The Legal News.

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*LEGISLATION AT QUEBEC.*

A bill introduced by Mr. Wurtele, Q.C., to amend 33 Vict., chap. 26, proposed that "the "interdiction of any person interdicted as an "habitual drunkard, shall have the same effects "as those conferred by the laws in force in this "Province, in the case of the interdiction of "any person for prodigality." The bill was read a third time and passed, Aug. 13.

Another measure submitted by the same gentleman proposes to declare that articles 1489 and 2268 of the Civil Code "have always "applied and apply to the contract of pledge." This seems very clear, and was, in fact, distinctly affirmed in the case of *Cassils & Crawford*, 21 L. C. Jurist, p. 1. At page 7, Ramsay, J., remarks: "It has been questioned whether "the rule that is applicable to a purchaser is "applicable to the pledgee. On this point I "think that there is no distinction. The right "to sell implies the right to pledge." It might seem unnecessary to declare by statute that the opinion of the highest provincial tribunal is really the law, but the preamble states that "doubts have been raised outside the Province "of Quebec, as to the right of the creditor who "has received a pledge in this Province, to be "maintained in the possession thereof, against "the owner when the same was obtained in "good faith, from a trader dealing in similar "articles; and that it is important to remove "such doubts."

An important bill respecting Coroner's Inquests has been introduced by the Hon. Mr. Mercier. The first section enacts that "no "coroner shall hold an inquest on the death of "any person, except when it is established by "sworn complaint information that there is "reason to suspect that such death has been "caused by the commission of a crime." The proposed change in the law is avowedly based on motives of economy, and undoubtedly a great many useless inquests are held. But the bill seems to go rather far. The difficulty in many cases in which inquests ought to be held, will be in getting people to swear to their suspicion that the deceased has been the victim of foul play. In cases of poisoning, for instance, it may easily be imagined that the guilty will often have a good chance of escape, owing to the natural hesitation of people to swear to suspicions which may prove to be totally unfounded.

Doubts having been entertained (see *Parent* v. *Shearer*, 23 Lower Canada Jurist, page 42,) whether the writ of injunction can be obtained, save as provided by 41 Vict. chap. 14, the Hon. Mr. Mercier has introduced an amendment adding, after sub-section 6 of the first section of the above act, the following: "And generally, "in all cases in which the writ of injunction "may be granted in England, and under the "same rules, conditions and restrictions." And the bill proposes to replace section 3 by the following: "3. A copy of the said petition, "with a notice of the date of its presentation, "shall, in all cases, be served upon the party "against whom the injunction is demanded, "within the delays prescribed by law."

A lengthy bill, comprising thirty-three pages, has just been issued, respecting the bar of the Province of Quebec. It is stated that the bill will be allowed to remain over till next session.

*THE QUEUE ORDINANCE.*

We have received a pamphlet containing a copy of the judgment rendered by the Circuit Court of the United States in a *cause célèbre* of California, *Ho Ah Kow* v. *Nunan*. The Board of Supervisors of the City and County of San Francisco had made an ordinance, popularly known as the "Queue ordinance," directed against the Chinese, declaring that every male person imprisoned in the county jail, should have his hair "cut or clipped to an uniform "length of one inch from the scalp thereof." It seems that Ho Ah Kow had been fined $5, or, in default, five days' imprisonment in the county jail, for an offence against a statute of the State. Not paying his fine, the Chinaman was sent to prison, and while there his queue

was cut off by the sheriff, under the ordinance above mentioned. For this act the Chinaman claimed $10,000 damages, alleging that it is the custom of Chinamen to shave the hair from the front of the head, and to wear the remainder of it braided into a queue; that the deprivation of the queue is regarded by them as a mark of disgrace, and is attended, according to their religious faith, with misfortune and suffering after death; that the defendant knew of this custom and religious faith of the Chinese, and knew also that the plaintiff venerated the custom and held the faith. Yet, in disregard of his rights, inflicted the injury complained of; and that the plaintiff had, in consequence of it, suffered great mental anguish, been disgraced in the eyes of his friends and relatives, and ostracized from association with his countrymen.

The action was demurred to, but the Court had no hesitation in overruling the demurrer on two grounds: First, the ordinance was in excess of the powers vested in the Board. And, secondly, on the broader ground, that such legislation was prohibited by the Constitution, a clause of which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws. In fact, this cutting off the queue was really a species of torture intended to reach the Chinese specially, for it was said that only the dread of the loss of his queue would induce a Chinaman to pay his fine. As well might the Corporation of Montreal enact the thumbscrew or the rack, to coerce the drunken and disorderly brought before the Recorder's Court to pay their fines, and thus save the expense of their maintenance in jail.

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### *CONTRACT OF SALE—DUTY OF PURCHASER TO TEST ALLEGED REPRESENTATION.*

The law of implied warranty upon the sale of goods has doubtless presented many of our readers with problems of some difficulty. A number of circumstances and conditions may concur in a given case to render the solution of such problems less easy of accomplishment. The case of *Ward* v. *Hobbs* (40 L. T. Rep. N. S. 73) may be cited by way of illustration. Originally tried before Lord Justice Brett, it has been argued in the Queen's Bench Division, and the Court of Appeal, and ultimately came before the House of Lords. The action was brought to recover the value of a number of pigs which had been bought by the plaintiff of the defendant, on the ground that immediately after the sale they showed symptoms of typhoid fever, that all but one of them died, and they infected other pigs of the plaintiff. There were conditions of sale under which they were sold. By them it was provided that the lots with all faults and errors of description, if any, were to be paid for and removed at the buyer's expense immediately after the sale, and that no warranty would be given by the auctioneer with any lot, and that, as all lots were open to inspection previous to the commencement of the sale, no compensation would be made in respect of any fault or error of description of any lot in the catalogue. At the trial the jury found that the defendant was aware that the pigs were infected with the disease when he sent them to the market, and gave a verdict for the plaintiff. A motion to enter the verdict for the defendant was discharged by the Queen's Bench Division, whose decision was itself reversed by the Court of Appeal on the ground that the defendant did not, by taking the animals to a public market, represent them to be free from the disease. The plaintiffs thereupon appealed to the House of Lords.

The case of *Baglehole* v. *Walters* (3 Camp. 154), which was heard by Lord Ellenborough in 1811, is much in point. There a ship was sold with all faults. After the sale it turned out that the ship had several secret defects. In an action against the vendor, the Attorney-General relied on behalf of the purchaser upon the case of *Mellish* v. *Motteux* (Peak. Cas. 115), where Lord Kenyon ruled that the seller is bound to disclose to the buyer all latent defects known to him, and that such terms as taking "with all faults" and without warranty must be understood to relate only to those faults which the purchaser could have discovered, or which the defendants were unacquainted with. Lord Ellenborough refused to admit the doctrine of that case, observing: "Where an article is sold with all faults, I think it is quite immaterial how many belonged to it within the knowledge of the seller, unless he used some artifice to disguise them, and to prevent their

being discovered by the purchaser. The very object of introducing such a stipulation is to put the purchaser on his guard, and to throw upon him the burden of examining all faults, both secret and apparent. * * * By acceding to buy the horse with all faults, he takes upon himself the risk of latent or secret faults, and calculates accordingly the price which he gives." Upon principle, too, his Lordship thought that it would be most unjust if men could not, by using the strongest terms which language affords, obviate disputes concerning the quality of the goods they sell. It follows from this decision that the liability of a vendor in such a case depends upon whether he has actually rendered it impossible for the purchaser to detect latent faults.

There is not a complete identity between the principles recognized at law and in equity as to representations. In *Scott* v. *Hanson* (1 Sim. 13), where a piece of land, imperfectly watered, was described as uncommonly rich water meadow, Vice-Chancellor Leach held that this was not such a misrepresentation as would avoid the sale. For the vendor it was argued that the principles as to misrepresentation were the same in equity and at law; that the real quality of the land, being an object of sense, and obvious to ordinary diligence, it was the fault of the purchaser if he did not inspect it and judge for himself; that the amount of the annual rent being stated, which was the criterion of value, the purchaser could not be deceived; that when the land was said to be uncommonly rich, it was spoken of comparatively only. The Vice-Chancellor, having taken time to consider his judgment, said: "I do not accede to the argument that the principles upon the subject of representation are uniformly the same in equity and at law;" and pointed out that in such a case as the present, when the vendor had filed a bill for specific performance, it was not sufficient to say that the purchaser had been negligent if the vendor who seeks the aid of a court of equity has, in his conduct, been negligent.

What the principles of equity are upon the latter question appeared from the decision of Lord Langdale in *Clapham* v. *Shillito*, 7 Beav. 146. This was a bill for the purpose of compelling the defendant specifically to perform an agreement to take a lease of certain coal mines. The defendant relied upon false representations made during the negotiations for the contract. The jury found, upon an issue directed to be tried, that the plaintiffs made false representations to the defendants as to the depth of the coal from the surface, and as to the thickness of the little coal, but that the defendants did not rely upon these representations. This is Lord Langdale's summary of the law: "Cases have frequently occurred in which, upon entering into contracts, misrepresentations made by one party have not been, in any degree, relied on by the other party. If the party to whom the representations were made himself resorted to the proper means of verification before he entered into the contract, it may appear that he relied upon the results of his own investigation and inquiry, and not upon the representation made to him by the other party; or if the means of investigation and verification be at hand, and the attention of the party receiving the representations be drawn to them, the circumstances of the case may be such as to make it incumbent on a court of justice to impute to him a knowledge of the result which upon due inquiry he ought to have obtained, and thus the notion of reliance on the representations made to him may be excluded. Again, when we are endeavoring to ascertain what reliance was placed on representations, we must consider them with reference to the subject matter and the relative knowledge of the parties. If the subject is capable of being accurately known, and one party is, or is supposed to be, possessed of accurate knowledge, and the other is entirely ignorant, and a contract is entered into after representations made by the party who knows, or is supposed to know, without any means of verification being resorted to by the other, it may well enough be presumed that the ignorant man relied on the statements made by him who was supposed to be better informed." On the other hand, where the subject is in its nature uncertain—if all that is known about it is a matter of inference from something else, and if the parties making and receiving representations on the subject have equal knowledge and means of acquiring knowledge and equal skill, it is not easy to presume that representations made by one would have much or any influence on the other. His Lordship was satisfied that the proper questions were fairly and sufficiently

brought under the consideration of the jury, and agreed with the ruling of the learned judge at the trial.

In *Ward* v. *Hobbs* the arguments were heard by the Lord Chancellor and Lords O'Hagan and Selborne, who were unanimous in dismissing the appeal with costs. "I apprehend," said Lord Cairns, "there can be no doubt of this proposition, that if a man expressly states upon a sale that he gives no warranty, and that the goods sold must be taken with all their faults, but goes on to say in addition to that, that so far as he knows or believes, or has reason to believe, the goods are free from any particular fault, and that the animals, if it be animals that are sold, are free from any disease, if he expressly states that, and if it can afterwards be proved that the animals were tainted with the disease to which he referred, then there can be no doubt that, notwithstanding the negation of the warranty, an action would lie for deceit for the false representation." The alleged representation in this case was implied by the plaintiff from the provisions of the Contagious Diseases (Animals) Act, s. 57 (32 & 33 Vict, c. 70),which provides that any person who sends an animal having at the time upon it an infectious or contagious disease to any public place, shall be guilty of an offence unless he proves that he was not aware that the animal was so tainted. Their Lordships, however, held that such an inference could not countervail the express terms of the conditions of sale. Lord O'Hagan quoted and approved of the ruling of Lord Ellenborough in *Baglehole* v. *Walters* (*sup*). None of their Lordships made any reference whatever to the previous decision of Lord Kenyon, which was practically overruled by Lord Ellenborough's ruling, so far as a conflict existed, the latter having been accepted ever since as embodying the law. With respect to the duty of a purchaser to test the value of an alleged representation which is merely implied by the buyer, the case of *Ward* v. *Hobbs* is a distinct authority for the proposition that where a vendor, not being guilty of any contrivance to conceal or to deceive, sells upon the express understanding that no warranty of quality or condition is given, inspection by the buyer is challenged, and he has notice of the probable necessity of making inspection: whether he fails to do so or not he has no cause to complain. Lord Selborne was impressed for some time with the argument that it is actionable for A. to sell to B., without disclosing the fact, an article which A. knows to be positively noxious, and B. does not know to be so, even though A. expressly negative warranty, and says that B. must take his bargain with all faults. The authorities not supporting this argument, his Lordship ultimately agreed entirely with the Lords Cairns and O'Hagan.—*Law Times.*

## NOTES OF CASES.

### SUPERIOR COURT.

MONTREAL, July 19, 1879.

THE HOCHELAGA BANK v. GOLDRING.

*Bail—Justification of sureties.*

By the judgment in appeal, noted *ante*, p. 230, the judgment of MACKAY, J., fixing the bail at $36,800, was confirmed. Bail was offered for this amount before Mr. Prothonotary Honey.

*Beique*, for the plaintiffs, asked if the sureties were ready to justify on real estate. He cited from C.C. 1939, that "the solvency of a surety is estimated only with regard to his real property." He contended that the sureties should justify to twice the amount of the bail fixed. He also objected to one of the sureties, who was a resident of Ontario :—C.C.1938.

*Carter, Q.C.*, for defendant, petitioner, said the special law of *capias* applied, and the sureties need not justify on real estate :—C.C.P. 827; nor to more than the amount fixed by the Court.

MR. PROTHONOTARY HONEY held that it was not necessary that the sureties should justify on real estate; nor to twice the amount, if the security appeared satisfactory.

The objection to the surety resident in Ontario was maintained, but afterwards, by consent, he was accepted. The bail fixed amounted in the aggregate to $41,800, and five sureties were given.

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THE HOCHELAGA BANK v. GOLDRING.

MONTREAL, Aug. 15, 1879.

*Bail—Insolvency of a Surety—Justification.*

JOHNSON, J. The plaintiff was arrested on a capias, and gave bail under the law and practice of the Court, according to Article 827, C. P.

That Article exacted sureties, and not merely one surety, and it was complied with by five sureties being given. One of these sureties has since failed, and the plaintiffs petition to have the defendant surrendered to the Sheriff, and the defendant answers their petition by offering another person to replace Wm. Harmburger, who has failed. The person offered is a Mr. Kortosk, and he justifies on oath, but not on real estate. The questions raised are, first, whether, according to the practice of the Court, two sureties are not required. That may be admitted, without affecting the present case, though I give no opinion that it must be so in all cases. This, however, is not a case in which bail is being offered to the action in the general sense. That has been done; bail has been taken, and not only two sureties, but five have been furnished. It is only a question now of substituting one surety for another that has ceased to exist. I cannot possibly exact two sureties in the place of one. I am only concerned to see that the surety to be substituted has a legal character. The parties are well aware of the serious doubts I entertained personally as to the real state of the law respecting the second point raised—that is as to the necessity of justifying on real estate. The judicial surety by law must, generally speaking, be a person who has sufficient property in Lower Canada to answer the obligation, and whose domicile is in Lower Canada, (Article 1,938 C.C.) The solvency of the surety must be estimated only by his real estate, except where the debt is small, and in commercial matters, and in cases not otherwise provided for by some special law (1939). But then comes the code of procedure, which in articles 825 and 827 regulates this subject. Article 825 says the sureties must be to the satisfaction of the Court; and of course nothing will satisfy the Court but a conformity to the law. Article 827, however, which does not appear in this Code of Procedure as new law, and does not accurately reproduce the old law, says that the sureties must justify on oath, but need not justify on real estate. I say this is not the reproduction of the old law, for on reference to the Consolidated Statutes of Lower Canada, C. 87, sec.10, sub.-sec. 2, we find no such exemption from justifying on real estate. Therefore, I am glad that I have had time to consider this matter; and I can only say that I am bound by the article 827, which is positive law, whether accurate or not as old law, and whether appearing marked as new law or not. As regards the *caution judiciaire* given to prosecute an appeal in the Queen's Bench, or as regards the appeal from the Circuit Court, those are cases provided for by special laws. They are cases after judgment rendered, and the article 1145 in the case of the Circuit Court, and the authority of the Queen's Bench in Dawson's case, settle that the surety in such cases, where there is only one, must justify on real estate.

Petition to surrender dismissed without costs.

Bail offered and justified on oath, without real estate, admitted.

*Davidson, Monk & Cross* for defendant, petitioner; *Carter, Q.C.*, counsel.

*Beique & Choquet* for plaintiffs.

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MONTREAL, February 19, 1879.

DOBIE v. THE BOARD OF MANAGEMENT OF THE TEMPORALITIES FUND, etc.

*Injunction—Security for Costs—Increase of Security under* 41 *Vict.* (*Quebec*), *cap.* 14, *sec.* 4.

The action was brought by a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, against the Board of Management of the Temporalities Fund of the Church, to have the Union of the Presbyterian Churches in Canada declared illegal. The action was accompanied by a writ of injunction under the provisions of the 41 Victoria (Quebec), ch. 14, to restrain the Board from paying monies to persons alleged not to be entitled thereto, or taking any action until the Board should be composed of members legally capable.

The plaintiff being a resident of Ontario, the defendants moved for security for costs under C. C. 29. They also asked for an increase of the security which the plaintiff had given under 41 Vic. c. 14.

The plaintiff answered that he had already given security as regards the injunction proceedings, as required by section 4 of the statute above referred to, and that he was not bound to give any further security. As to the demand for increase of security, the plaintiff said that the defendants had waived their right to ask

for an increase by their motion for security for costs; and further, that the motion was too late, as it ought to have been made immediately after the return of the action.

JETTÉ, J., as to the first point, held that the pretension of the plaintiff that he was not bound to give security for costs, was unfounded. The security given under section 4 was merely for costs and damages caused by the issue of the writ of injunction, and the injunction was only an accessory of the principal demand. The plaintiff, as a resident of Ontario, was, therefore, bound to furnish the usual security for costs, as prescribed by C. C. 29.

Then, as to the demand for increase of security on the injunction proceedings, the defendants had not waived their right to ask for such increase by their motion for security for costs. Nor was the motion made too late. The intention of the statute was that an increase of security might be asked for after the return of the writ, where it was shown that the security given in the first instance was insufficient to answer the damages which might be caused by this exceptional remedy, and the application might be made within any reasonable time after the return.

Motion for security for costs granted, and petition for increase of security granted in part.

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MONTREAL, May 31, 1879.

DOBIE v. THE BOARD OF MANAGEMENT OF THE TEMPORALITIES FUND, etc.

*Injunction—Motion to dissolve.*

In the case noted above, the defendants now moved to dissolve or suspend the injunction.

JETTÉ, J., after referring to the legislation and other proceedings, said he had come to the conclusion not to grant the motion. Although the Quebec Act, 38 Vict., cap. 64, established in favor of the defendants, a presumption which could only be destroyed by a judicial declaration of the unconstitutionality of the Act in question, it nevertheless resulted from the circumstances of the case, from the facts established by the affidavits and set forth in the pleadings of the parties, that the petitioner has an undoubted right to watch over the administration of the fund, of which defendants have the management. The petitioner, moreover, has a real and acknowledged interest in the conservation of the fund. Now, it was established and admitted that since the passage of 38 Victoria, chap. 64, the Board of Management had diminished the capital of the fund entrusted to its administration by a sum of $40,000. It was contended that this could not affect or endanger in any respect the interests of the petitioner or of others similarly situated, because their rights were amply guarded. But the Court considered that in view of the fact that the diminution had taken place, the petitioner was well founded in contending that the continuance of the administration of the fund by the Board jeopardized his interests. The suspension of the writ of injunction issued in the case might inflict on the petitioner, by a new diminution of the capital of the fund, an irreparable loss; while, on the other hand, the maintenance of the writ, though a serious inconvenience to the defendants, did not endanger any interest, but on the contrary protected all the rights in litigation between the parties. Motion of the defendants rejected.

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MONTREAL, June 14, 1879.

DOBIE v. THE BOARD FOR THE MANAGEMENT OF TEMPORALTIES FUND, ETC.

*Injunction — Offer to give security to party proceeding by Injunction.*

In the same case, the defendants asked that the injunction be dissolved, at the same time offering to deposit the sum of $10,000 as security for the petitioner's rights in the fund, that sum representing more than the capital which would suffice to yield the annual sum payable to him from the fund.

JETTÉ, J., was of opinion that the application must be rejected, on the ground that the petitioner's rights in the case, as alleged, were more extensive than the annual sum payable to him.

*Macmaster & Co.* and *M. M. Tait* for petitioners.

*J. L. Morris* for defendants.

*S. Bethune, Q.C.*, counsel.

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MONTREAL, July 9, 1879.

LUCKHURST v. THE CITY OF MONTREAL; and THE CITY OF MONTREAL v. MALTBY et al.

*Responsibility of Corporation for Condition of the Streets—Contributory Negligence—Costs.*

The plaintiff, the master of the British steam-

ship *Clyde*, sued for $8,000 damages, alleged to have been suffered by him, owing to his having been precipitated into an excavation in Sherbrooke Street, in the City of Montreal.

It appeared that on the evening of the 18th September last, the plaintiff was driving along Sherbrooke Street, and opposite the Lacrosse Grounds, there was an excavation in the street. It was a very dark night, the horse fell into the hole, and the plaintiff was precipitated with great force to the earth and severely injured. He sued the City for the damages sustained.

The defendants pleaded that they had not been negligent, and that the plaintiff had contributed to the accident by fast driving, and was not entitled to complain. They also sued *en garantie* Maltby and Dineen, under whose control, it was alleged, the work was being performed.

PAPINEAU, J., said the proof of damages was sufficient, and the hole was not properly protected by a fence. But it appeared that plaintiff was driving at a very rapid rate, and if the pace had been moderate, he might have checked the horse in time. It was a very dark night, and it was proved that warning was given the plaintiff, but just at that moment he was precipitated into the excavation. Each party contributed to the accident, and the action would, therefore, be dismissed, each party paying his own costs.

The judgment was as follows:—

"Considérant que la défenderesse, la Cité de Montréal, doit surveiller dans l'intérêt de la sureté publique, les travaux qui se font dans les rues de la ville, soit sous sa direction immédiate, soit sous la direction des particuliers par elle autorisés à faire tels travaux, et qu'elle est responsable des défauts de précautions prises pour protéger les passants contre les accidents occasionnés par l'exécution imprudente de ces travaux;

"Considérant que dans le cas actuel, l'excavation pratiquée sur la rue Sherbrooke avec la permission de la corporation de la dite Cité de Montréal par les nommés William L. Maltby et Matthew Dineen, et par les employés de la défenderesse, et la terre sortie de cette excavation n'ont pas été entourées d'une clôture, suivant les réglements de la dite Corporation;

"Considérant, d'un autre côté, que le demandeur et ses deux compagnons qui ont été précipités de voiture dans la dite excavation, étaient aussi au moment de l'accident et immédiatement auparavant, en contravention aux réglements de la Corporation de la Cité, qui défendent à ceux qui conduisent des chevaux et voitures, de les conduire plus rapidement qu'au pas en débouchant d'une rue dans une autre, et en tournant le coin de deux rues, et de les conduire dans les rues de la ville avec une vitesse excédant six milles à l'heure;

"Considérant qu'il est prouvé que lors de l'accident en question l'obscurité était très grande, et que de part et d'autre, les parties auraient dû être portées à une plus grande surveillance et à une prudence et prévoyance plus qu'ordinaire;

"Considérant que le demandeur et celui ou ceux qui le conduisaient en voiture, et la défenderesse et ses subordonnés étaient en faute et ont également contribué au malheur déplorable dans la soirée du 18 Septembre dernier;

"La cour renvoie l'action du demandeur, chaque partie payant ses frais."

The action *en garantie* was also dismissed, each party paying his own costs:

"Considérant que la demanderesse en garantie et les défendeurs en garantie ont participé directement ou indirectement à la faute, négligence et imprudence dont se plaint le demandeur principal en cette cause, en ne prenant pas ou ne faisant pas prendre les précautions nécessaires et requises par les réglements municipaux de la Cité," &c.

*L. N. Benjamin*, for plaintiff.

*R. Roy, Q.C.*, for defendants, plffs. *en gar.*

*D. E. Bowie* and *D. Barry*, for defts. *en gar.*

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MONTREAL, May 16, 1879.

DESBARATS v. HAMILTON et al.

*Surety—Endorser of Promissory Note—C. C.* 1953.

The action was brought by Desbarats against Hamilton, proprietor of the *Jester*, and Parent, under the following circumstances. Hamilton made a promissory note for $100 payable to plaintiff, and Parent, the other defendant, endorsed it *par aval*. The plaintiff endorsed the note and transferred it to the Banque du Peuple; but not being paid at maturity, it was protested. The plaintiff now alleged that he was liable to be troubled for the amount of the note and costs of protest, and he prayed that

the defendants be jointly and severally condemned to furnish him with a *quittance* in proper form, or to pay the amount, $102.50.

Parent did not contest, but Hamilton pleaded that the plaintiff had acknowledged in his declaration that he had not the note in his possession, and that he had no right of action as guarantor or surety for the payment of said note, which being a negotiable instrument, could not be made subject to the rules governing the contract of suretyship.

MACKAY, J., held that art. 1953 C. C. was applicable to an endorser of a note, he being a surety within the meaning of the article, and the defendants were condemned jointly and severally to furnish the *quittance* as prayed, or pay the amount of the note, and costs of protest.

*Barnard, Monk & Beauchamp* for the plaintiff.

*C. H. Stephens* for the defendant Hamilton.

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MONTREAL, June 12, 1878.

MELANÇON et al. v. BESSENER et al.

*Nullity of Receipt opposed by Special Answer.*

The plaintiffs, as assignees of insolvent estate of Giroux, instituted an action against Bessener, claiming the sum of $466 due to Giroux under a deed of sale by the defendant Giroux to the defendant Bessener.

Bessener, by his plea, invoked a receipt for the money signed by Giroux.

The plaintiffs answered specially that the receipt was a nullity being made fraudulently.

It was proved that the money was not paid, but a note was given by Bessener to Giroux, who transferred it to his wife.

By an interlocutory judgment, Madame Giroux was ordered to be called in.

The plaintiffs instituted another action, making Madame Giroux a party, and asking that the receipt be declared null. The causes were subsequently united, and

TORRANCE, J., holding that the special answer had been proved, maintained the action, and declared the receipt to be null and void.

*Jetté & Co.*, for plaintiffs.

*Doutre & Co.*, for defendant.

## CURRENT EVENTS.

### *ENGLAND.*

CODIFICATION.—Lord Chief Justice Cockburn, in a communication addressed to the Attorney General, June 11, expresses the following opinion on the codification of the law:—"I have long been, for reasons on which it is unnecessary here to dwell, a firm believer in not only the expediency and possibility, but also in the coming necessity of codification, and I have rejoiced, therefore, at the favorable reception which the proposal to codify our criminal law has received from the press as of good omen. But it would, I think, be much to be deplored if the eager desire to see the law codified, entertained by the public, of whom few have perhaps taken the trouble to study the details of the measure, and still fewer are in a position to appreciate the legal difficulties which present themselves, should lead to the adoption of a statement of the law still imperfect and incomplete. For not only would this be a misfortune as regards the work itself and administration of justice under it, but any failure in this, our first attempt at what can properly be termed a code, would engender a distrust of this method of dealing with the law which would retard all further attempts at codification for an indefinite period."

### *GENERAL NOTES.*

THE STUDY OF THE ROMAN LAW.—The London corespondent of the *Manchester Guardian* says that a resolute effort is now being made to induce the authorities of the various inns of court to abolish the examination in Roman law which is necessary with a view to a call to the bar. This attempt has been made before, on the grounds chiefly that the present study of Roman law must necessarily be imperfect and scamped by those who attempt it, and that it is essentially an archæological subject. It is now definitively suggested to substitute as a subject of examination International for Roman law.

—A legal gentleman, who paid his addresses to the daughter of a tradesman, was forbidden the house, on which he sent in a bill of £91 13*s.* 4*d.* for 275 attendances, advising on family affairs.—*Irish Law Times.*