The Legal News.

Vol. VI. OCTOBER 13, 1883. No. 41.

ENGLISH AND FRENCH LAWYERS.

In a letter to the *Albany Law Journal*, Mr. E. E. Moise, of New Orleans, remarks as follows upon the points of difference between English and French systems and their influence upon those who work under them:—

"In this State (Louisiana) with a Code almost an exact translation from the Code Civil or Napoleon—where the attorney is obliged to read the French commentators; with the law merchant governing—with no jury, unless specially prayed for in our State court, and then they, judges of the application of the law to the facts, the judge not being allowed to trench on the facts, with the common-law system of juries in the United States Court, some of my meagre observations on French and English legal mind may not be unwelcome. The difference between the English and French jurists and lawyers can be simplified by saying the former is concrete the latter abstract. It is hardly necessary to track the cause of this. The student of common law knows that there is no common law except as applied. The law is the law of a given case—of certain facts. This, that, or another *fact* allows the plaintiff to recover. This is technically known as *case* law— that is the law of an actual state of circumstances. There is the rule of *stare decisis* at common law. There is no such rule among the French, because the Code has accomplished what the desperation of common-law judges drove them to endeavor to accomplish by the rule of *stare decisis*. Codification was simply a means to an end. *Stare decisis* failed to accomplish it. Certainty in the law, fixed rules of conduct of right. Certainty in the meaning that as little is to be left to the judge's notion of right and wrong as possible. The peculiar system of practice in the French courts aided by the Code (generally a series of abstract principles) made the logic of the French lawyer a keen and heartless logic. It was and still is a logic of mind, a logic without feeling, that took no account of human passion and eradicated the governing principle of the logic of the English lawyer—common sense.

"Law to the French lawyer was and is a proposition from which logically deduced conclusions should be the judge's decree. Law to the English lawyer (when not statute law) was and still is an attempt to put rules for human conduct into words—a rule, but not a rule pure and simple, but a rule to be applied to human actions. The English lawyer looks back because precedent is the closest he can get to a Code. If the English lawyer had a Code he would *not* look back. I desire to illustrate this with Louisiana and Louisiana jurisprudence. No one who is at all familiar with the jurisprudence of this State will say that the Louisiana judge or lawyer is a precedent-loving individual. No case lawyer can expect to succeed in this State. No lawyer who knows the law is this or that solely because it has been so held in such a case need have any hope of obtaining any prominence at the bar. And since the Englishman's concrete mind (practical) has assumed its prominence at the bar and on the bench—since law has come to be understood as intended to be applied to human affairs—you will not be surprised to know that the metaphysical and keen logic of the French jurist has lost ground considerably. Judge Spofford, in *Johnson* v. *Bloodworth*, 12 La. Ann. 701, in speaking of the French jurists, said: 'When jurists of a race so much addicted to *theoretical speculation*, and so little addicted to reverence for each others' opinions draw a conclusion from the Code, in which they unanimously concur, we may *perhaps* set it down as an obvious truth.'

"This is not an exaggerated statement, nor is it an imaginative description. It is a common thing for a lawyer with a bad case to go to the French authorities. It is a well-known and recognized fact among the older members of the bar that the young lawyer just admitted makes very pretty and very ingenious points: he is very keen, but like those authors from whom he is fresh, his arguments lack the element of common sense. He overcomes this in time.

"In *Ozaune* v. *Delile*, 5 N. S. 28-29, the Supreme Court declined to follow the French jurists, though the article of the French Code (Code Civil or Napoleon) was similar to ours. Why—for a practical reason; because the tex-

tual provisions of our statutes must be interpreted by our former jurisprudence. And for a practical reason they declined to follow the French in *Jung* v. *Doriocurt*, 4 La. 175. In *McDonough* v. *Gravier's Curator*, 9 id. 546, such a jurist as Toullier did not affect the court except to admire his logic.

"The Englishman in Louisiana does not look back, but he has still the enviable mental quality of understanding that laws were made for men, and the logic of law is bad logic if it lack the element of common sense. Benjamin's great success here as well as in England was was due partly, as the *London Times* has truthfully said, to the legal education he acquired at the Louisiana bar, but mostly to his 'common sense logic.' The Louisiana student of law does not dare to risk his future upon any thing but a mastery of principle. His Code and his jurisprudence forbid it. His Code coming from Roman, Spanish, and French law, with some important common-law principles grafted on it. His jurisprudence, the magnificent result of grafting French system on the Anglo-Saxon practical temperament. The Louisiana lawyer if he hope for success must know common law, and common-law practice, including chancery and admiralty, Spanish law, Roman law, French law, because his own system comes from these four, and the necessities of his practice in the United States courts require his familiarity with admiralty, chancery and common-law practice. Louisiana presents an excellent field to the philosophical student. I have given the hints; I trust some abler pen will one day see the harvest here and gather it."

JURIES AND VERDICTS.

Several incidents of recent jury trials drop in this week from different quarters. In British Columbia the Chief Justice has had to do with a jury that would not convict. The evidence against a prisoner tried in Victoria was as strong, it is said, as evidence could well be, but the jury acquitted. Chief Justice Begbie told them their verdict was disgraceful, and added: "Many repetitions of such conduct as yours will make trial by jury a horrible farce, and the city of Victoria which you inhabit a nest of immorality and crime. Go, I have nothing more to say to you." Turning to the prisoner the Chief Justice said:—"You are discharged; go and sandbag some of those jurymen. They deserve it!"

In *State* v. *Cartwright*, 20 W. Va. 32, a conviction of felony was set aside, because one of the principal witnesses for the prosecution, who was an active participant in the fight which caused the indictment, was permitted to come into the juryroom, after their retirement, and play the fiddle for them for half an hour; although there was no conversation between the fiddler and the jury, and the jury all swore that the fiddling had no influence on their verdict.

In another case in the same State, *State* v. *Robinson*, 20 W. Va. 715, the jury were permitted to read newspaper accounts of the Guiteau trial, then in progress. The newspapers contained the evidence of Dr. Gray, examined as an expert on the subject of insanity, in which he ridiculed the idea that such a thing as "moral insanity" existed, and called "dypsomania" drunkenness. The jury into whose hands these newspapers fell were engaged in trying a case of murder, in which the defence was insanity, super-induced by long-continued habits of intoxication. The court adopted the view that the newspaper reports were calculated to prejudice the prisoner, and a new trial was granted.

In a case before the Supreme Court of New Mexico Territory, *Territory* v. *Kelly*, 2 New Mex. T. 292, the prisoner remained shackled while some of the jurors were being called and examined. The Supreme Court held that if the irons had remained on the prisoner during his trial, or for any considerable portion thereof, the Court would be compelled to reverse the judgment; but as it appeared from the record that they so remained for an inconsiderable time while a few only of the jurors were being called and examined, and before any of them had been accepted and sworn, the prisoner's rights of defence were not prejudicially affected thereby to an extent that would justify a reversal of the judgment on that ground.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

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

MONTREAL, September 24, 1883.

THE CANADA GUARANTEE CO. (deft. in the Court below) Appellant, and MCNICHOLLS, es qual. (plff. below), Respondent.

Surety, Liability of—Insolvent Act—Official Assignee appointed Assignee by Creditors—Default.

Where an official assignee has taken possession of an insolvent estate in that capacity, and subsequently the creditors have appointed him assignee to the estate, and while acting as assignee of the creditors he makes default to account for moneys of the estate, the creditors have recourse against the surety who guaranteed the due performance of his duties as official assignee.

The appeal was from a judgment of the Superior Court, condemning the Company appellant as sureties on a bond given by Alphonse Doutre, formerly official assignee. The bond guaranteed the due performance of the duties of Doutre as official assignee. In 1876 one George L. Perry was put into insolvency by a writ of compulsory litigation, and Doutre took possession of the estate as official assignee. Subsequently, at a meeting of the creditors duly called, Doutre was appointed assignee to the estate by the creditors. Doutre died in 1879, and the present respondent was appointed assignee in his place. It was ascertained that Doutre was indebted to the estate of Perry in the sum of $364.42. The present action was instituted on the bond to recover that amount from the sureties. The Court below sustained the action. (See 4 Legal News, p. 78, for judgment of the Superior Court.)

J. C. Hatton, for the appellants, contended that by the terms of the contract, the sureties ceased to be liable when Doutre was appointed assignee by the creditors. The bond was given for the due performance of his duties as official assignee, and there was a formal admission of record that the default complained of occurred while Doutre was acting as creditors' assignee. It followed that no complaint was made of his conduct while acting as official assignee, and the sureties on his bond as official assignee, therefore, could not be held liable. Under the Insolvent Act, official assignees were obliged to give security to Her Majesty, and the bond sued on was a bond of this nature. By section 29 of the Insolvent Act, the creditors might appoint an assignee who could be required to give security for the due performance of his duties to such an amount as might be fixed by the creditors at the meeting. Here the creditors had thought proper to appoint as assignee the same person who had possession of the estate previously as official assignee, but they had neglected to require him to give security, as provided by the Act; and they now attempted to get their recourse on the bond which applied solely to his acts as official assignee. This would be an extension of the obligation of the surety without his consent or acquiescence, which was entirely without any justification under our law. The Court below had followed the decision of Johnson, J., in *Delisle et al.*, v. *Letourneux*, 3 Legal News, p. 207, but the learned judge, as far as his individual opinion was concerned, appeared to be in favor of the appellants' pretension. And since the rendering of the judgment appealed from, a third judge of the same Court (Mr. Justice Jetté), in *Dansereau* v. *Letourneux*, 5 Legal News, p. 339, had ruled expressly in favor of the appellants' pretension, and there had been no appeal from his honor's judgment. In Ontario there had been a decision by Chief Justice Hagarty, in a case of *Miller* v. *Canada Guarantee Company*, in which the point adjudged was precisely the same. Chief Justice Hagarty ruled that the suretiship continued only so long as the assignee is acting by virtue of his original appointment. This ruling had been acquiesced in, not having been moved against, and the opinion of the Chief Justice was evidently considered sound, for the question had not been raised in any subsequent case. The attention of the Court was also directed to a manifest error in the judgment, by which a sum of costs never paid by the plaintiff was included in the condemnation. In any case the judgment must be modified to this extent.

Laflamme, Q.C., for respondent, submitted that the bond was given for the benefit of the creditors of "any estate" which might come into the possession of the assignee under the

Insolvent Act. When an official assignee is continued in office by the vote of the creditors, the bond given for the performance of his duties as official assignee still applies. The law allows the creditors to exact additional security, implying that the security already given still applies. The practice had been, where an official assignee was appointed creditors' assignee, to rely upon the bond given by him as official assignee.

RAMSAY, J. (*Diss.*) The only question that arises on this appeal is whether the defalcation took place while the assignee was acting as official assignee or not.

It appears one Perry became insolvent, and his estate was placed in the hands of an official assignee. The creditors of the insolvent, at a regular meeting, appointed the assignee, assignee of the estate. After this the assignee died, leaving a balance due to the estate. By this action it is sought to recover from the Guarantee Company the amount of the deficiency on their bond as security for the assignee as official assignee. The Guarantee Company contend that they are not his securities, as he was not acting as official assignee.

This question has come up on several occasions, and has been differently viewed by the judges. The whole question must turn on the interpretation to be put on the words of statute.

The argument put forward amounts to this: The Act by section 28, having dealt with the official assignee and his security, proceeds by section 29 to provide for the appointment of an assignee who may or may not be an official assignee, and it is provided by that Act that he shall give security "in manner, form and effect as provided in the next preceding section." Therefore it is said he is not an official assignee, and the law has specially provided how the estate shall be protected against his wrong-doing.

On the other hand it is said that by section 28 it is expressly provided that the official assignee's security is for the benefit of Her Majesty and for the benefit of the creditors of any estate "which may come into *his possession under this Act.*" The estate came into his possession under this Act, and it was under this Act he always held it.

Notwithstanding the strength of this second proposition, I think the force of argument is in favor of the first proposition. When it says the bond of the official assignee shall be for the benefit of the creditors of any estate that comes into his possession under this Act, it naturally means, acting in the capacity then referred to. Now it is plain he did not act as official assignee after the appointment by the creditors. It was not in virtue of his official position he acted, but in virtue of his appointment. It was entirely the fault of the creditors if they did not exact security.

We have not to decide what would be the effect of a continuance of the official assignee by a failure on part of creditors to appoint. C. J. Hagarty has given a decision on that point, which at first view appears to me to be supported by the terms of the Act.

I am to reverse.

DORION, C.J., also dissented.

The majority of the Court were of opinion to hold the surety liable, and the judgment was therefore confirmed.

Hatton & Nicolls, for Appellant.

R. & L. Laflamme, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, September 27, 1883.

DORION, C.J., MONK, RAMSAY, CROSS & BABY, JJ.

QUEBEC STEAMSHIP COMPANY & MORGAN.

Jurisdiction—Cause of action—Action of damages for failure to perform contract.

Where the action is in damages for failure to perform a contract, the debtor may be sued at the place where the contract was made, though the failure to perform occurred in another district.

Wurtele v. *Lenghan et al.* (1 Q. L. R. 61), *and Conroy & Ross*, (6 L. N. 154) *commented on.*

Motion by the defendant, the Quebec Steamship Company, for leave to appeal from a judgment dismissing a declinatory exception.

The action was for damages, by a traveller who had taken a return ticket at Montreal for himself and family to go and return from Metis. The plaintiff alleged that the defendant's steamer did not stop at Metis as was promised, that he had suffered by this.

The defendant pleaded by declinatory exception that its domicile was in the district of Quebec, and that as the whole cause of action

did not arise in the district of Montreal the action was wrongly brought there.

The Superior Court dismissed the declinatory exception.

Sir A. A. DORION, C. J., said this point had been decided by Chief Justice Meredith in the case of *Wurtele & Lenghan.** A very similar point had been raised in the case of *Conroy & Ross*,† but this Court, confirming the judgment of the Court below, had decided that the declinatory exception was unfounded. The case was this. A merchant in Ottawa had contracted with a merchant in Quebec (Ross) to sell timber for him in Quebec. Part of the timber was sold there, and the market being unfavorable Ross sent the rest of the timber to Liverpool, and it was sold there. The proceeds were not sufficient to pay expenses, and Ross sued Conroy in Quebec. We held that within the meaning of the code the whole cause of action had arisen in Quebec.

RAMSAY, J., said that the difference between the present case and the case of *Ross & Conroy* was that the latter case arose directly on the contract, whereas in the former the action was for damages. He thought, nevertheless, that where the action arose on a failure to perform a contract there was really no difference. This was the only point before the Court, and he did not think it necessary to enter into the old question of what was the "whole cause of action." The attempts to define had not been very successful.

Leave to appeal refused.

Lunn, for defendant moving.

Butler, for the plaintiff.

COURT OF QUEEN'S BENCH.

MONTREAL, September 27, 1882.

DORION, C. J., MONK, RAMSAY, CROSS & BABY.

DORION, appellant, & DORION, respondent.

Security for costs—Notice.

It is necessary to give notice to the opposite party before putting in security for an appeal to the Queen's Bench from a judgment of the Superior Court.

DORION, C. J. A motion has been been made in this case that the appeal be dismissed, the security bond having been entered into without notice to the opposite party. It was also alleged that the sureties were insolvent. On the other side it is contended that no notice is necessary. The Court is of opinion that it was the duty of appellant to give notice. Notice was required when the Court ordered security to be given in a case. In appeals from the Circuit Court the law provided, for obvious reasons, that the security might be given without previous notice; the article providing for appeals from the Superior Court makes no mention of notice. It was therefore to be presumed that notice was required, that being the general rule. Appellant had suggested no excuse for his not following the ordinary and proper procedure, and therefore his appeal would be dismissed with costs. He was still in time to renew his appeal.

Motion granted, and appeal dismissed with costs.

Barnard, Q. C., for respondent.

Pagnuelo, Q. C., contrà.

COURT OF QUEEN'S BENCH.

MONTREAL, September 26, 1883.

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

CLEMENT & FRANCIS.

Curator—Appeal from judgment—Execution.

The curator to a person interdicted cannot appeal from a judgment until he is authorized by the judge, or the prothonotary, on the advice of a family council.

In such case the Court of Appeal will not grant leave to execute a judgment for aliments, notwithstanding the appeal.

This case came up on a motion to reject the appeal taken by a curator to an interdicted woman without the authorisation of a family council as required by Arts. 306 & 343 C. C.

DORION, C. J., said that the Court in a previous case had already allowed the tutor to file the authorisation obtained but not produced, and he thought that the appellant was also entitled to delay to obtain the authorisation. This was the rule in France, and it was reasonable. If the Court were to hold absolutely that the appeal could not be brought until the authorisation was obtained, the minor or interdicted person might readily be cut out of his rights where there was a short delay to institute the

* 1 Q. L. R. 61. † 6 L. N. 154.

appeal. The authorisation to a tutor or a curator stood on a totally different footing from the authorisation to the wife to sue. The appellant would have one month to produce an authorisation.

The respondent also moved for leave to execute the judgment, notwithstanding the appeal. The argument was that the judgment for aliments was executory notwithstanding the appeal. If so, it was unnecessary for this court to interfere, and if not, the Court did not think this was a case in which it was desirable to make any special order as to aliments, if the Court of Appeals has authority to do so, as to which the Court expresses no opinion.

Motion to reject appeal granted, and take nothing by motion for leave to execute judgment.

Pagnuelo, Q.C., for appellant.
Geoffrion, for respondent.*

COURT OF QUEEN'S BENCH.

MONTREAL, September 24, 1883.

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

McCRAKEN et al. (plaintiffs below), Appellants, & LOGUE (defendant below), Respondent.

Procedure—Order of Judge appointing sequestrator—Appeal.

The Court of Queen's Bench sitting in appeal has jurisdiction to grant leave to appeal from an order of a judge in Chambers, where the judge is given the jurisdiction of the Court.

A judgment appointing a sequestrator is a final judgment, and may be appealed from de plano.

RAMSAY, J. This is an appeal from the decision of the Court of Review, setting aside an order of a Judge establishing a *séquestre*. (See L. N., 90.)

The first ground taken by appellants is that the Court of Review had no jurisdiction to set aside the order of the judge; 1st, because the order of a judge in Chambers is not appealable. 2nd, that even if appealable it is an interlocutory judgment which cannot be revised by the Court of Review, or by this Court *de plano*.

The first of these objections has presented itself in different forms before this Court within the last nine years, and I regret that I have not my notes by me at present, for I am disposed to believe that a question analogous to the present one has been already decided by this court. In the absence of my notes I must trust to memory. I know we have decided that we had not jurisdiction to give leave to appeal from a ruling of a judge at *enquête*, but generally, I think, we have said that where the Judge was given the jurisdiction of the Court, that then we had jurisdiction to grant leave to appeal from his order or judgment, for then it was a judgment of the Court. If that proposition be conceded, then we have only to enquire what words will convey this jurisdiction. The words relied on here are to be found in article 876 C. C. P:—"All demands for sequestration are made by petition to the Court (or to a Judge)." It is contended that if the Judge decides, it is not the decision of the Court, and that the party dissatisfied with the order must have it revised by the Court. Such a decision would be in effect to override the Statute, and to say, that the Court and the Judge had not concurrent jurisdiction. Plainly if they have concurrent jurisdiction the one cannot set aside the decision of the other. The Superior Court has already decided the point in a sense adverse to the appellant, and I think, unless there was a conflict of opinion among the Judges in the Superior Court, it would be very unwise of this Court to interfere with the practice of that Court unless it could be shown to be clearly unlawful. In the case of the *Heritable Securities and Mortgage Association & Racine*, the plaintiffs applied in Chambers for, and obtained, the order of a Judge for the appointment of a sequestrator. Some days after the defendant applied to another Judge in Chambers to set aside the order, which was granted. Plaintiffs then applied to another Judge in Chambers to annull the second order, and the Judge referred the parties to the Practice Court. There the question came before Mr. Justice Rainville, who after full argument decided that "the Court had no jurisdiction to revise the order of Mr. Justice Johnson," that is, the first order. In other words Mr. Justice Johnson's power acting in Chambers under article 976 C. C. P. was equal to that of the Court.

But it may be said that this is not conclusive, for that although equal to that of the Court, it is not that of the Court, and consequently that there is nothing to justify an appeal. It seems

* See 16 L. C. J., 224.

to me that this is hyper-critical, and that when a Statute gives equal or concurrent jurisdiction to the Court and to each of its Judges, it is to be presumed that the intention of the law is to make the judgment of the Judge that of the Court.

The second objection is that the judgment is interlocutory and not final, and consequently that the Court of Review had no jurisdiction, and that the Respondent's remedy was by application for leave to appeal to this Court.

The words final and interlocutory have given rise to considerable discussion here and elsewhere. They are relative terms to some extent. We have generally held, in all ordinary procedure, that "final," as regards appeal, means last in the case, but I think there is a great distinction to be made between ordinary and extraordinary procedure. In the latter there can be no remedy by the final judgment. The person subjected to it carries on his contest under a disadvantage which may be fatal. For instance, would it not be absurd, if a litigant's whole property were locked up by a sequestration, to say to him, this is not final, go on and contest as you can, the final, meaning last possible, judgment in the case will do you ample, if tardy justice. There is an appeal on a *Capias* and on an attachment, why should there be none on the appointment of a *sequestre*? Where there is the same reason for a thing there should be the same law. But it is said the Statutes allow the appeal in these cases. It seems to me that these are statutory recognitions that extraordinary proceedings, the injury of which cannot be rectified, should be appealable as final judgments.

Again, article 885 C. C. P. enacts that "orders of sequestration are executed provisionally, notwithstanding and without prejudice to any appeal." There is therefore no interest to be injured by the party sequestrated pursuing his appeal. I therefore think that the judgment of the Judge in Chambers is that of the Superior Court and that it has that sort of finality which permits the party complaining of it to appeal *de plano*.

On the merits it seems to me that there is nothing to be said. The sequestration of the property of the possessor under title from the public lands department could scarcely be justified, until perhaps there was a judgment against the possessor, in favour of some one with a better title. I am to confirm.

DORION, C. J., dissented.

Judgment confirmed.

T. P. Foran for appellant.
R. Laflamme, Q. C., counsel.
L. N. Champagne, for respondent.
S. Pagnuelo, Q. C., counsel.

COURT OF QUEEN'S BENCH.

MONTREAL, September 19, 1883.

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

MONTREAL TELEGRAPH CO. et al. (defts. below), Appellants, and LOW (plff. below), Respondent.

Corporation—Lease by Telegraph Company—Action by shareholder.

Held, reversing the judgment of Rainville, J., (5 Legal News, 12), that the Montreal Telegraph Company had authority to make the agreement in question with the Great North Western, and that the plaintiff had not established such interest as entitled him to maintain an action in his own name for the rescission of the contract.

The Court (Dorion, C. J., and Ramsay, J., dissenting) reversed the judgment of the Superior Court, Rainville, J., reported in 5 Legal News, p. 12, and maintained the lease.

The following is the judgment of the Court:

"Considering that the respondent has failed to show or prove any damage occasioned to himself personally, resulting from the matters by him complained of in this cause, and has likewise failed to show that he has such right or interest as entitles him to maintain an action, more especially in his own name and on his own behalf;

"And considering that it has been shown and established that the appellants had good right and sufficient authority to entitle them to make and carry out the agreement herein complained of by the respondent;

"And considering that there is error in the judgment herein rendered by the Superior Court at Montreal on the 31st day of December, 1881, doth reverse, annul and set aside the said judgment, and proceeding to render the judgment which the said Superior Court ought to have rendered, doth dismiss the action and complaint of the said respondent with costs, as well of this Court as of the said Superior Court (Hon. Sir A. A. Dorion, C.J., and Mr. Justice Ramsay dissenting).

Judgment reversed.

Abbott, Tait & Abbotts, for Montreal Telegraph Company.

Doutre, Joseph & Dandurand for the Great North Western Company.

Maclaren & Leet for respondent.
S. Bethune, Q. C., counsel.

CIRCUIT COURT.

MONTREAL, October 1, 1883.

Before MATHIEU, J.

THE MONTREAL PRINTING CO. v. IVES.

Advertising contract—Circulation.

The plaintiff sued for a sum of $50 alleged to be due for the insertion and circulation of the defendant's advertisement in their publication called the "Farmer's Almanac," in virtue of a contract in the following terms:—

"To the Publishers of the Farmer's Almanac:

"Please insert our advertisement, to "occupy a space of one half page (op. April) "top page half, for which we promise to pay "fifty cents for each thousand *circulated*."

"(Signed), H. R. IVES & Co."

The plaintiffs claimed to have circulated 100,000 copies of the almanac, and to be entitled to $50.

To this action the defendant pleaded that the almanacs had not been circulated under the terms of the contract; or according to the custom of trade; that all that the plaintiffs had done was to send the almanacs in quantities varying from 250 to 5000 to their customers throughout the Dominion; that defendant had always been ready, as appeared by his protest before the institution of the action, to pay for the *bonâ fide* circulation of his advertisement, but that plaintiffs had never furnished him with returns from their customers or with any reasonable proof of circulation.

At the trial the manager of the plaintiffs produced the receipts of their customers for quantities of the almanacs ranging from 250 to 5000, and (under defendant's objection as to the legality of this proof) stated that before the signing of the above contract he had explained to defendant the Company's method of doing business, which was to sell the almanac in quantities upon the orders of their customers, each bundle or set of almanacs having on the outside cover of each almanac the advertisement of the particular customer to whom the bundle was sold, thus offering him a direct inducement to circulate them. One of plaintiffs' customers deposed that he had received a quantity of 5000 almanacs, and that he had sent them in parcels to his customers for circulation.

The defendant examined two witnesses who gave their opinion that, according to the custom of trade, the distribution proved would not be considered a fulfilment of a contract for circulation, which (especially in the case of an ephemeral publication) meant distribution to individuals through the post or otherwise. The defendant also produced a letter from one of the plaintiffs' customers admitting that they still had on hand 250 of the almanacs (charged to defendant in the action) which they kept for agencies about to be opened.

MATHIEU, J., gave judgment for plaintiffs, on the ground that in his opinion they had in good faith done all that they contemplated doing by their contract.

Archibald & McCormick for plaintiffs.

Wotherspoon & Lafleur for defendant.

GENERAL NOTES.

Private seals have now been abolished in Ohio since March 29, 1883, but we do not remember of having seen a single instrument which required a seal in its execution before the statute that was without one since the passage of the act abolishing them. Every lawyer seems anxious for their abolition, but all seem to hesitate to drop them for fear some question may arise as to whether the particular instance was contemplated by the law.—*Cincinnati Law Bulletin.*

The London *Times* says:—"In consequence of the numerous applications which have been made to the Home office for an appointment *to the place of public executioner*, we are requested to state that it is neither the right nor the duty of the Secretary of State to make any such appointment. There is no such office as that of public executioner appointed by the Government. The person charged with the execution of capital sentences is the sheriff. It is the right and the duty of the sheriff to employ and to pay a fitting person to carry out the sentence of the law."

When the Lord Chief Justice of England arrived at Springfield on his way to St. Louis, he found the Hon. Milton Hay, one of the ablest lawyers in the State, at the depot, dressed in a new suit of the best broadcloth and a new silk hat, to welcome him to the Capital of the State, but the time allotted to Lord Coleridge would not permit him to remain over. There was a great contrast between this suit and the one worn by the distinguished lawyer when he was a candidate for colonel during the Black Hawk War.—*Chicago Legal News.*