The Legal News.

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CIRCUMSTANTIAL EVIDENCE.

A peculiar case of judicial error recently came to light in Austria. A strolling beggar, named Knapp, was tried and convicted of a double murder, accompanied by robbery. The charge was supported only by circumstantial evidence. Knapp had been seen near the scene of the murder on the day the crime was committed. The *alibi* which he attempted to establish was shown to be unfounded. He also gave an incredible explanation with respect to the money found on his person. The case seemed clear to the jury, and Knapp was condemned to death. Finding that there was no hope left, he made a revelation which wholly changed the aspect of the case. He confessed that it was he who had committed a burglary which had occurred on the day of the murder at a distant place, and the details which he gave respecting the affair were corroborated in various ways and proved to be correct. The money found on his person was thus accounted for, his previous false story having been concocted to avert suspicion as to the crime of which he was really guilty. But as the burglary took place at the same hour as the murder, and the distance was so great that it was impossible that the same person could have participated in both affairs, the authorities were forced to come to the conclusion that Knapp was innocent of the crime for which he was under sentence of death. The judgment was therefore annulled. A new trial took place, at which he was convicted of the burglary, and sentenced to nine years' imprisonment.

BREAD STAMP.

The bakers of Toronto have raised a constitutional question. Wm. Nasmith, a baker of that city, in a case before the Queen's Bench Division, questioned the validity of sub-section 2 of clause 1 of by-law 1,128 of the city, which provides that on every loaf of bread sold or offered for sale in the city of Toronto there shall be stamped the weight of such loaf. A motion to quash was made on four grounds: (1) the by-law was *ultra vires*; (2) it was in restraint of trade; (3) it was unjust; (4) it was impracticable. The Queen's Bench Division gave judgment (Feb. 13) disposing chiefly of the question of practicability, on which the argument turned, and holding that the stamping is practicable, and that the motion must fail and the by-law be upheld.

DECISIONS IN APPEAL, 1882.

The following is a statement of the business disposed of by the Court of Queen's Bench sitting in appeal during the year 1882. [For similar statements for 1880 and 1881 see 4 Legal News, pp. 41, 66, and vol. 5, p. 49.]

The total number of judgments rendered at Montreal in civil cases in 1882 was 144, against 116 in 1880 and 131 in 1881. It appears, therefore, that the increase in the number of judges and terms has been attended by a corresponding increase in the number of decisions, the increase of 25 per cent. in the number of terms, and of 20 per cent. in the number of judges having produced an increase of about 20 per cent. in the number of judgments.

Of the 144 decisions in civil cases, 107 were confirmations and 37 were reversals. The proportion continues about the same as in 1880 and 1881, the chances of obtaining a reversal being only about one to three. It must be observed, however, that under the head of confirmations are included all cases in which the appeal has been discontinued, or dismissed for failure to proceed. So that the proportion of confirmations to reversals of cases actually argued would probably be not much greater than two to one.

We have arranged the names of the cases alphabetically, as follows:

CONFIRMED.

Archambault & Cie. Typographique, Cantons de l'Est, S. C., St. Francis.
Arnoldi & Refuge Ste. Brigitte, S. C. M.
Baby & Laviolette, S. C. M.
Bain & City of Montreal, S. C. M.
Baker & O'Halloran, S. C., Bedford.
Barnes & Barbeau, S. C., St. Hyacinthe.
Beausoleil & Normand, S. C. M.
Beemer & Devlin, S. C. M.
Bickerdike & Murray, S. C. M.
Blouin & Brunelle, C. C., St Francis.
Bourbonnais & Bourbonnais, S. C. M.
Bowen & Gordon, S. C., St. Francis.
Brady & Church, S. C., Ottawa.
Brankin & La Banque du Peuple, S. C. M.
Brien & Charron, S. C. M.

Brunet & La Société de Construction, S. C. M.
Charbonneau & Lozeau, S. C. M.
Chretien & Crowley, S. C. M.
Christin & Caty, S. C. M.
Christin & La Cie. de Navigation Union, S. C. M.
City of Montreal & Dugas, S. C. M.
Consolidated Bank & Merchants' Bank, S. C. M.
Corbeil & St. Aubin, S. C. M.
Corporation Clifton & Hebert, S. C., Bedford.
Corporation of Roxton & E. T. Bank, S. C., Bedford.
Coté & Coté, S. C., St. Hyacinthe.
Coutu & Coutu, S. C., Richelieu.
Couture & Foster, S. C., St. Francis.
Cox & Heard, C. C., St. Francis.
Dubois & Cassidy, S. C. M.
Edey & Merrifield, S. C., Ottawa.
Exchange Bank of Canada & Euard, S. C. M.
Felton & Belanger, C. C., St. Francis.
Fletcher & Fuller, S. C., St. Francis.
Gagnon & Loranger, S. C. M.
Gariepy & Lauzon, S C. M.
Gault & Archambault, S. C. M.
Gauthier & Prevost, S. C. M.
Goldring & La Banque d'Hochelaga, S. C. M.
Harrington & Corse, S. C. M.
Hart & Pinsonnault, S. C. M.
Head & Murray, S. C. M.
Hogan & Dorion, S. C. M.
Hood & McCall, S. C. M.
James & Campbell, S. C. M.
Johnston & Scott, S. C. M.
Langlois & Brosseau, S. C. M.
Lapierre & Laviolette, C. C., Richelieu.
Lapointe & Bondy, S. C. M.
Larose & Paquet, S.C.M.
Lavigne & Charron, S.C.M.
Leclaire & Pharaud, S.C.M.
Lemieux & Cossitt, S.C.M.
Leroux & Merchants' Marine Ins. Co., S.C.M.
Letourneux & Delisle, S.C.M.
Limoges & Trudel, S. C., Richelieu.
Lionais & La Banque Molson, S.C.M.
Mackedie & Mongeon, S.C.M.
Mackinnon & Thompson, S.C.M.
McDonnell & Ross, S.C.M.
McGillivray & Cullen, S.C., Ottawa.
McLachlan & Bank of Montreal, S.C.M.
Marsolais & Gareau, S.C., Joliette.
Menard & Hughes, S.C.M.
Mondelet & Roy, S.C.. St. Hyacinthe.
Mondou & Quintal, S.C.M.
Morgan & Lord, S.C.M.
Mulhall & St. Ann's Mutual Building Society, S.C.M.
National Insurance Co. & Trudel, S.C., Ottawa.
N. Y. Central Car Co. & Donovan, S.C.M.
O'Neill & Morrice, S.C.M.
Osborne & Paquette, S.C.M.
Perrault & Charbonneau & Marcotte, S.C.M.
Pickford & Hamilton, S.C.M.
Poirier & Larose, S.C.M.
Pudney & Chartrand, S.C.M.
Ramsay & Almour, S.C.M.
Reford & Les Ecclesiastiques, S.C.M.
Rhéaume & Massie, S.C.M.
Richelieu & Ontario Navigation Co. & Durnford, S. C. M.
Richelieu & Ontario Navigation Co. & Levesque S.C.M.
Robert Namur & Trust & Loan Co., S.C.M.
Robillard & Dumesnil, S.C.M.
Ste. Marie & Stone, S.C.M.
Sarrasin & Cameron, C.C., St. Hyacinthe.
Senecal & Laurin, S.C.M.
Seybold & Evans, S.C.M.
Shaw & St Louis, S.C.M.
Short & Long, S.C., St. Francis.
Sœurs de la Congregation & Ste. Cunegonde, S.C.M.
Sovereign Ins. Co. & Picken, S.C.M.
Stadacona & Cabana, S.C., St. Francis.
Stevens & Hart, S.C., Bedford.
Stevenson & Henshaw, S.C.M.
Synod of Montreal & Trust & Loan Co., S.C.M.
Taylor & McLean, C.C., Ottawa.
Tempest & Baby, S.C.M.
Tempest & Baby, S.C.M.
Tempest & Toussignant, S.C.M.
Tempest & Toussignant, S.C.M.
Thibodeau & Vallée, S.C.M.
Trust & Loan Co. & Hutton, S.C.M.
Trust & Loan Co. & Synod of Montreal, S.C.M.
Waddell & Court, S.C.M.
Wilkes & Skinner, S.C., St. Francis.
Wood & St. Germain, S.C.M.
Workman & Fair, S.C.M.

REVERSED.

Ætna Life Insurance Co. & Larose, S.C.M.
Alliott & Eastern Townships' Bank, S.C., St. Francis.
Archambault & Lamère, S.C.M.
Banque d'Hochelaga & Dionne, S.C.M.
Banque d'Hochelaga & Prevost, S.C.M.
Banque Jacques-Cartier & Giraldi, S.C.M.
Baylis & Stanton, S.C.M.
Betournay & Moquin, S.C.M.
Canada Paper Co. & British Land Co., S.C., St. Francis.
Canada Shipping Co. & Hudon Cotton Co., S.C.M.
Chalut & Banque Jacques-Cartier, S.C.M.
Charlebois et vir & Charlebois et al, S.C.M.
Charlebois & Charlebois, S.C.M.
Desroches & Gauthier, S.C.M.
Dominion Land Co. & Hall, S.C., St. Francis.
Equitable Ass. Co. & Perrault, S.C.M.
Gilman & Court, S.C.M.
Hale & McLennan, S.C., St. Francis.
Hotte & Champagne, S.C.M.
Kennedy & Collinson, S.C.M.
Kneen & Boon, S.C.M.
Loranger & Colonial Investment Co., S.C.M.
Loranger & Reed, S.C.M.
Lord & Elliott, S.C.M.
Molson & Carter, S.C. M.
Nightingale & Société de Construction St. Jacques, S.C.M.
Normand & Beausoleil, S.C.M.
Quinn & Leduc, S.C.M.
Racine & Kane, S.C.M.
Rawley & Quintal, S.C.M.
Robert & Beard, S.C.M.
St. Ann's Mutual Building Society & Watson, S.C.M.
St. Lawrence Navigation Co. & McNamee, S.C.M.
Sauvé & Boileau, S.C., Terrebonne.

Tremblay & Turgeon, S.C.M.
Trust & Loan Co. & Quintal, S.C.M.
Trust & Loan Co. & Quintal, S.C.M.

The judgments at Montreal on appeals from the respective districts, in the year 1882, were as follows:

	C.	R.	Total.
Montreal	80	32	112
Ottawa	5	0	5
Terrebonne	0	1	1
Joliette	1	0	1
Richelieu	3	0	3
St. Francis	10	4	14
Bedford	4	0	4
St. Hyacinthe	4	0	4
Iberville	0	0	0
Beauharnois	0	0	0
	107	37	144

The fact that in 32 appeals from the country districts, the judgment was affirmed in all but five cases, is highly creditable to the administration of justice in those districts.

There were also three criminal cases decided at Montreal. On two writs of error, the judgment was affirmed in one case (*Thayer* v. *Reg.*), and conviction quashed in the other (*Kelly* v. *Reg.*) In the third case (*Reg.* v. *Suprani*), a reserved case, the conviction was maintained.

In the Quebec Division there were 59 judgments in civil cases. In 30 cases the judgment was confirmed, and in 29 cases the judgment was reversed.

There were also 4 judgments at Quebec on reserved cases. In 3 cases the conviction was affirmed, and in 1 case the verdict was set aside.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, January 31, 1882.

SICOTTE, TORRANCE, RAINVILLE, JJ.

DEVLIN v. WILSON.

Action for commission.

The judgment inscribed in Review was rendered by Mr. Justice Doherty in the Superior Court, Montreal, Dec. 11, 1882, dismissing the plaintiff's action. His Honor made the following observations in rendering judgment:—

This is an action for a commission. In the year 1877 a man named O'Brien and another had a claim against the Government, and O'Brien transferred this claim to Wilson, his private creditor. The matter remained unsettled for two or three years, when the plaintiff and defendant met, and the plaintiff, who was a notary represented to the defendant, that he could go to Ottawa about the matter, and he offered to negotiate a settlement for a commission of $200. A writing was made to that effect, stipulating that if the plaintiff succeeded in effecting a transmission of the money from the Government he was to get the $200. The plaintiff now sues for the commission, but the defendant denies that he ever succeeded in getting the money for him. There appears to be no evidence in the record to show that plaintiff has rendered any services in the matter. Except what is admitted by the defendant himself, there is nothing to show that the plaintiff ever was at Ottawa in connection with the business. Two lawyers were brought up to say that it is worth $200 for a professional man to go to Ottawa to attend to any business; but they do not say that the plaintiff ever went to Ottawa. There is no evidence that the plaintiff ever negotiated with the Government, or that he ever put his foot inside of a public office in connection with the business. The action is brought for commission under a contract; no commission was earned, and the action must be dismissed.

The above judgment was unanimously confirmed by the Court of Review.

Judah & Branchaud for the plaintiff.

Curran & Co. for the defendant.

SUPERIOR COURT.

MONTREAL, Dec. 11, 1882.

Before DOHERTY, J.

HÉTU v. BRODEUR.

Commission for procuring Loan—Action for commission where loan was not effected.

PER CURIAM. This is an action by the plaintiff to recover the sum of $130, alleged to be due by the defendant as commission for procuring for him a loan of $13,000. The defendant was indebted to the Credit Foncier Company, and was desirous of paying off their claim on the 1st of June, when the annual day of payment came round But in order to pay off the Credit Foncier, he required a loan of $13,000. He accordingly entered into a written agreement with the plaintiff, in which the conditions were specially set forth, and the earning of a commission of one per cent. was made dependent on

the loan being obtained by the plaintiff. The plaintiff, it appears, spoke to two notaries about the matter, without the negotiation resulting in anything; and finally, when it was probably too late for the purposes of the defendant, he spoke to Mr. Warner, and Mr. Warner agreed to furnish the money on getting $40 commission. The cheque for the $40 has never been presented, and it was payable at the plaintiff's office. In the meantime, however, the defendant got the money in another quarter, and he did not take the loan from Mr. Warner. Now the plaintiff's action is for a commission for procuring a loan. If the defendant had interfered with him in getting the loan, as he pretends, he might have brought an action of damages. Instead of that, he sues on a contract for a commission. He has earned no commission in the proper sense; and the action must, therefore, be dismissed.

Longpré & Cie. for plaintiff.

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

SUPERIOR COURT.

MONTREAL, Dec. 30, 1882.

Before DOHERTY, J.

LABRANCHE v. LABRANCHE et al.

Alimentary allowance—Offer of children to board parent.

PER CURIAM. This is an action by a father against two of his children for an alimentary allowance. The father sues *in forma pauperis*, and the children plead *in forma pauperis*, and sever in their defence. The plaintiff has established a right of action, but the difficulty is the extreme poverty of the defendants. The children offer to board the father at their own table; but the case is complicated by the fact that the father now has his third wife, and what is to be done with the stepmother or second stepmother? The case is somewhat of a puzzle. I doubt whether the Court has power to order the father to go and live with the children, but even if the Court does possess this power, I am not disposed to think it should be exercised under the circumstances of this case. The plaintiff's demand is moderate, being only for six dollars per month. The Court will order one of the children to pay 75 cents per week, and the other 50 cents per week.

Desjardins & Cie., for plaintiff.

J. C. Lacoste, for defendants.

SUPERIOR COURT.

MONTREAL, Dec. 30, 1882.

Before DOHERTY, J.

CHAMPEAU v. MOQUIN et al.

Liability of heirs for notarial charges on settlement of succession—Interruption of prescription—Admission of co-debtor.

PER CURIAM. This is an action by a notary for professional services. It is brought against Adeline Moquin and her husband for services in settling the succession of Joseph Moquin. There were three heirs of this estate, and they wanted the succession arranged. An action is now brought by the notary whom they employed for that purpose. Part of the services is prescribed, but the plaintiff alleges interruption of prescription, and it is also alleged that the heirs are jointly and severally liable. The defendant denies that there has been interruption of prescription, and it is further alleged that there is no solidarity between the heirs, and that Adeline Moquin is only liable for one-third. This third (of the part not prescribed) is tendered with the plea. The plaintiff, by his answer to the plea, abandons the idea of solidarity, so that two-thirds of the claim must be struck off; but he insists that the co-debtor made a note which had the effect of interrupting prescription. But the plaintiff having abandoned the pretension that there is solidarity, the admission of the co-debtor could not interrupt prescription as to the defendant. The tender of the defendant for $28.92 must, therefore, be maintained, and the costs go against the plaintiff.

Geoffrion & Cie. for plaintiff.

Doutre & Joseph for defendant.

SUPERIOR COURT.

MONTREAL, Dec. 30, 1882.

Before DOHERTY, J.

BRUCHESI v. THE CORPORATION OF THE VILLAGE OF ST. GABRIEL.

Corporation—Liability of Municipal Corporation for acts of its officers in making illegal arrests.

PER CURIAM. The plaintiff in this case, who is a grocer, sent out two men to deliver goods in the village of St. Gabriel. A constable in the village thought these men were intruders, doing business without a license. He accordingly arrested them, and they were taken away and detained for some time. Finally they were re-

leased, and the present action is brought against the Corporation, based upon the unjustifiable arrest. The case is similar to that of *Doolan* v. *Corporation of Montreal*, (18 L.C.J. 124) in which I was counsel. The question in the case of *Doolan* was whether a municipal corporation is responsible for the acts of its officers in making illegal arrests. In the Superior Court Judge Mondelet dismissed the action. Then, in Review, that judgment was unanimously reversed, Judge Mondelet concurring in the reversal of his own judgment. In appeal the judgment of the Court of Review was confirmed by three Judges, Judges Duval and Badgley dissenting. So that there were six Judges for maintaining the action, and two against. The Court, in the present case, taking into consideration that decision and other authorities on the question, is disposed to maintain the action. Fortunately the damages are small: the Court has come to the conclusion to give $50, with costs of the lowest class, Superior Court.

Trudel & Co., for plaintiff.

Geoffrion & Co., for defendant.

SUPERIOR COURT.

MONTREAL, April 29, 1882.

Before JOHNSON, J.

THE COLLEGE OF PHYSICIANS AND SURGEONS OF THE PROVINCE OF QUEBEC v. GARON.

Unlawful practise of Medicine—42-43 V. c. 37, s. 28—*One penalty sued for where several offences are alleged.*

PER CURIAM. This is an action under the Statute of the Province, 42 & 43 Vict., C. 37, Sec. 28, imposing a penalty of not less than $25, nor more than $100 upon any person who without being entitled to registration under the provisions of the act shall be convicted of having practised medicine, surgery, or midwifery in the Province of Quebec for hire, gain, or hope of reward, and the particular facts alleged against the defendant are that he attended three persons who are named, one of them at St. Constant, and the two others at Laprairie, and received, by way of fee, $2 in each of two of the cases, and $1.25 in the other. The conclusion is for one penalty only.

The defendant pleaded a *défense en droit*; a general plea, and a special one alleging that he is an old man over seventy, and received the money as travelling expenses, which would not subject him to the penalty of the Statute.

The brother of one of the patients proves that his sister who died of consumption in July 1881, was attended, in June, by the defendant who administered certain remedies to her, and got paid $1.25, asking, however, for $3.

The husband of another patient who had a cancer, but who seems to have survived the treatment, proves that the defendant prescribed for his wife, and gave her a bottle of something to be taken internally, and also an external application. In this instance the defendant bargained for, and got $2, besides his board and lodging for two days. I must give the penalty asked. There is no objection made on the score of two offences being alleged: and it cannot be said that no penalty is due, merely because two have been incurred. The defendant is very old and very poor, and appears to be what is now known as a "crank." The judgment is for $25 for the first case proved, viz., that of Madlle. Gervais; the court reserving to pronounce as to imprisonment if it should be asked.

Mercier & Co., for the plaintiff.

O. Augé, for the defendant.

CIRCUIT COURT.

MONTREAL, January 23, 1882.

Before JETTE, J.

MICHAELS v. PLIMSOLL.

Lawyer's Letter—Exigibility of fee.

Held, that where a letter has been written by a lawyer, in pursuance of instructions from a client, to a debtor of the latter, requesting payment of a debt, and the debtor settles the claim, the sum of $1.50 *may be claimed by the lawyer from the debtor, as the fee for such letter, and he may sue therefor in the name of his client.*

The plaintiff sued for $1.50, fee for a lawyer's letter which had been sent to the defendant.

The defence was that the tariff does not contain any mention of such fee, and it was not taxable.

PER CURIAM. The defendant after having received a "lawyer's letter," paid the amount of the account to the plaintiff, but refused to pay anything for the letter. The advocate has sued in his client's name for $1.50, fee on the letter. I think the action should be sustained. The

letter was written in the interest of the defendant, and to save him the costs of a suit, and the creditor has a right to recover the amount, inasmuch as he is creditor for the costs until distraction has been obtained.

Judgment for plaintiff.

Quinn & Weir, for plaintiff.

Lane, for defendant.

ACCEPTANCE OF BILL CONTAINING UNFILLED BLANKS.

ENGLISH HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, NOV. 2, 1882.

GARRARD v. LEWIS.

A bill of exchange which contained the sum of 14l. in figures in the margin, but no words in the body to denote the amount, was accepted by the defendant and returned to the drawer to be filled in. The drawer fraudulently inserted the words "One hundred and sixty-four" in the body, and altered the marginal figures to that amount and issued the bill. *Held*, that the defendant was liable on the bill to the plaintiff, an innocent holder for value. The figures in the margin of a bill are merely an index or summary of the contents of the bill.

Action by the indorsee of a bill of exchange against the acceptor. The bill read as follows when presented for payment:

"£ 164 0s. 6d,

BRISTOL, Feb. 22, 1882.

Four months after date pay to my order the sum of one hundred and sixty-four pounds and sixpence, value received.

SYDNEY F. BEES.

To Mr. John Lewis, Salisbury."

Defendant's acceptance appeared upon the bill, as also the indorsement of the drawer. The defence was forgery and material alteration. The opinion states the material facts.

BOWEN, L. J. This was an action by the indorsee of a bill of exchange against the acceptor, tried by consent before myself without a jury. The first ground of defence, that the acceptor's signature was itself a forgery, was abandoned at the trial. It remains for me to consider the second defence put forward, viz., that the bill after issue was altered in a material part. The bill of exchange in question had been drawn by one Sidney Bees, four months after date, on the defendant. At the time when the defendant appended his signature to the document, the sum to be mentioned in the body of the bill was left in blank, but in the margin of the bill were the figures 14l. 0s. 6d., which was the sum for which the defendant desired to accept. Bees subsequently filled in the blank in the body of the bill for 164l. 0s., 6d., and fraudulently altered the figures in the margin to that sum. Having done so he indorsed the the bill to the plaintiff, who took it as a *bona fide* holder for value for the larger amount. It was contended before me on the part of the plaintiff that the document at the time it was handed to Bees was, in spite of the marginal figures, an acceptance in blank which did not issue as a bill till after the body of the bill had been filled in, and that the alteration of the marginal figures was not an alteration after, but before or at the time of issue. Secondly, the plaintiff's counsel maintained that the defendant on account of his negligence was precluded, as against a *bona fide* holder for value, from disputing what Bees had done. From the view I take of this case it is unnecessary for me to examine or refer to the series of cases cited before me, beginning with *Young* v. *Grote*, 4 Bing. 253; which deal with the question of negligence as applied to negotiable instruments. It is however necessary that I should state what in my view was the character of the document when handed by the defendant to Bees, and for this purpose to consider what is the exact import and effect of marginal figures at the head of a bill of exchange. They do not seem in general to have been considered among merchants as of the same effect and value as the mention of the sum contained in the body of the bill. The history of these marginal figures may perhaps be shortly summarized as follows: The first model of a bill of exchange preserved to us, and which dates from 1381, does not I believe possess them, though it does possess the votum or invocation with which merchants' bills used generally to commence, and which usually preceded the figures. The marginal figures at the head of a bill, which have since become a matter of common usage, were probably added at a very early date, in order that the amount of the bill might strike the eye immediately, and were in fact a note, index, or summary of the contents of the bill which followed: (see Nouguier, Lettres de Change, edit. 1875, p. 127, "Les chiffres ne sont que pour simple note.") Heineccius, who treats such marginal figures as part of the lemma or heading, does not speak of them as

an essential part of the bill, and the fact that by the law of some countries the amount of the bill was necessarily repeated, both in figures and in words, is adduced by him as a reason for this view (edit. A. D. 1769, cap. iv. s. 5; see also cap. iv. s. 12); "Denique sollemne etiam est campsoribus, sub finem lemmatis cifris exprimere summam soluendam, addito monetæ genere, quo exactori sit satisfaciendum; quamvis hoc requisitum vel ideo, essentiale dici nequeat, quod summa in ipsis litteris cambialibus bis exprimi solet." "Hoc requisitum non esse essentiale vel inde patet, quum tamen debitor sine falsi crimine in ipsa obligatione nihil mutare possit. *Aducitur ergo summa magis notitiæ, quam necessitatis causa.*" Marius, the first English writer on the subject (2nd edit. A. D. 1655, p. 34) in explaining that the words in the body are in case of difference to govern, adds: "The figures at the top of the bill do only, as it were, serve as the contents of the bill and a *breviat* thereof, but the words at length are in the body of the bill of exchange, and are the chief and principal substance thereof, whereto special regard ought to be had." The substance of this passage is reproduced by Beames, § 193. Story (Bills of Exchange, § 42) deals with the matter as follows: "The sum is sometimes also expressed in figures in the superscription as well as in the body of the instrument in letters, for greater caution. But if any of the figures on the superscription differ from the sum in words in the body of the instrument, the letters will be deemed to be the sum." This view has received judicial sanction in the case of *Sanderson* v. *Piper*, 5 Bing. N. C. 431, where a bill containing £245 as a marginal figure, but two hundred pounds in the body of the bill in words was held to be a bill for the latter sum. The case of *Rex* v. *Elliott*, 1 Leach, C. C. 175, is distinguished by and explained by Tindal, C. J. in *Sanderson* v. *Piper*. Let us now apply the above proposition to the case of a document like the present, signed originally in blank with a marginal figure or index, which has since been improperly altered. A document which contains such a marginal index, but in which a blank is left by the acceptor to be filled in with the dominant and all important statement in the body of the bill defining the amount for which it is accepted, is not a perfect bill till this dominant portion of the bill has been filled in. The document is not invalid simply because it is incomplete. It creates certain rights and obligations just as a blank acceptance does. But as the blank is presumably intended to be filled with something, the document till this "something" has been added is not complete. Nor is the question merely what is the actual limit of authority conferred by the acceptance in blank of such a document on the person to whom the acceptor hands it, but rather, what authority the acceptor by his conduct holds out that person as possessing when the bill has reached the hands of innocent holders who do not know that the actual authority conferred is a limited one only. Let me assume first a case in which no marginal figure exists at all, but in which a blank acceptance is left to be filled in, but which is subsequently filled in with a sum in the body of the bill larger than that which the acceptor has actually directed. It is plain, I think, that in the hands of a *bona fide* holder for value without notice, a bill so filled in binds the acceptor to the full amount. Next, let me assume a case of a similar excess of authority, where however a marginal index exists on the bill for a smaller sum than that which has subsequently been placed in the body of the bill. Is the apparent and ostensible authority of the drawer to whom the acceptance was intrusted in blank necessarily limited by the figure in the margin, when the holder of the bill is acting innocently and in good faith? I think not. For it is conceivable that after the bill was signed in its original form the acceptor may have changed his mind and authorized the drawer to disregard the index and to fill in the body of the bill with larger amount. If the acceptor had in fact authorized this to be done, surely he could not as against a subsequent holder deny that the bill for the larger amount so inserted by his express direction was his bill simply because the marginal figures have been left unchanged. *Sanderson* v. *Piper* seems to show this much at all events. Yet if the holder in the absence of notice would have a right to neglect the marginal figure if it remained unaltered, and to look only to the body of the bill, it would seem next to follow that even if the marginal figure was altered, the holder would have a right in the absence of notice to assume that it was altered properly. The holder's right

to look to the body of the bill would not be affected by such alteration, if he did not know the alteration was improper. *A fortiori*, his right to look to the body of the bill would remain the same when he did not know the marginal figure had undergone any alteration at all. Thus I arrive at the conclusion that a man who gives his acceptance in blank holds out the person to whom it is intrusted as clothed with ostensible authority to fill in the bill as he pleases within the limits of the stamp, and that no alteration (even if it be fraudulent and unauthorized) of the marginal figure vitiates the bill as a bill for the full amount inserted in the body, when the bill reaches the hands of a holder who is unaware that the marginal index has been improperly altered. For these reasons the plaintiff in this case would seem to be entitled to succeed, and judgment must be entered for him with costs.

Judgment for the plaintiff.

RECENT SUPREME COURT DECISIONS.

Will—Insanity—Error.—This was an appeal from the Court of Queen's Bench, P.Q. The action was originally brought in the Superior Court by Pierre Lefrançois' executor under the will of the late Wm. Russell, of Quebec, against Austin, curator to the estate of Russell during the lunacy of the latter, to compel Austin to hand over the estate to the executor. After preliminary proceedings had been taken, Elizabeth Russell, the appellant, moved to intervene and have Russell's last will set aside, on the ground that it had been executed under pressure by Dame Julie Morin, Russell's wife, in whose favor the will was made, while the testator was of unsound mind. The intervening party claimed and proved that Morin was not the lawful wife of Russell, having another husband living at the time the second marriage was contracted. Russell, who was a master pilot, died in 1881, having made a will two years previously. His estate was valued at about $16,000. The evidence in the case was voluminous and contradictory. On the 4th October, 1878, Russell made a will by which he bequeathed $4,000 and all his household furniture and effects to his wife Julie Morin; $2,000 to his niece, Ellen Russell; $1,000 to the Rev. Father Sexton, for charitable purposes, and the remainder of his estate to his brothers, nephews and nieces in equal shares. On the 8th of the same month he made another will before the same notary, leaving $800 to his wife Julie Morin, $400 to each of his nieces, Mary and Elizabeth Russell, and $400 to his brother Patrick, with reversion to the nieces if not claimed within a year, and the remainder to Ellen Russell. On the 27th November, 1878, Russell made a will, which is the subject of the present litigation, by which he revoked his former wills, and gave $2,000 to Father Sexton, for the poor of St. Rochs, and the remainder of his property to his wife Julie Morin. On the 10th January following, Russell was interdicted as a maniac, and a curator appointed to his estate. He remained in an asylum until December, 1879, when he was released and lived until his death with his sister Ellen Russell, sister of the appellant. The Superior Court, (Tessier, J.), held that the will was valid, and this decision was affirmed by the Court of Queen's Bench.

Held, (reversing the judgment of the Q. B., Ritchie, C. J., and Strong, J., dissenting), (1) that the proper inference to be drawn from all the evidence as to the mental capacity of the testator to make the will of the 27th November, was that the testator, at the date of making said will, was of unsound mind. (2) That as it appeared that the only consideration for the testator's liberality to Julie Morin was that he supposed her to be his "beloved wife, Julie Morin," whereas she was at the time the lawful wife of another, the universal bequest to Julie Morin, was void, by reason of error and false cause. (3) That it is the duty of an appellate Court to review the conclusion arrived at by Courts whose judgments are appealed from upon a question of fact, when such judgments do not turn upon the credibility of any of the witnesses, but upon the proper inference to be drawn from all the evidence in the case.—*Russell* v. *Lefrançois*, Jan. 1883.

GENERAL NOTES.

Bradlaugh, the English agitator, having been expelled from the House of Commons, brought an action for assault against Mr. Erskine, the Serjeant-at-Arms. Mr. Justice Field has dismissed the case, holding that the claim of a member to sit in the House, from which he has been excluded by the House itself, cannot be determined by a court of law, and if the House has power to order his exclusion it must have power to enforce its order. If the Serjeant-at-Arms were not protected by that order in the use of such force as may be necessary to carry it out, the order itself would be a nullity.