The Legal News.

VOL. VIII. APRIL 18, 1885. No. 16.

Dr. Francis Wharton has been appointed by Secretary Bayard, legal adviser upon questions of international law. This is a good appointment. Dr. Wharton's works on international and criminal law are highly esteemed, and have been translated into German and Spanish. While referring to this appointment we may note that the *Central Law Journal* (St. Louis) speaks strongly of international responsibility for dynamite warfare. It says: "Funds have been publicly collected in this country for years, by O'Donovan Rossa and his gang, for the avowed purpose of attacking England by secret expeditions of this kind. It is idle to say that we perform our duty to a friendly nation when, having every reason to believe that such expeditions are furnished and fitted out in this country, we take no measures to discover and arrest them. It is no answer to England that our laws do not enable our officials to arrest and punish such conspirators. What concern has England with the state of our municipal law? When we allege the defects of our laws as a reason for not performing our duty to a friendly power, that power is entitled to make answer in the thunder of cannon." Our contemporary then refers to the Fenian raids upon Canada, organized upon U. S. territory, and concludes with the remark: "Plainly, we have not discharged our duty in regard to this dynamite business, and unless we wake up to a sense of that duty, we shall forfeit the right to a decent position in the family of civilized nations."

The weight to be given to the evidence of women of doubtful reputation came under consideration in a recent case in the Court of Queen's Bench, Crown Side. Mr. Justice Ramsay, subsequently correcting a distorted report of his remarks which had appeared in an evening newspaper, observed: "What I did say, in substance, was that a woman might have ceased to be virtuous without becoming a perjurer, and that experience showed this to be the case. I added that all other things being equal, the evidence of a virtuous woman would be preferred to that of a woman who was the reverse. I never said that I would prevent counsel putting questions to a witness to show that she was an inhabitant of a house of ill-fame, for I have no power to prevent counsel exercising the right of discrediting a witness produced by the other party. There is, of course, a decent and an indecent way of performing even a duty, which gentlemanly feeling will at once suggest to a profession of gentlemen, without the intervention of authority. If that intervention becomes necessary another question may arise, which it is unnecessary to discuss at the present moment."

The *American Law Review* is nothing if not critical—that is to say, apart from the immensely valuable fund of information which it possesses concerning the affairs of this Dominion. Some of its superabundant activity, however, might be usefully applied to a revision of the syntax of its own articles. The opening sentence of the article in the last number, on the Responsibility of the Pullman Palace Car Company, by its colossal proportions, is worthy of Mr. Evarts. It contains 138 words. The writer apparently lost himself in the labyrinth, for the subject of the sentence has no predicate. Our readers may be curious to see this monumental exordium, so we produce it, using our smallest type from motives of economy.

"The comparatively recent introduction of sleeping cars upon the great highways of travel, as a means of public conveyance, while it marks a new era in the history of common carriers of passengers, and signalizes the advancement of the age in the attainment of the luxuries of refinement and wealth, yet on account of the unique and peculiar features of the system as it exists, both with reference to the railroads that employ them, and to the traveling public that enjoy their superior comforts and facilities, there have arisen interesting questions of law, touching the responsibility of such companies, for the loss or theft of the goods, luggage and valuables of passengers, upon which there exist among the bench and bar, an undesirable, and it would seem, needless amount of uncertainty, not to say, diversity of legal sentiment."

Further on, in the same article, on page 219, the following is found: "The principles of the Roman law touching the doctrine of

innkeepers and their responsibility, *is* very similar, &c." Old Lindley Murray used to teach that a verb should agree with its subject in number.

The death of Mr. C. S. Cherrier, Q.C., which occurred at Montreal on the 10th instant, marks something like an epoch in the history of the bar. Mr. Cherrier was admitted to the practice of the law in 1822, so that his professional experience extended over the long space of sixty-three years. Lawyers then were not numerous, and Mr. Cherrier was soon engaged in a number of causes of importance. He had for partners several gentlemen who are conspicuous figures in the early annals of the Province. After about forty years of professional toil, Mr. Cherrier was placed, by the death of Mr. Viger, in the possession of an ample fortune, and thenceforward he needed only to labour for the welfare of others. The blessedness of assisting the poor and destitute was enjoyed by him in large measure. After his retirement from the active exercise of his profession Mr. Cherrier was tendered the position of Chief Justice of the Court of Appeal, but he did not care to resign the ease and leisure which were so dear to him for the duties of an arduous and exacting office. In his long retirement he preserved both mental and physical health unimpaired to the venerable age of nearly 87 years.

A NEW QUESTION OF CRIMINAL LAW.

Not long ago the judges in England were gravely deliberating whether it was justifiable homicide to kill your neighbour and eat him, because it was extremely probable that if you did not, both would die of starvation. With a unanimity, for which we should feel thankful, they decided that it was not. Now they are agitated by the question as to whether a cab-man who receives a sovereign for a shilling, and keeps it, is guilty of larceny. The Lord Chief Justice thinks he is, while Mr. Justice Stephen is of a contrary mind. The pretention of the crown seems to be, that the cabman either knew the piece given to him was not a shilling but a sovereign at the time he took it, or that the felonious intent when he became aware that it was a sovereign dates back to the time he took it. The difference of opinion must be owing to some statutory complication, for the old law on the point is very clear. "And this intent to "steal must be when it cometh to his hands "or possessions: for if he hath the possession "of it once lawfully, though he hath *animum* "*furandi* afterward, and carrieth it away, it "is no lareeny." Coke; 3 Inst., cap. 47, p. 108.

R.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, March 20, 1885.

Before RAMSAY, J.

THE QUEEN v. HENRY STERNBERG, and others, on an indictment for conspiracy with intent to defraud.

Indictment—Conspiracy to secrete property with intent to defraud—Essential allegations.

An indictment for conspiracy with intent to defraud, which merely alleges that the defendants did combine to secrete and make away with the property of one of them, A., with intent to defraud B. of a sum due to him by A., without alleging that A was insolvent and that it was in contemplation of insolvency the secreting was carried out, is insufficient.

The case for the Crown being closed, it was moved on the part of the defendants that there was no case to go to the jury; because there was no evidence of the combination, and because there was no sufficient offence set forth in the indictment.

RAMSAY, J. I intimated at the argument when the objections were made, that if the indictment was sufficient, there was evidence of combination and of fraudulent intent to go to the jury, so I need not enlarge on that point.

As to the second point I am with the defendants. The indictment sets forth that the defendants, to the number of four, did combine to secrete and make away with the property, &c., of one of them, Henry Sternberg, with intent to defraud a London firm of $

sum of money due to said firm by Henry Sternberg. Another count sets up the same thing, with intent to defraud the creditors of the said Henry Sternberg generally, and also the said London firm. There is no allegation that H. Sternberg was insolvent, and that it was in contemplation of insolvency this secreting was carried out. On general principle I don't think it sufficient to allege a conspiracy with intent to defraud, and I don't think the accusation is made more complete by alleging that they did secrete with intent to defraud. We all of us secrete quantities of our property daily, and there is no harm in that. Can it be said that doing so with another person could make it a crime? I think not, and no case has been brought to my notice to support such a pretension.

It has been said that by our civil law it is unlawful to secrete with intent to defraud, and that therefore two or more persons doing so may be indicted for the conspiracy to do such a thing. This is an ingenious argument. It is, however, to be observed that the prohibition is to the secreting by the owner with intent to defraud. Again, this particular Act gives two remedies against the owner—the right to *capias* him and the right to attach his property. And lastly, these remedies can only be acquired on a special affidavit as to a reunion of circumstances of which we have no evidence here. The limits of conspiracy are tolerably vague, and much is left to the discretion of the judge, but I am not disposed to extend these limits so far as is sought to be done in this case, even though there is serious ground for supposing that fraud has been practised.

The jury was directed to acquit.

Archambault, Q. C., for the defendant.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, March 23, 1885.

Before RAMSAY, J.

THE QUEEN v. JOSHUA STANSFELD.

Indictment—Trustee fraudulently converting property.

1. *In an indictment of a trustee for fraudulently converting property, it is sufficient to set out that A "being a trustee" did, etc., instead of that A "was a trustee and being such trustee" did, etc.*
2. *It is not necessary to set out the trust in the indictment.*

RAMSAY, J. This is a motion to quash an indictment under 32 and 33 Vic., c. 21, sect. 81. Trustees fraudulently converting property.

Two objections are taken to the indictment. The first is, that the indictment is not in positive terms. The words are "then *being* a trustee." The accepted form of criminal pleading is to lay every act directly in the indicative and not as it is called inferentially; thus instead of saying that, "—being a trustee did," it is usual to say that "—was a trustee," and being such trustee did, and so on.

After verdict, all objections of this sort are cured by the latter part of section 79, 32 and 33 Vic., cap. 29. But in addition to this, section 27 of the same act specially declares that the forms of indictment contained in schedule A to this act shall be sufficient, as respects the several offences to which they respectively relate; and as respects offences not mentioned in the schedule, the said forms shall serve as a guide to shew the manner in which the offences are to be charged, and the indictment is declared to be good if, in the opinion of the court, the prisoner will sustain no injury from its being held to be so, and the offence or offences intended to be charged by it can be understood from it. Turning to the schedule A, we find that the general form instructs the pleader to "describe the offence in the terms in which it is described in the law; or" etc. That has been done. Then in the special forms given in the schedule for "embezzlement," "offences against the habitation," and "bigamy," the present participle is used, precisely as in the indictment before us.

Lastly, it appears to me that, grammatically speaking, it is the same thing to say, that "A *being* a trustee did," and to say, that "A was a trustee, and so *being* such trustee did." If one is inferential so is the other. Further, I think the accused cannot suffer any injury by it; but that on the contrary the offence charged is more easily understood when

expressed in the former simple language rather than in the latter involved way.

The second objection is that the trust is not set forth. What has been said with regard to the general form is equally applicable to this objection, and in practice in England, it seems, it is not usual to set out the trust. Even where the trust is created by an instrument in writing it would be sufficient to describe it by its usual name or by its designation. Sect. 24, 32 and 33 Vic., c. 29.

The defendant will therefore take nothing by his motion.

Davidson, Q. C., for the Crown.
Kerr, Q. C., for the defendant.

COURT OF QUEEN'S BENCH.

[Crown Side.]

MONTREAL, March 1885.

Before RAMSAY, J.

THE QUEEN v. JUDAH.

False Pretence—Warranty in deed.

A clause of a deed by which the borrower of a sum of money falsely declares a property well and truly to belong to him may constitute a false pretence.

The defendant was charged with having obtained $25,000 by false pretences. See 7 Legal News, pp. 371, 385, 396.

The evidence establishes that defendant wished to pay off an hypothec on certain real estate, and applied to a broker to procure him the money on the same security as the hypothecary claim to be paid off. The broker opened communications with the complainant, and finally it was agreed that if the titles were satisfactory, complainant would furnish the money. The name of the defendant was then furnished, and the complainant left the termination of the affair in the hands of a notary, with verbal instructions that the money, which he paid over to the notary, should not be delivered to the defendant except in payment of the hypothecs on the property. The defendant agreed to all this, and went to the notary's office and signed the deed, which contained in printed form, after describing the property to be hypothecated, this unusual warranty: "Which "he declares well and truly to belong to him, "and to be free and clear of all hypothecs "and incumbrances whatsoever." In fact this statement was untrue. To defendant's knowledge, two-thirds belonged to his daughter, as heir of her mother, who had been *commune en biens* with defendant and of her only brother deceased since the mother's death.

The notary being examined as a witness said, that after signing the deed, defendant "said there were some pretty strong clauses in the deed, pointing to the clause referred to and read by Mr. Burland in his evidence. He said the property belonged to him, and he said that he knew of no other encumbrances or mortgages on the property, except the three mortgages which I was to discharge, viz., Chadwick, the Seminary and the Nuns' mortgages. He said he would not like to sign anything that would put him in jail. I then said to him, is the property not all clear, except above mentioned mortgages? The defendant answered yes. I then said he could sign without fear." The notary further swore that he would not have given the money without the assurance from the defendant, that the property was his. He also established that the money was applied to the discharge of defendant's indebtedness, as it was understood it should be applied.

In cross-examination it was shown that the notary not only had the titles but that he had been guided, to some extent, by a legal opinion he found among the papers, and in which it was declared that the title was satisfactory.

In the cross-examination of Mr. Withers, the financial agent through whom the loan was effected, a witness produced by the prosecution, it was established that loans on the mortgage of real estate were never made on the assurances of the borrower, but on the report of a lawyer or notary, or both.

It was established that the defendant knew of the defect in his title, which was not apparent either by the deeds themselves or by registration, for that the matter had twice since 1874 been brought to his notice.

The case for the crown being closed, the defendant, who conducted his own defence, moved the Court to direct the jury to acquit, there being no false pretence proved but only

a breach of contract. He relied on the *King & Codrington*, (1 C. & P. 661) and the *Queen & Durocher*, (not reported) decided in this Court, which last case he believed to have been decided by the Court as now constituted.

Mr. Davidson, Q. C., in reply, said that *Rex & Codrington* had been, in effect, over-ruled, and he referred to the cases of *Abbott*, of *Dark*, of *Burgon* and of *Meakin*.

RAMSAY, J. I sat in the case of *Durocher*, and although I have no note of the point except the barest mention, I remember to have held that a bad title was not necessarily a false pretence. I never said that there might not be a false pretence by means of a deed. This is all I understand to have been decided in *Rex & Codrington*. See what Brett, J., said at the argument in *Reg.* v. *Meakin*, 11 Cox, p. 273. The cases of *Reg.* v. *Abbott*, 1 Den. C. C., 273; 2 C. & K., 630; 2 Cox, C.C.; *Reg.* v. *Dark*, 1 Den. C.C. 276; and *Reg.* v. *Burgon*, 25 L. J. 105 M. C., don't apply at all. They were material false pretences. In all the cases the defendants obtained money by producing one thing for another in a grossly fraudulent manner. It will be observed that although, in some of the cases, the judges questioned the ruling in *Rex & Codrington*, they took especial care not to over-rule it. I cannot concur with the criticism of *Rex & Codrington*, by Lord Chief Justice Denman, in the *Queen & Kernick* (5 Q. B. 49). Whatever may be the law of England, it could not be maintained for an instant under our highly organized and logical system of law, that the conversations which preceded the written contract, not persisted in by the contract, could be the inducement to make the contract. Our rule is that you cannot prove *outre le contenu de l'acte*. This is a sound rule of evidence, and to expose people to being held criminally responsible for mere talk at the time, as it may chance to be remembered, after the whole matter had been reduced to writing, would be excessively dangerous. I therefore had some difficulty at first in admitting Mr. Lighthall's evidence as to the conversation. But it will be at once seen that this evidence was rightly admitted in this case, for two reasons: It did not contradict the written instrument, and it was useful to meet a defence which might have been set up plausibly, had there been no such evidence, namely, that the false warranty was unusual, was contained in a printed form, and had been passed unobserved by the defendant when he signed. He might have found an illustration in support of such a contention in the same deed. Alongside the words alleged to be false and fraudulent, there is a warranty that there were no hypothecs. This is palpably false, yet the defendant signed it inadvertently. As for the case of *Reg.* v. *Meakin*, 11 Cox, 270, I purpose to follow it precisely. The case before us is one of mixed law and fact, and it must go to the jury. I shall endeavour to present to them the legal aspect of the case, and leave to them the duty of applying the law so explained to the facts as proved.

The defendant was convicted.

Davidson, Q.C., for the Crown.

The defendant in person.

PRIVILEGE IN RELATION TO CRIMINAL ISSUES.

The case of *Regina* v. *Cox*, 54 Law J. Rep. M.C. 41, reported in the March number of the Law Journal Reports, decides once for all a very important question of professional law, upon which considerable difference of opinion has been expressed from time to time. How far may a solicitor be compelled to disclose communications made to him by a client in a criminal case or upon the trial of an issue involving a crime? The judgment was delivered by Mr. Justice Stephen on behalf of the ten judges who composed the Court. It is noticeable that the Lord Chief Justice of England, who is ordinarily essential to the constitution of the Court, was absent, and no doubt his absence was justified on the ground allowed by the statute—namely, that it is signified by writing under his hand, or that of his medical attendant, that he is prevented by illness or otherwise from being present. The decision is that of the highest Court of Appeal on the question, which is one incapable of being raised on a writ of error and taken to the House of Lords, and it undoubtedly goes very far in opening the mouth and the document box of the solicitor in a criminal case. Happily it does not

go quite so far as the words attributed to Mr Justice Lush in *Regina* v. *Castro*—namely, 'that the law does not allow in the name of privilege any person to withhold evidence which is within his power and which may be used in support of a criminal charge.' Mr. Justice Lush's words would force a solicitor to disclose what his client told him after he was accused for the purposes of his defence. The learned judge could not have intended to go so far, otherwise the crucial question which the solicitor engaged to defend an accused person is popularly supposed to put to his client—namely, 'Are you in truth guilty or not?'—would be hazardous. The learned judge could not have meant that an accused person could be convicted by a confession after the fact to his legal adviser. Mr. Justice Stephen's judgment in any case deals directly with the matter. He says: 'We are far from saying that the question whether the advice was taken before or after the offence will always be decisive as to the admissibility of such evidence. Courts must in every instance judge for themselves on the special facts of each particular case.' This shows that many questions of nicety are still open. Suppose, for example, a man comes to his solicitor and asks him whether there is an extradition treaty between Spain and England, would the solicitor be bound to disclose the fact in the witness-box at his trial? Probably he would, although the communication took place after the alleged crime, because the information was required with a view to escape from justice.

The facts in *Regina* v. *Cox and Railton* were such as have often happened before, and will frequently happen again. Railton, in the character of proprietor of a newspaper, had been ordered to pay damages and costs. Cox, the other defendant, was his partner, and the deed of partnership had been prepared by Mr. Goodman, a solicitor. A few days after the verdict the two defendants repaired to Mr. Goodman, and asked him whether Railton, the defendant in the civil action, could not give a bill of sale to Cox, his partner, to protect the plant of the newspaper from seizure. They were told that he could not, whereupon they paid their fee and departed. Afterwards, when the sheriff appeared at the newspaper office, a bill of sale was produced duly executed and registered some days previously, together with the partnership deed, endorsed with a memorandum of dissolution dated before the bringing of the action. Cox and Railton were indicted before the Recorder of London, and found guilty by the jury, but the recorder reserved the question whether the evidence of Mr. Goodman ought to have been admitted. On the one hand it was clear that the communication with Mr. Goodman took place before the crime was committed, and with a view to obtain information as to the form which it ought to take. On the other hand it was obvious that Mr. Goodman was not *particeps criminis*. It was argued for the prisoners that evidence of this kind is not admissible unless the solicitor is cognisant of the crime, but the argument was disposed of by a consideration thrown out in the judgment. The privilege is based on confidence, and, if the confidence is only one-sided, the privilege does not exist. How could Mr. Goodman by any disclosure be made to betray a confidence which was not reposed in him? As the Latin Grammar says: 'Fides et fiducia sunt relativa.' The one cannot exist without the other, and Mr. Goodman broke no trust, because Cox and Railton committed no trust to his keeping. They studiously kept back the fact that they proposed *quocunque modo* to prevent execution being levied on the plant of their newspaper. The communication was not confidential because the criminal purpose was concealed, and so the confidence did not exist. On the other hand, suppose the solicitor consulted had been told the client's object, the evidence would still have been inadmissible, but on a different principle — namely, that the whole communication was in furtherance of an illegal purpose. The cases cited and considered in the course of the argument, show how tender the law has always been of the privilege in question. The most authoritative of them is that of *Cromack* v. *Heathcote*, 1 B. & B., decided in 1820 by the full Court of Common Pleas, consisting of Chief Justice Dallas and Justices Burrough and Richardson. The circumstances of that case were very similar to the present; and it was held that, in order

to prove that a deed of assignment was fraudulent as against an execution creditor, an attorney to whom the execution debtor had applied to draw the deed, and who had declined on the ground that execution had issued, could not be called to give evidence. Mr. Justice Stephen points out that the only question argued in that case was whether the privilege extended only to communications in the course of a cause. Upon that subject it is still an authority; but the result of it must now be considered as overruled by the decision of the Court of Crown Cases Reserved. In theory, we suppose the decision of the Common Pleas ought to prevail in a civil action, but practically no judge would now follow the three judges in *Cromack* v. *Heathcote*, now that their opinion has been dissented from by ten judges upon a point not argued before the three. Two other cases decided by single judges must be definitely considered overruled. The first is *Rex* v. *Smith*, 1 Phil. & A. 118, in which Mr. Justice Holroyd refused to compel an attorney to produce a forged promissory note which had been given to him by a client with instructions to bring an action upon it. The other is *Doe* v. *Harris*, 5 Car. & P. 592, in which Mr. Justice Parke followed *Cromack* v. *Heathcote*. The Court, while overruling these two cases, and declining to follow *Cromack* v. *Heathcote* mechanically, is supported by the principles laid down in a number of cases which were cited in the judgment, but mainly by a decisive consideration of public policy. If the contrary decision had been arrived at, as Mr. Justice Stephen points out, 'the result would be that a man intending to commit treason or murder might safely take legal advice for the purpose of enabling himself to do so with impunity.' Upon an examination of the authorities, a conclusion was arrived at that the rule contended for by the defendants' counsel, which had such monstrous consequences as to reduce it to an absurdity, was not warranted by any principle or rule of English law.

The best general principle to be extracted from the case is to be found towards the end of the judgment, where Mr. Justice Stephen lays down that, 'in each particular case, the Court must determine upon the facts actually given in evidence, or proposed to be given in evidence, whether it seems probable that the accused person may have consulted his legal adviser, not after the commission of the crime for the legitimate purpose of being defended, but before the commission of the crime for the purpose of being guided or helped in committing it.' Perhaps the words 'whether it seems probable' hardly go far enough, as the judge is bound in many cases to decide adversely to the prisoner the same question as that which the jury will have to try in order to admit the evidence. There need, however, be no inconvenience in this, so long as care is taken that the jury do not hear the evidence given or proposed to be given. Practically, the decision would seem to come to this, that communications made in furtherance of a criminal object are not protected by privilege, except when that object is the successful defence of the accused before the Court which tries him, and the communication is made after the event. The result is not only in accordance with public policy, but relieves the breast of legal advisers of a weight which they would rather not bear.—*Law Journal*, (London.)

INTEREST ON COSTS.

A point of practice of some considerable interest to suitors is the question from what date the costs of an action bear interest. There is no doubt that the old equity rule was, that the interest ran, not from the date of the judgment, but from that of the certificate of taxation. See section (last ed.) 130. At common law the matter was not quite so clear, and there were decisions which went to show that the date from which the interest ran was the date of the judgment. In *Schroeder* v. *Cleugh*, 46 L. J. C. P. 365, 35 L. T. Rep. N. S. 850, however, the question was considered by three judges of the common pleas division, after the judicature acts had come into operation, and they decided in favor of the old equity rule. So the matter stood when the case of *Hyman* v. *Burt*, 76 L.T. 425, Weekly Notes, 1884, 100, came before Mr. Justice Field in chambers, and he decided in favor of the right date being the date of the judgment. Lastly, the same point came up again before Mr. Justice Pearson, in *Land-*

owners West of England, etc., Company v. *Ashford*, on the thirtieth of October, and the learned judge seemed inclined to decide in the contrary sense to Mr. Justice Field, but, on being told that the decision of Mr. Justice Field was supported by one of Mr. Justice Chitty, in *The Atlantic Mutual Fire Ins. Co.* v. *Huth*, on the twenty-first of December, 1883, Mr. Justice Pearson felt himself obliged to follow those authorities, which, he said, were too strong for him. It appears, however, that *Atlantic, etc., Co.* v. *Huth* was not a decision at all upon the date from which the interest ran, but upon the question whether, on the facts of the case, any interest at all ought to be paid on the costs or not. The point that the interest ought to run from the date of the judgment does not appear to have been argued or suggested, and Mr. Justice Chitty is stated to have said that interest ran by statute from the date of the certificate, and that the usual four per cent. interest must be paid from that date. But for the reference to *Atlantic, etc., Co.* v. *Huth*, it seems very probable that the decision of Mr. Justice Pearson would have been in accordance with that in *Schroeder* v. *Cleugh*, so that, so far from the point now being a settled one, as would appear at first sight to be the case, it must be regarded as more doubtful than ever, and in an eminently fit condition for the handling of the court of appeal.—*Law Times.*

JURISPRUDENCE FRANÇAISE.

Assurances terrestres—Propriétaire assuré—Locataire—Clause subrogative de l'assureur aux droits de l'assuré—Cession de créance—Sinistre—Saisie-arrêt—Validité.

La clause d'une police d'assurance contre l'incendie, par laquelle l'assuré déclare subroger, de plein droit, l'assureur dans tous ses droits, actions et recours contre les tiers à raison de l'incendie, ne vaut pas au profit de l'assureur comme subrogation, mais comme cession de droits éventuels et aléatoires soumise à la seule condition de l'évènement de l'incendie des meubles assurés.

Mais la dite cession étant parfaite par le seul fait de l'évènement de l'incendie, l'assureur est en droit d'exiger des tiers, notamment des locataires responsables, aussitôt cet évènement, le paiement, entre ses mains, de la somme due pour le dommage éprouvé par le propriétaire assuré, sans être tenu de justifier de l'acquit préalable de l'indemnité aux mains de ce dernier.

Une saisie-arrêt pratiquée pour procurer ce paiement ne peut donc être annulée par l'unique motif que l'assureur, qui l'a formée, n'aurait pas préalablement désintéressé le propriétaire incendié.

(3 *fév.* 1885. *Cass. Gaz. Pal.* 21 *fév.* 1885.)

Testament olographe—Signature—Défaut—Ecrit enfermé dans une enveloppe signée—Nullité.

L'apposition de la signature est une formalité essentielle du testament olographe, et la seule qui atteste que l'écrit n'est pas un simple projet, mais bien un acte définitif. Par suite, doit être considéré comme nul l'écrit non signé émané du défunt, bien qu'il soit contenu dans une enveloppe gommée dont la suscription, indiquant qu'elle contient un testament, a été datée et signée par le *de cujus*. L'enveloppe n'est en effet réunie au testament par aucun lien matériel et nécessaire et n'en est pas partie intégrante.

GENERAL NOTES.

The *Law Times* (London) says: "The Lord Chancellor is evidently no believer in codification of the law. He holds out to the commercial world practically no hope that any branch of the law affecting them will be codified under government supervision. We shall not regret it if the present government avoids the great duty. They blunder with so much persistency, that we should like to see fresh minds brought to bear. With the Master of the Rolls or Sir Farrer Herschell on the woolsack, matters would assume a very different aspect."

A correspondent of the London *Times* writes: "Now that the subject of Imperal Federation is occupying the attention of the powers that be, will you kindly allow me space for a suggestion? The want of a system of reciprocal legal procedure between the mother country and the colonies, as well as between the colonies themselves, has been a long-felt evil, and I venture to think that, with the increasing commercial relations the time has now arrived, and the opportunity too, when some steps should be taken to remedy the evil. A debtor, who now betakes himself to another colony with a letter of credit on a bank there, has only to withdraw his balance from his local bank and remain where he is, and his creditors find themselves foiled. The evil is, however, not confined to cases of contract, but abounds in cases of tort, where the wrong doer finds an easy escape from the consequences of his acts, provided they are not criminal, by taking a ticket for 'the other side.'"