The Legal News.

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THE CUSTODY OF INSANE PERSONS.

The very general reluctance to relax or weaken the checks which protect sane persons from being shut up fraudulently in lunatic asylums—a reluctance which has been greatly increased by writers of fiction like Charles Reade—has had a tendency to the opposite error, and persons undoubtedly insane, and often dangerous, are suffered to be at large, with no other restraint than can be exercised by friends or relatives. Suicides like that of the late Mr. Shannon in Montreal are now of almost daily occurrence throughout the country, as any one can be convinced by an examination of the telegraphic despatches in the files of a daily paper. These unfortunate people are usually observed with more or less certainty to be deranged several days before the irrevocable act is committed, but no effort is made to place them in safe keeping. Their lives are therefore sacrificed, when in all probability a few weeks of proper attention would have fully restored their mental health.

But a still more painful class of cases is that in which the person with disordered mind sacrifices others as well as himself. It is quite common for women laboring under delusions to kill their children before they commit suicide. The recent case of Mrs. Seguin in New York, in which the wife of a physician slaughtered her whole family before putting an end to her own life, furnishes a terrible illustration. Referring to this case the *Albany Law Journal* pertinently observes:—"There is no safety in the household against the craft and violence of the insane, and mild melancholy is ever ready to burst out into mad rage. * * * No family should be intrusted with the keeping, but every such person should be sent to an asylum. It should be made the duty of every physician, under penalty, to report to the proper officers the case of every insane person within his knowledge."

It must be confessed, however, that the subject is one of the greatest difficulty and embarrassment. It is admitted, we believe, that in the first stages of mental maladies the removal of the patient from his ordinary surroundings is most salutary and conducive to a speedy recovery. Dr. Seguin is said to have entertained a contrary opinion; but the result has probably shaken his convictions. But, apart from the danger of confining those who are perfectly sane, how shall the reluctance of relatives to be separated from those who appear to them to be merely the victims of melancholy, be overcome? Certainly not so long as asylums are regarded with feelings of apprehension and even aversion as at present.

THE ADVOCATES' LIBRARY.

The Provincial Government have acceded to the suggestion of a deputation of the Montreal bar, that a gallery be erected in the Advocates' Library, and space will thus be provided for the fresh acquisitions of several years to come. The library at Montreal now comprises a very respectable collection of books, though possibly a little more care in the selection would not be labor lost.

JUDICIAL RECREATION.

Mr. Justice Lawson, now famous in connection with the Gray contempt case, and as the object of an attempted assassination, has for some time, according to the *Pall Mall Gazette*, been engaging his leisure in turning a collection of popular evangelical and other hymns into Latin verse. Sometimes the Horatian metres are followed, but more commonly the learned judge has sought to gain the exact measure of the original. Several of the hymns, adds the *Gazette*, are rendered with exquisite grace and taste.

To one who, like the learned judge, lives in hourly apprehension of death by knife, bullet or dynamite, some of the sacred melodies will doubtless have double significance. He may say, in the version of Brady and Tate,

> "My hairs, though num'rous, are but few,
> Compared with foes that me pursue—"

Or he may be excused for applying to his enemies, in bitterness of spirit, those other lines,

> "They to the grave in peace descend,
> And whilst they live are hale and strong;
> No plague or troubles them offend,
> Which oft to other men belong."

It is certain, however, that if judges are forced to toil, with one hand upon a revolver and a policeman at their back, deliberation will not be assisted, and an occasional eccentricity of judgment may be pardoned.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 15, 1882.

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

LA BANQUE d'HOCHELAGA v. LAVENDER.

Appeal—Interlocutory judgment ordering "preuve avant faire droit."

The plaintiff moved for leave to appeal from an interlocutory judgment which ordered *preuve avant faire droit* on a *défense en droit.*

The COURT rejected the motion, but said that it would not lay down the rule that an appeal would under no circumstances be granted from such judgment.

Motion rejected.

Beïque for plaintiff.
Kerr, Q.C., contra.

COUR SUPÉRIEURE.

MONTRÉAL, 20 Octobre, 1882.

Coram RAINVILLE, J.

MAINVILLE v. YOUNG.

Action pour diffamation—Délai pour plaider.

Le demandeur poursuit en dommages pour diffamation et injures dans des écrits judiciaires.

Le défendeur Young dans une action contre une Dame Deguise aurait accusé Mainville d'avoir conspiré avec cette dite Dame Deguise, dont il était le notaire, pour faire signer au dit Young certains actes, dans le but de priver ce dernier d'une partie notable des biens qui lui revenaient de la succession de son père. Le demandeur Mainville se plaint de ces accusations, et allègue qu'elles ont été déclarées fausses par un jugement de la Cour Supérieure qui a débouté l'action du dit *Young* contre *Deguise.*

Après le retour de l'action, le défendeur fit motion, qu'attendu que le dit jugement auquel réfère la déclaration, a été porté en appel où la dite cause de *Young* v. *Deguise* est encore pendante, il demande que le délai pour plaider en la présente cause soit prolongé jusqu'au troisième jour inclusivement après la reddition du jugement en Cour d'appel, dans la dite cause de *Young* v. *Deguise.*

Les raisons à l'appui de la motion sont que le jugement de la Cour d'appel décidera en quelque sorte la présente cause; que si le dit jugement de la Cour Supérieure était renversé en appel le défendeur aurait une preuve évidente de cause probable, et il deviendrait inutile de faire une enquête; qu'il serait très-avantageux pour les deux parties que la présente cause resterait au *statu quo* jusqu'au jugement de la Cour d'appel, car autrement il faudrait recommencer à grands frais une longue enquête déjà faite dans la première cause.

Puis le défendeur cita:

1 *American Leading Cases*, pages 221-223; *Pharis* v. *Lambert*, 1 *Sneed*, 232.

Le demandeur insista pour que le défendeur fût forcé de plaider dans les délais ordinaires, sur le principe que le jugement de la Cour d'Appel n'aurait aucune influence sur la cause actuelle, et ne pourrait fournir aucune cause probable au défendeur quand même il lui serait favorable.

PER CURIAM. "La Cour, parties ouies sur la motion du défendeur faite et produite le 2 Octobre courant, qu'en autant qu'il serait avantageux pour les deux parties que la présente cause resterait au *statu quo* jusqu'au jugement de la Cour d'appel dans la cause No. 2161, *Young*, demandeur contre *Dame Emélie Deguise*, défenderesse, le délai pour plaider en cette cause soit prolongé jusqu'au troisième jour inclusivement après la reddition du jugement dans la dite Cour d'appel, avoir examiné la procédure et délibéré: Accorde la dite motion, et en conséquence prolonge le délai pour plaider tel que requis, les frais de la motion à suivre le sort du procès."

Lareau & Lebeuf pour le demandeur.
Barnard, Beauchamp & Creighton pour le défendeur.

(J. J. B.)

SUPERIOR COURT.

MONTREAL, Oct. 31, 1882.

Before TORRANCE, J.

GOSSELIN v. GOSSELIN, & MONGEAU, *mis en cause.*

Settlement between parties to suit—Attorneys' costs.

The plaintiff, after issue joined, agreed to discontinue his action on payment of $300, *each party to pay his own costs. The defendants*

with the permission of the Court, then pleaded the arrangement, concluding for the dismissal of the action without costs.

Held, that the plaintiff was not entitled to answer this plea by alleging that the settlement was fraudulent, and made with the view of depriving the attorneys of plaintiff of their costs.

This was an action to set aside a deed of obligation between father and son for want of consideration. After issue joined, the case was inscribed for trial before Mr. Justice Mackay, and the father (defendant) was examined for the plaintiff. The case was then adjourned to a later day, and meanwhile the parties made an arrangement by which plaintiff agreed to discontinue his action on payment to him of $300, which was done, each party paying his own costs.

Subsequently defendant applied to the Court to be allowed to produce an additional plea based on the above arrangement. This was allowed, and the new plea concluded for the dismissal of the action, each party paying his costs.

The plaintiff answered this new plea by alleging that the arrangement had been made in a fraudulent manner, and with the view of depriving the attorneys of plaintiff of their costs, of which they had claimed distraction. The contest was now to ascertain whether the arrangement could be made to the prejudice of the attorneys.

Préfontaine, for plaintiff, cited *Montrait* v. *Williams*, 1 L. N. 339, 3 L. N. 10.

J. M. Loranger, Q.C., for defendant, cited *Lafaille* v. *Lafaille*, 14 L. C. J. 262; *Quebec Bank* v. *Paquet*, 13 L. C. J. 122; *Castonguay* v. *Castonguay*, 14 L. C. J. 304; *Ryan* v. *Ward*, 6 L.C.R. 201.

PER CURIAM. I do not see that *Montrait* v. *Williams* applies to the present case. The facts there were peculiar. The cases cited by defendant are in point. But there is more than this. The demand here for costs against the defendant is made by plaintiff, who urges his own fraud. This cannot be. It is not a demand by his attorneys, though it is for their benefit. The additional plea will be maintained and the answer over-ruled with costs.

Préfontaine & Co. for plaintiff.

Loranger & Co. for defendant.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1882.

MACKAY, TORRANCE, MATHIEU, JJ.

[From C. C., Terrebonne.

GUERIN v. ORR.

Promissory Note—Evidence of payment—Action by third party.

Where there is a competition of evidence on the question whether a security has or has not been satisfied by payment, the possession of the uncancelled security by the claimant ought to turn the scale in his favor.

G., who was not a party to the note in question, got it into his possession before maturity, as collateral security. The payee subsequently became insolvent, and G., before maturity of the note, obtained from the assignee a transfer of all the insolvent's assets.

Held, that G. might sue the maker on the instrument though not endorsed.

The judgment under Review was rendered by the Circuit Court, Terrebonne, Bélanger, J., April 1, 1882.

MACKAY, J. The defendant, appellant, has been condemned to pay plaintiff the amount of a note of December, 1878, for $106, at 12 months, made to the order of L. D. Mathieu.

Mathieu became bankrupt in 1879, before the note matured, and some time before had placed a quantity of notes with the plaintiff, but he had not endorsed them. Dispute, since the bankruptcy, has taken place between Mathieu and plaintiff, as to the conditions under which the notes were delivered to plaintiff.

Mathieu now insists that Guerin never got them as collaterals, for securing payment of the large sum of money which undoubtedly Mathieu owed Guerin; but that the notes were placed with him (unendorsed) on condition that they should become his, only on his procuring Mathieu a discharge from all his creditors. Had the parties made writings, all would have been plain. As things appear, Guerin seems to have the best right. He insists that the notes, Orr's note among them, were gotten by him as collaterals. He proves that he represented the facts to Mathieu's assignee in bankruptcy, and that he described the collaterals, and put a value upon them of over seven hundred dollars, when proving in bankruptcy, value that was ap-

proved by the inspectors and assignee, and upon which he reduced his claim to $1,395, from much larger amount that it read for at first.

There are appearances of all this being so; it is hard to believe that Mathieu did not know of how Guerin was claiming in bankruptcy. I see in these proceedings in bankruptcy one confirmation of the plaintiff's title to the collaterals; the assignee, examined as a witness, swears that the bankrupt informed him, as assignee, that he had given Guerin, as collateral security, notes amounting to twelve or thirteen hundred dollars. The bankrupt is suspicious, swearing now to the notes having been given to plaintiff *not* as collateral security, but on the other condition stated; for, when he ought to have instructed his assignee in bankruptcy truly, he told him that the plaintiff held the notes as collateral. The assignee, when Guerin proved his claim, consented to his keeping these collaterals at his valuation of them. Since that, and before maturity of Orr's note, the assignee has conveyed to the plaintiff *en bloc* all the assets generally that the bankrupt owned, or could claim in any way.

The deed filed by plaintiff is *prima facie* evidence of that conveyance. The counsel for Orr has argued that it did not transfer the Orr note to the plaintiff. In one sense it did not; for the plaintiff had the note before the bankruptcy; he was confirmed in possession of it at proving his claim, and that sale *en bloc* transferred to plaintiff the Orr note, in so far as Mathieu had property in it, and any possible claim that Mathieu could make to it. Any such claim was, under the circumstances, subject to the superior right of the plaintiff as holder of the note. Mathieu, in one sense, was, at his bankruptcy, owner of the note, though he had pledged it; but from the time of the sale *en bloc* referred to he certainly ceased to have any kind of claim or right, and complete absolute title to Orr's note was operated in favor of the plaintiff. But for the proceedings and events that have occurred in bankruptcy, the plaintiff might have had trouble in collecting from Orr the amount of the note unendorsed; the proceedings in bankruptcy, and the deed from the assignee, are said by plaintiff to be of equal orce as could be plaintiff's endorsation. The counsel for Orr has insisted upon the absence of Mathieu's endorsation being fatal to the action. The Court below has evidently adopted the plaintiff's argument. We see no reason to differ from it.

There remains the question of whether (supposing the note held well enough by the plaintiff) Orr can be made to pay it. He claims to have paid Mathieu before the note matured. He produces receipts from Mathieu. The plaintiff says that these are simulated; but, whether simulated or not, the plaintiff is not bound to submit to them. Orr had *onus* of proving that he really paid the note. If he paid before maturity of his note, he paid out of the usual course in commerce. We may say so, I think, and yet admit that *au civil* payment may be before the *terme*. Again, a presumption is against Orr from his not having gotten up his note paid. "Where there is a competition of evidence on the question whether a security has or has not been satisfied by payment, the possession of the uncancelled security by the claimant ought to turn the scale in his favor; since, in the ordinary course of dealing, the security is taken up by the party paying." (Mascardus.) Mathieu had not the note to give him; for he had, long before, given it to the plaintiff. Orr ought to have asked to see it. Mathieu is not a reliable witness; he swears for Orr. The plaintiff is like an endorsee of a note getting it *bona fide* before maturity from the payee or holder.

It is said that the Bankrupt law only transfers to the assignee what property the bankrupt had and the rights he might exercise; and that, in the present case, the bankrupt could not have sued Orr. Certainly he could not, but it does not follow that the Orr note, as possessed by plaintiff long before the bankruptcy, cannot be sued upon by the plaintiff, third person, who got it before maturity, and before the date of the alleged payment, who says that he got it as for value, and who may say so now at any rate, seeing his allowance of over $700 (off his debt claim) for this and other notes, and the assignee's deed. The note, as plaintiff holds it, is a valid security against the maker. "A contrary doctrine would add a new clog to the circulation of notes," said Lord Ellenborough in a case in point. (P. 223, Byles on Bills, eleventh English edition.)

Judgment confirmed.

C. L. Champagne for the plaintiff.

Prévost & Co. for the defendant.

SUPERIOR COURT.

MONTREAL, February 28, 1882.

Before TASCHEREAU, J.

MOLSON et al. v. THE CITY OF MONTREAL.

Certiorari—Deputy Recorder.

The defendant, the City of Montreal, had obtained certain judgments against the plaintiffs in the Recorder's Court of the City of Montreal, for assessments imposed for the construction of a brick drain in St. Lawrence steeet. The plaintiffs prayed that these judgments be declared null and void, the principal ground alleged being that the nomination of Mr. Dugas as deputy Recorder, during the illness of the Recorder, was invalid; that the Act 37 Victoria (Quebec) ch. 51, s. 134, requires that the person appointed deputy Recorder shall be an advocate, of not less than five years' standing, and that Mr. Dugas was not an advocate; but was exercising the office of Judge of the Sessions of the Peace, at the time of his appointment as deputy Recorder.

The Court held that such action could properly be brought by a ratepayer exposed to trouble by a judgment radically null, without it being necessary to have recourse to a writ of *certiorari*; but that in this case the nomination of the Judge of Sessions as deputy Recorder was valid, Mr. Dugas having formerly practised as an advocate during more than five years, and not having lost his privileges as such by his appointment as Judge of Sessions. The functions of the two offices were not incompatible, though their exercise by the same person might give rise to inconvenience.

Action dismissed.

Barnard, Beauchamp & Creighton for plaintiff.
R. Roy, Q.C., for defendant.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1882.

Before TORRANCE, J.

PREVOST et al. v. GOSSELIN, & PRUDENT PETIT dit BEAUCHEMIN, Opposant.

Contract in fraud of Creditors—Resiliation—C. C. 1033, 1035.

A sold a certain lot of land to B, and it was agreed that in default of payment of the price A might demand the resiliation of the deed. B became insolvent, and A, knowing his insolvency, obtained a retrocession of the land at a less price. Held, that the retrocession under the circumstances must be deemed to be made with intent to defraud, and the contract was avoided.

The plaintiffs had obtained a judgment against defendant on the 5th October, 1881, for $148 and costs, and seized the land in question as belonging to the defendant on the 28th October, 1881.

The opposant resisted the seizure alleging that on the 10th May, 1881, opposant sold the land in question to defendant, and it was agreed that in default of defendant paying the price, opposant might demand the resiliation of the deed; that said deed was duly registered; that by deed of retrocession of date the 22nd October, 1881, defendant retroceded to opposant the land in question, registered on the 24th October, 1881.

The plaintiff contested the opposition, alleging that the retrocession was made after the judgment, and in view of the execution of the judgment, at the request of the opposant; that defendant, at the time, had no other property, and opposant knew his insolvency.

PER CURIAM. The opposant sold the land to the defendant on the 10th of May, 1881, for the price of $333, of which $100 was cash. On the 22nd October, 1881, defendant retroceded to opposant for the sum of $30 cash paid, and was discharged from his liability to pay the balance of his purchase money, $233. It appeared therefore that opposant sold the property for $333, and got it back for $233 and $30. Opposant says he knew of the suit by plaintiffs, but not of the judgment. One important ingredient in the congeries of facts giving rise to the *actio pauliana* is *damni eventus*, and C. C. 1033 says a contract cannot be avoided unless it is made by the debtor with intent to defraud, and will have the effect of injuring the creditor. I do not see strong proof of injury. On the other hand C. C. 1035 says an onerous contract made by an insolvent debtor with a person who knows him to be insolvent, is deemed to be made with intent to defraud. I see evidence that Gosselin was insolvent, and that the opposant knew it. But the opposant will urge that we have not such evidence before us of the value of the property as to be able to say positively that the creditors lose by the cession. There is, it is true, the difference between the purchase in May and the re-sale in October, some $70 lost to the estate. There is also the consideration that the sale by

the Sheriff would cost a good deal—to be deducted from the price obtained by the Sheriff. It is possible that the opposant will not recover the balance due to him, if the sheriff's sale goes on. Nevertheless, I think, on the facts of record, the sale should be rescinded, and the conclusions of plaintiff be granted.

Préfontaine & Co, for plaintiff.

Geoffrion & Co., for opposant.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1882.

TORRANCE, JETTÉ, MATHIEU, JJ.

[From S. C., Montreal.

DENIS v. THEORET.

Slander—Variance of time.

The judgment under Review was rendered by the Superior Court, Montreal, Mackay, J., May 15, 1882.

TORRANCE, J. The case is one of slander, and defendant has been condemned to pay $50 and costs as in a cause over $100. The chief points made by the defendant who appeals, are:—1st. That prescription has accrued; and 2nd, that there is a variance between the date alleged and the date proved.

As to the prescription of C. C. 2262 of one year, it does not apply, because the slander complained of did not come to the knowledge of the plaintiff until a short time before the action.

Then as to the variance, the slander was uttered in 1879 and 1880, and the declaration alleges the utterance in 1881. The defendant denied that he had uttered the slander then or at any other time. The variance in time is not material here. Phillips' Evidence, second volume, 861-2.

The issue was fairly tried, and the defendant was rightly condemned. The epithet again and again applied to the plaintiff was of the most brutal description, though it was in the privacy of one family only, and the defendant has only to thank himself if the consequences are ruinous to him. The plaintiff had done nothing to merit the slander. Judgment should be confirmed.

As to the motion to amend made by plaintiff, which the judgment has taken no notice of, viewing the evidence as I do, the omission is of no consequence. The defendant complains of a mere matter of form, which in no way affects the rights of the parties or the substantial justice of the case. In the Privy Council, in the celebrated Guibord case, the Judges there refused to pass upon matters of form when they could do substantial justice between the litigants by passing them by.

Judgment confirmed.

St. Pierre & Scallon for plaintiff.

T. & C. C. de Lorimier for defendant.

ERRATUM.—In *Giles* v. *Brock*, p. 370, 2nd col., a sentence is rendered obscure by a line of type falling out in going to press. The sentence beginning on the 6th line should read: "That the power to *make these assessments was given them by law*, and that the Directors in so acting were the agents of the insured," &c. The words in italics were omitted.

NEW PUBLICATIONS.

CATALOGUE OF LAW REPORTS AND TEXT BOOKS, Soule & Bugbee, Boston.

Messrs. Soule & Bugbee, Boston, have issued a very neatly arranged and printed catalogue of Law Reports and Text Books. The works are catalogued by subjects as well as by the authors' names, so that reference is greatly facilitated. The publications of this newly established firm are taking high rank for neatness and precision.

THE QUEBEC LAW DIGEST, by Mr. C. H. Stephens, B.C.L. Montreal, John Lovell & Son.

Parts I and II of Volume II of this well known work have been issued. Reports are now multiplying so fast that indexes have become indispensable to the practising lawyer, and it is needless to insist upon the importance of the present work.

THE INDEX-REPORTER, by Mr. R. R. Newell. Albany, Weed, Parsons & Co.

This is an attempt at indexing on a larger scale, to which reference has already been made. Nine parts have now been issued, up to September inclusive, and 8,142 decisions—English, United States and Canadian—have been comprised within 413 double column octavo pages. As it is part of the "Sisyphean" task of judges and lawyers to keep abreast of current decisions, we presume that this work will have many eager if not happy patrons.

RECENT ENGLISH DECISIONS.

Marine Insurance—Partial Loss—Loss on Sale of Damaged Ship after repairs—Measure of liability.—Plaintiff's vessel was insured by a time policy, valued. During the continuance of the risk she went ashore and was damaged, but was got off and towed into port. Her value immediately before she went ashore was the same as at the commencement of the risk. The cost of the repairs necessary to restore her to the same condition as she was in before she was damaged would have greatly exceeded her value when repaired. Plaintiffs did not do these repairs, but only did some slight repairs that were immediately necessary, sold the ship before the expiration of the policy for a sum exceeding her estimated value, and claimed for an average loss. *Held*, by Jessel, M. R. and Cotton, L. J. (Brett, L. J. *dissentiente*), that the measure of the insurers' liability was the difference between the value of the vessel when undamaged and the balance which remained after deducting from the proceeds of the sale the cost of the repairs executed. Per Jessel, M. R.: The value to be regarded was the value of the vessel at the commencement of the risk. Per Brett, L. J. The measure of the insurers' liability was the estimated cost of the repairs which would have been necessary to restore the vessel to the same condition as she was in before she was damaged, deducting one-third new for old. Judgment of Lindley, J. (45 L. T. Rep. N. S., 46), affirmed. Ct. of Appeal, June 6, 1872. *Pitman* v. *Universal Marine Insurance Co.* (46 L.T.Rep., N.S., 863.)

Maritime law—When shipowner liable for negligence of pilot employed by compulsion—Ultra vires.—The employment of a pilot in the Suez Canal, though compulsory, is not of such a nature as to exempt the owners of a ship from liability for damage done to another ship by the negligence or want of skill of such pilot. By the regulations of the Suez Canal the pilot is to advise the master of the ship; but the master remains responsible for the navigation of the ship. Such regulations are not *ultra vires*. Per Brett, L. J.: Observations on the general duties of a pilot as understood in England. Ct. of Appeal, July 4, 1882. *The Guy Mannering* (46 L. T. Rep. N. S., 905.)

Carrier—Contract limiting liability not presumed to include loss from carrier's negligence.—The plaintiffs shipped a quantity of specie on board defandant's ship, the Crown Prince, under a bill of lading which contained the following exceptions: "The act of God, the king's enemies, restraint of princes and rulers, accidents and damages from collision, and all the perils, dangers and accidents of the sea, rivers, land carriage and steam navigation of whatsoever nature and kind, and accidents, loss or damage from any act, neglect or default whatsoever of the pilots, masters, marines or other servants of the company in navigating the ship, or from any deviation excepted." Whilst on her voyage the Crown Prince came into collision with another steamship also belonging to the defendants, and a quantity of the specie was lost. The jury found that this latter vessel was principally in fault, but that the Crown Prince was also in some degree to blame. *Held*, in an action to recover damages for the loss of the specie, that the exception in the bill of lading as to collision did not protect the defendants from liability for a collision caused by the negligence or default of their servants on board a vessel other than the Crown Prince, and that they were not protected by the clause which excepted their liability for the negligence of their servants, as that applied only to the negligence of their servants who were navigating the Crown Prince. In Lloyd v. General Iron Screw Collier Co., 10 L. T. Rep. N. S. 586; 3 H. & C. 284, it was held that the exception in the bill of lading of "accidents or damages of the seas, rivers, and steam navigation of whatsoever nature or kind," did not exempt the ship-owner from responsibility for the loss of goods which arose from a collision caused by the negligence of the master or crew. This decision was discussed and followed in Grill v. General Iron Screw Collier Co., 14 L. T. Rep., N. S. 711; L. R, 1 C. P. 600. A similar construction was given to a bill of lading which contained a clause that the ship-owner "is not to be accountable for leakage or breakage," in the earlier case of Phillips v. Clarke, 2 C. B. N. S. 256, and more recently in Czech v. General Steam Nav. Co., 17 L. T. Rep., N. S., 246: L. R., 3 C. P. 14. See also Lloyd v. Guibert, 10 L. T. Rep., N. S., 570; 3 Kent Com. Lect. 47, §5; 1 Pars. Ship. 269. Q. B. Div. March 24, 1882. *Chartered Mercantile Bank of India* v. *Netherland Steam Navigation Co.* Opinions by Pollock, B. and Manisty, J. (46 L. T. Rep., N. S., 530.)

RECENT U. S. DECISIONS.

Carrier—Negligence—Passenger leaving moving train.—One who passed out of a railway car, and got upon the platform thereof and attempted to step or jump from the car while it was in motion, cannot recover for injuries suffered in consequence thereof, even though he had reached his place of destination, and the train, which had previously stopped to permit passengers to alight, had not so stopped for a reasonable length of time. In Railroad Co v. Aspell, 23 Penn. St. 147, it was held that "a passenger who had been negligently carried beyond a station where he intended to stop, and where he had a right to be let off, may recover compensation for the inconvenience, loss of time, and labor of travelling back; but where the plaintiff, under such circumstances, jumped off the car when in motion, though warned not to do so, it was held that he could not recover for the injury sustained." In Gavett v. Railway, 16 Gray, 501, it was held that "a passenger in a railroad car who, knowing that the train is in motion, goes out of the car and steps upon the platform of the station while the train is still in motion, is so wanting in ordinary care as not to be entitled to maintain an action against the railroad corporation for an injury therefrom." In Hickey v. Railway Co., 14 Allen, 429, it was held that, "a traveller by railroad cannot maintain an action against a railroad company to recover damages for personal injury, sustained by him in consequence of his voluntarily and unnecessarily standing upon the platform of a passenger car while the train is in motion. See also Nichols v. Railway Co., 106 Mass. 463; Harvey v. Railway Co., 116 id. 269; Illinois C. & R. Co. v. Able, 59 Ill. 131; Ohio & M. R. Co. v. Schiebe, 44 id. 460; Burrows v. Railway Co., 63 N. Y. 556; Morrison v. Railway Co., 56 id. 302; Canada R. Co. v. Randolph, 53 Ill. 510; Illinois C. R. Co. v Slatton, 54 id. 133; Ohio & M. Railway Co. v. Stratton, 78 id. 88; Chicago & N.W.R. Co. v. Seates, 98 id. 586. In Secor v. Railway Co. 10 Fed. Rep. 15, a passenger, on a train that had approached a station and was still moving slowly, stood on the lower step of a car, in the act of stepping to the platform of the station, when, in consequence of the car being moved forward with a jerk he was thrown upon the platform and injured, and Drummond, O. J. held that he was guilty of contributory negligence in attempting to alight from the train while it was in motion." Bon v. Railway Co., 10 N.W.Rep. (Iowa), 225; Lake Shore & M.S.R. Co. v. Bangs, 11 N.W.Rep. (Mich.) 276. *Jewell* v. *Chicago, St. Paul & Minnesota Railway Co.* (Supreme Court of Wisconsin) 54 Wisconsin Reports.

GENERAL NOTES.

Mr. R. J. Wicksteed, LL.D., a graduate of McGill University, has offered a medal yearly for the next five years, for the encouragement of physical culture, to be competed for by the graduating class of the University.

The Earldom of Eglinton.—A late British journal has the following: "Yesterday, in the Court of Chancery, Edinburgh, the Sheriff (Professor Muirhead) heard a petition by William Stephen John Fulton, designated as late of Her Majesty's 8th Hussars, and residing at 2, Salisbury-square, Edinburgh, claiming the earldom of Eglinton. The petitioner states that he is the great grandson of James Fulton, or Fultown, the immediate younger brother of the eleventh earl, who, however, died prior to the eleventh earl, leaving a son (the petitioner's grandfather), who, when the succession opened to him by the death of his uncle, the eleventh earl, was a prisoner of war and could not claim. He maintains that while the present holder of the title does so through the female line, he claims as male heir, and that females are excluded under the deeds. Sheriff Muirhead found relevant a plea by the Earl of Eglinton that he is entitled to appear to oppose the petition, and appointed him to lodge documents to substantiate his plea in 14 days."

St. Francis District.—The following address was presented to Mr. Justice Brooks, on his taking his seat at Sherbrooke, on the 10th inst., by Mr. Wm. White, *Bâtonnier-Général* and *Bâtonnier* of the District, on behalf of the St. Francis bar:—

"Your late *confrères* of the St. Francis bar beg to tender their congratulations on your Honor's elevation to the Bench of the Superior Court, and to express the pleasure they feel that your long career of usefulness at the bar has been rewarded by the well-deserved promotion to the high and responsible office you have been called upon to fill.

"They are proud to regard the appointment as a just recognition of a reputation earned by a member of their section through an ability and industry which they will cherish as an example in the discharge of their own obligations to the public and the profession.

"It will not diminish your appreciation of the honor to know that your appointment has been hailed by them with unalloyed satisfaction; and that, in continuing the practice of the legal profession under your presidency, they enter upon their new relation towards you with no feelings other than those founded on a recollection of former friendly intercourse, a high estimation of your legal attainments, and a profound respect for the important functions now committed to your charge.

"Fully realizing that in the pursuit of their avocation they will always receive at your hands that degree of consideration springing from an intimate experience of its difficulties and anxieties, it will be to them a privilege to exert every influence in their power tending to lessen the labors and cares inseparable from the fulfilment of the duties of an impartial judge.

"With their sincere congratulations they heartily wish your Honor a long and enjoyable term of office."