriage contract had reduced T. to a state of insolvency, and had been made in fraud of the plaintiffs, and that at the time the gift was made T. was notoriously insolvent. T. pleaded, *inter alia*, denying averments of insolvency, fraud, or wrong-doing. The only evidence of the value of the property still held by T. at the date of the donation was the evidence of an auctioneer, who merely spoke of the value of the property, in November, 1881, and that of a real estate agent, who did not know in what condition the property was two years before but stated that it was not worth more than $6,000 in November, 1881, adding that he considered property a little better then than it was two years before, although very little changed in price.

Held, reversing the judgment of the Court of Queen's Bench, (Montreal, 22nd May, 1883,) that in order to obtain the revocation of the gift in question, it was incumbent on the plaintiffs to prove the insolvency or *déconfiture* of the donor at the time of the donation, and that there was no proof in this case sufficient to show that the property remaining to the donor at the date of his donation was inadequate to pay the hypothecary claims with which it was charged.

Doutre & Joseph for appellants.
Judah & Branchaud for respondent.

U. S. CIRCUIT COURT, N. D. ILL.

THE LONDON GUARANTY AND ACCIDENT CO. v. GEDDES. (17 Chic. L. N.)

Surety—Rights of Company insuring employer against loss by misconduct of employé.

1. Under the Constitution and statutes of Illinois, which authorize the issuing of a *capias ad respondendum*, upon the filing of an affidavit, showing that the defendant fraudulently contracted the debt or incurred the obligation respecting which the suit is brought, where a guaranty company issued its policy guaranteeing for a consideration an employer, against any losses it might sustain by reason of the want of integrity, honesty and fidelity of an employé, and received from the employer a written agreement in which he stipulated that he would save such company harmless against any loss it might sustain by reason of the issuance of said policy. *Held*, that such company would have the right, in case of an embezzlement of the employé from the employer, and the payment of the loss by it, to arrest and hold to bail such employé.

2. In such case the obligation sued on is contracted and incurred when the embezzlement takes place, not when the agreement to pay is executed.

3. The insurance company stands in the shoes of the employer, and it has a right to be subrogated to all the rights of the employer, in the prosecution of dishonest employés, and the common dictates of public policy would give to the sureties of such employés the same remedy that the defrauded employer would have.

BLODGETT, J. This is a motion to quash the capias and discharge on common bail, upon the ground that the affidavit filed does not show a case which authorizes the issue of a capias.

The facts set out in the affidavit are briefly these: The plaintiff is a corporation, created in England, with authority to insure employers against loss by reason of the want of integrity, fidelity or misconduct of employés. It is stated in the affidavit that the defendant was an employé of the Grand Trunk Railway Company, as their outside ticket agent at Orillia, Province of Ontario; that, at the request of the defendant, the plaintiff issued

to the Grand Trunk Railway Company its policy, wherein it guaranteed the Grand Trunk Railway Company against any losses it might sustain by reason of the want of fidelity or honesty of the defendant as such employé of the railway company, to the extent of $800; that, before the issue of this policy, the defendant signed a written agreement, by which he stipulated that he would himself save the plaintiff harmless against any loss plaintiff might sustain by reason of the policy, and also that any account stated by the general accounting officer, or auditor of the railroad company, should be conclusive against the defendant as to the amount of any defalcation of defendant that the plaintiff might be compelled to pay. The affidavit further states that the defendant, after the issue of this policy, embezzled money to the amount of $546, which came into his hands as such agent and employé of the Grand Trunk Railway Company, and that the plaintiff paid the same, and now seeks to recover, or is about to bring a suit to recover that amount from the defendant.

The only question raised is, whether this shows such a case of fraud as justifies the issue of a capias. It is very clear there would be no liability for the amount claimed in this case, but for the embezzlement of the defendant as charged. If this defendant had faithfully and honestly performed his duty to the railway company, the plaintiff would have had no cause of action against him; and I take it, there can be no legal difference in the relation which this guaranty company sustains to the defendant, and the relation which a surety on his bond would have sustained. If he had asked a person to become surety on his bond and then embezzled the money of his employer, and the surety had been compelled to pay it, it would not lie in the mouth of the defendant to say that the liability to the surety did not arise out of a fraud. I find no special authority on this question. This class of contracts is new, and I do not find that they have been very much before the courts as yet, but it seems to me so clear there is hardly room for a doubt that there would have been no right of action but for the fraud of the defendant, and, it seems to me, his surety should have the same remedy as the original employer would have. He stands in the shoes of the employer, and has a right to be subrogated to all the rights of the employer in the prosecution of dishonest employés. The case is largely analogous to the very numerous class of cases that occur in our Admiralty Courts, where insurance companies are subrogated to the place of the insured, in cases of fraud or negligence on the part of other parties whereby losses occur to ships for which an insurance company is liable and compelled to pay under its policies.

Further than that, it seems to me, there is a principle of public interest involved in this question that should entitle this plaintiff to all remedies that the employer would have. We all know that in cases of large corporations, whose sole business it is to make, handle and disburse money for the benefit of their stockholders, or parties interested in their earnings, if they get their money from the sureties of their dishonest employés, they will not prosecute the employé either civilly or criminally. They will simply stand on their bond, and, if they get the money from the surety, they leave the punishment of the dishonest servant to the man who has suffered, rather than spend their money in prosecutions which either directly or indirectly may punish the wrongdoer; and inasmuch as we know that it is almost the universal custom for bankers, railroad companies and all large corporations, employing numerous agents and servants who handle their funds in one capacity or another, to exact a bond whether it may be such a policy as this, or the ordinary bond, it seems to me the common dictates of public policy should give to the sureties of such employés the same remedy that the defrauded employer would have. The Constitution and statutes of Illinois authorize the issue of a *capias ad respondendum* upon the filing of an affidavit showing that he defendant "fraudulently contracted the debt or incurred the obligation" respecting which the suit is brought, and there seems to me no room for question, as the record now stands, that defendant fraudulently incurred the obligation he is now under to make good this defalcation to the plaintiff.

The motion to discharge on common bail is overruled.

RECENT DECISIONS AT QUEBEC.

Pilotage.—A ship exempt from compulsory pilotage, making the signal for pilot, is liable for pilotage, even if she should afterwards refuse the services of the pilot.—*Corporation of Pilots* v. *Brigantine "J. A. Horsey,"* (Vice-Admiralty Court, Irvine, J. V. A. C.), 10 Q. L. R, 257.

Saisie-arrêt. — Jugé, 1o. Que l'enlèvement illégal, par le saisi, de partie des biens saisis-arrêtés, avant le cautionnement qui est substitué à la saisie d'iceux, n'affecte pas le recours du saisissant contre les cautions.

2o. Que la validation de la saisie-arrêt n'a pour effet que de la convertir en saisie-exécution, et que, lorsque le saisi a, sur cautionnement obtenu possession des effets saisis, la validation de l'arrêt n'a plus d'objet et n'est pas nécessaire pour conserver au saisissant son recours contre les cautions; mais qu'il en serait autrement si l'arrêt avait été annulé.—*Gauvreau* v. *Quinn et al.* (Sup. Ct., Casault, J.), 10 Q. L. R. 259.

Jurisdiction—Wages.—Where the mariner's contract was made in a foreign country and the voyage terminated in this country: on an action for wages by the seaman, *held*, that the Court here should not withhold the exercise of its jurisdiction.—*The Mary Russell* (Vice-Admiralty Court, Irvine, J. V. A. C.) 10 Q. L. R. 265.

Servitude—Water course.—The defendant, by the making of a trench or drain, changed the course of a rivulet or stream passing through his property, so as to cause it to pass through the land of the plaintiff where it never passed before; *Held*, that such diversion of the water constituted an illegal servitude on the plaintiff's property.—*Maguire* v. *Donovan* (Sup. Ct., Meredith, C.J.), 10 Q.L.R. 267.

Donation—Substitution — Résiliation. — Jugé, 1o. Que la résiliation, par le donateur et le donataire, de la donation créant une substitution en faveur des enfants à naître du donataire, n'affecte pas la substitution, ni les droits des appelés.

2o. Que le grevé qui remet au substituant les biens donnés, pour demeurer quitte envers lui des prestations dont le charge l'acte créant la substitution, ne peut pas, avant sa mort, faire remise aux appelés des biens substitués.

3. Que la substitution ne peut être créée que par un acte à titre gratuit, et que celle stipulée en faveur des enfans à naître du grevé par un acte intitulé donation, mais dont les charges excèdent la valeur des biens donnés, peut être résilié par le concours seul du substituant et du grevé.—*Beaulieu* v. *Hayward*, et *Letellier*, oppt. (C. R., Stuart, Casault et Caron, JJ.) 10 Q. L. R. 275.

Evidence—Hypothec.—1. The allegation of the granting of a hypothec is in effect an allegation that the person creating the hypothec had power to do so, and therefore under such allegation, the Court will admit evidence to prove the existence of such power.

2. (Following *Renaud* v. *Proulx*, 22 L. C. J. 126), the plaintiff in a hypothecary action must prove that the grantor of the mortgage wrs proprietor of the immoveable hypothecated at the time the mortgage was granted. — *Union Bank* v. *Nutbrown* (Ct. of Review Meredith, C.J., Stuart & Casault, JJ.) 10 Q. L. R. 287.

RECENT U. S. DECISIONS.

Inspection of the Books of a Corporation.—The books and papers of a trading corporation are the common property of all the stockholders; and unless the charter provides otherwise, a shareholder has the right to inspect such books and papers and to take minutes from them for a definite and proper purpose at reasonable times. A writ of mandamus may go against the corporation at the instance of a stockholder to inspect the corporate books and papers in reference to some distinct, defined dispute as to which the shareholder wishes to file a bill against the corporation, and such inspection is necessary to enable him to state the facts in his bill.—*Commonwealth* v. *Iron Co.*, S. C. Pa.; 15 Pittsb. Leg. Jour., 142.

Liability of Sleeping Car Co.—A sleeping car company is not liable for valuables stolen from one occupying a berth unless negligence is shown on its part. The carrier's or innkeeper's liability does not apply.—*Pullman*

Palace Car Co. v. *Gaylord*, Ct. App. Ky., Oct. 29, 1884; 8 Ky. L. Rep. 279.

Fire Insurance. — Where the owner of a dwelling, who, after a tenant has vacated the premises, moves his furniture into and cleans up the house with an intention of making it his residence, but during that time does not actually occupy it at night, subsequently leaves it temporarily on business, and puts a party in possession until his return, the house cannot be considered as "vacant or unoccupied," within the meaning of a clause in the policy providing that if the insured building shall "be or become vacant or unoccupied" the policy shall be void unless consent in writing is indorsed thereon; and he will be entitled to recover for a loss occurring during such temporary absence. — *Shackleton* v. *Sun Fire Office*, Sup. Ct. Mich. N. W. Rep. Dec. 6.

Public Sidewalks.—A public sidewalk is a portion of the public highway, and the owner or one in possession of a lot or building cannot be required to remove snow and ice from the sidewalk thereto. A city ordinance requiring this to be done is void.—*Chicago* v. *O'Brien*, S. C. Ill., Sept. 27, 1884; 18 Rep. 587.

Stock Speculation.—Contracts for speculations in stocks upon margins, when the broker and the customer do not contemplate or intend that the stock purchased or sold shall become or be treated as the stock of the customer, but the real transaction is a mere dealing in the differences between prices; that is, in the payment of future profits or losses, as the event may be, are contracts of wager, dependent on a chance or casualty. Such contracts, if made in this State, are unlawful, and securities given therefor are void by force of the provisions of "the Act to prevent gaming." Such contracts, though made in another State, where they are to be presumed to be lawful and enforceable, will not be enforced here; at least against residents and citizens of this State, because their enforcement would violate the plain public policy of this State on the subject of gambling and betting evinced by the statute above mentioned. In this respect, such contracts are excepted from the rule of comity, which requires the enforcement by the courts of one State of contracts made in another, if valid by the *lex loci contractus.*—*Flagg* v. *Baldwin*, New Jersey Ct. of Error and Appeal.

FIRE ESCAPES.

The Supreme Court of New York in the late case of the Fire Department of the City of New York, respondent, *v.* Albert P. Sturtevant *et al.*, appellants, which was an appeal from an order of the Special Term authorizing and directing the respondent to place upon the hotel of the appellants certain fire escapes, as especially directed in the order, decided that the powers conferred by statute upon the Fire Department of the City of New York to require, by proper notice, the construction of fire escapes in and upon hotels, are clearly constitutional, and are to be exercised in accordance with the sound discretion of the department; and courts of justice will not interfere with the exercise of these powers, unless that exercise is clearly improper. Such proceedings are not open to the objection that the party affected is deprived of his property without due process of law; nor is the right of trial by jury preserved to him therein, or in any just sense applicable thereto. The powers referred to are given to the Fire Department, and the action and direction of the department as such, and not of one of its subordinate officers or bureaus is required.—*Boston Law Record.*

GENERAL NOTES.

THE ADVANTAGES OF ARBITRATION.—"The English profession and the public," says the *New York Daily Register*, "are discussing, with considerable vivacity, the question whether the supposed reform in judicial organization and procedure is really an improvement or not. Some are of opinion that the result has been to render litigation more expensive and to deter the business community from resorting to it. Others attribute the slackness of business to other causes. In this state of things, renewed interest is taken in the question of arbitration as a substitute for litigation, and perhaps as a preliminary. The business view of the question was well illustrated in a trial in this city some time ago, in a commercial cause that had been tried very closely, occupying the greater part of a week. When the defendant came to his part of the case, his affirmative defence was a former adjudication by award. The arbitration and award being proved, the witness who testified to them was asked incidentally how long they were trying the arbitration. 'About fifteen minutes,' was the answer. The jury laughed, and brought in a verdict for defendant."